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## AMERICAN CATHOLIC LEGAL EDUCATION AND THE FOUNDING OF DEPAUL'S COLLEGE OF LAW

Lester Goodchild\*

In a 1940 article, *The Problem of the Catholic Law School*, the fourth dean of DePaul's College of Law, William F. Clarke (1894-1955), challenged the curricular content of American Catholic law schools, when he wrote:

There is little or no point in the bestowal of the appellation *Catholic* upon any institution the actions of which do nothing to set it apart from those which lay no claim to that title. Furthermore, if such a differential is not to be found, there is no justification, other than proprietary or financial, for the maintenance of law schools by Catholic universities and communities, since the primary reason for the operation of a privately established and maintained school system is the propagation of an active Catholicity amongst Catholic youth.<sup>1</sup>

As one of the chief proponents for a Catholic jurisprudence, Clarke endeavored to create a new curricular philosophy which demonstrated American Catholic law schools' *raison d'être*. During his 25 year deanship, from 1925 to 1950, he partially achieved this goal, because a Roman Catholic spirit permeated American Catholic higher education during the first half of the twentieth century.<sup>2</sup>

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1. Clarke, *The Problem of the Catholic Law School*, 3 U. DET. L. REV. 169, 174 (1940).

2. P. FITZGERALD, S.J., *THE GOVERNANCE OF JESUIT COLLEGES IN THE UNITED STATES, 1920-1970* 21-35 (1984); Goodchild, *The Mission of the Catholic University in the Midwest, 1842-1980: A Comparative Case Study of the Effects of Strategic Policy Decisions Upon the Mission of the University of Notre Dame, Loyola University of Chicago, and DePaul University*, (1 Ph.D. Dissertation, University of Chicago 284-461 (1986)) [hereinafter Goodchild, *Catholic University*]; Goodchild, *The Turning Point in American Jesuit Higher Education: The Standardization Controversy Between the Jesuits and the North Central Association, 1915-1940*, 6 HIST. OF HIGHER EDUC. ANN. 81-116 (1986). On how the American Catholic church embodied a Roman Catholic spirit during this period, see J. DOLAN, *THE AMERICAN CATHOLIC EXPERIENCE: A HISTORY FROM COLONIAL TIMES TO THE PRESENT* 384-407 (1985); G. FOGARTY, S.J., *THE VATICAN AND THE AMERICAN HIERARCHY FROM 1870 TO 1965* 195-209, 228-30 (1985); A. GREELEY, *COME BLOW YOUR MIND WITH ME* 109-48 (1971); J. HENNESEY, S.J., *AMERICAN CATHOLICS: A HISTORY OF THE ROMAN CATHOLIC COMMUNITY IN THE UNITED STATES* 234-93 (1981); T. MCAVOY, C.S.C., *A HISTORY OF THE CATHOLIC CHURCH IN THE UNITED STATES* 371-423 (1969); W. HALSEY, *THE SURVIVAL OF INNOCENCE: CATHOLICISM IN AN ERA OF DISILLUSIONMENT 1920-40* (2 Notre Dame Stud. in Am. Catholicism 61-180 (1980)).

However, this development did not correspond with the College of Law's aims at its founding nor does it at its seventy-fifth anniversary. This is because DePaul University's mission and Catholic character were markedly different before the Depression began and after the Second Vatican Council ended in 1965. During these periods, DePaul's leadership used other rationales to justify the existence of a law school at a Catholic university. At the turn of the century, the offering of legal education with a nascent ecumenical admissions policy sufficiently determined the Catholic orientation of the College of Law. Universal moral and national legal mandates now buttress this approach. On the other hand, the law school of today evidences its Catholic aims through research centers, such as the Center for Church/State Studies and the new Health Law Institute. These shifts in academic policies, programs, and research during the College of Law's 75 year history reflect the changing mission and character of American Catholic higher education and legal education which have responded to developments within American higher education and the American system of legal education. To date, a history of this largest group of private law schools in the United States remains unwritten.<sup>3</sup>

As a prelude to such a work, this paper first overviews the beginnings of American Catholic legal education from St. Louis University's early effort in 1843 to the establishment of the sixteenth Catholic law school at Loyola

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3. In 1984-86, Catholic law schools numbered 23 out of the 175 law schools in the United States and enrolled approximately 5,800 of their 117,600 students.

Two authors have written short overviews of American Catholic legal education. Brown, *The Place of the Catholic Law School in American Education*, 5 U. DET. L. REV. 1-18 (1941), also published in R. DEFERRARI, *ESSAYS ON CATHOLIC EDUCATION IN THE UNITED STATES* (1942). Brown suggests there are three periods in the development of Catholic legal education. The originating period from 1869 to 1929 accounted for the founding and accrediting of most Catholic law schools. The aspirant period from 1929 to 1941 delineated how these schools complied with the standards of the American Bar Association and the Association of American Law Schools. By the end of this period, they attempted to develop a Thomistic philosophy and jurisprudence. The third period represented a time of retrenchment when the Second World War diminished the schools' enrollments.

This author believes that there are some problems with Brown's work. It is essentially an essay based upon a contemporary survey, rather than a historical analysis. While his periodization is generally demonstrable, it does not account for St. Louis University's pioneering effort in 1843, lacks a close analysis of the role that the accrediting associations played in the development of Catholic law schools, and fails to identify the law schools by name.

On the other hand, in E. POWER, *A HISTORY OF CATHOLIC HIGHER EDUCATION IN THE UNITED STATES* 248-53 (1958) and E. POWER, *CATHOLIC HIGHER EDUCATION IN AMERICA: A HISTORY* 221-30 (1972) [hereinafter POWER, *CATHOLIC HIGHER EDUCATION*], the author has provided good, broad analyses of the founding of Catholic law schools, although he concentrates primarily on the University of Notre Dame, Georgetown University, and Catholic University of America, and does not describe the process that standardization played in their development. This article overcomes the problems of Power's works.

Besides these general studies, several significant institutional histories are useful: P. MOORE, C.S.C., *A CENTURY OF LAW AT NOTRE DAME* (1969) and T. SIMON, *BOSTON COLLEGE LAW SCHOOL AFTER FIFTY YEARS* (1980).

University (Los Angeles) in 1920. Second, it describes the history of DePaul's College of Law from its founding as the Illinois College of Law in 1897. Third, this paper chronicles the law school's affiliation with this Chicago Vincentian university in 1912 and its growth until 1930. Fourth, it recounts how the American Bar Association (ABA) and the Association of American Law Schools' (AALS) quest to standardize American legal education brought uniformity and stature to Catholic law schools. Fifth, it analyzes the Catholic legal culture movement from the 1930's to the 1950's as these law schools took a radical departure from their founding spirits. As a result of this historical analysis, four developmental periods may be discerned within American Catholic legal education. This overview discloses Catholic law schools' predominant reactive disposition to developments within American legal education and to shifting American and Roman Catholic magisterial positions from the late nineteenth to the mid-twentieth century.

### I. EARLY AMERICAN CATHOLIC LEGAL EDUCATION

Early North American legal education established the pattern which Catholic legal education followed. During the colonial period, legal study consisted of an apprenticeship method. By the latter part of the eighteenth century, private law schools also arose, such as the Litchfield Law School, where law was taught as a science. Both approaches continued into the twentieth century. A third means of legal education began when American colleges created professorships in law. In 1779, Thomas Jefferson instituted the first chair of law at William and Mary. Similar chairs were established at the College of Philadelphia in 1790, Columbia College in 1793, Transylvania University in 1799, Yale College in 1801, and Harvard College in 1815.<sup>4</sup> This development led to an institutional form which rivaled earlier approaches.

The first American law school evolved when Asahel Stearns joined Harvard's Royall Professor of Law, Isaac Parker, in 1817. They created a course of studies which met the "immediate demands of the practitioner."<sup>5</sup> During Parker and Stearns' more than decade long leadership, the school produced few graduates. Harvard's enrollment increased only after the school's reorganization under Supreme Court Justice Joseph Story's tenure as the Dane Professor of Law. This success may be attributed to his inclusion of national

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4. A. HARNO, *LEGAL EDUCATION IN THE UNITED STATES* 1-39 (1953); A. REED, *TRAINING FOR THE PUBLIC PROFESSION OF LAW* 116-19 (1921); R. STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s* 3-5 (1983). For a broader perspective on legal education and professional schools in American higher education, see J. BRUBACHER & W. RUDY, *HIGHER EDUCATION IN TRANSITION: A HISTORY OF AMERICAN COLLEGES AND UNIVERSITIES, 1636-1976* (3d ed., rev. 1976); E. HUGHES, *EDUCATION FOR THE PROFESSIONS OF MEDICINE, LAW, THEOLOGY, AND SOCIAL WELFARE* (1973); E. SCHEIN, *PROFESSIONAL EDUCATION: SOME NEW DIRECTIONS* (1972).

5. A. HARNO, *supra* note 4, at 37; A. REED, *supra* note 4, at 138.

law and legal principles within the older professional focus.<sup>6</sup> Conversely, Thomas Jefferson integrated the study of law within the baccalaureate curriculum rather than as a separate college at his own University of Virginia. Here, politics and law were taught together, a precursor to the social science method of legal study.<sup>7</sup> These two prototypical approaches to the study of law created a curricular dialectic which has marked the struggle between practical and academic law proponents until the present day. While Harvard and Virginia had begun their own schools, Yale appropriated a private law school in New Haven operated by Judge David Daggett. This demonstrated an alternative method by which American colleges and universities established their own law schools.

These early university law schools presaged the predominant pattern of American legal education, although this development took over 100 years. Between 1820 and 1850, collegiate and proprietary law schools suffered severe setbacks, as Jacksonian Democratic ideals influenced states to reduce or eliminate requirements for apprenticeship. As access to the bar became populist, these schools lost enrollments or closed their doors. By 1840, there remained only nine university law schools, enrolling some 350 students.<sup>8</sup>

As these Jacksonian influences decreased within American legal education, Catholic institutions of higher learning made their first efforts to establish legal education. Following the pattern of establishing law professorships, St. Louis University accepted Judge Richard A. Buckner's proposal to offer a course of legal lectures. Its law department opened in November, 1843 with 18 students. As professor of common and chancery law, he taught collegiate students for the next five years, imitating the University of Virginia's plan. However, after Buckner's death in 1847, the Jesuit rector failed to appoint another law professor, due to the course's limited success in attracting students.<sup>9</sup> Almost 60 years would elapse until this Jesuit university resumed legal offerings. Another midwestern Catholic school, the University of Notre Dame, built on this pioneering effort.

Although apprenticeship remained the norm, during the next 20 years a boom occurred within American legal education, favoring the founding of a Catholic law school. By 1860, 21 law schools were operating across the country, and some even offered instruction in the theory and practice of

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6. J. BRUBACHER & W. RUDY, *supra* note 4, at 203; A. HARNO, *supra* note 4, at 40-50; POUND, *THE LAW SCHOOL, 1817-1929* cited in S. MORISON, *THE DEVELOPMENT OF HARVARD UNIVERSITY, SINCE THE INAUGURATION OF PRESIDENT ELIOT, 1636-1936* 472-77 (1930); A. REED, *supra* note 4, at 143-44.

