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# TODAY'S CATHOLIC LAW SCHOOLS IN THEORY AND PRACTICE: ARE WE PRESERVING OUR IDENTITY?

JOHN J. FITZGERALD\*

## INTRODUCTION

You are the salt of the earth. But if salt loses its taste, with what can it be seasoned? It is no longer good for anything but to be thrown out and trampled underfoot. You are the light of the world. A city set on a mountain cannot be hidden. Nor do they light a lamp and then put it under a bushel basket; it is set on a lampstand, where it gives light to all in the house. Just so, your light must shine before others, that they may see your good deeds and glorify your heavenly Father.<sup>1</sup>

Jesus Christ called his followers to be the salt of the earth and the light of the world—to be signs of God's presence in the world and to be models of humanity inspired by divinity. As leaders in this "nation under lawyers," as Mary Ann Glendon has put it,<sup>2</sup> lawyers have an especial opportunity to shine light where darkness threatens, to season the tasteless in our culture and to bring the healing of truth and justice. However, lawyers also have the potential to use their tremendous power in a destructive fashion, by burying truth and justice in the darkness of red tape or bureaucracy. Therefore, the Catholic law schools that train future lawyers have a fundamental responsibility to take up Christ's call so that they may in turn inculcate a sense of Christian mission in their students.

One school that professes to have taken up this call is the Ave Maria School of Law in Ann Arbor, Michigan, which opened its doors to students this past fall.<sup>3</sup> Ave Maria asserts that it will

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\* B.A., Princeton University, 1997; J.D. Candidate, 2001, Notre Dame Law School. I dedicate this article to my family: John, Annette, and James Fitzgerald. Also, I wish to thank Richard Ambrow, Gerard Bradley, Elizabeth Cheung, Conor Dugan, Rev. John Pearson, C.S.C., Lucy Payne, Charles Rice, Vincent Rougeau, Joseph Shimek, and my father for reading drafts of this Note and/or offering helpful comments and advice.

1. *Matthew* 5:13–16 (New American Bible).

2. MARY ANN GLENDON, *A NATION UNDER LAWYERS* (1994).

3. See George Bullard, *Ave Maria Readies Its First Law Class: Opening Draws Plenty of Attention*, DET. NEWS, Aug. 7, 2000, at 1, available at 2000 WL 3486916.

offer “a traditional legal education enhanced by the Catholic intellectual tradition—a rich heritage of thought based on the harmony of faith and reason.”<sup>4</sup> However, some commentators have maintained that there is no need for a new Catholic law school since existing ones are doing just fine in preserving their heritage.<sup>5</sup> Others have contended that Ave Maria may not even be any more distinctively Catholic than these other schools.<sup>6</sup> Even those who concede that Ave Maria will stand out among Catholic law schools disagree over whether such a law school will be beneficial or harmful to its students, to other law schools, and to the general public.<sup>7</sup>

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The school's founder, Thomas S. Monaghan, notes that he has “been very disappointed, in general, with Catholic education in the United States, particularly how it teaches the faith. I'm afraid that much of it has become secularized.” Justin Hyde, *Pizza Magnate Builds Law School for God*, SOUTH BEND TRIB., Apr. 26, 1999, at B3. For a fascinating account of Monaghan's life and background, see Charles Laurence, *Mine's a Billion Dollars—To Go*, THE DAILY TELEGRAPH (London), June 27, 2000, at 23, available at 2000 WL 23256848. See also Lisa Miller, *Domino's Theory: Pizza Magnate Mounts a Crusade to Restore Orthodox Catholicism*, WALL ST. J., June 21, 2000, at A1, available at 2000 WL-WJSJ 3033644.

4. *Ave Maria School of Law: Educating Lawyers for Law and Life*, at <http://www.avemarialaw.edu/philosophy/goals.html> (last visited Dec. 17, 2000).

5. According to Fr. Robert Drinan, a professor at Georgetown University Law Center, “We have three full-time Jesuit lawyers. We say Mass at noon. What more can we do to make it Catholic?” David Crumm et al., *Can Catholic Colleges Pass Vatican's Test? New Ave Maria Law School Has Sparked Debate*, DET. FREE PRESS, May 12, 1999, at 13. Drinan adds that his school publishes “the prestigious Journal of Legal Ethics, the nation's premier journal in this field.” *Id.* Monika K. Hellwig, executive director of the Association of Catholic Colleges and Universities, insists that “Catholic law schools, and the Jesuit schools in particular, have been offering legal clinics for the poor and addressing Catholic social teachings for years. They pride themselves in being extremely Catholic.” Katherine S. Mangan, *Ave Maria: A “Seriously Catholic” Law School*, CHRON. HIGHER EDUC., Feb. 18, 2000, at A18, available at 2000 WL8881031.

6. Fr. Richard McBrien, a theology professor at Notre Dame, states that if Ave Maria cannot distinguish itself from existing Catholic law schools, “then the bottom line is that he [Monaghan] is wasting money.” Crumm, *supra* note 5, at 13. Drinan adds that “[t]he first professor hired is Robert Bork, and he's not known for any religious faith. They want his political views . . . right-wing, anti-abortion—the views of Mr. Monaghan.” Hyde, *supra* note 3. *But see* George Bullard, *Monaghan Ponders Nation's Soul*, DET. NEWS, May 22, 1999, at C1 (“I'm not Democrat or Republican. I'm pro-life. I hope we get a pro-life president.”).

7. Robert Sedler, a professor at Wayne State University School of Law, notes that he has “the greatest respect for Mr. Monaghan. He made his fortune and he's using his fortune to advance causes he believes in.” Hyde, *supra* note 3. Prof. Gerard V. Bradley of Notre Dame Law School believes that the school will address “the crisis in our culture” by producing optimistic law students who believe that morality should play a strong part in law. *Id.* Most Rev. Allen Vigneron, an auxiliary Roman Catholic bishop of Detroit, also contends that it is important to train “lawyers who believe in objective truth, that right or wrong are things that transcend even the power of the majority.” *Id.*

The debate over Ave Maria School of Law has raised some interesting questions about the nature of Catholic legal education. In Part I of this Note, I will examine different theories of Catholic legal education in an attempt to answer the question of what exactly makes a law school distinctively Catholic. At the end of Part I, I will also address the question of whether a law school with distinctively Catholic features is a good thing for students, for the legal community, and for the general public. Finally, in Part II, I will survey the existing twenty-eight Catholic law schools in the continental United States<sup>8</sup> and analyze the extent to which they have preserved a distinctively Catholic identity.

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On the other hand, Drinan warns that "Ave Maria will be a 'holier than thou' institution that will deride the competition and seek to buy talent with money from its billionaire patron." Crumm, *supra* note 5. McBrien asserts that "[i]t's an attempt to return Catholics to a ghetto. And it shows grave naivete about what really goes on in Catholic law schools." *Id.*

8. Twenty-five Catholic law schools are accredited by the American Bar Association (A.B.A.): Boston College Law School, The Columbus School of Law at the Catholic University of America, Creighton University School of Law, University of Dayton School of Law, DePaul University College of Law, University of Detroit Mercy School of Law, Duquesne University School of Law, Fordham University School of Law, Georgetown University Law Center, Gonzaga University School of Law, Loyola Law School at Loyola Marymount University, Loyola University Chicago School of Law, Loyola University New Orleans School of Law, Marquette University Law School, Notre Dame Law School, Saint Louis University School of Law, University of San Diego School of Law, University of San Francisco School of Law, Santa Clara University School of Law, Seattle University School of Law, Seton Hall University School of Law, St. John's University School of Law, St. Mary's University School of Law, St. Thomas University School of Law in Florida, and Villanova University School of Law. See generally AMERICAN COUNCIL ON EDUCATION, AMERICAN UNIVERSITIES AND COLLEGES (15th ed. 1997); OFFICIAL ABA GUIDE TO APPROVED LAW SCHOOLS (Rick L. Morgan & Kurt Snyder eds., 2000) [hereinafter OFFICIAL ABA GUIDE]. I am also aware of two currently unaccredited Catholic law schools that are presently offering full-time programs: Ave Maria School of Law and Barry University Law School. See sources cited and accompanying text, *supra* notes 3-7; *Barry Law*, at <http://www.uo.edu/lawsch/main.htm> (last visited Dec. 17, 2000). Another unaccredited Catholic law school, University of St. Thomas School of Law in Minnesota, is headed by David Link (former dean of Notre Dame Law School), and will begin offering a full-time program in the fall of 2001. See *University of St. Thomas School of Law*, at <http://www.stthomas.edu/lawschool> (last visited Dec. 17, 2000); *University of St. Thomas School of Law, About the Dean: Dean David T. Link*, at [http://www.stthomas.edu/lawschool/deans/about\\_the\\_dean.cfm](http://www.stthomas.edu/lawschool/deans/about_the_dean.cfm) (last visited Dec. 17, 2000). These are the twenty-eight schools that were included in the survey in Part II. The Pontifical Catholic University of Puerto Rico is also accredited by the A.B.A. but was not included in the survey because the school did not have a website. See OFFICIAL ABA GUIDE, *supra*, at 316. I am indebted to Lucy Payne, an associate librarian in the Notre Dame Law Library, for most of the research in compiling the above list of Catholic law schools.

## I. CATHOLIC LEGAL EDUCATION: THE THEORIES

### A. *The Official Position of the Catholic Church*

No survey of the many theories of Catholic legal education would be complete without a review of the position of the Catholic Church itself, which is outlined in Pope John Paul II's recent constitution on Catholic universities, *Ex Corde Ecclesiae* ("Born From the Heart of the Church").<sup>9</sup> The Pope identified four "essential characteristics" of a Catholic university: Christian inspiration in individuals and the university as a whole, scholarly reflection and research in the light of the Catholic faith, fidelity to the Christian message as revealed by the Catholic Church, and an institutional commitment to the service of others.<sup>10</sup> According to the Pope, research in a Catholic university necessarily includes an effort to integrate knowledge from various disciplines into a view of the world enlightened by the Gospel, a dialogue between faith and reason, a concern for the ethical and moral implications of its methods and discoveries, and a theological perspective.<sup>11</sup> Research conformed to these discoveries will enable the university to be professionally competent in its service of society and the Church, but also able to give a witness of its faith to the world.<sup>12</sup> Its teachers, students, and non-academic staff are all called to provide this witness, whether they are laypersons or members of a religious order.<sup>13</sup> The Church does recognize academic freedom, but notes that it must be exercised

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9. APOSTOLIC CONSTITUTION OF THE SUPREME PONTIFF JOHN PAUL II ON CATHOLIC UNIVERSITIES (1990) [hereinafter *EX CORDE ECCLESIAE*], [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_constitutions/documents/hf\\_jp-ii\\_apc\\_15081990\\_ex-corde-ecclesiae\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/apost_constitutions/documents/hf_jp-ii_apc_15081990_ex-corde-ecclesiae_en.html) (last visited Dec. 17, 2000). The importance of *Ex Corde Ecclesiae* arises from the fact that it was authored by the Pope. The Catholic Church has officially held that:

Religious submission of mind and will must be shown in a special way to the authentic magisterium of the Roman Pontiff, even when he is not speaking *ex cathedra*; that is, it must be shown in such a way that his supreme magisterium is acknowledged with reverence, the judgments made by him are sincerely adhered to, according to his manifest mind and will.

POPE PAUL VI, DOGMATIC CONSTITUTION ON THE CHURCH: LUMEN GENTIUM ¶ 25 (1964), [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_const\\_19641121\\_lumen-gentium\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html) (last visited Dec. 17, 2000) [hereinafter *LUMEN GENTIUM*]. For a good history of the events that led to the writing of *Ex Corde Ecclesiae*, and of the reaction to the document in its wake up to early 1999, see James T. Burtchaell, *Out of the Heartburn of the Church*, 25 J.C. & U.L. 653, 653-79 (1999).

10. See *EX CORDE ECCLESIAE*, *supra* note 9, ¶ 13.

11. See *id.* ¶¶ 15-20.

12. See *id.* ¶ 20.

13. See *id.* ¶¶ 22-25.

“within the confines of the truth and the common good.”<sup>14</sup> In general, the university community should be “characterized by mutual respect, sincere dialogue, and protection of the rights of individuals.”<sup>15</sup> Mutual trust, continuing dialogue, and close cooperation should particularly characterize the university’s relationship with the local bishop, who has the responsibility to assist in the preservation of the school’s Catholic identity and to take necessary measures if problems arise concerning the school’s Catholic identity.<sup>16</sup>

According to the Pope, each Catholic university has a basic mission: “a continuous quest for truth through its research, and the preservation and communication of knowledge for the good of society.”<sup>17</sup> Within this basic mission (which also applies to the Catholic law school)<sup>18</sup> lies four particular missions: service to the Church and society, pastoral ministry, cultural dialogue, and evangelization.<sup>19</sup> A Catholic university carries out its mission to service by immersing itself in human society through the study of serious contemporary problems, and preparing young men and women to hold positions of responsibility within the Church.<sup>20</sup> The Catholic university “must have the courage to speak uncomfortable truths which do not please public opinion, but which are necessary to safeguard the authentic good of society.”<sup>21</sup> Society should recognize and defend the institutional and academic freedom of Catholic universities, since they contribute to cultural diversity and join other institutions in serving the public interest.<sup>22</sup>

*Ex Corde Ecclesiae* states that a Catholic university should fulfill its particular mission to pastoral ministry by demonstrating its faith in its daily activity through time set aside for reflection and prayer, and by preparing its graduates for active participation in the Church.<sup>23</sup> The Catholic University should also engage in cultural dialogue in order to help the Church to come to a better knowledge of diverse cultures and thereby to present the faith in a way that is more suited to the needs of each particular cul-

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14. *Id.* ¶ 29.

15. *Id.* ¶ 21.

16. *See id.* ¶ 28.

17. *Id.* ¶ 30.

18. *See id.* ¶ 10 (“While this Document specifically concerns Catholic Universities, it is also meant to include all Catholic Institutions of higher education . . . .”).

19. *See id.* ¶¶ 31–49.

20. *See id.* ¶¶ 31–32.

21. *Id.* ¶ 32.

22. *See id.* ¶ 37.

23. *See id.* ¶¶ 38–42.

ture.<sup>24</sup> Finally, in all of its basic academic activities the Catholic university assists the Church in its work of evangelization; the Catholic university is a living witness to its faith in cultures where Christ is either unknown or rejected.<sup>25</sup>

The Pope also stated that he expects Catholic universities to conform themselves to certain norms.<sup>26</sup> Among these norms are the following: a Catholic university is to make known its Catholic identity in a mission statement or some other appropriate document;<sup>27</sup> Catholic teachings are to influence all university activities, but without violating the freedom of conscience of any person;<sup>28</sup> "Catholic teachers are to be faithful to, and all other teachers are to respect, Catholic doctrine and morals in their research and teaching";<sup>29</sup> non-Catholic members of the university are to "recognize and respect" its Catholic identity;<sup>30</sup> the number of non-Catholic teachers should not exceed half of the total number of teachers;<sup>31</sup> courses in Catholic doctrine are to be provided to all students;<sup>32</sup> and a Catholic university must provide pastoral care to all of its members, and must be particularly sensitive to the needs of Catholics.<sup>33</sup>

In May 2000, the Church officially approved a document that applied *Ex Corde Ecclesiae* to the United States (the "United States Application").<sup>34</sup> The United States Application echoed the general norms of *Ex Corde Ecclesiae* but added some specific norms to be applied in the United States: the university should take practical steps in order to insure that its mission statement is actually implemented;<sup>35</sup> no university may use the title "Catholic" without the consent of the competent ecclesiastical authority;<sup>36</sup> the university president should be a Catholic;<sup>37</sup> to the extent possible, the majority of both the board of trustees and of faculty members should be Catholics committed to their faith;<sup>38</sup> Catho-

24. See *id.* ¶ 44.

25. See *id.* ¶ 49.

26. See *id.* art. 1, § 1.

27. See *id.* art. 2, § 3.

28. See *id.* art. 2, § 4.

29. *Id.* art. 4, § 3.

30. *Id.* art. 4, § 4.

31. See *id.* art. 4, § 4.

32. See *id.* art. 4, § 5.

33. See *id.* art. 6, § 1.

34. See EX CORDE ECCLESIAE: AN APPLICATION TO THE UNITED STATES, 30 ORIGINS 68 (2000) [hereinafter UNITED STATES APPLICATION].

35. See *id.* pt. 2, art. 2, ¶ 6.

36. See *id.* pt. 2, art. 3, ¶ 4.

37. See *id.* pt. 2, art. 4, ¶ 3(a).

38. See *id.* pt. 2, art. 4, ¶¶ 2(b), 4(a).

lic professors who teach theology must have a mandate granted by the competent ecclesiastical authority stating that he or she is within the full communion of the Catholic Church, and must not present as Church teaching anything that is contrary to official Catholic doctrine;<sup>39</sup> where appropriate, Catholic teachings should have a place in the various courses taught in the university;<sup>40</sup> and the university should develop a plan for addressing its intellectual and pastoral contributions to social justice initiatives.<sup>41</sup>

In addition to the above, the document noted that Catholic universities should manifest a “[c]ommitment to Catholic ideals, principles, and attitudes in carrying out . . . activities of student and faculty organizations . . . with due regard for the conscience of every individual”;<sup>42</sup> however, this recommendation of the United States Application was not explicitly mentioned in its norms. These norms take effect on May 3, 2001; during the five years following this date, the National Conference of Catholic Bishops (N.C.C.B.) will collaborate with Catholic universities to develop a process to evaluate the implementation of *Ex Corde Ecclesiae* in the United States.<sup>43</sup> In 2011, the N.C.C.B. will review the application of *Ex Corde Ecclesiae* to the United States.<sup>44</sup>

#### B. *Incomplete Visions of the Catholic Law School*

Several articles in the scholarly literature have also addressed the question of the ideal Catholic law school. Visions of Catholic law schools in this literature can be said to constitute a spectrum. On one end of the spectrum are those visions that have positive attributes, but no readily apparent qualities that would distinguish the schools from their non-Catholic counterparts. Michael Perry, for example, has proposed a version of a Catholic law school that falls well on this side of the spectrum.<sup>45</sup> Perry identifies four “essential, connected Christian convictions” that the Catholic law school should affirm.<sup>46</sup> The first addresses the nature of God: “God, the holy mystery who is the origin, sus-

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39. See *id.* pt. 2, art. 4, ¶ 4(e).

40. See *id.* pt. 2, art. 4, ¶ 5.

41. See *id.* pt. 2, art. 5, ¶ 1(b).

42. *Id.* pt. 1, art. VII.

43. See *id.* at conclusion.

44. See *id.*

45. Michael J. Perry, *The Idea of a Catholic University*, 78 MARQ. L. REV. 325 (1995). Perry notes that “[w]hat I say about the idea of a Catholic university . . . I mean to apply fully to a law school that is part—indeed, that is a prime constituent—of a Catholic university.” *Id.* at 325.

46. *Id.* at 337.



tainer, and end of all reality . . . is disclosed to us in Jesus Christ as pure, unbounded love."<sup>47</sup> The second refers to the nature of human beings: "[W]e are, all of us, even 'the least' among us—even 'the wicked'—children of God."<sup>48</sup> The third conviction concerns the nature of our relationship with God: "[W]e are to strive to 'love the Lord our God with all our heart, with all our soul, and with all our mind.'"<sup>49</sup> The fourth conviction pertains to the nature of our relationship to our fellow human beings: "[W]e are to strive [sic] love one another 'just as I have loved you.'"<sup>50</sup>

Perry's vision of a Catholic law school is certainly religiously based, and the four convictions that he lists are shared by Catholics and other Christians. Indeed, he performs an important service by emphasizing that religious beliefs can play a beneficial role in the operation of a law school. However, it is difficult to see why the affirmation of the four convictions above, without more, would make a law school Catholic. The tenets that Perry proposes—Jesus was a holy man who reflected God's love, we are all brothers and sisters, we must love God, we must love one another—are also shared by the Jewish and Islamic traditions.<sup>51</sup> In addition, Perry seems to further blur the line when he explicitly indicates that these convictions need not include a belief in either the divinity of Jesus or his Resurrection.<sup>52</sup> While it would

47. *Id.* (quoting David Tracy, *Approaching the Christian Understanding of God*, in 1 SYSTEMATIC THEOLOGY: ROMAN CATHOLIC PERSPECTIVES 131, 147 (Francis S. Fiorenza & John P. Galvin eds., 1991)).