7. P. BRUCE, *HISTORY OF THE UNIVERSITY OF VIRGINIA, 1819-1919* 1:322-25, 2:101-02 (1920); A. REED, *supra* note 4, at 118-19; F. RUDOLPH, *THE AMERICAN COLLEGE AND UNIVERSITY* 124-8 (1962).

8. R. STEVENS, *supra* note 4, at 6-10.

9. G. GARRAGHAN, S.J., *THE JESUITS OF THE MIDDLE UNITED STATES* 3:204-05 (1938); W. HILL, S.J., *HISTORICAL SKETCH OF THE ST. LOUIS UNIVERSITY* 73 (1879); E. POWER, *CATHOLIC HIGHER EDUCATION*, *supra* note 3, at 223; Dunsford, *St. Louis—Pioneer Catholic Law School*, 3 *CATH. LAW.* 237 (1957) (wrongly states that law school was founded in October 1842).

law. The demand for an intensive period of legal study increased with the advent of the bar examination. The numbers practicing law decreased, especially after New York instituted the first written exam in 1870.<sup>10</sup> Approximately 40,000 lawyers practiced at the bar by this time, an increase of some 20,000 since 1850.<sup>11</sup>

Responding to this new desire for legal education, the Reverend Edward Sorin, C.S.C. and the Holy Cross brothers at the University of Notre Dame hoped to begin a Department of Law as early as 1854, only 12 years after the college's founding.<sup>12</sup> However, not until Sorin became provincial of the Congregation of Holy Cross did he and Notre Dame's second president, the Reverend William Corby, C.S.C., launch the College of Law with four faculty members in February, 1869. Favoring the Harvard approach, they established a departmental head and three professorships in ethics and civil law, constitutional and criminal law, and commercial law. Their two year course maintained a strong jurisprudential concentration, which became a distinguishing characteristic of Catholic law schools. The first year included political economy, Roman law, the institutes of Justinian, English common law, principles of obligations, criminal law and procedure, and medical jurisprudence. The second year was comprised of constitutional law, principles of civil jurisprudence, American jurisprudence, civil and commercial contract law, the law of evidence, and practice at law and equity.<sup>13</sup>

Following the developments of the eastern American law schools, the Notre Dame faculty used textbooks and cases instead of the lecture method.<sup>14</sup> The administration expected students to have some liberal education before beginning the study of law.<sup>15</sup> While only 12 students enrolled, three students completed the course by 1871 and received a Bachelor of Laws (LL.B.) degree.<sup>16</sup> Because of this strong beginning, 23 LL.B.s were granted by the end of the decade.<sup>17</sup>

After a fire destroyed the main university building in 1879, the university shut down for four years, while Sorin built a larger Notre Dame. In 1883, Colonel William Haynes, who had earned his law degree from the University of Michigan and established a thriving practice in Chicago, assumed Notre Dame's law professorship. His efforts enabled the law school to stabilize its enrollment at 25 in 1890.<sup>18</sup> Sorin and the Holy Cross community thus created the first organized Catholic law school.

10. R. STEVENS, *supra* note 4, at 22-25.

11. *Id.* at 21-22; A. REED, *supra* note 4, at 152-59, 442.

12. P. MOORE, *supra* note 3, at 2.

13. *Id.* at 4; Konop, *History of the Notre Dame College of Law*, 6 NOTRE DAME LAW. 5-7 (1930).

14. Konop, *supra* note 13, at 7.

15. P. MOORE, *supra* note 3, at 3.

16. A. HOPE, C.S.C., NOTRE DAME: ONE HUNDRED YEARS 151 (1943).

17. P. MOORE, *supra* note 3, at 6.

18. Konop, *supra* note 13, at 12-14.

Subsequent events in American legal education set the future standards for Catholic law schools. First, Harvard's President Charles W. Eliot appointed Christopher Columbus Langdell as the Dane Professor of Law and dean of its law school in 1870. His first casebook, *A Selection of Cases on the Law of Contracts*, inaugurated the case method that would become the system of instruction for American legal education.<sup>19</sup> Moreover, Langdell hoped to make the study of law a three year post-baccalaureate experience, thereby anchoring the profession to the American university.<sup>20</sup>

Second, Lewis Delafield criticized the low admission standards to the bar at the 1876 meeting of the American Social Science Association. He believed that the best approach would require all applicants to "learn the principles of law in a school, then apply them for at least a year in an office, and finally pass a public examination by impartial examiners appointed by the courts."<sup>21</sup> His speech prompted the association to call for a national association of lawyers in the following year. As a result, the ABA was formed in 1878 with a reformist agenda. One of its most significant early actions occurred in 1881 when the House of Delegates recommended three years of law school attendance as preparation for the bar. In 1893, the professionalization movement began in earnest when the ABA established a separate section concerned with legal education. There soon followed a Committee on Legal Education and Admission to the Bar which forwarded its recommendations to the ABA. Three years later, the committee recommended requiring a high school diploma and two years of legal study for admission to the bar.<sup>22</sup> In 1897, the ABA approved the following resolutions, which, as will be discussed later, had great implications for Catholic legal education and DePaul's College of Law:

Resolved, that the American Bar Association approves the lengthening of the course of instruction in law school to a period of three years, and that it expresses hope that as soon as practicable a rule may be adopted by each State which will require candidates for admission to the bar to study law for three years before applying for examination.

Resolved, that the American Bar Association is of the opinion that before a student commences the study of law, it is desirable that he should receive a general education at least equivalent to a high school course, . . .<sup>23</sup>

In a third development, the ABA section on legal education invited all 96 law schools in the country to attend its meeting in 1900. Thirty-five schools

19. A. HARNO, *supra* note 4, at 55-60; H. HAWKINGS, *BETWEEN HARVARD AND AMERICA: THE EDUCATIONAL LEADERSHIP OF CHARLES W. ELIOT* 204-05 (1972); POUND, *supra* note 6, at 477-81; J. REDLICH, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS* (1914).

20. R. STEVENS, *supra* note 4, at 36.

21. Delafield, *The Conditions of Admission to the Bar*, 969 cited in R. STEVENS, *supra* note 4, at 27-28.

22. R. STEVENS, *supra* note 4, at 27, 93, 96.

23. Gregory, *The Past and Present of the Association of American Law Schools*, 9 A. OF AM. L. SCH. PROC. 40-47 (1909); *Transactions of the Twentieth Annual Meeting of the American Bar Association* 20 A.B.A. REP. 3, 26, 33 (1897).

sent representatives.<sup>24</sup> They created the Association of American Law Schools, whose object was the improvement of legal education.<sup>25</sup> This organization required its member schools to abide by its norms if the schools wished to retain their memberships. This mechanism promoted compliance and became the means by which the professionalization of the bar through university law schools occurred. Each of these forces, namely, the case method of instruction, the professionalization of the bar, and the standardization of law schools, had tremendous implications for the future of the American system of legal education and the rise of Catholic law schools.

During the latter part of the nineteenth century, American Catholic colleges sought university stature. Adopting the older European university model, they founded or affiliated professional schools to substantiate their changing educational missions. Catholic educators did this to provide professional opportunities for second and third generation Catholics who were unable to enter or afford more prestigious colleges and universities.

The next two Catholic law schools to be established at this time, Georgetown University and Catholic University, had great difficulties matching the quality of established law programs. In 1870, Georgetown Law School opened its doors as a two year night school leading to an LL.B. degree. Eight years later, the school offered a Master of Laws (LL.M.) degree. While the university extended its night school to three years with the ABA's 1897 mandate, this program hardly compared with the day programs at Harvard and other schools.<sup>26</sup> Several reasons accounted for this fact. First, Georgetown's curriculum centered on local law, even though its faculty attracted prominent government officials, including Supreme Court Justice Samuel F. Miller. Furthermore, its faculty used a lecture method supplemented by quizzes, instead of the case method, following the Jesuit *Ratio Studiorum* ideal.<sup>27</sup> Most revealing was Georgetown's failure to require graduation from high school as an admission standard even as late as 1907. This low standard enabled it to assemble 1,000 students within its law school.<sup>28</sup> The Jesuits had seemed committed to higher standards when the law school joined the AALS in 1902.<sup>29</sup> However, after the AALS required all its member schools to admit only students who had a high school degree or its equivalent, the administration of the law school found this requirement too demanding

24. These schools instructed 8,084 students, nearly two-thirds of the total. Gregory, *supra* note 23, at 44-45.

25. Smith, *History of the Activity of the American Bar Association in Relation to Legal Education and Admission to the Bar*, 7 AM. L. SCH. REV. 1-3 (1930).

26. E. POWER, CATHOLIC HIGHER EDUCATION, *supra* note 3, at 227; R. STEVENS, *supra* note 4, at 40.

27. J. DONOHUE, S.J., JESUIT EDUCATION: AN ESSAY IN THE FOUNDATIONS OF AN IDEA 3-86 (1963); A. FARRELL, S.J., THE JESUIT CODE OF LIBERAL EDUCATION AND SCOPE OF THE RATIO STUDIORUM 314-428 (1938); Lucey, S.J., *The Story of Georgetown Law School*, 3 CATH. LAW. 129-31 (1957); *Georgetown Law School, 1870-1920*, 9 GEO. L.J. 1-106 (1920).

28. E. POWER, CATHOLIC HIGHER EDUCATION, *supra* note 3, at 224-28.

29. 2 A. OF AM. L. SCH. PROC. 4 (1902).



and withdrew from the association in 1907.<sup>30</sup> Not until its readmission to the AALS in 1925 did Georgetown rank comparably with other American law schools.

The third Catholic law school to open in the nineteenth century was diocesan and reflected a more American spirit. In 1889, the American Catholic bishops founded Catholic University of America as the flagship of American Catholic higher education. Progressive bishops, such as Archbishop James Gibbons (CA1834-1921) of Baltimore, Archbishop John Ireland (1838-1918) of St. Paul, Bishop John Lancaster Spalding (1840-1916) of Peoria, and Monsignor John J. Keane (1839-1918), the first rector of Catholic University, launched this institution as a graduate university, similar to Johns Hopkins University and Clark University. Their university design exemplified the liberal Catholic sentiment at the turn of the century that the self-proclaimed Americanists called a rapprochement between American Catholicism and the American way of life.<sup>31</sup> While the advanced study of theology remained the paramount focus of the university, Keane wanted to establish a School of Social Sciences within which a law school would hold a prominent place. This approach followed the European and University of Virginia patterns. The rector discussed the structure of the division and the law school with William Callyhan Robinson (1834-1911), a professor of law at Yale and a leader of the philosophic concept of law. He wanted to structure Catholic University's legal curriculum along this principle. When the law school opened in 1895, Robinson became its first dean and gave the curriculum a jurisprudential orientation with courses in Roman and natural law.<sup>32</sup> This focus furthered the distinctive Catholic law school approach

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30. 7 A. OF AM. L. SCH. PROC. 22 (1907).

31. The American research university owed its development to the importation of the research ideal, being practiced in German universities during the nineteenth century. Founded in 1876, Johns Hopkins University began as an institution of higher learning primarily for graduate students. While Johns Hopkins allowed some undergraduates, Clark University maintained an all graduate model from its founding in 1889. See J. BRUBACHER & W. RUDY, *supra* note 4, at 174-97; R. GEIGER, *TO ADVANCE KNOWLEDGE: THE GROWTH OF AMERICAN RESEARCH UNIVERSITIES, 1900-1940* (1986); L. VEYSEY, *THE EMERGENCE OF THE AMERICAN UNIVERSITY* (1965). These developments influenced the founding of Catholic University, which was devoted initially to graduate study. This appropriation of American ideas and patterns for Catholic institutions represented a major goal of these liberal bishops in their attempts to renew American Catholicism at the turn of the century. See G. FOGARTY, S.J., *THE VATICAN & THE AMERICANIST CRISIS*; J. HENNESEY, *supra* note 2, at 196-99, 201, 216, 217, 230; T. MCAVOY, C.S.P., *THE AMERICANIST HERESY IN ROMAN CATHOLICISM, 1850-1900* (1963); D. O'BRIEN, *THE RENEWAL OF AMERICAN CATHOLICISM* 102-08 (1972); D. O'CONNELL, *AMERICAN AGENT IN ROME, 1885-1903* (1974); Goodchild, *The Americanist University: DePaul at the Turn of the Century*, *De Paul U. Mag.* 4-13 (1987); Goodchild, *The Americanist University: DePaul University, 1907-1932*, *AM. CATHOLIC HIST. A. MEETING* (1986); Spalding, *University Education, THE MEM VOL.: A HISTORY OF THE THIRD PLENARY COUNCIL OF BALTIMORE, NOVEMBER 9-DECEMBER 7, 1884* 98-102 (1885). See also note 70 and accompanying text.

32. Nuesse, *The Thrust of Legal Education at the Catholic University of America, 1895-1954*, 35 *CATH. U.L. REV.* 35-39 (1985).

which arose by mid-century. Robinson also resisted Harvard's case study method and instead followed the Yale practice of lectures. However, the dean encountered a major difficulty when the American bishops decided to open the law school to undergraduates. Robinson resisted their directive during the 16 years of his deanship, as approximately 70 percent of his students had received baccalaureate degrees.<sup>33</sup> After the school opened, the dean also found the divisional structure unworkable and separated the law school from the School of Social Sciences. In these ways, Catholic University's School of Law followed the patterns set at other American law schools.

However, the law school's dissimilarities from other American schools restricted its viability. The bishops wanted only Catholics to be faculty members. Such a hiring criterion was hardly workable, since few Catholics had attained advanced professional degrees at this time. The bishops acquiesced and allowed non-Catholics to become faculty members if they promised not to criticize the teachings of the Church. Without this flexibility, the school could not have opened, for while Robinson was an Episcopal convert, his two fellow faculty members were not Catholics. However, this unresolved tension continued and led these faculty members to leave the institution prematurely. As the sole instructor the dean's designs for the school's degrees undermined its credibility.<sup>34</sup> Besides a Master of Laws degree, Robinson offered three doctoral degrees in civil law, English and American jurisprudence, and comparative jurisprudence.<sup>35</sup> These exceptional practices from the more established law schools served to undercut Catholic University's reputation, but provided a major locus for the developing distinctive Catholic legal culture within American Catholic law schools.<sup>36</sup>

The oddity that two of the three Catholic law schools in the country were less than five miles apart brought an early attempt at unification. In 1903, the Vatican's apostolic delegate to the United States, Archbishop Francesco Satolli, suggested that the Jesuits transfer their law school and their medical school to Catholic University. Satolli hoped this would end the feuding between the religious community and the diocesan institution. When the Jesuits declined, Keane was relieved because the new university could hardly meet the operating costs of two more professional schools. Moreover, the Jesuits were also relieved because they believed that such an action would have led to the future transfer of Catholic University to them. These new fiscal demands would have brought on its insolvency. This Roman misadventure indicated how little Vatican authorities understood the complexity of American higher education and revealed how divisive competition, rather

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33. *Id.* at 46.

34. R. STEVENS, *supra* note 4, at 40.

35. Nuesse, *supra* note 32, at 47-48.

36. Brown, *A Distinctive Law School at the Catholic University of America*, 3 THE ALUMNUS (1935) (available in the Archives of the Catholic University of America, Washington, D.C.); Miller, *The Law School of the Catholic University of America*, 4 CATH. LAW. 333-37 (1958).

than unified planning, among Catholic institutions characterized American Catholic higher education.<sup>37</sup>

As at Georgetown, Catholic University's School of Law did not become viable until it secured certification from the Board of Regents of the State of New York in 1914, adopted the case study method in the 1920's, and received AALS approbation in 1921. Indeed, when this latter accreditation occurred, the AALS remarked that Catholic University had surpassed its membership criteria.<sup>38</sup>

The 13 Catholic law schools founded or reactivated between 1900 and 1920 also had difficulty conforming to the developing ABA and AALS standards because most of them were night schools. They included: Creighton University in 1904; Fordham University in 1905; St. Louis University, Loyola University (Chicago), and Marquette University in 1908; Duquesne University and the University of Santa Clara in 1911; DePaul University, University of San Francisco, Gonzaga University, and the University of Detroit in 1912; Loyola University (New Orleans) in 1914; and Loyola University (Los Angeles) in 1920.<sup>39</sup> If these newly founded law schools attempted to adopt the ABA and AALS standards, especially before WWI, they risked losing their clientele. Few Catholic male students had received baccalaureate degrees or could afford the luxury of day schools. Nevertheless, Creighton and Marquette achieved AALS membership in 1907 and 1912, respectively.<sup>40</sup>

This predicament of Catholic law schools mirrored the difficulties of most American law schools. In 1901, only 32 out of 108 American law schools were AALS members. Nevertheless, the ABA and AALS continued their drive for higher standards. The ABA demanded a three year degree program in 1905. The AALS issued a directive that only high school graduates be admitted to law schools in 1907, and required at least three full-time faculty members at each school in 1916. These standards not only prohibited de-

37. E. POWER, CATHOLIC HIGHER EDUCATION, *supra* note 3, at 217-18, 227-28; R. STEVENS, *supra* note 4, at 76-77; Nuesse, *supra* note 32, at 38-39.

38. Nuesse, *supra* note 32, at 55-57.

39. R. GANNON, S.J., UP TO THE PRESENT: THE STORY OF FORDHAM 126-28 (1967); R. HAMILTON, S.J., THE STORY OF MARQUETTE UNIVERSITY 80-87 (1953); H. MULLER, S.J., THE UNIVERSITY OF DETROIT, 1877-1977: A CENTENNIAL HISTORY 88-90, 137-38, 193-94 (1976); Flore, *Loyola University School of Law*, 9 CATH. LAW. 218-22 (1963); Joyce, *The University of Detroit Law School*, 7 CATH. LAW. 40-44 (1961); Joyce & McKenna, *The University of Detroit School of Law*, 27 MICH. ST. B. J. 5-12 (1948); Kelly, *DePaul University College of Law*, 6 CATH. LAW. 287-89 (1960); McGonagle, *Duquesne University School of Law*, 6 CATH. LAW. 61-66 (1959); Mulligan, *The Fiftieth Anniversary of Fordham University School of Law*, 5 CATH. LAW. 207-13 (1956); North, *Creighton Law School—A Private Institution in the Public Service*, 4 CATH. LAW. 77-82 (1958); Papale, *The Law School of Loyola University, New Orleans*, 5 CATH. LAW. 218-25 (1959); Seitz, *Marquette Law School—Fifty Years of Service in the Middle West*, 3 CATH. LAW. 330-36 (1957); Smith, *Gonzaga University School of Law*, 7 CATH. LAW. 120-24 (1961); Vachon, S.J., *The University of San Francisco School of Law*, 6 CATH. LAW. 21-233 (1960); Vitullo, *Loyola University School of Law—Chicago*, 9 CATH. LAW. 305-07 (1961); *History of the Marquette Law School*, 8 MARQ. L. REV. 298 (1924).

40. 7 A. OF AM. L. SCH. PROC. 22 (1907); 12 A. OF AM. L. SCH. PROC. 35-36, 43 (1912).

veloping law schools from joining the associations but also caused members to resign, as Boston University and New York University did over the issue of admission standards.<sup>41</sup> In 1920, only 50 of the 143 law schools had joined the AALS. From the associations' perspective, the difficulty resided with the failure of the states to exact attendance at a law school as a requirement for practicing at the bar.<sup>42</sup> However, the ABA, which constituted only nine percent of the American bar at this time, resisted forcing prospective lawyers to attend law schools. Yet, the ABA and AALS strove for higher standards to keep out what the president of the Carnegie Foundation called "the poorly educated, the ill-prepared, and the morally weak candidates."<sup>43</sup> Such a plan prevented many foreign-born persons, Catholics, Jews, and blacks from attaining bar membership. The associations' mutual disdain centered on the night law schools which enabled many of these types of working persons to gain a legal education.<sup>44</sup> Considering such schools inferior, the associations' leadership sought to close them. The ardor of their efforts intensified as these schools achieved spectacular growth compared to the accredited law schools.<sup>45</sup> At its 1916 annual meeting, the AALS recommended eliminating all night law schools in 1920. When the University of Southern California objected, AALS president and dean of the University of Chicago's Law School, Walter Cook, said:

The Committee in formulating the resolution meant, . . . , to strike at night school instruction or instruction in law at night . . . I think most of us will agree that we have plenty of lawyers and we are not to sit up nights devising ways for poor and unworthy individuals to get to the Bar.<sup>46</sup>

Elitist protagonists and equalitarian antagonists debated the issue in the accrediting associations for the next eight years. The ABA and AALS' compromise on this issue during the early 1920's gave night law schools respectability and changed the character of Catholic legal education.

Thus, the formative period of Catholic law schools, which began with St. Louis University's pioneering effort in 1843, came to a close in 1920 when 15 other Catholic university law schools prepared American Catholics and others for the bar. DePaul's College of Law played a significant role during this first period of American Catholic legal education.

## II. THE ORIGIN OF THE ILLINOIS COLLEGE OF LAW

Most Catholic institutions of higher learning established their own law schools. Of the 16 founded by 1920, only two resulted from the mergers of

41. Gregory, *supra* note 23, at 43.

42. R. STEVENS, *supra* note 4, at 96-100.

43. J. AUERBACH, *UNEQUAL JUSTICE* 107 (1976).

44. R. STEVENS, *supra* note 4, at 100-01; Auerbach, *Enmity and Amity: Law Teachers and Practitioners, 1900-1922*, 5 *PERSP. ON AM. HIST.* 572-80 (1971). For an excellent general discussion of admission bias within American colleges and universities, see H. WECHSLER, *THE QUALIFIED STUDENT: A HISTORY OF SELECTIVE COLLEGE ADMISSION IN AMERICA* (1977).