48. *Id.* (citing *Matthew* 25:31–46, 5:43–48).

49. *Id.* (citing *Matthew* 22:34–40).

50. *Id.* at 338 (quoting *John* 13:34).

51. See MILTON STEINBERG, BASIC JUDAISM 111 (1947) ("Certainly [Jesus] was, despite his defects, a great man, a gifted and exalted teacher."); THE KORAN 20 (N.J. Dawood ed. & trans., Viking Books 1990) ("Say: 'We believe in God and that which is revealed to us; in what was revealed to Abraham, Ishmael, Isaac, Jacob, and the tribes; to Moses and Jesus and the other prophets by their Lord. We make no distinction among any of them . . . .'").

52. See Perry, *supra* note 45, at 339 & n.45. Those who are interested in the issues of Jesus' divinity and Resurrection, the underlying arguments for them, and their implications for the Christian faith might want to consult the following works: CRAIG BLOMBERG, THE HISTORICAL RELIABILITY OF THE GOSPELS (1987); PETER KREEFT & RONALD K. TACELLI, HANDBOOK OF CHRISTIAN APOLOGETICS 147–221 (1994); MICHAEL J. WILKINS & J.P. MORELAND, JESUS UNDER FIRE: MODERN SCHOLARSHIP REINVENTS THE HISTORICAL JESUS (1995); J.N.D. Anderson, *The Resurrection of Jesus Christ*, 3 CHRISTIAN LAW. 10 (1970). The Apostle Paul has made a particularly strong case for Jesus' Resurrection being essential to the Christian faith: "[I]f Christ has not been raised, your faith is in vain; you are still in your sins. Then those who have fallen asleep in Christ have also perished. If for this life only we have hoped in Christ, we are the most pitiable people of all." 1 *Corinthians* 15:17–19 (New American Bible). As for the impli-

be beyond the scope of this Note to address the theological question of exactly how much a law school must affirm to reach the status of "Christian,"<sup>53</sup> it does not seem that Perry's version, as proposed, even contains any concepts that are particular to Christianity.

Even if we assume that Perry's vision is a Christian one, he does not make clear what would make it particularly Catholic. For example, Perry's ideal Catholic law school would "affirm the possibility and indeed the reality of sin and falsity in every tradition, including the Catholic tradition. In particular, it should affirm the possibility of falsity even among the present official church teachings."<sup>54</sup> He notes that "I would not want my children to attend, nor would I want to teach at, a university whose identity-constituting commitments—whose animating spirit, if you will—comprised such affirmations: affirmations that are, in my view, deeply problematic."<sup>55</sup> Among these "deeply problematic" affirmations are the Church's teaching on contraception,<sup>56</sup>

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cations of a belief in the Resurrection for Catholic law schools in particular, it could be said that to the extent that members of the law school community accepted it, the school as a whole would be able to rest on a firmer foundation when witnessing to Christ's individual teachings on the human person and on social justice. See SECOND VATICAN ECUMENICAL COUNCIL, CATHOLIC CHURCH, CATECHISM OF THE CATHOLIC CHURCH ¶ 651 (2d ed. 1997) [hereinafter CATECHISM] ("The Resurrection above all constitutes the confirmation of all Christ's works and teachings. All truths, even those most inaccessible to human reason, find their justification in Christ by his Resurrection has given the definitive proof of his divine authority, which he had promised.").

53. Those interested in the question of what the fundamental beliefs of Christianity are might want to consult, for starters, the work of C.S. Lewis, a former professor of literature at Oxford and Cambridge and perhaps the most well-known Christian apologist of this century. See, e.g., C.S. LEWIS, *MERE CHRISTIANITY* (1952).

54. See Perry, *supra* note 45, at 342.

55. *Id.* at 345.

56. *Id.* at 345, 351. For a statement of the Church's position against contraception, see CATECHISM, *supra* note 52, ¶¶ 2368, 2370. See also POPE PAUL VI, *HUMANAE VITAE* (1968), [http://www.vatican.va/holy\\_father/paul\\_vi/encyclicals/documents/hf\\_p-vi\\_enc\\_25071968\\_humanae-vitae\\_en.html](http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html) (last visited Dec. 17, 2000); Joseph B. Stanford, *Sex, Naturally*, *FIRST THINGS*, Nov. 1999, at 28, <http://www.firstthings.com/ftissues/ft9911/articles/stanford.html> (last visited Dec. 17, 2000); JACQUELINE KASUN, *THE WAR AGAINST POPULATION: THE ECONOMICS AND IDEOLOGY OF WORLD POPULATION CONTROL* (2d ed. 1999); Jacqueline R. Kasun, *Too Many People?*, *ENVOY MAGAZINE*, May/June 1998, [http://www.envoymagazine.com/samplearticles/may\\_june98/coverstory.html](http://www.envoymagazine.com/samplearticles/may_june98/coverstory.html) (last visited Dec. 17, 2000).

On whether following such moral "rules" of the Church ultimately makes us happy and gives us fulfillments, see CHARLES RICE, *50 QUESTIONS ON THE NATURAL LAW: WHAT IT IS AND WHY WE NEED IT* 31-32 (3d ed. 1999); compare *id.*

the morality of homosexual acts,<sup>57</sup> and the ordination of women.<sup>58</sup> Perry cannot “accept that a university should be Catholic in the sense of making an institutional commitment” to such teachings.<sup>59</sup> Instead, for Perry the Church should defer to the Catholic university on theological questions: “[A] university that is Catholic . . . can serve the church well in identifying and repenting which among still-official Catholic propositions and ideals are in reality sinful, disfiguring propositions and ideals . . . [and correct] the church’s inevitable and all-too-human mistakes.”<sup>60</sup> The Church itself is seen as:

A fallible human community that seeks to teach out of a wide discernment of the consensus of the faithful, knowing that even these best efforts must be held tentatively and that our final hope and salvation lies not in our certainties but in the grace of God who upholds us and loves us in and through our uncertainties.<sup>61</sup>

Perry even refers at one point to the “mindless” conformity of faithful Catholics to the teachings of their Church.<sup>62</sup>

with SØREN KIERKEGAARD, 1 EITHER/OR 1-44, 281-445 (Howard V. Hong & Edna H. Hong eds. & trans., Princeton University Press 1987) (1843).

57. See Perry, *supra* note 45, at 351–52. For a statement of the Church’s teaching on homosexuality, see CATECHISM, *supra* note 52, ¶¶ 2357–59. See also John 6:60, 66-68; *Courage RC Home Page*, at <http://CourageRC.org> (last visited Dec. 17, 2000); David Morrison, *Out of the Closet and Into Chastity*, THIS ROCK (n.d.), at [http://www.catholic.com/rock/out\\_of\\_the\\_closet.htm](http://www.catholic.com/rock/out_of_the_closet.htm) (last visited Dec. 17, 2000); JOHN F. HARVEY O.S.F.S., THE TRUTH ABOUT HOMOSEXUALITY: THE CRY OF THE FAITHFUL 114 (1996).

58. See Perry, *supra* note 45, at 345, 350. For a statement of the Church’s teaching against the ordination of women, see CATECHISM, *supra* note 52, ¶ 1577. See also Michael Novak, *Women, Ordination, and Angels*, FIRST THINGS, Apr. 1993, at 25, <http://www.firstthings.com/ftissues/ft9304/articles/novak.html> (last visited Dec. 17, 2000). For the perspectives of many leading female scholars on the Church’s teachings on women, see generally THE CATHOLIC WOMAN (Ralph McInerny ed., 1990).

59. Perry, *supra* note 45, at 345–46.

60. *Id.* at 354.

61. *Id.* at 359 (quoting Rosemary Radford Ruether, *What Bishop Might Tell Her People About Encyclical*, NAT’L CATH. REP., Nov. 12, 1993, at 18).

62. *Id.* at 353. For a general reasoned defense of many of the controversial teachings of the Catholic Church on faith and morals, see generally *Catholic Answers: Tracts By Topic*, at <http://www.catholic.com/answers/tracts/topical.htm> (last visited Dec. 17, 2000), and *Catholics United for the Faith: Faith Facts*, at <http://www.cuf.org/facts1b.htm> (last visited Dec. 17, 2000). While the Catholic Church’s teachings are based on well-reasoned grounds, we should not discount the necessity of faith in helping us attain to the truth. See JOHN PAUL II, FIDES ET RATIO preamble (1998), at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_15101998\\_fides-et-ratio\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_15101998_fides-et-ratio_en.html) (last visited Dec. 17, 2000) (“Faith and reason are like two wings on which the human spirit rises to the contemplation of truth.”). St. Thomas

Furthermore, Perry explicitly attacks the views promulgated by the Catholic Church in *Ex Corde Ecclesiae*. "[T]he exercise of ecclesiastical control over Catholic universities and colleges is one sure way to sap the strength, and to deplete the nourishment, that a Catholic university or college draws from communion with the rich—the pluralistic!—life and tradition of the Catholic community."<sup>63</sup> On this point he approvingly quotes Father George H. Tavard of Marquette University: "In the real world of academia Catholics differ less and less from other committed Christians. There exists a communion of learning and scholarship that ignores denominations and church separations and that properly carries legitimate authority in its own order."<sup>64</sup> Perry's view of the ideal Catholic law school contradicts the view of *Ex Corde Ecclesiae* in another fundamental respect; namely, that

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Aquinas explains that divine revelation provides us with truths which exceed human reason and helps clarify even those truths which are within reach of our reason. See ST. THOMAS AQUINAS, *SUMMA THEOLOGICA*, I, Q. 1, art. 1 (Benziger Bros. ed. 1947). Aquinas adds that the person who refuses to assent "to one article [of faith] has no faith in the other articles, but only a kind of opinion in accordance with his own will." *Id.* at II, Q. 5, art. 3.

The noted Catholic author and apologist G.K. Chesterton has also commented on the limitations of private reason. See Philip Yancey, *Foreword* to G. K. CHESTERTON, *ORTHODOXY* xii–xiii (Wheaton Books 1994) (1908) (quoting Chesterton) ("In dealing with the . . . asserter of doubt, it is not the right method to tell him to stop doubting. It is rather the right method to tell him to go on doubting . . . until at last, by some strange enlightenment, he may begin to doubt himself."). See also WILLIAM SHAKESPEARE, *MEASURE FOR MEASURE* 46 (J.W. Lever ed., Harvard Univ. Press 1965) (1623) ("But man, proud man, Dress'd in a little brief authority, Most ignorant of what he's most assur'd – His glassy essence – like an angry ape/Plays such fantastic tricks before high heaven/As makes the angels weep. . ."). Finally, the Catholic apologist Frank Sheed has claimed that because of our limitations, Christ provided us with the teaching authority of the Catholic Church:

For God to have given His revelation and made no provision for its preservation would have been sheerly insane. Christ . . . committed [his teaching] to men He had trained: they were to teach it to all men till the end of time: He would be with them in their teaching. "No prophecy of Scripture is of private interpretation," said Paul . . . . [U]nless there is an authority to study [theological ideas], sift them, compare them with the original revelation, channel them to the millions for whom Christ meant it—then they must add to the religious chaos and bring no light to the secular.

FRANK SHEED, *THEOLOGY AND SANITY* xi (2d ed. 1993).

For a general response to Perry's article (and his claim that there have been "wide shifts" in Church positions in the past), see Christopher Wolfe, *The Ideal of a (Catholic) Law School*, 78 MARQ. L. REV. 487 (1995).

63. Perry, *supra* note 45, at 335.

64. *Id.* at 343 (quoting George H. Tavard, Comment, in *CATHOLIC UNIVERSITIES IN CHURCH AND SOCIETY: A DIALOGUE ON Ex Corde Ecclesiae* 63, 64 (John P. Langan ed., 1993)).

Catholic universities are not good in and of themselves. If interest in Catholic law schools faded, Perry would conclude that they "had outlived their time."<sup>65</sup> Overall, the philosophy upon which Perry would base his law school is, as stated, simply not sufficiently distinguishable from that of many Protestant traditions.

Many remarks in the scholarly literature echo Perry's views. For example, some commentators on the subject of Catholic law schools explicitly or implicitly question the teachings of the Catholic Church. In response to Perry's claim that the Catholic law school should acknowledge the possibility of error or sinfulness within the Catholic tradition, Dean Barbara Bader Aldave maintains that this proposition "articulate[s] what I have long believed, and what I have recently attempted to put into practice at St. Mary's University School of Law."<sup>66</sup> Also, Daniel Morrissey makes the surprising comment that "[t]wo of the great attributes of American Catholics are that we do not wear our religion on our sleeves, and we do not proselytize about it."<sup>67</sup> While Morrissey's statement may be true of most individual Catholics, his compliment undermines the fact that members of the Church are called to evangelize.<sup>68</sup> As Andrew Anderson has noted, "The kind of Catholic university envisioned in *Ex Corde Ecclesiae* is one whose religious character is transparent, and those who comprise this institution know what makes them distinct and are proud of it."<sup>69</sup>

Other commentators, like Perry, affirm no more than general principles which do not sufficiently distinguish their respective proposed Catholic law schools from a Protestant (or Orthodox) law school. Dean Aldave says that "if anything is special about Catholic law schools, it should be that they view the advancement of the reign of God as their principle business—as the ultimate rationale for all they do."<sup>70</sup> She then elaborates on this statement, arguing that Catholic law schools should instill in their students a "success" that is informed by religious views, publish "explicitly . . . Christian" mission statements, and explain to their students why it is important to act ethically and compassion-

65. *Id.* at 356.

66. Barbara Bader Aldave, *The Reality of a Catholic Law School*, 78 MARQ. L. REV. 291, 292 (1995).

67. Daniel J. Morrissey, *The Catholic Moment in Legal Education*, 78 MARQ. L. REV. 413, 414 (1995).

68. See generally CATECHISM, *supra* note 52, ¶¶ 846–56 (quoting *Matthew* 28:19–20; 2 *Corinthians* 5:14; 1 *Timothy* 2:4).

69. Very Rev. Andrew L. Anderson, J.C.D., *Ex Corde Ecclesiae: Obstacle or Opportunity for Catholic Affiliated Law Schools*, 34 GONZ. L. REV. 103, 111 (1999).

70. Aldave, *supra* note 66, at 295.

ately.<sup>71</sup> Grace Walle quotes Aldave approvingly, and emphasizes the need for Catholic law schools to “link the profession of justice with the practice of justice” by preparing students for ethical relationships with clients and opponents.<sup>72</sup> Finally, Randy Lee states that “[o]n a fundamental level the mission of a Catholic law school must be to prepare men and women through the study of law to love God and their neighbor.”<sup>73</sup> Lee contends that the Catholic law school can cultivate a love of God in its students by teaching them to know God through His law, to apply this law to social problems, and to be in service to God by producing loving work.<sup>74</sup> He adds that the Catholic law school can foster love of neighbor by teaching students to seek peace for their clients, to rebuild communities on Christian principles, and to serve those that are materially and spiritually poor.<sup>75</sup> Furthermore, according to Lee, a Catholic law school should make prayer a fundamental priority.<sup>76</sup>

These are all inspiring visions of law schools and are certainly not inconsistent with the Catholic Church’s beliefs; Lee even frequently invokes great Catholic figures such as Pope John Paul II, Mother Teresa, Saint Francis of Assisi, and Saint Thomas More.<sup>77</sup> But do these visions go far enough? Christopher Wolfe, for one, has expressed reservations about what he calls the “social justice model” of a Catholic law school, noting that Stanford and Yale should have the same concern for social justice.<sup>78</sup> Wolfe also argues that the proponents of this “social justice model” sometimes disregard the Catholic social teachings on the family and sexual morality.<sup>79</sup> Furthermore, Wolfe notes that these proponents often interpret the Catholic teachings on economic rights to coincide with the views of the liberal wing of the Democratic Party; he believes this position to be a legitimate personal interpretation but not necessarily the authoritative teaching of

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71. *Id.* at 295–96.

72. Sister Grace M. Walle, F.M.I., *Doing Justice: A Challenge for Catholic Law Schools*, 28 ST. MARY’S L.J. 625, 634 & 632–34 (1997).

73. Randy Lee, *Catholic Legal Education at the Edge of a New Millennium: Do We Still Have the Spirit to Send Forth Saints?*, 31 GONZ. L. REV. 565, 572 (1996).

74. *See id.* at 573–76.

75. *See id.* at 576–86.

76. *See id.* at 587–90.

77. *See id.* at 575–90.

78. Wolfe, *supra* note 62, at 495. It is not really fair to put Lee’s proposal in the “social justice” category, since he continually stresses the importance of prayer and love of God. However, at least in the article cited above he does not appear to list any tangible characteristics that would make his ideal law school particularly Catholic.

79. *See id.*

the Church.<sup>80</sup> Finally, Wolfe points out that while social action is certainly commendable, a law school that focuses on action as its main distinguishing characteristic may detract from its primary functions of teaching and research.<sup>81</sup>

At least two articles in the scholarly literature have addressed the narrower question of the ideal Jesuit law school. Steven Barkan names "five characteristics [that] should mark the spirit of Jesuit legal education . . . (1) conducted in a religious context, (2) value oriented, (3) person-centered, (4) broad-based and interdisciplinary, and (5) devoted to excellence."<sup>82</sup> At least the first of these principles offers hope that this vision is distinctively Catholic in nature, but Barkan also states that the affirmation of these principles:

Need not mean that students are taught a distinctively Catholic approach to law, that the faculty produces legal scholarship from a Catholic perspective, or that students and faculty are predominantly Catholic. It should have little to do with crucifixes on classroom walls, law school liturgies, or having priests as teachers. Most importantly, [it] need not mean that the structure of the curriculum, the standards for scholarship, the diversity of students and faculty, and other objective attributes are significantly different from those of any other mainstream law school.<sup>83</sup>

While Barkan's approach may reflect the current philosophy of many Jesuit schools towards legal education,<sup>84</sup> it does not seem to be Catholic in any distinctive way. Robert J. Araujo takes a similar approach to Jesuit legal education; he quotes Barkan's principles approvingly and then enumerates four of his own.<sup>85</sup> Specifically, Araujo claims that Jesuit legal education must "share in the challenge of coming to know the world in which lawyers live and work," form the whole person, promote love for neighbor, and encourage people to live in harmony and not conflict.<sup>86</sup> Although as shown below Araujo does support more specific standards for a Catholic law school, it is difficult to discern what would separate his particular formulation here from a Protestant, Orthodox, or even secular law school. There may be room for

80. *See id.*

81. *See id.*

82. Steven M. Barkan, *Jesuit Legal Education: Focusing The Vision*, 74 MARQ. L. REV. 99, 108 (1990).

83. *Id.* at 107-08 (footnotes omitted).

84. *See infra* Part II.H; *see also infra* Table I.

85. Robert J. Araujo, S.J., *Legal Education and Jesuit Universities: Mission and Ministry of the Society of Jesus?*, 37 LOY. L. REV. 245, 273-76 (1991).

86. *Id.* at 275-76.

disagreement as to what the "essential convictions" of a Catholic law school should be, but it should be clear that what is required is something more than has been proposed by the preceding authors.

### C. *Toward a Distinctively Catholic Law School*

At the other end of the spectrum mentioned above are those visions of Catholic law schools that are distinctively Catholic in one or more ways. In answering the question, "What makes UST [University of St. Thomas in Minnesota] Law a Catholic law school?" Dean David Link and Associate Dean Patrick Schiltz emphasize that a Catholic law school's intellectual mission—"the very purpose of its teaching, scholarship, and service"—must be in some way unique, by being devoted to the Catholic intellectual tradition.<sup>87</sup> Daniel Morrissey suggests that a Catholic law school should maintain a "critical mass" of Catholic faculty members, courses informed by particularly Catholic outlooks (such as jurisprudence, but even courses like corporate law and wills and trusts to a certain degree), and a vibrant pastoral ministry.<sup>88</sup> Judge John Noonan believes that a Catholic law school should have enough Catholic faculty members "to give substance to the claim of the school to be . . . Catholic," emphasize the importance of natural law, maintain a dialogue with theological ideas (ideally by hiring members of a religious order), be sensitive to violations of human rights abroad, and provide spiritual opportunities, such as masses and observance of feast days.<sup>89</sup> He adds that a Catholic law school should prepare its students to work for three causes in particular: religious liberty, freedom from corruption in government, and the inviolability of human life at all stages.<sup>90</sup> Aloysius Leopold and Marie Kaiser claim that the perspective of the Catholic Church should inform discussions on constitutional law, family law, pornography, civil rights law, and professional ethics.<sup>91</sup> In addition, they say that a Catholic law school should provide classes in canon law and poverty law; law clinics to assist the needy; lectures on theological issues; courses

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87. David T. Link & Patrick J. Schiltz, *What Makes UST Law a Catholic Law School*, at <http://www.stthomas.edu/lawschool/about/catholic.cfm> (last visited Dec. 17, 2000).