45. Gregory, *supra* note 23, at 44-45.

46. 16 *A. OF AM. L. SCH. PROC.* 62-67 (1916).

older proprietary schools. In 1908, Marquette University absorbed the Milwaukee Law School, founded in 1895, and the Milwaukee University Law School, established in 1905. This Jesuit university started its law school with three professors and 100 students. In the following year, the administration selected a new dean, Judge James Jenkins. By 1910, the Jesuits placed the Reverend Charles B. Moulinier, S.J., as regent over the dean and law school. This Jesuit governance pattern occurred whenever a professional college was not headed by a Jesuit priest.<sup>47</sup>

The other merger between older propriety law schools occurred in Chicago where DePaul University affiliated the Illinois College of Law in 1912. The Illinois College of Law had been a strong force in Chicago legal education for fifteen years. Howard Newton Ogden (1864-1915) launched the Illinois College of Law in 1897. He was a man of extraordinary talent and intellect. Born in Washington, West Virginia in 1864, Ogden received his baccalaureate degree from West Virginia University in 1881 and his Master of Arts from the same institution four years later. Ogden then decided to practice law. He was admitted to the bar in West Virginia in 1884 and practiced there until 1888, when he moved to St. Paul, Minnesota. Two years in the cold northern climate were enough for the southerner, and in 1890 Ogden returned to West Virginia University where he taught English language and literature until 1893. Excited by that experience, he moved to Chicago the following year where he studied and lectured at the University of Chicago, while earning a Ph.D. in political science and history from Marietta College in Ohio. Over the next three years, he lectured at various Chicago law schools and began a law practice in the city. The year after he began at University of Chicago law school, Ogden received a doctorate in laws from Washington University. His scholarly aptitude led him not only to write several books, but also to serve as the editor of *Blackstone's Commentaries* and various legal publications.<sup>48</sup>

Ogden's desire to found a local law school was prompted by national and state efforts to raise the educational requirements for admission to the bar. The State Supreme Court of Illinois took action in 1897, after the ABA voted to require a high school education for admission to law school and a three year record of study before approaching the bar.<sup>49</sup> The court adopted Rule 39 on November 4, 1897, which raised the standards of legal education. This rule required applicants to the bar to prove that they were high school graduates or had received an equivalent educational experience. More importantly, the court ordered the state board of examiners to insure that

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47. Brown, *supra* note 3, at 14; Seitz, *supra* note 39, at 299-300. This section depends heavily upon Goodchild, *DePaul's College of Law: The First Thirty Years*, DePaul U. Mag. 8-13 (1988) [hereinafter Goodchild, *The First Thirty Years*].

48. A. MARQUIS, *THE BOOK OF THE CHICAGOANS* 513 (1911).

49. R. STEVENS, *supra* note 4, at 95-96; Stevens, *Law Schools and Legal Education, 1879-1979: Lecture in Honor of 100 Years of Valparaiso Law School*, 14 VAL. U.L. REV. 187, 201 (1980).

applicants had undergone a three year course of legal studies and satisfactorily passed an examination on:

the law of real and personal property, personal rights, contracts, evidence, common law and equity pleadings, partnerships, bailments, negotiable instruments, principal and agent, principal and surety, domestic relations, wills, corporations, equity, jurisprudence, criminal law, and upon the principles of the constitutions of the State and of the United States, and legal ethics.<sup>50</sup>

Following these new requirements, Ogden opened his law school as a three year day and evening course in September, 1897 at 160 Washington Street.<sup>51</sup> He employed seven faculty members, some of whom practiced law. By the end of the year, 74 students had begun their studies toward the LL.B.(see Table 1 for enrollments until 1912, at page 408).<sup>52</sup> Ogden's admission requirements followed the accepted standard of graduation from high school or college. Lacking either of these, students needed to pass an entrance examination. For those lawyers who wished advanced study in either more practical areas of law or legal history and theory, the founder launched a postgraduate course with such courses as: "Roman, Civil, and Spanish law; English and Comparative Constitutional Law, Legal History, International Law, Conflict of Law, Medical Jurisprudence, Abstracts, Conveyancing, Landlord and Tenant, Ejectment and Practical Exercises in Pleading."<sup>53</sup> This effort demonstrated Ogden's desire to further the scholarly study of law, following the patterns of elite American law schools. This program enrolled 22 students and brought the combined enrollment to 96. This achievement heralded a propitious beginning for the Chicago lawyer.

Ogden's success continued as he launched other innovative programs to encourage the study of law. He began a summer school in 1898. While it attracted only nine students initially, subsequent summer schools averaged more than 50 students. Over the next several years, he offered a commercial law course leading to a diploma, added regularly scheduled moot court competitions for the LL.B. students, and established a 1,000 volume library. Because of these efforts, enrollments increased appreciably from 179 in the 1898-99 academic year to 311 by the 1902-03 academic year. Such expansion required a larger faculty and brought greater regional recognition. While Ogden wanted to become a charter member of the AALS, he was unable to

50. R. ELLIOTT, *THE RULES OF COURT AS ESTABLISHED BY THE SEVERAL STATE COURTS OF ILLINOIS* 26-29 (4th ed. 1904); 2 ILL. C. OF LAW BULL. 8, 11, 17-18 (1905) [hereinafter 2 ILL. BULL].

51. Ogden moved the Illinois College of Law several times during its fifteen year history. In 1899, it moved to the Opera House block. Because of increased enrollments, Ogden moved the school again in 1904 to the larger accommodations of 301 Erie Street, which had been Robert McCormick's residence before his departure as the United States Ambassador to Russia. See 2 ILL. BULL. *supra* note 50, at 18.

52. 1 ILL. C. OF LAW BULL. 12-14 (1904).

53. *Id.* at 6.

attend its initial meeting. The Illinois College of Law attained AALS membership in 1902.<sup>54</sup>

After 1904, Ogden added additional law programs. As the faculty grew to 18, he upgraded the postgraduate course by offering an LL.M. degree. Subsequently, some 50 students enrolled annually in the program. The president also opened a University Extension Law School in which all course requirements could be accomplished *in absentia*. This later development brought the law school in conflict with the AALS. This new program allowed students who had not completed high school to enroll in courses as special students while all degree-seeking students were required to have a high school education.<sup>55</sup> When the AALS prohibited member schools from accepting *any* nonsecondary graduates, Ogden withdrew from the association.<sup>56</sup> The Illinois College of Law was not alone in its protest as Georgetown, Baltimore, and Buffalo resigned, while Chicago-Kent College of Law and Tennessee were dropped.<sup>57</sup> While this change in stature had no appreciable affect on Illinois College of Law's enrollment, the unfortunate event signalled a turning point in its history.

Over the next three years, Ogden's aspirations for the law school continued to rise. In 1908, he affiliated the Illinois College of Law with Chicago's Jefferson Park College. This enabled law school students to receive a year of credit toward a Bachelor of Arts degree which in turn allowed them to earn a LL.B. and B.A. in six years.<sup>58</sup> In 1909, Ogden further expanded the school's degree granting powers by offering a Doctor of Law (J.D.) degree to college graduates who attended the day law school full-time for three years. In the following year, he added a Doctor of Civil Law (D.C.L.), if students studied for four or more years in the day program.<sup>59</sup> To accentuate the growing prestige of the day school, the founder also incorporated the evening school as a separate school under the name of the Illinois Law School, making Albert H. Putney dean.<sup>60</sup> To bolster these programs, Ogden hired excellent faculty members who had received law degrees from Harvard, University of Chicago, Northwestern University, University of Michigan, and a growing number, especially in the evening school, from the Illinois College of Law. By this time, law instruction was based entirely on the case

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54. 1 A. OF AM. L. SCH. PROC. 2-4 (1900); 2 A. OF AM. L. SCH. PROC. 4 (1902); 2 ILL. BULL., *supra* note 50, at 2.

55. 2 ILL. BULL., *supra* note 50, at 8-9.

56. 6 A. OF AM. L. SCH. PROC. 113-29 (1906). Of the 27 schools attending the meeting, 16 moved to strengthen admission standards, while six voted against the measure: "It shall be required of all candidates for its degree at the time of their admission to the school the completion of a four year high school course, or such a course of preparation as would be accepted for admission to the State university or to the principal colleges and universities in the State where the law school is located." *Id.*

57. Gregory, *supra* note 23, at 42.

58. 13 ILL. C. OF LAW BULL. 18 (1909) [hereinafter 13 ILL. BULL.].

59. *Id.* at 13; 15 ILL. C. OF LAW BULL. 2 (1911) [hereinafter 15 ILL. BULL.].

60. 13 ILL. BULL., *supra* note 58, at 5.

study approach. The Illinois College of Law thus had become a thriving local bar school with a scholarly post-graduate program, reaching its highest enrollment of 387 in the 1907-08 academic year.

However, the panic of 1907, a three year economic downturn, undercut many of Ogden's hard fought gains. Students and lawyers curtailed educational expenses. By the 1909-10 academic year, the enrollment dropped to 261, with only ten students in postgraduate programs. To secure additional monies, Ogden launched his last innovative program, the Illinois Business Law School, a one year evening course for the nonprofessional student.<sup>61</sup> Despite Ogden's efforts, enrollments continued to decline, dropping to 218 during the following year. To save his 13 year effort to make the Illinois College of Law a significant force in Chicago and midwestern legal education, Ogden sought to affiliate the law school with a major university.<sup>62</sup>

### III. ILLINOIS COLLEGE OF LAW'S AFFILIATION WITH DEPAUL UNIVERSITY

Howard Ogden turned to DePaul University, perhaps because one of his faculty members, Judge Walter J. Gibbons, was on its board of trustees. The founder wrote to the university's third president, the Reverend Francis X. McCabe, C.M. (1872-1948), and its trustees on December 15, 1910, to offer an affiliation with his law school. Because the Chicago Vincentian's desired to develop a modern Catholic higher education with an accompanying Americanist Catholic character, which they had espoused since the founding of the university, the trustees and Father McCabe accepted Ogden's offer.<sup>63</sup>

DePaul University began as St. Vincent's College in 1898.<sup>64</sup> Its founding reflected the typical pattern of nineteenth century American Catholic colleges. Chicago Archbishop Patrick A. Feehan (1829-1902) asked the Superior of the Congregation of the Mission if the Vincentians could assist him in meeting the educational needs of the archdiocese. They already had established a church in 1874 and a parish school in 1883 within the city. Feehan wanted the Vincentians now to establish an academy (a secondary program) and a college for boys at their parish. The archbishop thought that the classical course offered by such a school would educate Catholic students for professional careers or prepare them to study for the priesthood. In this latter

61. 15 ILL. BULL., *supra* 59, at 2.

62. This move followed the pattern that medical schools had set over the previous 30 years, which culminated in the famous 1910 Flexner report for the Carnegie Foundation. A. FLEXNER, *MEDICAL EDUCATION IN THE UNITED STATES AND CANADA* (1973); K. LUDMERER, *LEARNING TO HEAL: THE DEVELOPMENT OF AMERICAN MEDICAL EDUCATION* (1985).

63. Minutes of the Depaul Board of Trustees, December 28, 1910, Office of the Secretary of the Board of Trustees, DePaul University, Chicago, Illinois [hereinafter Board Minutes]. This section depends heavily upon Goodchild, *The Americanist University: DePaul at the Turn of the Century*, DePaul U. Mag. 4-13 (1987); and Goodchild, *The First Thirty Years*, *supra* note 47. See also Goodchild, *Catholic University*, *supra* note 2, at 1:235-83; and *supra* note 31 and accompanying text.

64. Goodchild, *Catholic University*, *supra* note 2, at 1:208-33.



respect, the college required many courses in philosophy in the junior and senior years. Because this program furthered the Congregation of the Mission's major aim, the education of future clergy, Visitor Thomas J. Smith, C.M. (1830-1905),<sup>65</sup> the provincial and pastor of the Chicago community, strived to fulfill the archbishop's wishes.<sup>66</sup> He added a third floor to the old church for the school. This church was no longer needed for worship, because the construction of the present church had been virtually completed by 1896.<sup>67</sup> In June 1898, Smith received a state charter for St. Vincent's College and opened the school in the following fall with 69 students.<sup>68</sup>

The success of the Chicago Vincentian college stemmed largely from Visitor Smith's choice of the Reverend Peter V. Byrne, C.M. (1846-1932), as its first president. Smith chose him because of his extensive administrative experience as superior and president of St. Vincent's College in Cape Girardeau, Missouri from 1888 to 1893, and as rector of Kenrick Theological Seminary from 1895 to 1897.<sup>69</sup> Byrne was an adamant supporter of the Irish Americanists who founded Catholic University of America and who wanted all levels of Catholic education to follow the best traditions within American education.<sup>70</sup> By spring of 1904, the college had enrolled 200 collegiate and secondary students and awarded numerous baccalaureate and several master of arts degrees.

After the deaths of Feehan in 1902 and Smith in 1905, competition from the Chicago Jesuit college, St. Ignatius College,<sup>71</sup> threatened the survival of the Vincentian college. The Jesuits intended to raise their institution to a university.<sup>72</sup> To compete successfully with this older Catholic institution, Byrne believed that the Vincentian college had to offer something different.<sup>73</sup>

65. The term "Visitor" designates the local ecclesiastical superior of priests and brothers belonging to the Congregation of the Mission. It is equivalent to the office of provincial used in other Catholic religious communities. This more accepted term replaced the office of the visitor by mid-century.

66. Letter from Thomas J. Smith, C.M. to Antoine Fiat, C.M. (October 23, 1896) (available in DeAndreis-Rosati Memorial Archives, St. Mary's Seminary, Perryville, Missouri—Vincentian Letters, Microfilm Series A, Roll 2, Letter 400) [hereinafter DRMA].

67. Letter from Thomas J. Smith, C.M. to Antoine Fiat, C.M. (February, 1899) (available in DRMA—Vincentian Letters, Microfilm Series A, Roll 2, Letter 432).

68. Articles of Incorporation of St. Vincent's College, State of Illinois, June 30, 1898, (available in DePaul University Archives, Chicago, Illinois) [hereinafter DPUA]. See also Mullins, C.M., *The History of the University*, 27 DePaul U. Mag. 7-12 (1975).

69. See *supra* note 67.

70. R. CROSS, *THE EMERGENCE OF LIBERAL CATHOLICISM IN AMERICA*, 130-62 (1958); J. HENNESEY, *supra* note 2, at 197-203; Carey, *American Catholic Religious Thought: An Historical Review*, 4 U.S. CATHOLIC HISTORIAN 133 (1985); T. McAVOY, C.S.C., *THE GREAT CRISIS IN AMERICAN CATHOLIC HISTORY 1895-1900*, 45-154 (1957).

71. St. Ignatius College was established in 1870. See T. MULKEINS, S.J., *HOLY FAMILY PARISH: PRIESTS AND PEOPLE* (1923).

72. Minutes of the Board of Managers, St. Ignatius College, December 5, 1905, 140-42, Office of the President of St. Ignatius Preparatory High School, Chicago, Illinois.

73. Congregation of the Mission at St. Vincent's Parish, Chicago, Minutes of the Domestic Council, January 2, 1905, 18, St. Vincent de Paul Church, Chicago, Illinois [hereinafter Minutes of the Domestic Council].

He recalled Harvard President Eliot's criticism of the Jesuit collegiate curriculum as being too rigid and inflexible. Eliot claimed that Harvard's elective undergraduate course, which allowed students to choose their classes, was the principle reason why it had more Catholic students than any other school in the nation.<sup>74</sup> Both a new elective undergraduate curriculum and professional studies program became the approaches that Byrne used to withstand the Jesuit challenge.<sup>75</sup> They also represented a continuation of the Irish Americanists' efforts to achieve a full integration between Americanism and Catholicism in their educational endeavors.<sup>76</sup>

In his quest to remold the mission of the college, Byrne gained two Vincentian supporters in the spring of 1906, Thomas O'Neill Finney, C.M., the new visitor of the province,<sup>77</sup> and Justin A. Nuelle, C.M. (1879-1972), the college's prefect of studies. He also asked three prominent Chicago attorneys, Judge Walter J. Gibbons, John McGillen, and William Dillon, for their assistance. By the fall of the following year, they decided to recharter the Vincentian college as a university, using the charter of the University of Chicago as a model, a pattern not atypical in Catholic higher education during this period.<sup>78</sup> The mandate of this great Baptist university for liberal, professional, and graduate learning embodied the approach that the Vincentians and their lay supporters wished to take. To accomplish the legal transformation, they created a new charter by substituting the word "Vincentian" for "Baptist" wherever it occurred in the Chicago charter.<sup>79</sup> However, they maintained everything else in the Chicago charter. Byrne and his colleagues thus followed the University of Chicago's lead in mandating a board with lay representation. The board of trustees was to be comprised of ten Vincentian priests and five laymen. While religious communities had shared the governance of the Catholic colleges with laypersons up to the Civil War, no Catholic institution had allowed this type of collaboration for almost 50 years. This development set a precedent for the early modern American Catholic university.

Another clause in Chicago's charter required the administration to make no enrollment or faculty decisions based on *religion*. By adopting a similar policy, the Vincentians pursued a policy unusual for a Catholic institution

74. Eliot, *Recent Changes in Secondary Education*, ATLANTIC MONTHLY 433-44 (October 1899); H. Hawkins, *supra* note 19, at 186-90.

75. Letter from Justin A. Nuelle, C.M. to Jeremiah Lehane, C.M. (December 18, 1944) (available in DPUA, Nuelle Papers).

76. D. O'BRIEN *supra* note 31, at 102-08.

77. Visitor Finney was the first Vincentian faculty member of St. Vincent's College. CATALOGUE OF ST. VINCENT'S COLLEGE, Chicago, Illinois, (1898-99) (available in DPUA).

78. E. POWER, CATHOLIC HIGHER EDUCATION, *supra* note 3, at 235-37.

79. Articles of Incorporation of DePaul University, State of Illinois, December 24, 1907 (available in DPUA) (when compared with the charter of the University of Chicago reveals their action). See Gates, *An Historical Sketch*, The President's Report: July, 1892—July, 1902 503-05 (1903) (available in University of Chicago Archives, Chicago, Illinois).

at the turn of the century. This action represented an early ecumenism that comprised part of DePaul's new Catholic character.

Given the similarities to the University of Chicago charter, it is not surprising that Byrne wanted to call this new institution the University of North Chicago. Visitor Finney objected, insisting that the name be more descriptive of the institution's Catholic affiliation.<sup>80</sup> Nuelle suggested DePaul University.<sup>81</sup> Their agreement on this name enabled Byrne and the other 14 Vincentian and lay trustees to petition the secretary of state to recharter St. Vincent's College as DePaul University by mid-December. The state granted their request on December 24, 1907.

It took three years, however, to transform the college in accordance with their Americanist ideals. First, the Vincentian and lay faculty modified St. Vincent's curriculum to experiment with a program of elective courses before they completely revised the collegiate program. Byrne's and Nuelle's Americanism prompted them to dispense with collegiate religious instruction in Catholicism, retaining it only in the parish elementary and high schools. Visitor Finney discovered this policy a year later and objected that this was inappropriate for a Catholic institution of higher learning. Byrne and Nuelle agreed to modify their position. However, instead of restoring religion classes to the curriculum as in the old college, they required Catholic students to attend Mass and an extracurricular lecture on Christian dogma every Wednesday morning, making this optional for non-Catholic students.<sup>82</sup> In an effort to demonstrate respect for the faiths of non-Catholics which had been given no consideration in the old college, the president separated the instruction of religion from the rest of the curriculum. This policy had its origin in the modern American university mission, exemplified by the University of Chicago's charter.

Yet, how was the university "Catholic"? Byrne addressed this difficult issue in a 1909 report to the trustees:

This institution is Catholic and must ever remain Catholic. Regular instructions in Catholic doctrine are given to Catholic students. They have also Chapel exercises, Mass and sermon, once a week. But, true to the letter and spirit of the charter of the University, no religious test is applied to either students or teachers. No provision is made in the record forms for noting the religion of the students or professors. In fact there are, today, a number of non-Catholic gentlemen, as heads of departments.<sup>83</sup>

Byrne simply defined DePaul's Catholic character as a university conducted under Catholic auspices, a quintessential Americanist demonstration. Fur-

80. Letter from Thomas Finney, C.M. to Peter V. Byrne, C.M. (November 11, 1907) (available in DPUA, Finney Papers).

81. See *supra* note 74.

82. Thomas Finney, C.M., Visitation of June 21, 1908, Regulations and Advice of the Visitor of the Community of the House of St. Vincent, 26-29, (available in DRMA); Nuelle, C.M., *Program of Studies, Schedule for College*, 3 BULL. DEPAUL U. (1909).

83. *First Annual Report of the President to the Trustees of DePaul University*, 3 BULL. DEPAUL U. 3-5 (1908-09).

thermore, these ecumenical policies replicated two Vincentian ideals. During the seventeenth century, Vincent de Paul had encouraged his clergy, and Catholics in general, to work with Protestants<sup>84</sup> in his social apostolates. He also found "gentle persuasion" a better means of reconciling religious differences than the outright hostility often practiced by other Counter Reformation religious communities. These American Catholic and Vincentian attributes represented part of DePaul's developing character. Without this movement toward professional studies, lay leadership, ecumenical personnel policies, and an American Catholic character in the chartering of DePaul University, it is rather unlikely that the Vincentians would have been disposed to affiliate with the Illinois College of Law.

At the same time, President Byrne's professional design for the new university proved difficult to institute. He expanded DePaul's facilities, hired new faculty to teach its engineering and medical courses, and purchased new equipment to facilitate these efforts. The president also wanted to launch professional schools of oratory, music, pharmacy, and dentistry. With these programs he hoped to increase enrollments and make DePaul a modern American Catholic university. However, the panic of 1907 stalled the realization of his new vision. It bankrupted the lending institution that had given the university favorable loan rates and raised other bank rates to exorbitant levels.<sup>85</sup> It also discouraged contributions necessary to establish the 17 professorial chairs that the president hoped to endow. Indeed, by the end of 1908, DePaul's debt had reach \$700,000, although its property was valued at \$1,000,000.<sup>86</sup> As a last resort, President Byrne and Judge Gibbons went to New York to request some financial aid from Andrew Carnegie. His response was: "I see no reason for duplicating the University of Chicago."<sup>87</sup> Left without other alternatives, an exhausted Byrne resigned from the presidency on May 7, 1909.