88. Morrissey, *supra* note 67, at 420–21.

89. John T. Noonan, Jr., *A Catholic Law School*, 67 NOTRE DAME L. REV. 1037, 1044 & 1040–45 (1992).

90. John T. Noonan, Jr., *The Heart of a Catholic Law School*, 23 U. DAYTON L. REV. 7, 8–9 (1997).

91. See Aloysius A. Leopold & Marie E. Kaiser, *The Lord in the Law: Reflections on a Catholic Law School*, 25 ST. MARY'S L.J. 385, 399–402 (1993).



in Catholic history, literature, and philosophy; and opportunities for spiritual growth.<sup>92</sup> Finally, Leopold and Kaiser maintain that the law school's professors should "exemplify the integrity of uprightness of life."<sup>93</sup>

Fernand Dutile also expands at length on the identity of a Catholic law school.<sup>94</sup> Dutile stresses that there is no "magic factor" that makes a law school Catholic.<sup>95</sup> However, he points to several important indicia: having a distinctively Catholic mission statement, maintaining a "critical mass" of Catholic faculty members, preferring to some extent Catholic students, emphasizing areas of study that are important to Catholicism, requiring a jurisprudence course that is both theological and philosophical in nature, offering a course that enables students to directly explore the needs of the urban poor, highlighting Roman Catholic values in the curriculum in general, having a chapel in the law school, hanging crucifixes in the classroom, and supporting several Catholic student organizations.<sup>96</sup>

David DeWolf and Robert Araujo prefer to emphasize the importance of promoting "the culture of life" referred to by John Paul II, and of engaging in cultural dialogue with "the skeptical intellect."<sup>97</sup> They assert that Catholic legal education must fulfill at least three missions: teaching and seeking God's justice, encouraging its students to live "in right relation with God" by serving one's neighbor, and rejecting the view "that all beliefs

92. *See id.* at 402–03.

93. *Id.* at 403–04.

94. Fernand N. Dutile, *A Catholic Law University, Maybe; But a Catholic Law School?*, in *THE CHALLENGE AND PROMISE OF A CATHOLIC UNIVERSITY* 71 (Theodore M. Hesburgh, C.S.C., ed., 1994).

95. *Id.* at 73.

96. *See id.* at 73–80. Link and Schiltz point out that while it is important to have many faculty and students who are practicing Catholics, "a Catholic law school cannot succeed in its mission—nor be taken seriously by the outside world—unless its faculty and student body reflect the diversity of God's creation." *See* Link & Schiltz, *supra* note 87.

97. David K. DeWolf & Robert John Araujo, *And God's Justice Shall Become Ours: Reflections on Teaching Law in a Catholic University*, 11 *REGENT U. L. REV.* 37, 43–44 (1999). Interestingly, Araujo's collaboration with DeWolf results in a vision that is much more distinctively Catholic than the one in Araujo's article on Jesuit legal education eight years earlier. *See* sources cited and accompanying text, *supra* notes 85–86. I do not know if this shift is a result of a change in Araujo's personal views or an elaboration of his prior views. *See also* Robert J. Araujo, *Ex Corde Ecclesiae and Mission-Centered Hiring in Roman Catholic Colleges and Universities: To Boldly Go Where We Have Gone Before*, 25 *J. C. & U.L.* 835, 864 (1999) ("By not acknowledging the healthy relationship between the Holy Father's Apostolic Constitution and the civil law as well as their compatibility, we may contribute to the extinction of the distinctive missions of our Catholic universities.").

and cultures are equally valid.”<sup>98</sup> DeWolf and Araujo quote *Ex Corde Ecclesiae* approvingly in saying that Catholic faculty members are “called to a personal fidelity to the Church with all that this implies” and that those who are non-Catholic “are required to respect the Catholic character of the university, while the university in turn respects their religious liberty.”<sup>99</sup>

Christopher Wolfe provides an especially comprehensive view of a distinctively Catholic law school. Wolfe says that what is unique about a Catholic law school is that its jurisprudence is informed by the essentials of Church teaching.<sup>100</sup> Generally, these essentials include the dignity of human beings, the common good as the aim of all laws, solidarity (the responsibility of all to contribute to the common good), and subsidiarity (the allocation of functions to lower levels of community rather than to the state).<sup>101</sup> Wolfe compiles a detailed list of these essentials, emphasizing the Church’s promotion of religious liberty; the rights of both children and parents in education; the indissolubility, unity, and fruitfulness of marriage; the integral relationship between marriage and sexual union; the right to a job, a just wage, property, and economic initiative; the right to informed political participation, a just form of government, and a peaceful state which avoids unjust wars; the right to life and the necessities of life (with a special view to the needs of the poor); and the right against unjust discrimination.<sup>102</sup> According to Wolfe, these essentials would particularly affect the teaching of jurisprudence, legal ethics, and family law; they would also challenge the materialism, consumerism, relativism, privatization of religious discussion, and ideal of a false freedom embraced by our society.<sup>103</sup> Also, such a law school would stress the “preferential option” for the spiritually and materially poor, and discourage utopian or violent proposed solutions to society’s problems.<sup>104</sup>

While a Catholic law school should cultivate such distinctive characteristics, it should also be ready to address any challenges to its distinctiveness. Christopher Wolfe notes that he does not object to the “limited ecclesiastical control” asserted by *Ex Corde Ecclesiae* over Catholic law schools, noting that such oversight is a

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98. *Id.* at 47–48.

99. *Id.* at 45–46 (quoting *EX CORDE ECCLESIAE*, *supra* note 9, ¶ 27).

100. See Wolfe, *supra* note 62, at 488. See also Edward J. Murphy, *The Sign of the Cross and Jurisprudence*, 71 NOTRE DAME L. REV. 577 (1996) (explaining how the Catholic faith fundamentally affects one’s understanding of law).

101. *See id.*

102. *See id.* at 488–89.

103. *See id.* at 489–492.

104. *See id.* at 492.

“minimal form of self-defense” by the Church, denying the legitimacy of schools to call themselves Catholic while promoting views independent of and contrary to those of the Church.<sup>105</sup> On the other hand, Wolfe does believe that it is possible for a law school to be distinctively Catholic even without such ecclesiastical control; he maintains that “[t]he essence of a Catholic law school is not in its formal governing relation to the hierarchy, but in what it is.”<sup>106</sup>

As noted above, one particular requirement of *Ex Corde Ecclesiae* is that bishops have a duty to preserve the Catholic character and take proper measures to resolve any problems that may arise in this regard. According to David Gregory, this imperative “might mean . . . that resolute proponents of capital punishment or abortion—the secular champions of the culture of death—[should] no longer be allowed a platform for such gravely immoral activities directly within the Catholic law school.”<sup>107</sup> He adds that it is possible that the “culture of death” could become so ingrained at a Catholic law school that the ecclesiastical authorities would have to intervene.<sup>108</sup>

Other potential challenges to a school’s Catholic identity can come through controversial student organizations that apply for official recognition. James Faught notes that his school, Loyola University of Chicago, distinguishes between those organizations whose purpose is advocacy of behavior that is in conflict with the teachings of the Catholic Church, and those organizations whose purpose is support, discussion, and education.<sup>109</sup> Loyola University refused official recognition to Students for Choice upon finding that the proposed group fell into the former category, but it recognized a gay and lesbian student organization and a Reproductive Issues Society upon determining that these groups fell into the latter category.<sup>110</sup> The distinction initially appears to be an acceptable one, but it is easy to see how a controversial student organization could undermine Church teachings by taking a stubbornly neutral stance towards certain lifestyles that are at odds with the teachings of the Church. Alternatively, such an organization might even directly challenge those teachings by engaging in some forms of advocacy once rec-

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105. *Id.* at 499.

106. *Id.*

107. David L. Gregory, *The Bishop’s Role in the Catholic Law School*, 11 REGENT U. L. REV. 23, 27 (1999).

108. *See id.*

109. *See* James J. Faught, *An Approach to Dealing With Controversial Student Organizations*, 78 MARQ. L. REV. 313, 317 (1995).

110. *See id.* at 317–20.

ognized. Faught asserts that since pro-choice groups “rarely label themselves as pro-abortion, it becomes difficult to reject a registration group on the basis that the group’s purpose opposes Church teachings.”<sup>111</sup> On the contrary, the dictionary definition of “pro-choice” is “favoring the legalization of abortion,”<sup>112</sup> and the *Catechism of the Catholic Church* asserts, “The inalienable rights of the person must be recognized and respected by civil society and the political authority. . . . Among such fundamental rights one should mention in this regard every human being’s right to life and physical integrity from the moment of conception until death.”<sup>113</sup>

Although the scholarly literature appears to be otherwise silent on the issue of the recognition of student organizations at Catholic law schools, the University of Notre Dame takes the sound view that the concerns of certain proposed student organizations are best addressed by activities that are organized directly by the administration. Specifically, the University declined to recognize a gay and lesbian student organization on the grounds that the proposed group’s application materials discussed homosexuality in such a way that was inconsistent with Church teaching, and that some of the group’s leaders expressed dissent from Church teaching in conversations and correspondence with the administration.<sup>114</sup> As a compromise, Notre Dame sought instead to sponsor through the Student Affairs office a facilitated setting respectful of Church teaching in which gay and lesbian students could come together for discussion and support. This “facilitated setting” was distinguished from a student organization in five ways: (1) the group would be facilitated by one or two faculty or staff members of the University; (2) the group would stand “in special relationship” to the Office of Student Affairs; (3) the group would provide support and facilitate discussion within the context of the teachings of the Catholic Church; (4) the group’s right to funding, advertising, and use of university facilities would come through its advisor(s); and (5) the Vice President for Student Affairs would play a role in choosing the advisor(s). Such an arrangement can be a model for other schools that are strug-

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111. *Id.* at 318.

112. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 929 (10th ed. 1998).

113. CATECHISM, *supra* note 52, ¶ 2273 (quoting CONGREGATION FOR THE DOCTRINE OF THE FAITH, DONUM VITAE III (1987), [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.htm](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.htm) (last visited Dec. 17, 2000)).

114. Professor Patricia O’Hara’s *Open Letter in Response to Final Report of Ad Hoc Committee*, at <http://www.nd.edu/~scglsn/response.html> (last visited Dec. 17, 2000).

gling to find a way to adequately meet both the needs of gay and lesbian students and the need to be faithful to the teachings of the Catholic Church.<sup>115</sup>

For similar reasons, a Catholic law school should be wary of recognizing a "Reproductive Issues Society," such as the one at Loyola of Chicago; such an organization would also have a relatively narrow focus and in practice could easily undermine or challenge Church teachings. The need for discussion about the issue of abortion could be handled through a pro-life club, which could critically examine pro-choice arguments in a setting that maintained a respectful attitude towards Church teaching.<sup>116</sup> On the other hand, Catholic law schools could probably be more favorable to recognizing a student chapter of the American Civil Liberties Union (ACLU) or the Federalist Society, which would deal with a wider variety of issues and could make an effort to invite speakers who are sympathetic to the concerns of the Catholic Church on certain issues.<sup>117</sup> In this regard, one could view

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115. Specifically, the *Catechism of the Catholic Church* holds:

The number of men and women who have deep-seated homosexual tendencies is not negligible. This inclination, which is objectively disordered, constitutes for most of them a trial. They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided. . . . Homosexual persons are called to chastity. By the virtues of self-mastery that teach them inner freedom, at times by the support of disinterested friendship, by prayer and sacramental grace, they can and should gradually and resolutely approach Christian perfection.

CATECHISM, *supra* note 52, ¶ 2358–59. While Notre Dame's arrangement sounds perfectly acceptable in theory, at least one commentator has suggested that in practice the school's effort has been halfhearted. See Charles Rice, *Administration's Homosexual Policy Does Not Make Sense*, NOTRE DAME OBSERVER (campus newspaper), Apr. 21, 1998, at 9.

116. For example, I have attended an undergraduate Notre Dame Right to Life "debate meeting" where members raised several pro-choice arguments that had stumped them. Such arguments could (and should) also be posed to speakers that a pro-life group invites; a debate between a pro-choice and a pro-life speaker might be yet another appropriate way to foster discussion within the bounds of *Ex Corde Ecclesiae*. See *infra* note 120. Although Loyola University Chicago School of Law already had a student pro-life group, the school decided to recognize the "Reproductive Issues Society" nevertheless. See Faught, *supra* note 109, at 320.

117. For example, the ACLU and the Catholic Church are on common ground with regard to the death penalty. The ACLU supports a national moratorium on executions. See *ACLU and Death Penalty*, at <http://www.aclu.org/death-penalty> (last visited Dec. 17, 2000). Although the Church has traditionally taught that the death penalty can be justified in certain circumstances, see CATECHISM, *supra* note 52, ¶ 2267, the *Catechism* states that:

Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed

these clubs as similar to a student chapter of the Republican or Democratic Party. While one can find individual statements in the national platforms of these parties that would clearly or arguably contradict the teachings of the Church,<sup>118</sup> most people would probably agree that Republican and Democratic student organizations are permissible at a Catholic university, since their efforts are diffused over a relatively large number of candidates and issues.

On the other hand, this accommodating view of groups like the ACLU and the Federalist Society should be read with two caveats. First, as noted above, the United States Application of *Ex Corde Ecclesiae* asserts that Catholic universities should be committed to Catholic ideals, teachings, and attitudes in conducting the activities of student organizations.<sup>119</sup> Therefore, student organizations might be restricted in their ability to invite inflammatory speakers who would explicitly advocate conduct or legal action which conflicts with the teachings of the Catholic Church.<sup>120</sup> For

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an offense incapable of doing harm—without definitively taking away the possibility of redeeming himself—the cases in which the execution of the offender is an absolute necessity “are very rare, if practically nonexistent.”

*Id.* (quoting JOHN PAUL II, *EVANGELIUM VITAE* ¶ 56 (1995), [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_25031995\\_evangelium-vitae\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_25031995_evangelium-vitae_en.html) (last visited Dec. 17, 2000)).

118. See *The 2000 Democratic National Platform: Prosperity, Progress, and Peace*, at <http://www.democrats.org/hq/resources/platform/platform.html> (last visited Dec. 17, 2000) (supporting the right to choose and “the full inclusion of gay and lesbian families in the life of the nation. This would include an equitable alignment of benefits.”); *Republican National Committee: Renewing Family and Community*, <http://www.rnc.org/2000/2000platform4> (last visited Dec. 17, 2000) (“[W]ithin proper federal jurisdiction, the Republican Congress has enacted legislation for an effective deterrent death penalty.”). For statements of the Catholic Church that bear on these issues, see *CATECHISM*, *supra* note 52, ¶¶ 2267, 2270–75, 2357–59.

119. See sources cited and accompanying text, *supra* note 42.

120. A conservative interpretation of *Ex Corde Ecclesiae* and its Application would completely prohibit such speakers. A more liberal interpretation would permit inviting such people to speak in the context of a debate or forum, or perhaps even on their own as long as the law school takes steps to ensure that those supporting the “pro-Church” side are also heard. Of course, much speculation is involved in determining how the general guidelines of *Ex Corde Ecclesiae* and its Application would specifically apply to particular situations. I do think at the very least that the United States Application’s brief statement on the subject of student organizations contemplates that (1) Catholic law schools should not recognize those groups (such as pro-choice clubs) whose main focus would present a direct challenge to Church teachings, and (2) speakers for other organizations (such as the ACLU) who propound a “contra-Church” position at a Catholic law school should not be featured in total isolation, as might happen at a secular school.

example, such restrictions might apply to a student chapter of the ACLU that plans to invite any speakers who will advocate the right to abortion, physician-assisted suicide, or same-sex marriage;<sup>121</sup> they might also apply to a student chapter of the Federalist Society that attempts to invite any speakers who will question the right of all to a decent minimum wage or to affordable and accessible health care.<sup>122</sup> Second, in deciding whether or not to even recognize such a group, a Catholic law school should also

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121. See *ACLU and Reproductive Freedom*, at <http://www.aclu.org/issues/reproduct/hmrr.html> (last visited Dec. 17, 2000); *ACLU Action Alert: Congress Tries to Deny Wishes of Terminally Ill*, at <http://www.aclu.org/action/dwdignity106.html> (last visited Dec. 17, 2000); *A Historic Victory: Civil Unions for Same Sex Couples*, at [http://www.aclu.org/issues/gay/civil\\_union\\_publ.html](http://www.aclu.org/issues/gay/civil_union_publ.html) (last visited Dec. 17, 2000). For statements of the Catholic Church that bear on these issues, see CATECHISM, *supra* note 52, at ¶¶ 2270-83, 2357-59.

While the *Catechism of the Catholic Church* supports legal protection of the right to life "from the moment of conception until death," (see sources cited and accompanying text, *supra* note 113), it does not explicitly address legal recognition of same-sex marriages. In fact, Thomas Aquinas, whom John Paul II has called a "master of thought and model of the right way to do theology," allows that criminalizing certain types of immoral conduct may do more harm than good. See JOHN PAUL II, *supra* note 62, at ¶ 43; AQUINAS, *supra* note 62, at I-II, Q. 96, art. 2. However, Robert George and Gerard Bradley argue that there is a crucial difference between refraining from investigating and prosecuting couples who use contraception (for example), and institutionalizing or supporting intrinsically nonmarital sexual relationships. See Robert P. George & Gerard V. Bradley, *Marriage and the Liberal Imagination*, 84 GEO. L.J. 301, 320 (1995). See also PONTIFICAL COUNCIL FOR THE FAMILY, FAMILY, MARRIAGE, AND "DE FACTO" UNIONS (2000), [http://www.vatican.va/roman\\_curia/pontifical\\_councils/family/documents/rc\\_pc\\_family\\_doc\\_20001109\\_de-facto-unions\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001109_de-facto-unions_en.html) (criticizing legal recognition of "de facto" unions between heterosexuals or homosexuals).

122. Admittedly, the Catholic Church's position on these issues is not as clear as its position on issues such as abortion, physician-assisted suicide, or the morality of homosexual conduct. The *Catechism of the Catholic Church* has not explicitly defended the right to a decent minimum wage or the right to affordable and accessible health care, although certain passages do hint at them. See CATECHISM, *supra* note 52, at ¶ 2434 ("A just wage is the legitimate fruit of work. To refuse or withhold it can be a grave injustice."); *id.* at ¶ 2431 ("Economic activity, especially the activity of a market economy, cannot be conducted in an institutional, juridical, or political vacuum. On the contrary, it presupposes sure guarantees of . . . efficient public services.") (quoting JOHN PAUL II, CENTESIMUS ANNUS ¶ 37, [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/encyclicals/documents/hf\\_jp-ii\\_enc\\_01051991\\_centessimus-annus\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_01051991_centessimus-annus_en.html) (last visited Dec. 17, 2000)). However, the United States bishops have come out strongly in favor of such rights. See United States Catholic Conference Administrative Board, FAITHFUL CITIZENSHIP: CIVIC RESPONSIBILITY FOR A NEW MILLENNIUM, 29 ORIGINS 309, 315 (1999), available at <http://www.nccbuscc.org/faihtfulcitizenship/citizenship.htm> (last visited Dec. 17, 2000) [hereinafter FAITHFUL CITIZENSHIP] ("We support policies that . . . increase the minimum wage so that it becomes a living wage . . ."); *id.* ("Affordable and accessible

look at the big picture; a Catholic law school with an ACLU chapter but no corresponding right-to-life group is not really helping to distance itself from the secular mentality of most law schools.

#### D. *Is a Distinctively Catholic Law School a Good Thing?*

##### 1. Reasons to Believe a Distinctively Catholic Law School Is Desirable

As noted above, *Ex Corde Ecclesiae* makes the case that a distinctively Catholic law school is a good thing, helping the Catholic Church to fulfill its fourfold mission of promoting service to the Church and society, pastoral ministry within the University, cultural dialogue, and evangelization.<sup>123</sup> Thomas Shaffer has also noted that the Church has law schools in order to carry out a mission from God.<sup>124</sup> Shaffer describes four possible elements of this mission, emphasizing the last: to open up doors in society to members of the church; to provide a "spiritually cordial" atmosphere for religious law students; to serve the community; and to think about how it views the practice of law in order for that practice to "not only be moral but . . . also priestly and prophetic."<sup>125</sup> While Shaffer does not explicitly define what it means for the practice of law to be priestly and prophetic, he quotes Robert Rodes in referring to the Church as a "a sign and safeguard of transcendence."<sup>126</sup> Possibly, then, the practice of law is priestly when it attempts to safeguard transcendence, by "serving people

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health care is an essential safeguard of human life and a fundamental human right.")