After the second president of the new university failed to solve its fiscal problems, Finney appointed McCabe as its third president in July 1910. He acted swiftly to stabilize the university. McCabe reduced expenses by employing four Vincentian seminarians to teach in the college rather than hiring more lay faculty.<sup>88</sup> Next, he discouraged medical studies and any further expansion of the engineering department.<sup>89</sup> Fortunately, more students came to the university as word of DePaul's new curriculum circulated within Chicago. By the fall of 1911, 50 new students pushed the enrollment to 225. These developments brought some financial relief to the struggling Vincentian university. Yet more was needed.

84. He referred to the Protestants as his separated brothers and sisters.

85. Letter from Thomas Finney, C.M. to Emile Villette, C.M. (September 16, 1908) (available in DRMA, Finney Papers).

86. See *supra* note 81.

87. McHugh, C.M., *General Notes*, cited in Mullins, *supra* note 67, at 10.

88. OFFICIAL CATHOLIC DIRECTORY (1910-11).

89. D. McHUGH, C.M., GLIMPSES (available in DPUA, McHugh Papers).

At no more propitious moment could Howard Ogden's offer have come to affiliate the Illinois College of Law. In the process of considering this action, DePaul's trustees asked the Reverends Daniel J. McHugh, C.M., treasurer, and James E. Lilley, C.M., vice-president and director of studies, to make a thorough investigation of the day and evening law schools. In April 1911, after learning that the schools were in debt, and at the insistence of Charles L. Mahony (1857-1939), the board's legal advisor, McCabe and the board of trustees decided against the affiliation.<sup>90</sup> Later, McCabe reconsidered and recommended the affiliation to the board in the middle of June.<sup>91</sup> The trustees reinvestigated the institution and approved the affiliation on February 13, 1912, with the stipulation that DePaul would assume none of the law school's debts, while its eventual ownership and control would pass to the university upon Ogden's death.<sup>92</sup> At a meeting between the board and Ogden on February 21, 1912, the trustees accepted his offer of affiliation. At the same time, they invited him to become a member of the board of trustees and conferred upon him DePaul's first honorary Doctor of Laws degree.<sup>93</sup> In accepting, the Baptist Ogden became the first non-Catholic trustee of the university and dean of its College of Law.

During the following year, Ogden and McCabe agreed to move the day College of Law and its library to DePaul's North Side campus. Francis X. Busch (1879-1975) assumed the deanship of the evening division which remained on Erie Street. Busch had taken his legal studies at the Illinois College of Law, receiving his LL.B. in 1901 and LL.M. in 1905.<sup>94</sup> With the affiliation, the university's enrollment doubled from approximately 200 to 400 matriculated students.

The affiliation between Illinois College of Law and the university brought significant innovations to this small Catholic institution, two of which demonstrated its growing Americanist character. First, DePaul acquired its first professional degree programs. Following the practices of most American law schools, Ogden admitted degree-seeking students who completed college, graduated from an approved high school with one year of collegiate work, or passed his entrance examinations. The college's curriculum consisted of a three year LL.B. course and a J.D. degree for those students who had a B.A. and completed the LL.B. requirements. Furthermore, it offered post-graduate LL.M. and D.C.L. degrees.<sup>95</sup>

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90. Board Minutes, April 27, 1911, *supra* note 63; Minutes of the Domestic Council, January 8, 1912, *supra* note 72, at 91. McHugh discusses this issue in his reflections, *General Notes* and *The Law School* [hereinafter McHugh, *The Law School*] (available in DPUA, McHugh Papers).

91. Board Minutes, June 16, 1911, *supra* note 63.

92. Board Minutes, February 13, 1912, *supra* note 63.

93. Board Minutes, February 21, 1912, *supra* note 63; *Current Event*, 3 CATH. EDUC. REV. 462 (1912).

94. Cirese, *Dean Francis X. Bush*, 8 DEPAUL MINIVAL 45-47 (1919) (available in DPUA).

95. 19 BULL. DEPAUL U. 14-16 (1915) (adopting the Illinois College of Law's degree structure, DePaul continued offering these degrees, with the exception of the D.C.L., through the 1920's).

Second, during the summer of 1911, the university had become the first American Catholic coeducational institution of higher learning with its summer school for teachers.<sup>96</sup> McCabe retained the Illinois College of Law's coed student body and continued its coeducational admissions and instructional policies. In fact, the first woman to enroll during this affiliation period was Elinore Blanche MacCarthy in September, 1912, and she graduated with a LL.B. and a Ph.D. from the university in spring of 1916.<sup>97</sup> Following her entrance, the number of women in the law school increased to 19 by the 1914-1915 academic year. *The DePaul Minerval* noted their extracurricular efforts: "The Co-eds of the Law School have a club. Their numbers are few, but oh, that name 'DePaul University Woman's Law Club.'"<sup>98</sup>

Third, this affiliation also added to the types of students enrolled at the university. The Illinois College of Law was essentially Protestant. DePaul significantly extended its mission by adding approximately 150 non-Catholics to its student body. Flowing from its charter, DePaul's ecumenical Catholic character received a tremendous boost when approximately 40 to 50 percent of the university's enrollment became either Protestant or Jewish. Ogden had described the nascent ecumenical orientation which he thought the Vincentian administration should take with his students in a letter to McCabe: "I am anxious to avoid, however, too much show of Church symbolism before my Protestant students, and we must not lose our hold on them or offend by too much display of Church trappings at the starting off. Mere unfamiliarity causes the trouble."<sup>99</sup> McCabe's respect for these students' beliefs represented a continuation of Vincent de Paul's ideas of toleration and former President Byrne's concept of nondiscrimination.<sup>100</sup> In this sense, the president extended the apostolic aim of the university to assume an ecumenical orientation.

By the end of 1913, Ogden gave up the deanship of the law school because of his failing health. The university's legal advisor, Charles Mahony, became the second dean of the day law school. The new dean had been a lecturer at the university, a practicing Chicago lawyer, and a partner at Mahony, Burt, Kriete & Kriete. He offered a course on trial procedures, presided over moot court, and arranged for a series of lectures on legal ethics.<sup>101</sup> A

96. E. POWER, CATHOLIC HIGHER EDUCATION, *supra* note 3 at 277. See also Goodchild, *Catholic University*, *supra* note 2, at 1:264-68.

97. DEPAUL MINerval 15 (Graduation 1913); 4 DEPAUL MINerval 70 (Commencement 1915) (both available in DPUA) (all previous issues of the university's magazine were unnumbered until this issue; prior issues had been given a special content date, e.g., Christmas, Easter, Graduation).

98. 19 BULL. DEPAUL U. 19-24 (1915); DEPAUL MINerval 42 (Thanksgiving, 1915) (both available in DPUA).

99. Letter from Howard N. Ogden to Francis X. McCabe, C.M. (March 12, 1912) *cited in* McHugh, *The Law School*, *supra* note 91, at 8-13.

100. Fenton, *Saint Vincent de Paul et l'idée de tolérance*, 110 ANNALES DE LA CONGREGATION DE LA MISSION 160-78 (1954). See *supra* note 81 and accompanying text.

101. *Law Department*, DEPAUL MINerval 51-52 (Christmas, 1912) (available in DPUA).

transition had been made in the administration of the law school. On January 28, 1915, Howard Ogden died. He left the ownership of the law school in the university's hands, if the administration agreed to pay the law school's remaining debt of \$7,500. The Vincentians assumed the outstanding balance and attained ownership of the college.<sup>102</sup> An era had passed. Ogden's gracious offer provided DePaul University with a superior professional law school that contributed significantly to future character and fiscal viability of the university.

A few months later, President McCabe noticed that the enrollment of the North Side division of the College of Law began declining, while that of the evening division, which had relocated to the heart of the commercial district at Chicago Business College on 207 South Wabash Avenue, was increasing. He decided to relocate the day law division back downtown with the growing College of Commerce. In July 1915, he brought together both divisions of the law school, the two year old College of Commerce, and the education extension courses in the Tower Building at 6 North Michigan Avenue. During the next school year, the College of Law continued its first revenues to the university.<sup>103</sup> In the following year, McCabe united the administration of the law schools by appointing Busch dean over both programs. The school and its policies seemed to have the blessings of DePaul's chancellor. At the 1916 commencement exercises, Archbishop George W. Mundelein, who had succeeded Quigley, became the first episcopal member to confer its degrees. Aspirations for greatness abounded among DePaul faculty and students with its growing professional school. The 1917 graduating law school seniors proclaimed: "We want DePaul University and DePaul Law School to take first rank among institutions of learning in America."<sup>104</sup>

The results of this affiliation for DePaul were numerous. In 1916, the Board of Regents of New York State recognized the College of Law, allowing its graduates to practice in the New York area, which added greatly to DePaul's stature. During the period of McCabe's presidency, which lasted until 1920, the university granted approximately 213 LL.B., 22 LL.M., and 10 J.D. degrees. The College of Law's enrollment continued at approximately 200 students until the 1920's when it averaged 300 (see Table 2 for enrollments until 1926, at page 409). In the 1923-1924 academic year, the enrollment rose to 413 students. Benefiting from the tremendous increase in Catholic collegiate admissions during the 1920's, the law school enrollment climbed to 532 in 1925. Another factor which assisted this growth was the AALS membership achieved in this year. The school's success pointed to the role standardization played in the second developmental period of American Catholic law schools.

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102. Minutes of the Domestic Council, March 1, 1915, *supra* note 73, at 109.

103. McHugh, *The Law School*, *supra* note 91, at 18.

104. *Law School*, 5 DEPAUL MINERVA 362 (1917) (available in DPUA).

## IV. ABA AND AALS BRING UNIFORMITY AND STATURE TO CATHOLIC LAW SCHOOLS

As the 1920's began, the American Bar Association and the Association of American Law Schools moved toward adopting professional standards that would secure the role of university affiliated law schools. In many ways, the law profession came late to the process of standardization in American higher education, which had been underway since the 1890's. Regional accrediting associations, led by the North Central Association of Colleges and Secondary Schools, had resolved ambiguities regarding what constituted higher education by determining the relations among the academy, the high school, and the college. On the other hand, the Association of American Universities had insured which universities would be privileged to award approved doctorates. In the professions, the American Medical Association guided by the 1910 Flexner Report regulated the quality of medical schools. The movement to standardize educational institutions and professional practice also definitively changed legal education, especially as conducted by Catholic universities.<sup>105</sup>

The impetus for this drive to professionalize education came from the ABA's Committee on Legal Education and Admissions to the Bar. Following the 1910 Flexner Report, it approached the Carnegie Foundation for the Advancement of Teaching to conduct a similar study of the American legal profession. In 1921, Alfred Z. Reed published *Training for the Public Profession of Law* which argued for a differentiated approach to legal education by allowing both the day law schools and the night law schools to continue.<sup>106</sup> His study provoked the ABA and AALS to eliminate "their common enemy: The night law schools and the immigrants who crowded into them."<sup>107</sup> The release of his study timed perfectly with AALS organizational moves to standardize legal education.