The Federalist Society itself does not appear to take an official stand against these rights, although it seems at least remotely possible that a student chapter of such a group might invite a speaker who was opposed to these rights. See *Federalist Society—Conservative and Libertarian Legal Scholarship: An Annotated Bibliography*, at <http://www.fed-soc.org/biblio.htm> (last visited Dec. 17, 2000) (stating that in putting together a recommended list of books, the Society "looked for scholarship that embraced the Framers' ideals, which include: limited government, representative democracy, free markets, individual freedom, and personal responsibility").

For an excellent compilation of essays on how Catholic social teachings apply to particular issues in American society, see *Symposium on Entitlement*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 419 (1997).

123. See *EX CORDE ECCLESIAE*, *supra* note 9, ¶¶ 31–49.

124. See Thomas L. Shaffer, *Why Does the Church Have Law Schools?*, 78 MARQ. L. REV. 401, 402 (1995). While Shaffer uses the word "church" to generally describe the "People of God," *id.* at 401 n.1, his thoughts can easily be applied to the Catholic Church in particular.

125. *Id.* at 406.

126. *Id.* at 411 (quoting Robert E. Rodes, Jr., *Catholic Universities and the New Pluralism*, in *THE CHALLENGE AND PROMISE OF A CATHOLIC UNIVERSITY* 303, 310 (Theodore M. Hesburgh, C.S.C., ed. 1994)).



at the margins of society . . . people whose transcendence is belied by their condition."<sup>127</sup> Shaffer also quotes Rodes as saying that "when we cannot be a safeguard, we must still be a sign."<sup>128</sup> In other words, perhaps, our practice of law is prophetic when we stand as a witness to the fact that Christ is and always will be with us despite society's troubles. One way we can witness is by engaging the secular world in cultural dialogue, which must involve "reaching across differences rather than resting on common ground."<sup>129</sup>

Furthermore, people of many different faith backgrounds (and of no faith at all) should be able to agree that distinctively Catholic law schools are desirable for at least two reasons. First, they are good for law students, other law schools, and the public at large because they have a special contribution to make to the discourse on current issues facing our society.<sup>130</sup> Many commentators have documented the current tendency of American law schools to suppress religious discussion in and outside of the classroom.<sup>131</sup> However, as Professor Stephen Carter notes in his book, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion*, it is discriminatory to suppress ideas that have been shaped by religious views, when other forms of reasoning are tolerated.<sup>132</sup> Furthermore, it is undemocratic, since a state that tries to suppress these ideas is acting tyrannically by removing potential sources of ideas different from its own.<sup>133</sup>

127. *Id.*, at 408 (quoting Rodes, *supra* note 126, at 310).

128. *Id.*, at 411 (quoting Rodes, *supra* note 126, at 310).

129. *Id.*, at 409 (quoting Rodes, *supra* note 126, at 307).

130. See Anderson, *supra* note 69, at 124 ("By helping to make a law school's Catholic identity more transparent, *Ex Corde Ecclesiae* helps to ensure the diversity so highly valued in legal education."); Wolfe, *supra* note 62, at 503 ("'Diversity' is a very prized principle at many leading schools today, but it is more often sought with respect to race and gender than it is with respect to intellectual views which are at the fringe of the cultural elite (as political conservatism and traditional religious belief are).").

131. See, e.g., Harold J. Berman, *The Crisis of Legal Education in America*, 26 B.C. L. REV. 347 (1985); Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247 (1978); James D. Gordon III, *The Importance of Religiously Affiliated Law Schools*, 37 CATH. LAW. 183 (1997); Michael Stokes Paulsen, *How Yale Law School Trivializes Religious Devotion*, 27 SETON HALL L. REV. 1259 (1997).

132. STEPHEN L. CARTER, *THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION* 218 (1993). For an excellent summary and analysis of the ideas in Professor Carter's book, see Thomas L. Shaffer, *Review Essay: Stephen Carter and Religion in America*, 62 U. CIN. L. REV. 1601 (1994).

133. See CARTER, *supra* note 132, at 142.

Carter argues that giving religiously influenced views a place in public discourse serves the interests of democracy, since religions are independent moral and political forces that can prevent majoritarian tyranny.<sup>134</sup> For example, many religious leaders were vocal opponents of segregation in the late 1950's and early 1960's.<sup>135</sup> To those who would still dismiss religious ideas as irrelevant to the actions of the State, Carter responds that:

The citizen whose public self is guided by religious faith might reasonably ask why the will of any of the brilliant philosophers of the liberal tradition or, for that matter, the will of the Supreme Court of the United States is more relevant to moral decisions than the will of God. So far, liberal theory has not presented an adequate answer.<sup>136</sup>

Others might claim that religions can even cause harm by imposing their views of the good life on others and thereby jeopardizing individual freedom; Carter replies that secular political ideas can also cause such harm.<sup>137</sup> Therefore, Americans have nothing to lose by encouraging discussion that reflects religious views. Furthermore, those who attempt to suppress religiously influenced dialogue are actually acting contrary to their own interests: "The roughly half of Americans for whom religious tradition is very important in reaching moral decisions are, in the long run, likely to turn their backs on a liberal tradition that turns its back on what they cherish most."<sup>138</sup>

One might argue in opposition to Catholic law schools that it is not necessarily beneficial to make room in public discourse for certain viewpoints, or to have law schools that represent such perspectives. For example, a Nazi law school would also contribute to the marketplace of ideas and serve as an independent moral and political force. However, as Carter notes, any religion that survives for long must possess some moral truth, whether or not most people accept the religion as a whole.<sup>139</sup> This seems to make sense; surely almost all of us, no matter what our personal views of Roman Catholicism are, would agree that such a religion includes more kernels of moral truth than Nazism, and that this is one reason we would be more inclined to approve of a Catholic law school rather than a Nazi one.

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134. See *id.* at 132, 134. See also RICHARD JOHN NEUHAUS, *THE NAKED PUBLIC SQUARE: RELIGION AND DEMOCRACY IN AMERICA* (2d ed. 1984).

135. See CARTER, *supra* note 132, at 63-64.

136. *Id.* at 226.

137. See *id.* at 145.

138. *Id.* at 56.

139. See *id.* at 231.

While many different religiously affiliated law schools could make a substantial contribution to public discourse, a Catholic law school could offer a particularly valuable perspective based on the richness of Catholic thought and experience with the law.<sup>140</sup> According to Judge John Noonan, the “mother of all law schools” is Bologna, a Catholic institution that dates back to the twelfth century.<sup>141</sup> The law school at Bologna honed the method that all modern-day law schools use: gathering authorities, comparing them, and questioning their conclusions.<sup>142</sup> The first great legal casebook, Master Gratian’s *Harmony of Unharmonious Canons*, was modeled on this approach, was written for the Catholic law school, and remained in use for about 800 years.<sup>143</sup> At about this time, the common law began developing, almost entirely at the hands of clerical judges who were paid largely through the benefices awarded them by the Church.<sup>144</sup> One of these clerical judges was William Raleigh, who co-authored the famous original treatise on the common law, *De Legibus et Consuetudinibus Angliae*.<sup>145</sup> The law of equity was also largely the creation of Catholic clergymen.<sup>146</sup> In the sixteenth century, the life of Thomas More, perhaps the most famous Catholic lawyer, evidenced both a respect for authority and a willingness to challenge its rational foundations, as well as a firm resolve to stand by his conscience when the law went too far.<sup>147</sup>

Another important Catholic contribution to our Anglo-American body of law is the idea of “natural law.”<sup>148</sup> While Catholics certainly cannot take sole credit for introducing this

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140. I am partially indebted for this idea to an observation made by journalist Peter Steinfels in the course of his study of the extent to which Catholic colleges and universities had preserved their religious heritage: “I found a non-Catholic political scientist wondering why, in view of the richness of Catholic thought and experience in relating God and Caesar, the government department at his Catholic university should be interchangeable with that of any first-rank secular school.” Peter Steinfels, *Catholic Identity: Emerging Consensus*, 25 ORIGINS 173, 174 (1995-96).

141. John T. Noonan, Jr., *A Catholic Law School*, 67 NOTRE DAME L. REV. 1037, 1038 (1992).

142. *See id.*

143. *See id.*

144. *See id.*

145. *See id.* at 1038–39 (citing 3 DE LEGIBUS ET CONSUETUDINIBUS ANGLIAE, III, XXXVI (Samuel Thorne ed., 1977)).

146. *See id.* at 1039.

147. *See id.*

148. For a good commentary on the concept of natural law and its implications for modern society, see generally RICE, *supra* note 56.

concept,<sup>149</sup> Catholic scholars such as Thomas Aquinas played an instrumental part in developing it.<sup>150</sup> According to Aquinas, the first, self-evident precept of the natural law is that:

[G]ood is to be done, and evil is to be avoided. All other precepts of the natural law are based on this: so that whatever the practical reason naturally apprehends as man's good (or evil) belongs to the precepts of the natural law as something to be done or avoided.<sup>151</sup>

More specifically, we naturally apprehend as being good the five things to which human beings have a natural inclination: seeking the good, preserving one's life, preserving the species, living in community with others, and knowing the truth and choosing how to act in accordance with it.<sup>152</sup> Aquinas adds that if a human law "deflects from the law of nature," it is unjust and "is no longer a law but a perversion of law."<sup>153</sup> Although natural law has in recent times been maligned as a method for reaching judicial conclusions,<sup>154</sup> certain widely praised judicial decisions, such as *Brown v. Board of Education*, might have been very different were the judges not permitted to rely upon the notion that there are moral norms that transcend the laws of the state.<sup>155</sup>

The second reason a Catholic law school should appeal to Catholics and non-Catholics alike can be explained relatively briefly: Catholic law schools can strengthen the legal profession's commitment to social justice. Jesus told his followers to "love one another as I have loved you,"<sup>156</sup> and the Church over the centuries has authored many documents stressing the need for

149. Aristotle, for example, makes the point that there are certain ideals that transcend the laws of a particular society, such as natural justice. See CLARENCE MORRIS, *THE GREAT LEGAL PHILOSOPHERS* 21 (1959).

150. See generally ST. THOMAS AQUINAS, *TREATISE ON LAW* 14–16, 54–72 (Regnery Publishing, 1998).

151. ST. THOMAS AQUINAS, *supra* note 62, at I–II, Q. 94, art. 2.

152. See *id.* See also RICE, *supra* note 56, at 52.

153. AQUINAS, *supra* note 62, at Q. 95, art. 2.

154. For example, the nomination of Clarence Thomas to the Supreme Court evoked criticism that he would use natural law to restrict abortion rights. See RICE, *supra* note 56, at 23–25. However, one commentator pointed out that natural law has been invoked throughout history by such figures as Socrates, Plato, Aristotle, the Stoics, Aquinas, Grotius, Pufendorf, Locke, Montesquieu, Jefferson, Adams, Abraham Lincoln, Rev. Martin Luther King Jr. and Thurgood Marshall (the man Thomas was nominated to replace). See *id.* at 23 (quoting Peter Steinfels, *Natural Law Collides With the Laws of Politics in the Squabble over a Supreme Court Nomination*, NEW YORK TIMES, Aug. 17, 1991, at A8).

155. See Aloysius A. Leopold & Marie E. Kaiser, *The Lord in the Law: Reflections on a Catholic Law School*, 25 ST. MARY'S L.J. 385, 392–93 (1993) (citing *Brown v. Board of Education*, 347 U.S. 483 (1954)).

156. *John* 15:12; see also *John* 13:34–35.

ministry to the poor and other disadvantaged members of society.<sup>157</sup> While the programs of existing law schools no doubt manifest a commitment to these ideals, the Catholic law school can provide a fresh perspective and offer further justifications for working for underrepresented causes in the law.

One additional issue is whether a distinctively Catholic law school would comply with requirements imposed by law and by the two major law school accrediting agencies, the American Bar Association (A.B.A.) and the Association of American Law Schools (A.A.L.S.). It is generally accepted that abiding by the norms of *Ex Corde Ecclesiae* will not result in a "legal crisis" for Catholic universities.<sup>158</sup> With regard to whether distinctively Catholic law schools can conform to the requirements of the A.B.A., Andrew Anderson notes that A.B.A. Standard 210(e) permits, with three qualifications, preferential hiring policies at law schools.<sup>159</sup> The first qualification is that religiously affiliated

157. For a good collection of these writings over the past century, see CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE (David J. O'Brien & Thomas A. Shannon, eds. 1992). See also POPE PAUL VI, PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD: GAUDIUM ET SPES ¶ 21 (1965), at [http://www.vatican.va/archive/hist\\_councils/ii\\_vatican\\_council/documents/vat-ii\\_cons\\_19651207\\_gaudium-et-spes\\_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html) (last visited Dec. 17, 2000) [hereinafter GAUDIUM ET SPES]:

[The Church] teaches that a hope related to the end of time does not diminish the importance of intervening duties, but rather undergirds the acquittal of them with fresh incentives. By contrast, when a divine substructure and the hope of life eternal are wanting, man's dignity is most grievously lacerated, as current events often attest; the riddles of life and death, of guilt and of grief go unsolved, with the frequent result that men succumb to despair.

158. See John H. Robinson, *A Symposium on the Implementation of Ex Corde Ecclesiae: Introduction*, 25 J.C. & U.L. 645, 652 (1999) ("None of our authors believe that the implementation of *Ex Corde* along lines roughly congruent with those sketched in the Bishops' current draft norms would produce a legal crisis for the affected institutions . . ."); see generally *Symposium on Ex Corde Ecclesiae*, 25 J.C. & U.L. 645 (1999).

159. See Anderson, *supra* note 69, at 116–17. Specifically, ABA Standard 210(e) states:

This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff which directly relate to this affiliation or purpose so long as (i) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (ii) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but shall not be applied to use admission policies or take other action to preclude admission of applicants or retention of

schools must give notice of these policies to potential employees; Anderson observes that *Ex Corde Ecclesiae* complies with this requirement since it states that “all teachers and all administrators, at the time of their appointment, are to be informed about the Catholic identity of the institution and its implications, and about their responsibility to promote, or at least respect, that identity.”<sup>160</sup> The second qualification is that religious affiliation may not contravene academic freedom; Anderson points out that *Ex Corde Ecclesiae* asserts:

A Catholic university possesses the autonomy necessary to develop its distinctive identity and pursue its proper mission. Freedom in research and teaching is recognized and respected according to the principles and methods of each individual discipline, so long as the rights of the individual and of the community are preserved within the confines of the truth and the common good.<sup>161</sup>

The third qualification is that schools may not use these policies to discriminate on the basis of race, color, religion, national origin, gender, or sexual orientation, although the A.B.A. notes that:

The prohibition concerning sexual orientation does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs. For example, it does not require a school to recognize or fund organizations whose purposes or objectives with respect to sexual orientation conflict with the essential elements of the religious values and beliefs held by the school.<sup>162</sup>

Anderson notes that the Church explicitly condemns “every type of discrimination, whether social or cultural, whether based on sex, race, color, social condition, language, or religion”; he adds that the A.B.A.’s exception with regard to sexual orientation acknowledges some instances in which a Catholic law school may

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students on the basis of race, color, religion, national origin, sex, or sexual orientation. This Standard permits religious policies as to admission, retention, and employment only to the extent that they are protected by the United States Constitution. It is administered as if the First Amendment of the United States Constitution governs its application.

AMERICAN BAR ASSOCIATION STANDARDS FOR APPROVAL OF LAW SCHOOLS, 37 Standard 210(e) [hereinafter ABA STANDARDS] (1999).

160. Anderson, *supra* note 69, at 116 (quoting EX CORDE ECCLESIAE, *supra* note 9, art. 4, § 2).

161. *Id.* at 117 (quoting EX CORDE ECCLESIAE, *supra* note 9, art. 2, § 5).

162. ABA STANDARDS, *supra* note 159, at 38.

have to discriminate with regard to sexual orientation in order to uphold its essential values.<sup>163</sup> Therefore, Anderson concludes, the A.B.A. standards do not appear to prevent a Catholic law school from maintaining its accreditation and remaining true to the norms of *Ex Corde Ecclesiae*.<sup>164</sup>

Anderson then points out that unlike membership in the A.B.A., membership in the A.A.L.S. "is generally not relied on by state supreme courts, the U.S. Department of Education, or other similar bodies. Rather, it is an organization of schools dedicated to maintaining and enhancing the quality of legal education and promoting certain goals and values."<sup>165</sup> Section Five of the A.A.L.S.'s Executive Committee Regulation 6.17 prohibits discrimination on the basis of sexual orientation, stating that the hiring practices at schools must not interfere with the provision of a satisfactory legal education "because of lack of a sufficient intellectual diversity," and requires that these practices "contain neither a blanket exclusion nor a limitation on the number of persons admitted or employed on religious grounds."<sup>166</sup> Furthermore, the A.A.L.S. adopts the position of the 1970 Interpretive Comments that "most church-related institutions no longer need or desire the departure from the principles of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure."<sup>167</sup> As Anderson observes, the preced-

163. Anderson, *supra* note 69, at 117-18 (quoting GAUDIUM ET SPES, *supra* note 157, ¶ 29).

164. *Id.* at 121.

165. *See id.* at 121 (quoting Steven R. Smith, *Accreditation and Religiously Affiliated Law Schools*, 78 MARQ. L. REV. 361, 362 (1995)).

166. ASSOCIATION OF AMERICAN LAW SCHOOLS, 2000 HANDBOOK 50 (2000). Executive Committee Regulation 6.17 reads in full:

It is not inconsistent with Bylaw Section 6-4(a) for a law school with a religious affiliation or purpose to adopt preferential admissions and employment practices that directly relate to the school's religious affiliation or purpose so long as (1) notice of the practices is provided to members of the law school community (students, faculty and staff) before their affiliation with the school; (2) the practices do not interfere with the school's provision of satisfactory legal education as provided for in these bylaws and regulations, whether because of lack of a sufficient intellectual diversity or for any other reason; (3) the practices are in compliance with Executive Committee Regulation Chapter 6.16, as well as all other Bylaws and Executive Committee Regulations; (4) the practices do not discriminate on the ground of race, color, national origin, sex, age, handicap or disability, or sexual orientation; and (5) the practices contain neither a blanket exclusion nor a limitation on the number of persons admitted or employed on religious grounds.

*Id.*

167. *Id.*

ing statements of the A.A.L.S. might possibly preclude a distinctively Catholic law school from being accepted for membership.<sup>168</sup> However, this possibility should not appreciably diminish the desirability of distinctively Catholic law schools, since such schools would still presumably be able to maintain A.B.A. membership, which would serve as an assurance to others of the schools' quality and would ensure that its graduating students have opportunities equal to those at other schools.

## 2. Response to Criticism of Distinctively Catholic Law Schools

Some scholars have claimed that a Catholic law school that abides by *Ex Corde Ecclesiae* would not be a desirable kind of law school. For example, Daniel Gordon claims that *Ex Corde Ecclesiae* creates "an impossible mission" for the Catholic law school in four ways: the search for truth, academic freedom, the competency of law students, and the intellectually exciting nature of law school are all compromised by the requirement that the law school must operate within the views of the Catholic Church.<sup>169</sup> Gordon contends that "*Ex Corde Ecclesiae* requires two separate and inconsistent cultures to exist in American Catholic law schools. One culture can be perceived as the competent intellectual, while the other can be regarded as a truth communication. Each culture possesses its own exclusive characteristics."<sup>170</sup>

However, these two cultures are not incompatible; *Ex Corde Ecclesiae* merely strikes a proper balance between them. Law professors can still search for truth and exercise academic freedom within a very large area; the only requirements are that they stop short of obvious disrespect of Church teaching and that they exercise this freedom within the confines of the truth and the common good.<sup>171</sup> Christopher Wolfe notes that Catholic law

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168. See Anderson, *supra* note 69, at 122.

169. See Daniel Gordon, *Ex Corde Ecclesiae: The Conflict Created for American Catholic Law Schools*, 34 GONZ. L. REV. 125, 133-40 (1999).

170. *Id.* at 139.

171. With regard to respecting Church doctrine, *Ex Corde Ecclesiae* states that "all Catholic teachers are to be faithful to, and all other teachers are to respect, Catholic doctrine and morals in their research and teaching." EX CORDE ECCLESIAE, *supra* note 9, at art. 4, § 3. The United States Application reiterates that "[a]ll professors are expected to exhibit . . . respect for Catholic doctrine." UNITED STATES APPLICATION, *supra* note 34, at pt. 2, art. 4, § 4(b). With regard to academic freedom, *Ex Corde Ecclesiae* states that "[t]he Church recognizes the academic freedom of scholars . . . within the confines of the truth and the common good." See EX CORDE ECCLESIAE, *supra* note 9, at ¶ 29. The norms of *Ex Corde Ecclesiae* add that "[f]reedom in research and teaching is recognized and respected . . . so long as the rights of the individual and of the community are preserved within the confines of the truth and the common



schools can avoid the danger of insularity if they remain “deeply engaged” in “mainstream” discussions about the law with those from secular law schools, and if they arrange visiting professorships and conferences to bring in respected scholars from these schools.<sup>172</sup> Wolfe adds that Catholic law schools that do remain deeply engaged in mainstream discussions might very well be less insular than secular institutions that are not as concerned with addressing topics “outside the mainstream,” such as the classical and medieval traditions of political philosophy and law.<sup>173</sup> Also,

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good.” See *id.* at art. 2, § 5. The United States Application phrases this general idea somewhat differently: “With due regard for the common good and the need to safeguard and promote the integrity and unity of the faith, the diocesan bishop has the duty to recognize and promote the rightful academic freedom of professors in Catholic universities in their search for truth.” UNITED STATES APPLICATION, *supra* note 34, at pt. 2, art. 2, ¶ 3. Both the general norms of *Ex Corde Ecclesiae* and the particular norms of the United States Application are to be observed by individual American Catholic universities. See *id.* at pt. 2, art. 1, ¶ 2.

Under the standards set forth by the two documents, the exact extent to which a professor can exercise academic freedom and must show “respect for Catholic doctrine” remains unclear. David Gregory offers a conservative interpretation of academic freedom and “respect for Catholic doctrine”; as noted above, he argues that *Ex Corde Ecclesiae* might mean that professors should not “be allowed a platform for . . . gravely immoral activities directly within the Catholic law school.” See sources cited and accompanying text, *supra* note 107. Under this interpretation, professors would presumably not be allowed to give lectures to the law school community (or publish works in one of the law school’s journals) in support of such conduct or legal action. However, under Gregory’s standard it would seem that such a professor might be able to promote his views at other non-Catholic law schools by giving guest lectures and publishing in their journals.

Under a more moderate approach, law school professors at a Catholic law school would be allowed publicly to promote within their school, views that are contrary to Church teachings, but only within a larger context in which the other side is also presented (i.e., a debate or forum). See sources cited and accompanying text, *supra* notes 116, 120. Finally, a very lenient approach would permit professors to freely give lectures and publish works in support of conduct or legal action that is directly opposed to the Church’s moral teachings, regardless of the larger context, as long as he or she “respects” (i.e., does not directly mock) Church teachings and sincerely believes to be acting within the confines of the truth and the common good.

While speculation in these specific matters is unavoidable, I think *Ex Corde Ecclesiae* and its Application more easily lend themselves to a conservative or moderate interpretation. The emphasis of *Ex Corde Ecclesiae* on the Catholic university as Christian witness (See sources cited and accompanying text, *supra* notes 12, 13, 25) appears to contemplate at the very least that Catholic universities should not feature in total isolation those who advocate a “contra-Church” position. See sources cited and accompanying text, *supra* note 120 (addressing the similar problem of regulating student organizations).

172. See Wolfe, *supra* note 62, at 501.

173. See *id.* at 501–02.

David Gregory contends that those concerned about academic freedom at Catholic universities should focus instead on “the materialistic and militaristic influences of Nike or the ROTC . . . on institutions of higher education.”<sup>174</sup> Gregory maintains that the real challenge to academic freedom comes not from exercising genuine academic freedom within the confines of the truth and the common good, but from the “potentially corrupting influence” of the money that the corporate world brings to bear on law schools.<sup>175</sup>

Gordon also asserts that *Ex Corde Ecclesiae* disregards the professors' freedom of conscience by requiring them to respect the teachings of the Catholic Church,<sup>176</sup> but as Andrew Anderson has explained, “It stands to reason that it would be unjust to force one to expound a value that she does not hold or share. *Ex Corde Ecclesiae* only asks individuals in a Catholic university to extend to such institutions the respect and freedom that the Church extends to them.”<sup>177</sup> In the few cases where a professor feels that his freedom of conscience is jeopardized by the mere requirement that he respect the teachings of the Church, he would be under no obligation to teach at that particular university in the first place.

Finally, Gordon expresses the valid concern that law schools “include adversarial discussions of all sides of issues” to help students learn to think objectively about public issues.<sup>178</sup> He points to the teaching of abortion law as an instance in which it is impossible for the professor to encourage disinterested thinking and stay within the bounds of the fidelity to Church teachings required by *Ex Corde Ecclesiae*.<sup>179</sup> In fact, these two concerns are very compatible. For example, a professor who happened to be a conservative Catholic could use the Socratic method in a juris-

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174. Gregory, *supra* note 107, at 29.

175. *Id.* See also Anderson, *supra* note 69, at 111 (noting that secular schools “have core values sustained by restraints on academic freedom and . . . have the ‘coercive power’ of the Association of American Law Schools to help them maintain those values,” and observing that the accrediting authorities are inconsistent in that they decide to protect individuals by upholding the rights of professors who feel that their academic freedom is challenged by the mission of religiously affiliated law schools, but decide to protect the group at the expense of individual professors and students who may be rejected as a consequence of affirmative action policies) (citing Douglas Laycock, *Academic Freedom, Religious Commitment, and Religious Integrity*, 78 MARQ. L. REV. 297, 302, 307, 309–310 (1995)).

176. See Gordon, *supra* note 169, at 137.

177. Anderson, *supra* note 69, at 114.

178. Gordon, *supra* note 169, at 143.

179. See *id.* at 143–53.

prudence class to explore both sides of the issue of physician-assisted suicide:

Professor: "Mr. Hart. Do you believe a patient should ever have the right to have his doctor help him kill himself?"

Student: "No, I don't."

Professor: "What if he's in extreme pain?"

Student: "I appreciate that that's a difficult situation to be in, but still no."

Professor: "Why not?"

Student: "I just don't believe that human beings have the right to make those decisions."

Professor: "Well, who does, then?"

Student: "God, I guess."

Professor: "So you're saying that God doesn't want us to legalize physician-assisted suicide. But many people in this society disagree with your particular religious views. What right do you have to impose your views on theirs?"<sup>180</sup>

By playing devil's advocate and by being open to questions challenging the reasoning behind the positions of the Catholic Church on controversial topics, a law professor can foster "adversarial discussions of all sides of issues," and still leave time to explain why he or she personally feels that the official Church position is correct. For example, after engaging in the dialogue above, the professor could suggest that the view that it is always wrong to intend to kill an innocent human being comports with the intuitive (and not necessarily religiously based) views of most people throughout history (including some of the world's great thinkers);<sup>181</sup> avoids the "slippery slope" abuses by the state that could arise with another, less objective definition of personhood;<sup>182</sup> and is not unduly burdensome when put into practice since extreme pain can almost always be controlled by

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180. The idea for this hypothetical dialogue came from my witnessing of several such dialogues conducted by my conservative Catholic Jurisprudence professor at Notre Dame, Charles Rice.

181. See, e.g., *Compassion in Dying v. Washington*, 79 F.3d 790, 845-47 (9th Cir. 1996) (Beezer, C.J., dissenting), *overruled by Washington v. Glucksberg*, 521 U.S. 702 (1997).

182. See generally John Finnis, *Euthanasia, Morality, and Law*, 31 *LOY. L.A. L. REV.* 1123 (1998). The Nazis, for example, slid down a slippery slope with their increasingly expansive euthanasia program. See, e.g., ROBERT LIFTON, *THE NAZI DOCTORS: MEDICAL KILLING AND THE PSYCHOLOGY OF GENOCIDE* (1986).

competent doctors.<sup>183</sup> In addition, by the time they matriculate to law school, most students have no doubt been besieged by the countless arguments offered by society in opposition to the Catholic Church's positions on various moral issues. They don't need a purely disinterested presentation of these issues in law school; what they really need to hear, perhaps for the first time, is exactly why the Catholic Church thinks the way it does.<sup>184</sup>

Gordon and Leonard Pertnoy have recently authored an article that examines the effect of *Ex Corde Ecclesiae* on Jewish law professors.<sup>185</sup> Pertnoy and Gordon note that their school, St. Thomas University in Florida, has become one of the first American Catholic universities to make an organized and positive response to *Ex Corde Ecclesiae*, specifically by developing a Catholic identity philosophy and statement.<sup>186</sup> Pertnoy and Gordon take issue with St. Thomas' desire to eventually create a "critical mass of Catholic faculty and administrators" and its proclaimed "institutional hospitality" towards those faculty and administra-

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183. See Finnis, *supra* note 182, at 1139 n.55, 1141 & nn.63–64 (citing both pro- and anti-euthanasia authorities; noting that skilled doctors will experience difficulty in alleviating pain in only one percent of cases, and will have to resort to complete sedation in much less than one percent). Of course, while modern science can treat pain, it cannot remove all of the suffering of the terminally ill. Finnis recognizes that difficult cases "are not to be shuffled away," but argues that we should also "ask the line-drawers what sense they can make of distinguishing between the cases on each side of it—in matters so important as autonomy, oppression, and existence itself," and that:

Those who hang on very often find that there hope is eventually transferred from living on to dying well—albeit in extremities of disfigurement and debility—dying affirmed and not abandoned by their relatives or friends. These many, many people, having left behind the falsely exclusive and dominating ethic or aesthetic of control, mastery, and achievement, have found a deeper, more humble but more human understanding of the worth of simply being, with what remains of what one was given.

*Id.* at 1142–43. See also JOHN PAUL II, *SALVIFICI DOLORIS* (1984), available at [http://www.vatican.va/holy\\_father/john\\_paul\\_ii/apost\\_letters/documents/hf\\_jp-ii\\_apl\\_11021984\\_salvifici-doloris\\_en.html](http://www.vatican.va/holy_father/john_paul_ii/apost_letters/documents/hf_jp-ii_apl_11021984_salvifici-doloris_en.html) (noting that one purpose of human pain is the gain of merit in sharing in the suffering of Christ).

184. In his book, *50 Questions on the Natural Law: What It Is & Why We Need It*, Charles Rice gives a detailed exposition of the Catholic Church's teachings on abortion, contraception, the death penalty, euthanasia, and gay and lesbian rights (among other issues), and of the reasoning behind these teachings. See generally RICE, *supra* note 56, at 66–71, 306–82. Prof. Rice uses this book extensively in his Jurisprudence class at Notre Dame Law School.

185. Leonard Pertnoy & Daniel Gordon, *Would Alan Dershowitz Be Hired to Teach Law at a Catholic Law School? Catholicizing, Neo-Brandeisizing, and an American Constitutional Policy Response*, 23 SEATTLE U. L. REV. 355 (1999).

186. See *id.* at 363–66.

tors who are not Catholic.<sup>187</sup> They fear that Jewish professors, such as themselves, will be merely “tolerated” and reduced to the status of “house guests.”<sup>188</sup> They wonder if a Catholic law school with such a view would even turn down a Jewish professor with the credentials of Harvard Law School’s Alan Dershowitz, should he desire a change in location to a sunnier climate.<sup>189</sup> Furthermore, Pertnoy and Gordon claim that institutional support of a “Jewish quota” (such as that enforced by many American colleges and universities in the first half of the twentieth century) will set a moral example for other American institutions by implying the legitimacy of anti-Semitism and inequality.<sup>190</sup>

Pertnoy and Gordon’s comments undermine the great respect that the Catholic Church has for the Jewish people.<sup>191</sup> Their concern about a return to a “Jewish quota” is belied by the experience of St. Thomas University, whose present hiring policy is guided by *Ex Corde Ecclesiae* but neither specifies quotas nor targets Jews in particular.<sup>192</sup> Even if a university did enforce a

187. *Id.* at 366 (quoting St. Thomas University’s Catholic Identity, A Living Document 3, 18 n.5 (1996) (on file with Pertnoy and Gordon) [hereinafter Catholic Identity]).

188. *Id.* at 368, 377.

189. *See id.* at 355–56, 379.

190. *Id.* at 374–76, 380.

191. The *Catechism of the Catholic Church* states:

When she delves into her own mystery, the Church, the People of God in the New Covenant, discovers her link with the Jewish people, “the first to hear the word of God.” The Jewish faith, unlike other non-Christian religions, is already a response to God’s revelation in the Old Covenant. To the Jews “belong the sonship, the glory, the covenants, the giving of the law, the worship, and the promises; to them belong the patriarchs, and of their race, according to the flesh, is the Christ”; “for the gifts and the call of God are irrevocable.” . . . [T]he Church considers all goodness and truth found in [non-Christian] religions as “a preparation for the Gospel and given by him who enlightens all men that they may at length have life.”

CATECHISM, *supra* note 52, ¶¶ 839, 843 (quoting *Roman Missal*, Good Friday 13: General Intercessions, VI; *Romans* 9:4-5; *Romans* 11:29; LUMEN GENTIUM, *supra* note 9, ¶ 16); *see also id.* ¶ 842. Pertnoy and Gordon do note that Pope John Paul II has done much to improve relations between Catholics and Jews. *See id.* at 377 (quoting THE CATHOLIC ALMANAC 291–92 (1996)). However, Pertnoy and Gordon also claim that the Church had an “ambigu[ous]” attitude towards the Jews as recently as the Holocaust, *see* Pertnoy & Gordon, *supra* note 185, at 377; for evidence that Pope Pius XII and the Church as a whole strongly supported Jews during the Holocaust, *see* William D. Rubenstein, *The Devil’s Advocate*, FIRST THINGS, Jan. 2000, at 39, available at <http://www.firstthings.com/ftissues/ft0001/reviews/rubinstein.html> (reviewing JOHN CORNWALL, *HITLER’S POPE: THE SECRET HISTORY OF PIUS XII* (1999)).

192. As noted by Pertnoy and Gordon, St. Thomas University seeks only a “critical mass of Catholic faculty and administrators,” welcomes “people from all

general “non-Catholic quota” of less than half the total number of faculty (and the United States Application of *Ex Corde Ecclesiae* indicates that a Catholic university need only ensure “to the extent possible” that the majority are Catholic),<sup>193</sup> such a requirement would certainly be a reasonable one; Andrew Anderson has pointed out that “the participation of the faculty is critical for a law school to be faithful to its mission.”<sup>194</sup> Given the Catholic Church’s respect for Jews and its strong commitment to social justice,<sup>195</sup> we should expect that a Catholic law school that supported a “non-Catholic quota” narrowly applied to faculty hiring would set a great moral example by combating anti-Semitism and promoting equality. It would welcome a distinguished professor, such as Alan Dershowitz,<sup>196</sup> as long as he agreed to exhibit respect for Catholic doctrine during his time there.<sup>197</sup>

## II. CATHOLIC LEGAL EDUCATION: THE PRACTICE

As discussed above, visions of Catholic law schools in the scholarly literature constitute a broad spectrum from more to less distinctively Catholic. On what end of the spectrum do the Catholic law schools in this country actually fall? No less an authority than Thomas Shaffer has stated that “[o]f 48 law

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religious and humanistic traditions,” and notes that “[i]t is conceivable that a strict majority of Catholics will not be required in the U.S. case.” Pertnoy & Gordon, *supra* note 185, at 366 (quoting Catholic Identity, *supra* note 187, at 3, 18 n.5).

193. UNITED STATES APPLICATION, *supra* note 34, pt. 2, art. 4, § 4(a).

194. Anderson, *supra* note 69, at 122.

195. See generally O’Brien & Shannon, *supra* note 157.

196. Dershowitz has been described by various national magazines as “the country’s most articulate and uncompromising protector of criminal defendants,” “one of the nation’s prominent legal educators,” and “[o]ne of the country’s foremost appellate lawyers.” *St. Louis Speakers Series: Alan M. Dershowitz*, at <http://www.speakerseries.com/spk1999/dershow.htm> (last visited Dec. 17, 2000).

197. See UNITED STATES APPLICATION, *supra* note 34, pt. 2, art. 4, §4(b). Someone espousing Dershowitz’s views on the death penalty could be a particularly valuable asset to the Catholic law school. See, e.g., ALAN M. DERSHOWITZ, CONTRARY TO POPULAR OPINION 256 (1992); Alan M. Dershowitz & Arthur J. Goldberg, *Declaring the Death Penalty Unconstitutional*, 83 HARV. L. REV. 1773 (1970). On the other hand, Dershowitz has also written in support of the legal right to abortion and physician-assisted suicide. See DERSHOWITZ, *supra*, at 238–40, 261–63. Furthermore, Dershowitz has exhibited some questionable views about the God of the Bible. See ALAN M. DERSHOWITZ, THE GENESIS OF JUSTICE: TEN STORIES OF BIBLICAL INJUSTICE THAT LED TO THE TEN COMMANDMENTS AND MODERN LAW 40–41 (2000) (claiming that “[t]he text of Genesis supports the view of an imperfect, learning God”). For a reply to *The Genesis of Justice*, see Steven H. Aden, *The God of Alan Dershowitz*, CHRISTIANITY TODAY, Jul. 10, 2000, 2000 WL 11062760.

schools in the U.S. that I believe to be church-related or Jewish, I estimate that 37 are functionally secular; seven are Erastian; and four are sectarian." Shaffer claims that "[t]he Erastian view of what the Church should be . . . ponders the problems of society beyond the Church," and that "the Erastian law schools are not secular, but they are for the most part indistinguishable from all other law schools."<sup>198</sup> DeWolf and Araujo note that "[o]ne ought to be wary of phrases like 'Jesuit heritage' and 'Jesuit tradition' often found in the catalogues of the law schools affiliated with Jesuit universities. To our knowledge, none of these schools elaborates on what this tradition and heritage are. It is not some relic from the past brought out to entertain loyal alumni and benefactors; it is a vibrant alternative to higher education both for today and the future."<sup>199</sup>

Are Shaffer, DeWolf, and Araujo's assertions backed by the evidence? A review of the websites for each of the twenty-nine major Catholic law schools in the country reveals some evidence as to the degree to which these schools on the whole are providing a distinctively Catholic education. A summary of this evidence is found below.

#### A. Methodology

The criteria included in the survey are generally based on the above discussion of *Ex Corde Ecclesiae* and the scholarly literature. However, three caveats should be stated at the outset. First, some of the specific criteria I choose are not explicitly enumerated above, but rather the result of my own specific interpretation of the general guidelines in *Ex Corde Ecclesiae* and the scholarly literature. Even in the case of criteria that are listed above, I often use specific "cutoffs" that are not taken from the above discussion. In any case, I have footnoted the criteria at the beginning of each section so that the reader may refer back to

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198. Thomas L. Shaffer, *Erastian and Sectarian Arguments in Religiously Affiliated American Law Schools*, 45 STAN. L. REV. 1859, 1864, 1866 n.18 (1993). Shaffer has published over 300 works, was named one of the two most productive senior law faculty members in the early 1980's, and has been cited in at least 475 articles in the 1990's alone. See Rev. John H. Pearson, C.S.C., *Thomas Shaffer: He Believes What He Teaches and Lives What He Believes*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 1, 2 (2000). It should be noted that Shaffer's assessment of religiously affiliated law schools has been indirectly challenged by at least one commentator. See David L. Gregory, *Where to Pray? A Survey Regarding Prayer Rooms in A.B.A. Accredited, Religiously Affiliated Law Schools*, 1993 B.Y.U. L. REV. 1287, 1307 ("The vibrancy, vitality, and variety of manifestations of religious commitment at the thirty-two of the fifty-two religiously affiliated law schools responding to the survey is cumulatively quite impressive.").

199. DeWolf & Araujo, *supra* note 97, at 41 n.17.

the relevant parts of the above discussion to see to what extent I have expanded on it.

Second, the reality of a law school's Catholic identity may either surpass or fall short of the expectations an outsider would have after viewing the school's promotional materials.<sup>200</sup> Ideally, such a survey would include on-site visits and conversations with various administrators, professors, and students. Nevertheless, it seemed that the websites would certainly be reliable indicators of the overall public commitment of these schools to Catholic values, and therefore would shed at least some light on their actual commitment.