In 1920, the association's law school deans devised a strategy to control the outcome of the next ABA meeting. They intended to force the 100 non-AALS law schools to either become members or shut their doors.<sup>108</sup> They succeeded in getting the ABA to establish a special committee under the direction of Elihu Root to "strengthen the character and improve the efficiency of persons admitted to the practice of law."<sup>109</sup> In the following year, Reed's report released a storm of controversy within the ABA. When it met in 1921, the membership readily approved the Root committee's recommendations, which undercut Reed's proposal:

105. See *supra* notes 107-19 and accompanying text.

106. A. REED, *supra* note 4; A. REED, *THE STUDY OF LEGAL EDUCATION* 3-20 (1921); R. STEVENS, *supra* note 4, at 112-14; Sanborn, *Present-Day Law Schools in the United States and Canada*, 15 A.B.A. L.J. 95-97 (1929).

107. Auerbach, *supra* note 44, at 588.

108. *Id.* at 591-92; R. STEVENS, *supra* note 4, at 115.

109. 43 A.B.A. L.J. 465-66 (1920).



Resolved, (1) The American Bar Association is of the opinion that every candidate for admission to the bar shall give evidence of graduation from a law school complying with the following standards:

(a) It shall require as a condition of admission at least two years of study in college.

(b) It shall require its students to pursue a course of three year's duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only part of their working time to their studies.

(c) It shall provide an adequate library available for the use of the students.

(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence with the whole student body.

(2) The American Bar Association is of the opinion that graduation from a law school should not confer the right of admission to the bar, and that every candidate should be subjected to an examination by public authority to determine his fitness.

(3) The Council on Legal Education and Admissions to the Bar is directed to publish from time to time the names of those law schools which comply with the above standards and of those which do not, and to make such publications available, so far as possible, to intending law students.<sup>110</sup>

The directives threatened the viability of night law schools. After a prolonged and bitter debate within the professional associations for two more years, however, the forces for elitist legal education were defeated. In 1923, the AALS finally enabled night schools to receive its endorsement, if such schools maintained a four year LL.B. program, rather than the typical day school's three year course.<sup>111</sup> The 30 year struggle had ended.

These developments enabled Catholic law schools to achieve the stature they had long sought: the Association of American Law Schools' accreditation. Before 1920, only two Catholic law schools retained its membership. In the two decades after the AALS's accreditation of night law schools, 13 more of the existing 19 Catholic law schools became members: Catholic University of America in 1921; Loyola University (Chicago), St. Louis University, University of Notre Dame, and DePaul University in 1924; Georgetown University in 1925; Loyola University (New Orleans) and University of Detroit in 1934; Fordham University in 1936; Boston College, University of San Francisco, and Loyola University (Los Angeles) in 1937; and finally the University of Santa Clara in 1940.<sup>112</sup> These 15 Catholic schools constituted 16 percent of the 91 AALS membership in 1940. Given the 185 law schools in the United States at this point, this approval represented a remarkable achievement for Catholic higher education.

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110. 7 A.B.A. L.J. 472-74 (1921). See also Reed, *Raising Standards of Legal Education*, 7 A.B.A. L.J. 571-78, 637-38 (1921).

111. R. STEVENS, *supra* note 4, at 172-73.

112. 19 A. OF AM. L. SCH. PROC. 50 (1921); 22 A. OF AM. L. SCH. PROC. 47, 105 (1924); 23 A. OF AM. L. SCH. PROC. 88 (1925); 32 A. OF AM. L. SCH. PROC. 8 (1934); 34 A. OF AM. L. SCH. PROC. 27 (1936); 35 A. OF AM. L. SCH. PROC. 27-28 (1937); 38 A. OF AM. L. SCH. PROC. 17 (1940).

A similar development occurred with the ABA. In 1921, the ABA, under its Council on Legal Education and Admissions to the Bar, established its standards following the Root recommendations. They were similar to those of the AALS, except that the ABA's admission requirements stipulated two years of college rather than the AALS's one year. In November 1923, the ABA published its first approved list of schools. No Catholic law schools were given full accreditation.<sup>113</sup> Only Catholic University of America received a tentative approval, while it changed its internal policies to conform with these new requirements.<sup>114</sup> Two years later, when the ABA and AALS's standards virtually agreed,<sup>115</sup> eight Catholic law schools attained ABA accreditation: Catholic University, Creighton University, DePaul University, Georgetown University, Loyola University (Chicago), Marquette University, the University of Notre Dame, and St. Louis University.<sup>116</sup> By 1940, Loyola University (New Orleans), Boston College, University of Detroit, Loyola University (Los Angeles), University of San Francisco, Fordham University, Santa Clara University, and St. John's University were members.<sup>117</sup> Thus, 16 of the 19 Catholic law schools had attained ABA accreditation. Moreover, not only did they meet the associations' requirements, these Catholic law schools surpassed them. Ten of the 19 demanded higher admission standards. Three required college degrees before admission. Only six other American law schools followed this exacting mandate. Three schools offered postgraduate courses leading to both the LL.M. and the J.D. degrees. Most schools followed the local law school model where faculty used the case method to prepare students for the state bar examination.<sup>118</sup> Nevertheless, many Catholic law schools attempted to move beyond this practical law orientation by offering more scholarly instruction and courses which conformed more closely to their changing Catholic missions, as will be described shortly.

During this standardizing period, Catholic law schools enjoyed the benefits of accreditation. The North Central Association (NCA) would not approve any university with a night school until the AALS determined their status. On January 9, 1925, AALS placed DePaul's College of Law in its Class A

113. See *supra* note 104 (important clause had been added to the 1921 ABA standards regarding rule a: schools were allowed to admit ten percent of their students who had not completed high school as *special* students); 9 A.B.A. L.J. 728 (1923); A. REED, STANDARDS AND STANDARDIZERS IN LEGAL EDUCATION, 12-15 (1924).

114. 9 A.B.A. L.J. 762 (1923).

115. A. REED, SOME CONTRASTS BETWEEN AMERICAN AND CANADIAN LEGAL EDUCATION, 16-18 (Carnegie Foundation for the Advancement of Teaching, Bulletin 20, 1925).

116. 11 A.B.A. L.J. 338 (1925). With DePaul's membership, the College of Law changed its admission standards to conform. Students had to complete their baccalaureate education before entering the law program. See 28 BULL. DEPAUL U. 8-9 (1924).

117. 18 A.B.A. L.J. 75 (1932); 19 A.B.A. L.J. 5, 601 (1933); 21 A.B.A. L.J. 328 (1935); 22 A.B.A. L.J. 445 (1936); 25 A.B.A. L.J. 711 (1939); 27 A.B.A. L.J. 830 (1940).

118. These conclusions are given in Brown, *supra* note 3, at 5-10, although no specific schools are cited; R. STEVENS, *supra* note 4, at 191.

(Superior) section. In May, the NCA accredited the university.<sup>119</sup> As a result of these developments, enrollment increased to more than 500 students in the 1924-25 academic year (see Tables 2 & 3 for enrollments until 1950, at pages 409-10). Thus, just 20 years after the law school's affiliation, Ogden's founding effort reached its greatest fruition under the care of the Chicago Vincentian university.

Accreditation caused only one problem. In November 1930, Dean Rufus C. Harris, a member of the AALS executive committee, inspected DePaul's law school. He found that the administration had "enrolled . . . a number of students for the LL.B. degree who could not present enough credits meeting the minimum entrance requirements of the law school except by counting the results of a prelegal examination for the Illinois Bar . . . and the administration allowed prelegal credits for various nonacademic subjects."<sup>120</sup> The investigation demonstrated the loss of autonomy which Catholic law schools enjoyed before their accreditation. It also revealed the elitist resentment that the old guard still held against night law schools.

DePaul's fourth president, the Reverend Thomas F. Levan, C.M. chose William Clarke to become dean after Busch resigned in 1924 to devote his energies to his law practice and as Corporation Council for the City of Chicago. Representing the success of Catholic higher education, Clark earned his bachelor's degree in philosophy from DePaul in 1917 and a LL.B. degree from the College of Law in 1917. After being an instructor at the DePaul Academy in 1918, President McCabe asked him to assume deanship of the university's growing College of Commerce in 1918, which he held until taking over the law school.

On December 29, 1930, in the fifth year of Clarke's deanship, he was required to defend his administration of the College of Law before the AALS executive committee concerning Harris' findings. The manner in which the committee grilled Clarke indicated a less than professional demeanor. Its secretary, Albert J. Harno, called him on Saturday night at 11:00 p.m. and requested that he appear before the committee at 12:30 a.m. Sunday morning without informing him of the reason for this unusual conference. Upon his arrival, Clarke was informed of the problem and questioned until 2:00 a.m. The law school had accepted correspondence course work toward the two years of college credit necessary for law school admission, instead of required residence courses. The dean pointed out that the University of Chicago, Columbia University, and other universities had credited similar work. Additionally, the law school had awarded credit for athletic courses, such as cavalry drill, hygiene, tumbling, and boxing. He argued that the University of Illinois had followed this practice for years. The committee informed him that Illinois had discontinued the practice several years ago. The committee

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119. McHugh, *The Law School*, *supra* note 91, at 21; *List of Accredited Institutions*, 1 N. CENT. A. Q. 24 (1926).

120. 28 A. OF AM. L. SCH. PROC. 9 (1930).

members seemed unmoved by Clarke's defense.<sup>121</sup> Indeed, on the following day at 9:00 a.m., it placed DePaul's College of Law and Loyola University's (Chicago) School of Law, which had similar difficulties, on probation for one year.<sup>122</sup> Upon reinspection one year later, the association fully reinstated DePaul.<sup>123</sup>

While this occurrence had little effect on the law school's stature or enrollment, it exemplified how Catholic law schools were under pressure to maintain national standards and quality programs or face public disclosure of their practices. It demonstrated the reactive stance that Catholic law school administrations faced with standardization. The associations became "*de facto* decisive" when they determined policy issues.<sup>124</sup> Yet this problem was hardly noticed among the extensive riches which accrued with accreditation. At DePaul, enrollments soared to reach a high of 796 in 1930 and remained in the 600s until the Second World War.

#### V. THE CULTURE OF CATHOLIC LEGAL EDUCATION AT MID-CENTURY

Just before World War II began, Catholic law schools attempted to expand their curricula beyond previous concentrations in strictly practical law.<sup>125</sup> Their effort to do this stemmed from a desire to create a new jurisprudence with Catholic ideals. DePaul's Dean Clarke became a national leader in this movement. He intended to develop a distinctive Catholic theory of law on "the principle of justice contained in the philosophy of neoscholasticism."<sup>126</sup> While Clarke did not intend to require Catholic courses in law schools, he believed that such schools should encourage the practice of law according to the principle of natural justice, if it was worthy of the name "Catholic." He also strongly encouraged appropriate instruction in legal ethics.<sup>127</sup> Clarke furthered this issue within the AALS, where he became chairperson for a special committee on the National Bar Program from 1936 to 1937. One of the committee's recommendations was to hand a copy of the ABA's Canon of Legal Ethics to the graduates of each law school in the country.<sup>128</sup>

Besides Clark's efforts, Brendan F. Brown of Catholic University's School of Law wrote extensively on bringing a scholastic sense of jurisprudence to

121. Statement of W. F. Clark Regarding the Placing of DePaul University College of Law on Membership Probation Because It Did Not Meet the Letter and Spirit of Article Six, Paragraph Two of the Articles of Association of the American Law Schools, Minutes of the University Council, Meeting of January 7, 1931, 28-33 (1930-36) (available in DPUA).