Third, the discerning reader will note that only a few of the criteria below are truly distinctively Catholic. For example, having several professors who have published works against abortion, euthanasia, and same-sex marriage can be a strong indicator that a school is distinctively Catholic, but the Catholic Church certainly has no monopoly on these views; in reality all of these professors could be conservative Protestants. To the extent possible, the survey takes into account specifically Catholic characteristics. However, the total amount of information available on these characteristics is relatively small, and so the survey also looks to ways in which schools show concern for religious issues in general or side with the Catholic Church on controversial moral teachings. In addition, the survey looks to the commitment of these schools to public interest work, although since even secular schools largely share these goals, these findings are listed under a separate section below.

#### B. *Administrative and Institutional Commitment to Distinctively Catholic Ideals*

The two criteria that fall under this category are the commitment of a Catholic law school's mission statement to distinctively Catholic ideals in particular, or distinctively religious ideals in general, and the commitment to either of these ideals in any message from the school's dean.<sup>201</sup> Seven schools display on their respective websites a law school mission statement that reveals a commitment to these ideals.<sup>202</sup> Three schools post a

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200. See, e.g., Ronald Herzman, *Catholic Educations*, FIRST THINGS, Oct. 2000, at 39, 43–45 (contrasting Boston College's representation of itself to parents as distinctively Catholic with its largely secular reality).

201. See, e.g., sources cited and accompanying text, *supra* note 27, 35, 37, 71, & 96.

202. See *Ave Maria School of Law: Mission Statement*, at <http://www.avemarialaw.edu/philosophy/mission.html> (last visited Dec. 17, 2000) ("Inspired by Pope John Paul II's encyclical *Fides et Ratio*, Ave Maria School of



Law will offer a distinctive legal education . . . characterized by the harmony of faith and reason.”);

The Columbus School of Law of The Catholic University of America . . . acknowledges that its purposes are as follows . . . to assure, in an institutional manner, the proper intellectual and academic witness to Christian inspiration in individuals and in the community . . . [and] [i]n all things, to pay due respect to the Catholic intellectual tradition of the university. . . .

*Catholic University of America, Columbus School of Law: 2000–2001 Announcements, Statement of Purpose*, at <http://home.cua.edu/cataloginfo/default.cfm?cat=20> (last visited Dec. 17, 2000);

Gonzaga Law School believes that laws and legal institutions are subject to a moral order which transcends human whim and caprice. A central premise of this moral order is that all human beings are created equally and are endowed by their Creator with certain natural rights and obligations.

....

. . . As a Catholic and Jesuit institution, Gonzaga Law School is committed to providing interested students with a supportive setting to explore and deepen their Christian faith. . . . We believe that this atmosphere makes our law school refreshingly distinctive in an era when some members of our society and profession do not consider . . . belief to be a part of legal education and the practice of law.

*Gonzaga University: Law School Mission Statement*, at <http://www.law.gonzaga.edu/about/lawmiss.htm> (last visited Dec. 17, 2000); *Loyola University New Orleans, 1999-2000 Law Bulletin: Goals of Loyola*, at <http://www.loyno.edu/law/bulletin/goalsofloyola.html> (last visited Dec. 17, 2000) (“Legal and graduate education at Loyola should also reflect Loyola’s commitment to participation in the Judeo-Christian intellectual tradition.”); *Loyola University New Orleans, 1999-2000 Law Bulletin: School of Law*, at <http://www.loyno.edu/law/bulletin/schooloflaw.html> (last visited Dec. 17, 2000) (“The School of Law is committed to excellence in legal education in the tradition of its spiritual heritage.”); *Notre Dame Law School: Our Mission*, at <http://www.nd.edu/~ndlaw/welcome/mission.html> (last visited Dec. 17, 2000) (“Notre Dame is a law school dedicated to the integration of reason and faith in the study of law and committed to developing Judeo-Christian principles within systems of jurisprudence.”); *St. Mary’s School of Law: History and Mission of the Law School*, at <http://stmary-law.stmarytx.edu/history.htm> (last visited Dec. 17, 2000) (“As part of a Catholic institution, St. Mary’s University School of Law strives to integrate a sound legal education with a love of God, [and] a respect for God’s laws.”); *University of St. Thomas (Minnesota) School of Law: The Mission of UST Law*, at <http://www.stthomas.edu/lawschool/mission/mission.cfm> (last visited Dec. 17, 2000) (“The University of St. Thomas School of Law, as a Catholic law school, is dedicated to integrating faith and reason in the search for truth through a focus on morality and social justice.”); The mission of St. Thomas University School of Law supports the intellectual and spiritual life of those within its community. The School of Law effectuates its mission by adhering to rigorous academic standards fortified by the recognition that moral and religious principles are relevant to the practical and ethical issues that confront all lawyers. *St. Thomas University (Florida): The Mission of the School of Law*, at <http://www.stu.edu/lawschool/lmission.htm> (last visited Dec. 17, 2000).

All websites listed in the footnotes to Parts II-B through II-G are on file with the author as hard copies.

mission statement that does not appear to manifest such a commitment,<sup>203</sup> and the other schools do not appear to post any mission statement for the law school in particular. Six schools display a message from the dean that manifests a commitment to distinctively Catholic ideals.<sup>204</sup> Ten schools post a message from

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203. [T]he mission of Loyola Law School is legal education within the context of Loyola Marymount University and its goals as a Catholic Institution in the Jesuit and Marymount traditions. . . . As a Jesuit-related institution, the Law School recognizes its moral and ethical obligation to provide opportunities for a quality legal education to qualified applicants of diverse backgrounds, interests, and professional objectives.

See *Loyola Law Los Angeles: Mission Statement*, at <http://www.lls.edu/about/mission.htm> (last visited Dec. 17, 2000); *Santa Clara University School of Law Handbook: School of Law Vision Statement*, at <http://www.scu.edu/law/resources/handbook2000.pdf> (last visited Dec. 17, 2000); *Seton Hall Law: Law School Mission Statement*, at [http://law.shu.edu/administration/dean/law\\_school\\_mission\\_statement.htm](http://law.shu.edu/administration/dean/law_school_mission_statement.htm) (last visited Dec. 17, 2000) (stating simply that “[s]pringing from the University’s Catholic origins, this spirit requires treating all individuals with dignity, justice, and compassion . . . . These values [the ethical and moral precepts governing lawyers] derive both from the Law School’s Catholic origins and from the highest aspirations of the legal profession itself.”).

204. See *Ave Maria School of Law: A Message From The Dean*, at <http://www.avemarialaw.edu/philosophy/message.html> (last visited Dec. 17, 2000) (“Ave Maria encourages applications from students of all faiths who seek a high-quality and distinctive legal education enriched by the Catholic faith and the Catholic intellectual tradition . . . .”); *Boston College Law School: Welcome from Dean John Garvey*, at [http://infoeagle.bc.edu/bc\\_org/avp/law/lwsc/dean.html](http://infoeagle.bc.edu/bc_org/avp/law/lwsc/dean.html) (last visited Dec. 17, 2000) (“We stress professional responsibility throughout the curriculum, anchored in a sense of obligation that is rooted in religious faith . . . .”);

Duquesne is a Catholic law school. We teach the same basic law courses at Duquesne as other law schools, but we do enrich our curriculum with courses that can build personal and ethical perspectives, such as Law and Philosophy, Law and Religion, Jewish Law, and Canon Law . . . . Being Catholic also affects the way we treat our students.

*Duquesne University: An Invitation from Dean Nicholas P. Cafardi*, at <http://www.law.duq.edu/dean.html> (last visited Dec. 17, 2000); *Notre Dame Law School: Dean’s Welcome*, at <http://www.nd.edu/~ndlaw/welcome/deanwelcome.html> (last visited Dec. 17, 2000) (“We offer legal education within a community of faith[,] a community which shares a belief in the existence of God as the source of all truth and as the ultimate law-giver . . . . Our challenge is dual to be Catholic . . . and to be great.”); *University of St. Thomas (Minnesota): What Makes UST Law a Catholic Law School?*, at [http://www.stthomas.edu/lawschool/articles/what\\_makes.cfm](http://www.stthomas.edu/lawschool/articles/what_makes.cfm) (last visited Dec. 17, 2000);

As a Catholic law school, St. Thomas seeks to promote an impartial search for truth, a desire to explore knowledge in an interdisciplinary and intercultural way, the courage to speak out on difficult issues, and service to the poor and disadvantaged. St. Thomas Aquinas wrote in the 13th century that law is for the common good.

*St. Thomas University (Florida): A Message From the Dean*, at <http://www.stu.edu/lawschool/deanmsg.htm> (last visited Dec. 17, 2000).

the dean that do not seem to demonstrate such a commitment,<sup>205</sup> and the other schools do not appear to display any message from the dean.

### C. Faculty Commitment to Distinctively Catholic Ideals

The two criteria that fall under this category are the number of professors who have demonstrated a scholarly interest in religious issues in general, and the number of professors who have published works or have collaborated with professional organiza-

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205. See *DePaul College of Law: Welcome From Dean Teree E. Foster*, at <http://www.law.depaul.edu/default.asp?Sec=1&Pg=deanwelc.asp> (last visited Dec. 17, 2000); *University of Detroit-Mercy School of Law: Welcome!*, at <http://www.law.udmercy.edu> (last visited Dec. 17, 2000) (noting only that the school “provides a challenging education that emphasizes the Catholic tradition of intellectual excellence, a sensitivity to the ethical dimensions of human experience, student-centered learning and community service”); *Fordham University School of Law: Message from the Dean*, at <http://www.fordham.edu/law/new/dean.htm> (last visited Dec. 17, 2000); *Georgetown University Law Center: A Message From the Dean*, at <http://www.law.georgetown.edu/dean/index.html> (last visited Dec. 17, 2000); *Loyola University Chicago School of Law*, at <http://www.luc.edu/schools/law/message/message.htm> (last visited Dec. 17, 2000); *Loyola Law Los Angeles: Dean’s Message by Dean David W. Burcham*, at <http://www.lls.edu/about/deanmsg.htm> (last visited Dec. 17, 2000); *Santa Clara University School of Law: Dean’s Welcome*, at [http://www.scu.edu/law/about\\_scu/deans\\_message/deans\\_message.html](http://www.scu.edu/law/about_scu/deans_message/deans_message.html) (last visited Dec. 17, 2000); *St. John’s University: About the School of Law, A Message From the Dean*, at <http://www.stjohns.edu/law/about/index.html> (last visited Dec. 17, 2000); *Saint Louis University School of Law: Welcome Message From the Dean*, at <http://law.slu.edu/community/about/dean-swelcome.html> (last visited Dec. 17, 2000) (stating only that “[a]s a Jesuit law school, we are dedicated to excellence in education and public service. The Jesuit tradition is educating men and women for others”); *Seton Hall Law: Welcome From the Dean*, at [http://law.shu.edu/administration/deans\\_suite/deans\\_page/index.html](http://law.shu.edu/administration/deans_suite/deans_page/index.html) (last visited Dec. 17, 2000).

Byron Cooper, Associate Dean of the University of Detroit-Mercy School of Law, points out that there is not much difference between Detroit-Mercy’s dean’s message and that of St. Thomas University School of Law in Florida. See sources cited and accompanying text, *supra* note 204; E-Mail from Byron Cooper, Associate Dean, University of Detroit-Mercy School of Law, to John J. Fitzgerald (Jan. 19, 2001, 17:01:17 EST). St. Thomas’ dean’s message was given the benefit of the doubt because it refers to “the courage to speak out on difficult issues” and St. Thomas Aquinas in particular, whereas the Detroit-Mercy statement did not appear to emphasize elements that were quite as distinct from those that a secular law school would emphasize. See sources cited and accompanying text, *supra* note 204. Clearly, though, deciding where to draw the line in such matters is an unavoidably subjective endeavor. To Detroit-Mercy’s credit, the school does post a prayer from St. Thomas More and a description of the tradition of the Red Mass on its website. See Cooper, *supra*; *University of Detroit-Mercy School of Law: A Prayer Inspired by St. Thomas More*, at <http://www.law.udmercy.edu/stthomp.htm> (visited Dec. 17, 2000); *University of Detroit-Mercy School of Law: The Tradition of the Red Mass*, at <http://www.law.udmercy.edu/redmass0.htm> (visited Dec. 17, 2000).

tions that are sympathetic to Catholic moral teachings.<sup>206</sup> Notre Dame has at least fifteen full-time professors who have demonstrated a scholarly interest in religious issues in general.<sup>207</sup> Judging from the various websites, no other law school appears to have more than five professors who have published material on religious issues.<sup>208</sup>

It is more difficult to assess the degree to which the faculty at each Catholic law school sides with the Catholic Church on controversial issues, such as abortion, euthanasia, and homosexuality. Many Catholic law schools appear to have one or more professors who have written in one or more of these areas, although it is often difficult to discern solely from the "home

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206. See, e.g., sources cited and accompanying text, *supra* notes 13, 29, 38, 88, 89, 96, 99, 107, & 194. Another possible criterion that was named in Part I would be the number of professors who are members of a religious order. See sources cited and accompanying text, *supra* note 89. However, Fr. John Pearson, a professor at Notre Dame, advises me that the number of priest-lawyers across the country is exceptionally small, so it did not seem fair to put this criterion on par with the others in the survey. For the record, at least three schools have two such professors. See *Notre Dame Law School: Faculty Profiles*, at <http://www.nd.edu/~ndlaw/faculty/listings.html> (last visited Dec. 17, 2000) (listing Sr. Deborah M. Cerullo, SSND and Rev. John H. Pearson, C.S.C.; the site also lists Rev. D. Reginald Whitt, O.P., who recently left Notre Dame); *Boston College Law School: Deans & Full-Time Faculty Members*, at [http://infoeagle.bc.edu/bc\\_org/avp/law/lwsch/fapages/menu.html](http://infoeagle.bc.edu/bc_org/avp/law/lwsch/fapages/menu.html) (last visited Dec. 17, 2000) (listing Frank R. Herrmann, S.J. and Francis J. Nicholson, S.J.); *Georgetown University Law Center: Faculty (Online Curriculum Guide)*, at [http://data.law.georgetown.edu/curriculum/tab\\_faculty.cfm?Status=main](http://data.law.georgetown.edu/curriculum/tab_faculty.cfm?Status=main) (last visited Dec. 17, 2000) (linking to homepages of Kevin P. Quinn, S.J. and Robert F. Drinan, S.J.).

207. See *Notre Dame Law School: Faculty Profiles*, at <http://www.nd.edu/~ndlaw/faculty/listings.html> (last visited Dec. 17, 2000) (containing links to webpages of Gerard V. Bradley, Sr. Deborah Cerullo, S.S.N.D., Fernand N. Dutille, Nicole Stelle Garnett, M. Cathleen Kaveny, Lucy Salisbury Payne, Rev. John H. Pearson, C.S.C., Charles E. Rice, Honorable Kenneth F. Ripple, John H. Robinson, Robert E. Rodes, Vincent D. Rougeau, Thomas L. Shaffer, Steven D. Smith, and part-time professor John M. Finnis).

208. To put this statistic in perspective, faculty membership for schools that were graded in this category ranged from nineteen (Duquesne) to ninety-three (Georgetown), with the average being about thirty-five. See OFFICIAL ABA GUIDE, *supra* note 8, at 106, 130, 150, 152, 156, 160, 168, 178, 186, 194, 234, 236, 238, 242, 292, 332, 336, 338, 340, 342, 344, 362, 364, 366, 410. Georgetown seems to be closest to Notre Dame with five full-time professors who have manifested a scholarly interest in religious issues in general, although the number of full-time faculty members at Georgetown is about three and a half times larger. See *id.* at 186, 292; *Georgetown University Law Center: Faculty (Online Curriculum Guide)*, at [http://data.law.georgetown.edu/curriculum/tab\\_faculty.cfm?Status=main](http://data.law.georgetown.edu/curriculum/tab_faculty.cfm?Status=main) (last visited Dec. 17, 2000) (linking to webpages of Anthony E. Cook, Robert F. Drinan, S.J., Steven P. Goldberg, Richard Alan Gordon, Kevin P. Quinn, S.J.).

pages” of individual professors (and without extremely extensive research into their individual works) where they come down on particular issues, since generally only the titles of particular publications are listed. Notre Dame appears to lead the way with at least four full-time professors who have published works against abortion, physician-assisted suicide, or same-sex marriage;<sup>209</sup> most Catholic law schools appear to have one or even none.<sup>210</sup> In contrast, some of these schools appear to have at least a few

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209. See, e.g., *Notre Dame Law School: Faculty Profiles*, at <http://www.nd.edu/~ndlaw/faculty/listings.html> (last visited Dec. 17, 2000) (containing links to webpages of Gerard V. Bradley, M. Cathleen Kaveny, Charles E. Rice, John H. Robinson, and part-time professor John M. Finnis); Gerard V. Bradley, *Same-Sex Marriage: Our Final Answer?*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 729, 752 (“On a matter as fundamental as this, that should not be our final answer.”); M. Cathleen Kaveny, *Managed Care, Assisted Suicide, and Vulnerable Populations*, 73 NOTRE DAME L. REV. 1275, 1279 (1998) (“To put the matter bluntly, I believe that legalizing assisted suicide in the current health care environment is the moral equivalent of throwing a torch on an oil slick.”); Charles E. Rice, *Abortion, Euthanasia, and the Need to Build a New “Culture of Life,”* 12 NOTRE DAME J.L. ETHICS & PUB. POL'Y 497, 518 (“*Roe v. Wade* has accelerated the dominance of a secular, relativist and individualistic ethic in which the right to life of the innocent is negotiable because it is evaluated according to the utilitarian norms characteristic of a pagan culture.”); John H. Robinson, *Physician-Assisted Suicide: A Constitutional Crisis Resolved*, 12 NOTRE DAME J.L. ETHICS & PUB. POL'Y 369, 385 (1998) (“To make of our existential angst over how we will die a fundamental right would be to disable our legislatures with respect to a set of questions regarding which they are at least as capable of producing good answers as our courts are.”); see sources cited and accompanying text, *supra* notes 182–83.

210. Notre Dame appears to particularly stand out in this respect when placed alongside the nation’s other three most academically prestigious Catholic law schools. See *Schools of Law*, U.S. NEWS & WORLD REPORT, Apr. 10, 2000, at 73, available at <http://www.usnews.com/usnews/edu/beyond/gradrank/law/gdlaw1.htm> (last visited Aug. 1, 2000) (listing four Catholic law schools in the top fifty: Georgetown (14), Boston College (23), Notre Dame (26), and Fordham (32)). Georgetown appears to have only one full-time professor who has published a piece in the last ten years that is sympathetic to the Catholic Church’s position on one of these moral issues; while Boston College and Fordham do not appear to have any such professors at this point in time. See *Georgetown University Law Center: Faculty (Online Curriculum Guide)*, at [http://data.law.georgetown.edu/curriculum/tab\\_faculty.cfm?Status=main](http://data.law.georgetown.edu/curriculum/tab_faculty.cfm?Status=main) (last visited Dec. 17, 2000) (linking to webpage of Kevin P. Quinn, S.J.); Kevin P. Quinn, *Assisted Suicide and Equal Protection: In Defense of the Distinction Between Killing and Letting Die*, 13 ISSUES L. & MED. 145, 165 (1997);

[O]ne can conclude that arguably in certain cases *assisted suicide and forgoing treatment* are morally distinct events: the intentions of the individuals involved are different . . . . Simply to extend the argument for letting patients die to include patients seeking assistance in dying is at best disingenuous . . . .

[Therefore,] it is possible to hold that the individuals involved in each event are not similarly situated for purposes of equal protection review.

professors that have publicly supported the other side of these issues.<sup>211</sup>

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*Boston College Law School*, at [http://infoeagle.bc.edu/bc\\_org/avp/law/lwsch/fapages/menu.html](http://infoeagle.bc.edu/bc_org/avp/law/lwsch/fapages/menu.html) (last visited Dec. 17, 2000) (linking to webpages of all professors); *Fordham University School of Law*, at <http://www.fordham.edu/law/faculty/INDEX.HTML> (last visited Dec. 17, 2000) (same).

211. For example, Boston College, Fordham, Georgetown each have a few professors that have published works or served as counsel in the past ten years in support of conduct or legal action directly opposed to the Church's moral teachings. See, e.g., *Georgetown University Law Center: Faculty (Online Curriculum Guide)*, at [http://data.law.georgetown.edu/curriculum/tab\\_faculty.cfm?Status=main](http://data.law.georgetown.edu/curriculum/tab_faculty.cfm?Status=main) (last visited Dec. 17, 2000) (linking to webpages of Judith Areen, David Cole, Chai R. Feldblum, Naomi Mezey, Susan Deller Ross, Peter J. Rubin, Robin L. West, and Milton C. Regan); *Boston College Law School*, at [http://infoeagle.bc.edu/bc\\_org/avp/law/lwsch/fapages/menu.html](http://infoeagle.bc.edu/bc_org/avp/law/lwsch/fapages/menu.html) (last visited Dec. 17, 2000) (linking to webpages of Charles H. Baron and Sanford J. Katz); *Fordham University School of Law*, at <http://www.fordham.edu/law/faculty/INDEX.HTML> (last visited Dec. 17, 2000) (linking to webpages of James E. Fleming and Katherine M. Franke); David Cole & William N. Eskridge, Jr., *From Hand-Holding to Sodomy: First Amendment Protection of Homosexual (Expressive) Conduct*, 29 HARV. C.R.—C.L. L. REV. 319, 329-330 (1994) (arguing that sodomy is a form of "non-harmful sexual intimacy" that promotes the "personal exploration and development" of homosexuals); Chai R. Feldblum, *A Progressive Moral Case for Same-Sex Marriage*, 7 TEMP. POL. & CIV. RTS. L. REV. 485 (1998); Naomi Mezey, *Dismantling the Wall: Bisexuality and the Possibilities of Sexual Identity Based on Acts*, 10 BERKELEY WOMEN'S L.J. 98 (1995) ("The time has come . . . when we must recognize bisexuality as a normal form of human behavior.") (quoting Margaret Mead, *Bisexuality: What's It All About?*, REDBOOK, Jan. 1975, at 29); SUSAN DELLER ROSS AND VICKI C. JACKSON, ET AL., *THE RIGHTS OF WOMEN: THE BASIC ACLU GUIDE TO A WOMAN'S RIGHTS* (3d ed. 1993); Robin L. West, *Universalism, Liberal Theory, and the Problem of Gay Marriage*, 25 FLA. ST. U. L. REV. 705, 730 (1998) (referring to marriage's "ignoble but ultimately inessential heterosexual and misogynist past"); Robin L. West, *The Nature of a Right to an Abortion: A Commentary on Professor Brownstein's Analysis of Casey*, 45 HASTINGS L.J. 961, 964 (1994) (proposing "a conception of rights that might provide a stronger justification for abortion rights"); Milton C. Regan, Jr., *Same-Sex Marriage and Communal Dialogue*, 8 RESPONSIVE COMMUNITY 56, (stating that "our moral sense of direction [about same-sex marriages] will come largely from engagement in [a] communal process, rather than from some reference to transcendent truth"); Charles H. Baron, *Physician Assisted Suicide Should Be Legalized and Regulated*, 41 BOSTON BAR. J. 15, 29 (1997); Sanford J. Katz, *Emerging Models for Alternatives to Marriage*, 33 FAM. L.Q. 663, 674-75 (1999) (arguably advocating a position in contradiction of Church teachings by supporting domestic partnership laws that give economic benefits and official recognition to cohabiting unmarried couples and same-sex couples who "wish to be connected to one another and live in a committed relationship based on mutual dependency, trust and love"); James E. Fleming, *Constitutional Tragedy in Dying: Responses to Some Common Arguments Against the Right to Die*, 24 FORDHAM URBAN L.J. 881 (1997); Katherine M. Franke, *Homosexuals, Torts, and Dangerous Things*, 106 YALE L.J. 2661, 2670, 2682 (1997) (reviewing WILLIAM N. ESKRIDGE, JR., AND NAN D. HUNTER, *SEXUALITY AND THE LAW* (1997), and WILLIAM B. RUBINSTEIN, *CASES AND MATERIALS ON SEXUAL ORIENTATION AND THE LAW* (2d ed. 1997)) (calling for judicial recognition

A survey of the extracurricular activities of faculty at Catholic law schools also hints at a lack of commitment on the part of these schools to distinctively Catholic ideals. Information on this criterion was limited as well; only about half of the schools had detailed data on the extracurricular activities of these schools. Of these schools, only Notre Dame appears to have more than one or two full-time professors who have been members of or have collaborated with a pro-life or other Catholic organization for lawyers or scholars in general.<sup>212</sup> In contrast, some of these schools appear to have at least a few professors who are or have been significantly involved with a regional or national chapter of the ACLU,<sup>213</sup> which sides with the Catholic Church on the death penalty but opposes it on issues such as abortion, physician-assisted suicide, and (arguably) legal recognition of same-sex marriages.<sup>214</sup> In presenting the data in this section, I want to make clear that I am not arguing that Catholic law schools should not be hiring professors who have demonstrated a scholarly or extracurricular interest in a position that is at odds with the teachings of the Catholic Church. However, I do think that looking at the big picture is instructive; the relative lack of faculty

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of the "equality rights of lesbians and gay men" and observing "[t]hat there is so much good pro-sex writing by lesbians available these days"). Compare Judith Areen, *Advanced Directives Under State Law and Judicial Decisions*, 19 LAW, MED. & HEALTH CARE 91, 99 (1991) (arguing that those who do not want their families to face the situation of incompetent vegetative patient Nancy Cruzan's family should avoid a "humiliating" end by preparing an advance directive) with U.S. BISHOPS' PRO-LIFE COMMITTEE, NUTRITION AND HYDRATION: MORAL AND PASTORAL REFLECTIONS, 21 ORIGINS 705, 707, 710 (1991) ("[M]orally the proxy [decision-maker] may not deliberately cause a patient's death or refuse what is clearly ordinary means, even if he or she believes the patient would have made such a decision.").

212. See, e.g., *Notre Dame Law School: Faculty Profiles*, at <http://www.nd.edu/~ndlaw/faculty/listings.html> (last visited Dec. 17, 2000) (containing links to webpages of Gerard V. Bradley, M. Cathleen Kaveny, Charles E. Rice, and Robert E. Rodes).

213. See, e.g., *DePaul University School of Law, Full-Time Faculty*, at <http://www.law.depaul.edu/facultymain.asp> (last visited Dec. 17, 2000) (containing links to webpages of Susan Bandes, Michelle Oberman, John Roberts, and Jeffrey M. Shaman); *Georgetown University Law Center: Faculty (Online Curriculum Guide)*, at [http://data.law.georgetown.edu/curriculum/tab\\_faculty.cfm?Status=main](http://data.law.georgetown.edu/curriculum/tab_faculty.cfm?Status=main) (last visited Dec. 17, 2000) (containing links to webpages of Eleanor Holmes Norton, Susan Deller Ross, and Abbe Smith); *Loyola Law School: Full-Time Faculty Directory*, at <http://www.lls.edu/academics/facultydir.htm> (last visited Dec. 17, 2000) (containing links to webpages of Sande Buhai, Catherine Fisk, and Gary C. Williams); *Santa Clara University School of Law: Faculty/Staff*, at [http://www.scu.edu/law/faculty\\_staff/faculty\\_staff.html](http://www.scu.edu/law/faculty_staff/faculty_staff.html) (last visited Dec. 17, 2000) (containing links to webpages of Howard C. Anawalt and Margaret Russell).

214. See sources cited and accompanying text, *supra* notes 117, 121.

interest in enterprises sympathetic to the teachings of the Church suggests that Catholic law schools should at least be slightly shifting their hiring preferences to ensure that they will be strong institutional witnesses to the Catholic faith.

#### D. *Commitment to a Distinctively Catholic Curriculum*

The five criteria that fall under this category are the following: the number of courses in Christian (including Judeo-Christian) or Catholic teachings; whether a school claims to incorporate a religious or moral perspective into most courses; whether a school includes in its course description for jurisprudence a clear emphasis on the natural law or on Catholic teachings in general; whether a school requires students to take a jurisprudence course before graduation; and whether a school offers a joint degree with their university's theology program.<sup>215</sup> Overall, only four law schools appear to have three or more courses focusing explicitly on the natural law or on Judeo-Christian, Christian, or Catholic teachings.<sup>216</sup> Ten law schools have

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215. See, e.g., See sources cited and accompanying text, *supra* notes 32, 40, 88, 91, 92, 96, & 103.

216. See *Ave Maria School of Law Curriculum: Elective Courses*, at <http://www.avemarialaw.edu/curriculum/elective.html> (last visited Dec. 17, 2000) (Canon Law, Catholic Social Teaching and the Law, Ecclesiastical History, Papal Encyclicals); *The Catholic University of America: Columbus School of Law*, at [http://law.cua.edu/academics/curriculum\\_XII.shtm](http://law.cua.edu/academics/curriculum_XII.shtm) (last visited Dec. 17, 2000) (Canon Law for American Attorneys, Catholic Natural Law Tradition, Catholic Social Teachings and the Law); *Loyola University Chicago School of Law*, at <http://www.luc.edu/schools/law/registrar/fallregpacket/secXV.htm> (last visited Dec. 17, 2000) (Canon Law for Civil Lawyers, Law and Theology); E-Mail from Thomas M. Haney, Professor of Law and Associate Dean, Loyola University Chicago School of Law, to John J. Fitzgerald (Jan. 17, 2001, 14:03:53 CST) (on file with author) (noting that Jurisprudence: The Catholic Social Tradition is being taught in the Spring 2001 semester and has been offered for the past few years); *Notre Dame Law School: Course Descriptions*, at <http://www.nd.edu/~ndlaw/student/coursedesc.html> (last visited Dec. 17, 2000) (Basic Principles of Canon Law; Canon Law of Marriage; Catholic Social Thought; Mercy and Justice; Social, Political, and Legal Thought of St. Thomas Aquinas).

Although arguably the existence of a "Law and Religion"-type class would be some evidence of a religious commitment on the part of a law school, such classes were not included in the survey since they are relatively broad and would seemingly be appealing to secular schools as well. See, e.g., *Yale Law School: Course Offerings 2000 Fall Term*, at <http://www.yale.edu/lawweb/lawschool/registrar> (last visited Dec. 17, 2000) (listing Law and Religion Seminar). Journals, institutes, and frequent conferences pertaining to law and religion would seem to be slightly more unique and therefore stronger indicators of a religious commitment on the part of a law school. See *infra* Part II.F. Nevertheless, I realize that this "cutoff" is fairly subjective and should note that the percentages in Table I with regard to this criterion would be slightly higher had I given credit for Law and Religion classes.



one or two such courses,<sup>217</sup> and thirteen law schools appear to have none at all.<sup>218</sup> One school does not yet have any specific curriculum information on its website.<sup>219</sup> In a recent survey con-

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217. *The University of Dayton School of Law: Course Descriptions*, at <http://www.law.udayton.edu/admission/degdescriptions.asp> (last visited Dec. 17, 2000) (Judeo-Christian Ethics and the Law); *Duquesne University School of Law: Curriculum*, at <http://www.law.duq.edu/curriculum.html> (last visited Dec. 17, 2000) (Canon Law); *Georgetown University Law Center: Online Curriculum Guide*, at [http://141.161.16.110/curriculum/tab\\_courses.cfm?Status=main](http://141.161.16.110/curriculum/tab_courses.cfm?Status=main) (visited Dec. 17, 2000) (linking to course description for Canon Law); *Loyola University New Orleans School of Law, 1999-2000 Law Bulletin*, at <http://www.loyno.edu/law/bulletin/courses.html> (last visited Dec. 17, 2000) (Canon Law); *Marquette University Law School*, at <http://www.marquette.edu/law/academic/doc/general.html> (last visited Dec. 17, 2000) (Canon Law); *Saint Louis University School of Law*, at <http://law.slu.edu/admissions/AcademicPrograms/ethicsjurislegal.html> (last visited Dec. 17, 2000) (Canon Law); *University of San Diego School of Law*, at <http://www.acusd.edu/usdlaw/cirr.html> (last visited Dec. 17, 2000) (Law and the Catholic Tradition); *Seton Hall Law School*, at [http://law.shu.edu/administration/registrar\\_bursar/courses/course\\_link\\_pages/history.html](http://law.shu.edu/administration/registrar_bursar/courses/course_link_pages/history.html) (last visited Dec. 17, 2000) (Canon Law and Natural Law Jurisprudence); *St. John's University School of Law: Curriculum*, at [http://www.law.stjohns.edu/law/law-webdb.law\\_home2.law\\_academics\\_programs](http://www.law.stjohns.edu/law/law-webdb.law_home2.law_academics_programs) (last visited Dec. 17, 2000) *St. Thomas University (Florida) School of Law: Seminar Descriptions and Independent Research*, at <http://www.stu.edu/lawschool/Academics/seminar.htm> (last visited Dec. 17, 2000) (Canon Law).

218. See *Barry Law: List of Approved Courses*, at <http://www.uo.edu/lawsch/reg.htm> (last visited Dec. 17, 2000); *Boston College: Law Course Offerings*, at [http://www.bc.edu/bc\\_org/avp/enmgt/stserv/acd/courses/LL/top.html](http://www.bc.edu/bc_org/avp/enmgt/stserv/acd/courses/LL/top.html) (last visited Dec. 17, 2000); *Creighton University School of Law: Course Descriptions*, at <http://culaw.creighton.edu/admit/curriculum2.shtml> (last visited Dec. 17, 2000); *DePaul College of Law*, at <http://www.law.depaul.edu/default.asp?Sec=2&Pg=fullcurric.asp> (last visited Dec. 17, 2000); *University of Detroit-Mercy School of Law: Elective Courses*, at <http://www.law.udmercy.edu/electc.htm> (last visited Dec. 17, 2000); *University of Detroit-Mercy School of Law: Seminars*, at <http://www.law.udmercy.edu/seminars.htm> (last visited Dec. 17, 2000); *Fordham University School of Law: Course Schedule Spring 2001*, at <http://law.fordham.edu/ihtml/regcoursesched.ihtml> (last visited Dec. 17, 2000); *Gonzaga University School of Law*, at <http://www.law.gonzaga.edu/admissions/courses.htm> (last visited Dec. 17, 2000); *Loyola Law Los Angeles*, at <http://www.lls.edu/academics/academicsface.htm> (visited Dec. 17, 2000); *University of San Francisco School of Law: 2000 Fall Semester*, at <http://www.usfca.edu/schedules/schedule00F/3law.html> (last visited Dec. 17, 2000); *University of San Francisco School of Law: 2001 Spring Semester*, at <http://www.usfca.edu/schedules/schedule01S/3law.html> (last visited Dec. 17, 2000); *Santa Clara University School of Law Handbook: Course Descriptions*, at <http://www.scu.edu/law/courses> (last visited Dec. 17, 2000); *Seattle University School of Law*, at <http://www.law.seattleu.edu/ACADEM.ICS/courses.html> (last visited Dec. 17, 2000); *St. Mary's University School of Law: Course Descriptions*, at <http://stmarylaw.stmarytx.edu/admiss/course-d.htm> (last visited Dec. 17, 2000); *Villanova Law School: Course Listing 2000-2001*, at <http://vls.law.villanova.edu/registrar/CourseInformation.htm> (last visited Dec. 17, 2000).

219. See *University of St. Thomas (Minnesota) School of Law*, at <http://www.stthomas.edu/lawschool> (last visited Dec. 17, 2000).

ducted by the *National Jurist*, six of seventeen responding Catholic law schools claimed that they incorporated a religious/moral perspective into most courses.<sup>220</sup> However, five other responding schools stated that they did not have any obvious religious perspective in the curricula.<sup>221</sup> Judging from the various websites, only four schools appear to specifically include in their respective course descriptions for jurisprudence a clear emphasis on the natural law or on Catholic teachings in general.<sup>222</sup> The other sixteen schools with course descriptions on their websites did not include such an emphasis.<sup>223</sup> Only three schools appear to spe-

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220. See Bruce Buckley, *Are Law Schools Holier Than Ever?*, THE NATIONAL JURIST, Nov. 1999, at 20, 22, 24 (listing Duquesne, Loyola University Chicago, Marquette, Seton Hall, St. John's, and Villanova). The seventeen Catholic law schools responding to the survey were Boston College, DePaul, Duquesne, Fordham, Loyola University Chicago, Loyola University New Orleans, Marquette, Notre Dame, Saint Louis, Santa Clara, Seton Hall, St. John's, St. Mary's, St. Thomas (Florida), San Diego, San Francisco, and Villanova.

221. See *id.* at 22, 24 (listing DePaul, Notre Dame, Saint Louis, San Francisco, and St. Mary's).

222. See *Ave Maria School of Law: Religion, Ethics, and the Law, An Integration*, at <http://www.avemarialaw.edu/curriculum/religion.html> (last visited Dec. 17, 2000) ("The required courses that directly address law and morality are: Moral Foundations of the Law; Jurisprudence; Professional Responsibility; and Law, Ethics, and Public Policy. Through these courses, students . . . learn the interrelationship between law, ethics, and the Catholic intellectual tradition . . . ."); *DePaul College of Law Courses: Complete Curriculum*, at <http://www.law.depaul.edu> (last visited Dec. 17, 2000) ("[f]ocuses on the natural law theory, its history, development, and influence on legal thought");

This course considers the history of the natural law. It also appraises such schools of jurisprudence as the analytical, historical, philosophical, sociological and realist in the light of the natural law. The natural law basis of the principal juridical institutions in the Roman and Anglo-American legal systems is considered, as well as the creative role of the natural law in contemporary law-making.

*Loyola University New Orleans, 1999-2000 Law Bulletin: General Law Courses*, at <http://www.loyno.edu/law/bulletin/courses-general.html> (last visited Dec. 17, 2000);

Examines in detail the central jurisprudential issue of this century, which is the relation between the human law and the higher law as that law is seen in the natural law and revelation. Primary emphasis is on the Treatise on Law of St. Thomas Aquinas and its intellectual foundations . . . . This study includes an evaluation of these issues with reference to the social teachings of the Catholic Church.

*Notre Dame Law School: Course Descriptions*, at <http://www.nd.edu/~ndlaw/student/coursedes.html> (last visited Dec. 17, 2000).

223. These sixteen schools are Boston College, Catholic University, Creighton, Dayton, Detroit-Mercy, Georgetown, Gonzaga, Loyola Los Angeles, Marquette, Santa Clara, Seattle, Seton Hall, St. John's, St. Mary's, St. Thomas (Florida), and Villanova. See sources cited and accompanying text, *supra* notes 216-18.

cifically require a jurisprudence course;<sup>224</sup> five other schools have a humanities or “perspectives” requirement which students can fulfill by taking a jurisprudence course.<sup>225</sup> Nineteen other Catholic law schools do not appear to require any type of jurisprudence or humanities course.<sup>226</sup> Finally, only five Catholic law schools explicitly advertise on their respective websites that they offer a joint degree with their university’s theology program;<sup>227</sup> the other twenty-three do not seem to advertise such a degree.<sup>228</sup>

#### E. *Commitment of Student Activities to Distinctively Catholic Ideals*

There are two criteria that fall under this category—the number of pro-life or Catholic student organizations and the number of organizations that might challenge Catholic Church teachings in practice.<sup>229</sup> Overall, eight schools list on their

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224. See *Ave Maria School of Law: Curriculum*, at <http://www.avemarialaw.edu/curriculum/required.html> (last visited Dec. 17, 2000); *Notre Dame Law School: Juris Doctor Curriculum*, at <http://www.nd.edu/~ndlaw/admissions/curriculum.html> (last visited Dec. 17, 2000). St. Thomas University School of Law (Florida) requires a “Perspectives on Legal Thought” course that appears to be substantively identical to a typical Jurisprudence course. See *St. Thomas University Florida School of Law*, at <http://www.stu.edu/lawschool/Academics/curriclm.htm> (last visited Dec. 17, 2000), *St. Thomas University Florida School of Law: Course Descriptions*, at <http://www.stu.edu/lawschool/Academics/courses.htm> (last visited Dec. 17, 2000).

225. See *Georgetown University Law Center: Introduction to the JD Program*, at <http://141.161.16.110/curriculum/jdprog.cfm> (last visited Dec. 17, 2000); *Loyola University New Orleans School of Law*, at <http://www.loyno.edu/law/degree.requirements.html> (last visited Dec. 17, 2000); *Marquette University Law School: Law School Courses Required for Graduation*, at <http://www.marquette.edu/law/academic/doc/required.html> (last visited Dec. 17, 2000); *Saint Louis University School of Law*, at <http://law.slu.edu/admissions/AcademicPrograms/jdfulltime.html> (last visited Dec. 17, 2000); *St. Mary’s University School of Law: Student Handbook*, at <http://stmarylaw.stmarytx.edu/HANBK98.html> (last visited Dec. 17, 2000).