122. 28 A. OF AM. L. SCH. PROC. 9 (1930).

123. 29 A. OF AM. L. SCH. PROC. 8 (1931).

124. Brown, *supra* note 3, at 9.

125. *Id.* at 9-10.

126. Clarke, *The Catholicity of the Law School: Catholicity in Legal Training Simply and Forcefully Discussed*, 6 J. OF REL. INSTRUCTION 700 (1936). See also Clarke, *Approach to the Study of Law*, 3 U. DET. L. REV. 7, 13-17 (1939).

127. Clarke, *supra* note 1, at 74-75.

128. 35 A. OF AM. L. SCH. PROC. 340-41 (1937).

legal education.<sup>129</sup> Brown suggested that teaching according to Catholic principles and cases represented the way to create a Catholic theory of law.<sup>130</sup> In this way, he hoped to create a distinctive Catholic legal culture. Brown presented his ideas at Catholic Philosophical Association meetings and at AALS conferences.<sup>131</sup>

While Clarke and Brown disseminated their ideas across the country, Catholic University and Notre Dame took the lead among Catholic law schools toward integrating these ideas within their courses and programs. Catholic University created courses in natural law and integrated their themes and principles within other law courses.<sup>132</sup> Notre Dame established a Natural Law Institute to further these ideals and methods among American Catholic law schools.<sup>133</sup> Outside of the Catholic milieu, law school reformers had been calling for a jurisprudential orientation with university affiliation since the turn of the century.<sup>134</sup> Catholic educators now subscribed to this movement and its current proponents, Dean Roscoe Pound of Harvard Law School and Robert Maynard Hutchins of the University of Chicago, by adding their own Catholic principles.<sup>135</sup>

Along with the curricular development, administrative measures were taken to encourage a Catholic orientation within Catholic law schools. Catholic university presidents appointed a clerical regent to supervise any lay dean's administration of a professional school. The aim of these appointments was to promote a greater "Catholicizing" of its activities.<sup>136</sup> At DePaul University, its fourth president, Father Levan, followed this typically Jesuit governance pattern as early as 1928, when he appointed Father McHugh, who had no legal training other than conducting the original investigation of the Illinois College of Law,<sup>137</sup> as regent over Dean Clarke.<sup>138</sup> This organizational response to new trends within the American church aided the emergence of a Catholic legal culture within the law schools.

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129. Brown, *Legal Education in Philosophical Perspectives*, 3 U. DET. L. REV. 181, 186-93 (1940); also published as BROWN, *Catholic Education and Law*, in R. DEFERRARI, VITAL PROBLEMS OF CATHOLIC EDUCATION IN THE UNITED STATES, 218-31 (Wash. D.C. 1939).

130. BROWN, *Jurisprudential Aims of Church Law Schools in the United States, A Survey*, 13 NOTRE DAME LAW. 163, 167-71, 185-88 (1938).

131. Brown, *supra* note 36, at 3.

132. Fox, *Catholic University*, 28 A. OF AM. L. SCH. PROC. 139 (1930); Neusse, *supra* note 32, at 59-61.

133. Scanlan, *Natural Law and Notre Dame*, 1 J. LEGAL EDUC. 438 (1949). See Barrett, *The Notre Dame Experiment*, 2 CATH. LAW. 297 (1956).

134. Jordan, *The University, the College, and the School of Law*, 8 A. OF AM. L. SCH. PROC. 25-37 (1908); Stone, *The Function of the American University Law School*, 11 A. OF AM. L. SCH. PROC. 59-73 (1911).

135. Feeney, *Do American Catholic Law Schools Have a Distinctive Philosophy of Education?*, 25 NOTRE DAME LAW. 646-72 (1950).

136. Letter from Samuel H. Horine, S.J. to Samuel K. Wilson, S.J., June 7, 1934 (available in Loyola University of Chicago Archives, Chicago, Illinois, Kane Collection, Box 14, File: U1.22-1.25). See *supra* note 2 and accompanying text.

137. See *supra* note 85 and accompanying text.

138. 32 BULL. DEPAUL U. 3 (1928).

Besides the evolving academic effort to develop a Catholic legal culture, there was a strong activist movement. Across the country, Catholic lawyers organized to promote Catholic action in every major city. Beginning in 1928, the Catholic Lawyers' Guild for the Archdiocese of New York became a strong force in the East. A similar organization began in Chicago during the following year. The purpose of these organizations was to "inculcate in Catholic lawyers a deeper understanding of the Natural Law, the Natural Law Philosophy and Jurisprudence, and particularly by their application to everyday legal problems."<sup>139</sup> One of the key means for organizing Catholic lawyers was an annual Red Mass which brought together Catholic lawyers to celebrate Mass with the local ordinary people of the diocese. During this celebration, lawyers committed themselves to further Catholic principles, causes, and spirituality in their profession. All of these activities demonstrated the growing Roman Catholic character of Catholic institutions of higher learning and Catholic professions in the United States since Pope Pius XI's 1929 encyclical on Catholic education.<sup>140</sup> These developments contrasted strongly with the Americanist ideals within certain Catholic universities, such as Catholic University and DePaul, at the turn of the century. This Roman Catholic spirit lasted in the American Catholic church and its universities and law schools until the beginning of the Second Vatican Council.

Meanwhile, Catholic law schools entered a third developmental period when they retrenched their programs or shut their doors with the onset of World War II. At DePaul, law school enrollment dropped to a low of 162 in 1944.<sup>141</sup> However, this period ended quickly with the close of the war. Thereafter, DePaul enrollment rose to 560 in the 1946-1947 academic year, and to 639 in the following year when the G.I. Bill enabled Catholics to attend college and professional schools en masse. Consequently, American Catholic law schools experienced a tremendous expansion that lasted approximately 25 years.

## VI. CONCLUSION

This short history of American Catholic law schools and DePaul's College of Law until 1940 primarily has outlined the struggles that the largest group of private law schools in the nation experienced during its formative and standardizing periods. Its successes and failures revealed how these maturing organizational cultures adapted to American higher education and the Amer-

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139. McNiece, *A Catholic Lawyers' Guild for Your Diocese?*, 4 CATH. LAW. 263-64 (1958); St. Thomas Moore Institute for Legal Research, *The Catholic Lawyers Guild of Chicago*, 3 CATH. LAW. 250-56 (1957).

140. C. Carlen, I.H.M., *Rappresentanti in Terra*, THE PAPAL ENCYCLICALS, 1903-1939 355-60 (N.C. 1981). See Goodchild, *Catholic University*, *supra* note 2, at 1:387-88.

141. Minutes of the University Council, Meeting of October 15, 1937, 278, 280-81 (1936-40); Meeting of November 15, 1938, 315-16 (1936-40) (available in DPUA).

ican system of legal education. These four developmental periods in the evolution of Catholic law schools thus account for more than 100 years in their service to the American bar, the American Catholic church, and American citizens of all faiths.

TABLE 1  
ILLINOIS COLLEGE OF LAW  
HEADCOUNT ENROLLMENTS, 1897-1912

Academic Year	Graduate	Senior	Junior	Freshman	Special	Summer	Total
1897-1898	22	14	17	26	17	0	96
1898-1899	22	53	40	55	—	9	179
1899-1900	50	32	33	47	14	55	231
1900-1901	56	29	36	84	24	39	268
1901-1902	8	45	46	76	18	65	258
1902-1903	60	48	51	81	— <sup>a</sup>	60	311
1903-1904	65	51	51	— <sup>a</sup>	—	—	306
1904-1905	55	48	36	49	29	60	277
1905-1906	51	43	36	62	86 <sup>b</sup>	84	362
1906-1907	56	36	43	63	77	106	381
1907-1908	51	46	44	83	56	107	387
1908-1909	58	50	57	78	72	— <sup>c</sup>	315
1909-1910	10	43	48	112	48 <sup>d</sup>	—	261
1910-1911	28	46	37	52	55 <sup>e</sup>	—	218
1911-1912	26	42	30	66	28	—	192

a. The 1902-03 catalogue did not include the specific number of students for this entry, but provides only a final enrollment total.

b. Beginning with this year, this category includes students enrolled in pre-legal courses.

c. Although the summer school continued, the catalogues no longer list student names by which the enrollment calculation is derived.

d. This sum represents the first class of the Business Law Course.

e. This number includes the special, pre-legal, and business law students.

SOURCE: Data compiled from the Illinois College of Law catalogues beginning with 2 (April 1905) until 15 (August 1911) and from the Bulletin of DePaul University 16 (June 1912), DePaul University College of Law Archives, Chicago, Illinois.

TABLE 2  
DEPAUL UNIVERSITY'S COLLEGE OF LAW  
HEADCOUNT ENROLLMENTS, 1912-1926

Academic Year	Graduate	Senior	Junior	Sophomore	Freshman	Special	Total
1912-1913	9	23	41	0	57	50	180
1913-1914	17	36	45	0	55	52	205
1914-1915	9	38	27	0	83	122a	279
1915-1916	4	19	58	0	70	31	182
1916-1917	3	57	38	0	111	60	269
1917-1918	9	37	65	0	103	35	249
1918-1919	2	45	74	0	52	29	202
1919-1920	5	73	23	21b	141	20	283
1920-1921	5	27	59	26	88	37	242
1921-1922	4	66	54	37	134	37	332
1922-1923	11	49	78	38	123	46	345
1923-1924	4	73	102	60	150	24	413
1924-1925	10	104	98	56	236	5	509
1925-1926	26	95	108	51	239	13	532

a. The McCabe administration added a special pre-legal class, which apparently lasted one year.

b. The College of Law added a fourth year to its curriculum in this year.

SOURCE: Data compiled from the College of Law bulletins from 17 Bulletin of DePaul University College of Law (June 1913) to 30 Bulletin of DePaul University College of Law (May 1926), Office of the Registrar, DePaul University, Chicago, Illinois.



TABLE 3

DEPAUL UNIVERSITY'S COLLEGE OF LAW  
HEADCOUNT ENROLLMENTS, 1926-1950

Academic Year	Total	Academic Year	Total
1926-1927	534	1938-1939	576
1927-1928	416	1939-1940	434
1928-1929	535	1940-1941	436
1929-1930	703	1941-1942	447
1930-1931	796	1942-1943	229
1931-1932	725	1943-1944	262
1932-1933	661	1944-1945	162
1933-1934	634	1945-1946	246
1934-1935	690	1946-1947	560
1935-1936	684	1947-1948	639
1936-1937	663	1948-1949	623
1937-1938	639	1949-1950	623

SOURCE: Office of the President, *Comparative Report on Enrollments for Autumn Quarter & First Semester*, Presidential Papers, DePaul University Archives.