226. This includes all other law schools except the University of St. Thomas (Minnesota), which as of yet does not have detailed course information on its website. See sources cited and accompanying text, *supra* notes 216–19.

227. See *The Catholic University of America, Columbus School of Law: 2000-2001 Announcements*, at <http://home.cua.edu/cataloginfo/default.cfm?cat=20> (last visited Dec. 17, 2000); *Duquesne University School of Law: Degree Programs*, at <http://www.law.duq.edu/degree.html> (last visited Dec. 17, 2000); *Loyola University New Orleans School of Law: Combined Degree Programs*, at <http://www.loyno.edu/law/combined.degree.programs.html> (last visited Dec. 17, 2000); *St. Mary’s School of Law: A Letter From the Dean*, at <http://stmary-law.stmarytx.edu/letterfromdean.htm> (last visited Dec. 17, 2000); *University of St. Thomas (Minnesota)*, at [http://www.stthomas.edu/lawschool/why\\_ust\\_law/community.cfm#joint\\_degree\\_programs](http://www.stthomas.edu/lawschool/why_ust_law/community.cfm#joint_degree_programs) (last visited Dec. 17, 2000).

228. See sources cited and accompanying text, *supra* notes 216–18.

229. See, e.g., sources cited and accompanying text, *supra* notes 42, 96, 109–122, & 162.

respective websites a pro-life club,<sup>230</sup> and fifteen schools have a Catholic student group.<sup>231</sup> On the other hand, twelve schools

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230. See *Barry Law School: Organizations*, at <http://www.uo.edu/lawstd/orgs.htm> (last visited Dec. 17, 2000); *Boston College Law School: Student Organizations*, at [http://infoeagle.bc.edu/bc\\_org/avp/law/lwsch/studentorg.html](http://infoeagle.bc.edu/bc_org/avp/law/lwsch/studentorg.html) (last visited Dec. 17, 2000); *The Catholic University of America, Columbus School of Law: 2000-2001 Announcements*, at <http://home.cua.edu/cataloginfo/default.cfm?cat=20> (last visited Dec. 17, 2000); *The University of Dayton School of Law*, at <http://www.law.udayton.edu/admission/bulstudentlife.asp> (last visited Dec. 17, 2000); *Gonzaga University School of Law: Student Organizations*, at <http://www.law.gonzaga.edu/admissions/storgs.htm> (last visited Dec. 17, 2000); *Loyola University Chicago School of Law*, at <http://www.luc.edu/schools/law/student/stdntservices.htm> (last visited Dec. 17, 2000); *Notre Dame Law School: Student Groups*, at <http://www.nd.edu/~ndlaw/student/groups.html> (last visited Dec. 17, 2000); *St. John's University: Various Student Organizations*, at [http://www.stjohns.edu/law/special/student\\_organizations/student\\_organizations.html](http://www.stjohns.edu/law/special/student_organizations/student_organizations.html) (last visited Dec. 17, 2000). The University of Dayton actually lists a student chapter of the Rutherford Institute rather than a specific pro-life club, but the Rutherford Institute engages in a substantial amount of pro-life work. See *The Rutherford Institute, Issue Areas*, at <http://www.rutherford.org/about/issues.asp> (last visited Dec. 17, 2000).

231. See *Boston College Law School: Student Organizations*, at [http://infoeagle.bc.edu/bc\\_org/avp/law/lwsch/studentorg.html](http://infoeagle.bc.edu/bc_org/avp/law/lwsch/studentorg.html) (last visited Dec. 17, 2000); *The Catholic University of America, Columbus School of Law: 2000-2001 Announcements*, at <http://home.cua.edu/cataloginfo/default.cfm?cat=20> (last visited Dec. 17, 2000); *The University of Dayton School of Law*, at <http://www.law.udayton.edu/admission/bulstudentlife.asp> (last visited Dec. 17, 2000); *University of Detroit Mercy School of Law: Student Life and Activities*, at <http://www.law.udmercy.edu/sliffe.htm> (last visited Dec. 17, 2000); *Fordham University School of Law*, at <http://law.fordham.edu/ihtml/sa-sgroup.ihtml> (last visited Dec. 17, 2000); *Loyola University Chicago School of Law*, at <http://www.luc.edu/schools/law/student/stdntservices.htm> (last visited Dec. 17, 2000); *Loyola University New Orleans School of Law: Student Organizations*, at <http://www.loyno.edu/law/student.organizations.html> (last visited Dec. 17, 2000); *Law School Student Organizations at Marquette Law School*, at <http://www.marquette.edu/law/students/doc/studorg.html> (last visited Dec. 17, 2000); *University of San Diego School of Law: Student Life*, at <http://www.acusd.edu/usdlaw/student.shtml> (last visited Dec. 17, 2000); *University of San Francisco School of Law: Student Organizations and Activities*, at [http://www.usfca.edu/law/html/stu\\_org\\_act\\_content.html](http://www.usfca.edu/law/html/stu_org_act_content.html) (last visited Dec. 17, 2000); *St. Mary's School of Law: Student Organizations*, at [http://stmarylaw.stmarytx.edu/sservices\\_studentorgs.htm](http://stmarylaw.stmarytx.edu/sservices_studentorgs.htm) (last visited Dec. 17, 2000); *St. Thomas University School of Law (Florida)*, at <http://www.stu.edu/law-school/studentorg.htm> (last visited Dec. 17, 2000); *Seton Hall Law School*, at [http://law.shu.edu/clinics\\_journals\\_orgs/index.htm](http://law.shu.edu/clinics_journals_orgs/index.htm) (last visited Dec. 17, 2000); *Villanova Law School: Student Organizations*, at <http://vls.law.vill.edu/students/index.html> (last visited Dec. 17, 2000). I know from personal experience that a fifteenth school with a Catholic law student group is Notre Dame, but for some reason this club was not listed on the school's website. It is difficult to know how many other relevant omissions there are in the various websites; I have incorporated into this survey the few omissions that were brought to my attention when I e-mailed the various schools in early January 2001 to ask them if the information on their websites was current.

recognize a gay and lesbian organization,<sup>232</sup> and two recognize a group dealing with reproductive issues or rights.<sup>233</sup> Finally, five schools appear to recognize an ACLU but no corresponding pro-life club.<sup>234</sup> Overall, twenty-three schools list student organizations on their respective websites.<sup>235</sup>

Of course, one could argue that a Catholic law school would not necessarily need a pro-life or Catholic student organization if the university as a whole sponsored such clubs. However, it still

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232. See *Boston College Law School: Student Organizations*, at [http://infoeagle.bc.edu/bc\\_org/avp/law/lwsch/studentorg.html](http://infoeagle.bc.edu/bc_org/avp/law/lwsch/studentorg.html) (last visited Dec. 17, 2000); *DePaul University School of Law: Student Organizations and Journals*, at <http://www.law.depaul.edu/orgs.asp> (last visited Dec. 17, 2000); *Fordham University School of Law: Student Groups*, at <http://law.fordham.edu/ihtml/sa-sgroup.ihtml> (last visited Dec. 17, 2000); *Georgetown University Law Center: Student Organizations*, at <http://www.law.georgetown.edu/stuaff/orgs.html> (last visited Dec. 17, 2000); E-Mail from Ilona DeRemer, Associate Dean, Gonzaga University School of Law, to John J. Fitzgerald (Jan. 18, 2001, 17:10:13 PST) (on file with author) (noting newly formed gay and lesbian club); *Loyola Law School, Los Angeles: Student Groups*, at <http://www.lls.edu/about/lglu.htm> (last visited Dec. 17, 2000); *Pride Law: University of San Diego School of Law*, at <http://www.acusd.edu/pride-law/aboutpridelaw.html> (last visited Dec. 17, 2000); *University of San Francisco School of Law: Student Organizations and Activities*, at [http://www.usfca.edu/law/html/stu\\_org\\_act\\_content.html](http://www.usfca.edu/law/html/stu_org_act_content.html) (last visited Dec. 17, 2000); *Santa Clara University School of Law*, at <http://www.scu.edu/law/resources/organizations/organizations.html> (last visited Dec. 17, 2000); *Seattle University School of Law: Student Organizations*, at <http://www.law.seattleu.edu/STUDENT.INF/organiza.html> (last visited Dec. 17, 2000); *St. Mary's School of Law: Student Organizations*, at [http://stmarylaw.stmarytx.edu/sservices\\_studentorgs.htm](http://stmarylaw.stmarytx.edu/sservices_studentorgs.htm) (last visited Dec. 17, 2000); *St. Thomas University School of Law (Florida)*, at <http://www.stu.edu/law-school/studentorg.htm> (last visited Dec. 17, 2000); *Villanova Law School: Student Organizations*, at <http://vls.law.vill.edu/students/index.html> (last visited Dec. 17, 2000).

Michael Kolnik at Saint Louis University advises me that the law school has had a gay and lesbian organization in the past, although it is not currently active. See E-Mail from Michael J. Kolnik, Assistant Dean of Admissions, Saint Louis University School of Law, to John J. Fitzgerald (Jan. 17, 2001, 16:38:29 CST) (on file with author).

233. *Boston College Law School: Student Organizations*, at [http://infoeagle.bc.edu/bc\\_org/avp/law/lwsch/studentorg.html](http://infoeagle.bc.edu/bc_org/avp/law/lwsch/studentorg.html) (last visited Dec. 17, 2000); *Loyola University Chicago School of Law*, at <http://www.luc.edu/schools/law/student/stndtservices.htm> (last visited Dec. 17, 2000).

234. See *DePaul University School of Law: Student Organizations and Journals*, at <http://www.law.depaul.edu/orgs.asp> (last visited Dec. 17, 2000); *Georgetown University Law Center: Student Organizations*, at <http://www.law.georgetown.edu/stuaff/orgs.html> (last visited Dec. 17, 2000); *Loyola Law School, Los Angeles: Student Groups*, at <http://www.lls.edu/about/aclu.htm> (last visited Dec. 17, 2000); *Santa Clara University School of Law*, at <http://www.scu.edu/law/resources/organizations/organizations.html> (last visited Dec. 17, 2000); *Seattle University School of Law: Student Organizations*, at <http://www.law.seattleu.edu/STUDENT.INF/organiza.html> (last visited Dec. 17, 2000).

235. See sources cited and accompanying text, *supra* notes 230–34.

seems important for a Catholic law school to have such organizations in order to cater to the particular needs of the law student. A law school right-to-life club could analyze legal aspects of abortion issues that an undergraduate club simply would not have the time or interest to present; similarly, a Catholic law student organization could perform a unique service by analyzing the way faith applies to the study and practice of law.

#### F. *Other Indicia of a Commitment to Distinctively Catholic Ideals*

The criterion under this category is the existence of any journals, institutes, and frequent conferences whose purpose is to analyze the relationship between law and religion in general, or between law and Catholicism in particular.<sup>236</sup> Two schools sponsor a journal, an institute, or frequent conferences that analyze the relationship between law and Catholicism in particular,<sup>237</sup> and four schools sponsor a journal, institute, or regular conference that analyzes the relationship between law and religion in general.<sup>238</sup> Judging from the various websites, none of the other twenty-two schools appear to have any such journals, institutes, or conferences.<sup>239</sup>

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236. These criteria were not explicitly taken from *Ex Corde Ecclesiae* or any of the articles mentioned above, but seemed to be good indicators of a school's commitment to maintaining a distinctively Catholic identity.

237. *Ave Maria School of Law Curriculum: Learning Beyond the Classroom*, at <http://www.avemarialaw.edu/curriculum/beyond.html> (last visited Dec. 17, 2000) (hosting the annual *Fides et Ratio* Conference, and two recent conferences: one on *Ex Corde Ecclesiae*, and one on St. Thomas Aquinas and the natural law tradition); *St. John's University School of Law: St. Thomas More Institute for Legal Research*, at [http://www.stjohns.edu/law/special/student\\_publications/thomas\\_more\\_institute.html](http://www.stjohns.edu/law/special/student_publications/thomas_more_institute.html) (last visited Dec. 17, 2000) (publishing *The Catholic Lawyer*, a journal "devoted to timely legal problems having ethical, canonical or theological implications.").

238. *The Catholic University of America Columbus School of Law: The Interdisciplinary Program in Law and Religion*, at <http://law.cua.edu/academics/Institutes/MAINL&R.htm> (last visited Dec. 17, 2000); *DePaul College of Law: Center for Church/State Studies*, at <http://www.law.depaul.edu/churchstate.asp> (last visited Dec. 17, 2000); *University of Detroit Mercy School of Law: Phillip J. McElroy Center for Law and Religion*, at <http://www.law.udmercy.edu/mcelroy.htm> (last visited Dec. 17, 2000); *Notre Dame Law School: American Journal of Jurisprudence*, at <http://www.nd.edu/~ndlaw/student/ajj/index.html> (last visited Dec. 17, 2000); *Notre Dame Law School: Thomas J. White Center on Law and Government*, at <http://www.nd.edu/~ndlaw/student/whitectr.html> (last visited Dec. 17, 2000).

239. While I am not aware of any other schools that offer such conferences consistently, it should be noted that Duquesne recently conducted an international conference on canon law and the ownership and operation of institutions, such as Catholic hospitals. See E-Mail from Kenneth Hirsch, Professor of Law, Duquesne University School of Law, to John J. Fitzgerald (Jan. 12, 2001, 01:52:24 EST) (on file with author). See also Haney, *supra* note 216 (not-

### G. Commitment to Public Interest Work

The six criteria under this category are membership on the "public interest honor roll" of the January 2000 issue of the *National Jurist*, placement of graduates in public interest jobs, percentage of total students enrolled in clinical programs, public interest student organizations, public interest journals or newsletters, and joint degrees in law and some area of public service.<sup>240</sup> The *National Jurist* chose twenty schools for its "public interest honor roll," basing its selection on the percentage of graduates with public interest jobs, the number of public interest employers that recruited on campus during the year, the percentage of available clinic positions to class size, whether the schools offered some loan repayment assistance program (L.R.A.P.), and the number of hours per week of staff time devoted to advising students who are interested in doing public interest work.<sup>241</sup> Of the twenty schools chosen, seven were Catholic: Boston College, Fordham, Georgetown, Gonzaga, Loyola of California, Loyola of Chicago, and Loyola of New Orleans.<sup>242</sup>

Statistics on two of the criteria above are also available in the A.B.A.'s recent official guide to law schools, which provides information for twenty-five accredited Catholic law schools. Four Catholic law schools each place three percent or more of their respective graduates in public interest jobs,<sup>243</sup> but six Catholic law schools place less than one percent of their respective graduates in public interest jobs.<sup>244</sup> Seven Catholic law schools place fifteen percent or more of their total enrollment in clinic posi-

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ing that Loyola University Chicago School of Law will be sponsoring a conference on law and religion in February 2001).

240. See, e.g., sources cited and accompanying text, *supra* notes 10, 41, 89, 92, 96, 104, 156, & 157.

241. See Bruce Buckley, *Public Interest Honor Roll*, NATIONAL JURIST, Jan. 2000, available at <http://www.lawboulevard.com/student/natjurist/jan2000/publicint.asp> (last visited Dec. 17, 2000). But see Patrick J. Schiltz, *Does the World Really Need Another Catholic Law School*, at [http://www.stthomas.edu/lawschool/articles/Does\\_the\\_world\\_really\\_need.cfm](http://www.stthomas.edu/lawschool/articles/Does_the_world_really_need.cfm) (last visited Dec. 17, 2000) (noting that loan forgiveness programs succeed only in permitting more students to compete for the same limited number of public interest jobs, and suggesting that Catholic law schools should instead create new positions for its graduates in its own clinics, and compensate these graduates with both money and loan forgiveness).

242. See *id.*

243. See OFFICIAL ABA GUIDE, *supra* note 8, at 153, 187, 239, 339 (listing San Francisco (4.7%), Loyola of New Orleans (4.5%), Dayton (3.3%), and Georgetown (3.0%)).

244. See *id.* at 151, 169, 333, 341, 363, 411 (listing Creighton (0%), Santa Clara (0.5%), Villanova (0.6%), Duquesne (0.8%), and St. John's (0.8%)).

tions,<sup>245</sup> but four Catholic law schools place less than six percent of their total enrollment in clinic positions.<sup>246</sup>

Three other indicia of a commitment to public service are student organizations, public interest journals or newsletters, and joint degrees in law and some area of public service.<sup>247</sup> At least six Catholic law schools have three or more clubs devoted to helping the underprivileged.<sup>248</sup> On the other hand, two Catholic

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245. See *id.* at 130, 152, 194, 236, 292, 342, 362 (listing Notre Dame (171 out of 550, or 31.1%), Catholic University (208 out of 932, or 22.3%), St. John's (209 out of 967, or 21.6%), Dayton (78 out of 452, or 17.3%), Seattle (154 out of 895, or 17.2%), Loyola of Chicago (120 out of 710, or 16.9%), and Gonzaga (75 out of 458, or 16.4%)).

246. See *id.* at 150, 156, 336, 344 (listing DePaul (35 out of 1108, or 3.1%), Creighton (21 out of 427, or 4.9%), San Diego (53 out of 975, or 5.4%), and Seton Hall (64 out of 1143, or 5.6%)).

247. Another possible criterion that was not formally included in the survey and Table I, *infra*, is the existence of a *pro bono* requirement that students must meet before graduation. At least three Catholic law schools have such a requirement. See *Loyola Law Los Angeles: Pro Bono Requirement*, at <http://www.lls.edu/community/probono.htm> (last visited Dec. 17, 2000); *St. Thomas University School of Law (Florida): The Law School Curriculum*, at <http://www.stu.edu/lawschool/Academics/curriclm.htm> (last visited Dec. 17, 2000); DeRemer, *supra* note 232 (noting that Gonzaga has a thirty-hour not-for-credit public service requirement, and a separate requirement for faculty members). However, information on this criterion was incomplete at the time of publication of this Note.

248. See *Boston College Law School: Student Organizations*, at [http://infoeagle.bc.edu/bc\\_org/avp/law/lwsch/studentorg.html](http://infoeagle.bc.edu/bc_org/avp/law/lwsch/studentorg.html) (last visited Dec. 17, 2000) (listing Children's Rights Project, Domestic Violence Outreach Project, Owen M. Kupferschmid Holocaust/Human Rights Project, Inner City Youth Outreach Tutoring Program, and Public Interest Law Foundation); *Fordham University School of Law, Public Interest Resource Center, Student Groups*, at <http://law.fordham.edu/ihtml/pirc-sgroup.ihtml> (last visited Dec. 17, 2000) (listing Amsterdam Houses Children's Law Project, Death Penalty Defense Project, Domestic Violence Advocacy Center, Family Court Mediation Project, Fordham Law Community Service Project, Fordham Student Sponsored Fellowship, Habitat for Humanity at Fordham Law School, Housing Advocacy Project, Police Misconduct Action Network, Public Service Law Network Worldwide, Stein Scholars Program in Public Interest Law & Ethics, Unemployment Action Center, and Workfare Action Center); *Georgetown University Law Center: Student Organizations*, at <http://www.law.georgetown.edu/stuaff/orgs.html> (last visited Dec. 17, 2000) (listing Amnesty International, Equal Justice Foundation, Georgetown Outreach, National Lawyers Guild); *Loyola University Chicago School of Law*, at <http://www.luc.edu/schools/law/student/stndtservices.htm> (last visited Dec. 17, 2000) (listing Amnesty International, National Lawyers Guild, and Public Interest Law Society); *Loyola Law Los Angeles*, at <http://www.lls.edu/about/aclu.htm> (last visited Dec. 17, 2000) (listing Evening Advocates, Loyola Child Advocates, and Public Interest Law Foundation); *Seattle University School of Law: Student Organizations*, at <http://www.law.seattleu.edu/STUDENT.INF/organiza.html> (last visited Dec. 17, 2000) (listing Amnesty International, Disability Law Society, Justice for Children, and Public Interest Law Foundation).



law schools do not include any such clubs among the lists on their respective websites.<sup>249</sup> At least six Catholic law schools publish a journal or newsletter explicitly devoted to discussing matters affecting the underprivileged,<sup>250</sup> and at least five Catholic law schools offer a joint degree with another program that addresses these matters.<sup>251</sup>

## H. Conclusions

Table I summarizes the data in Parts II.B. and Parts II.D. through II.G., and analyzes the fourteen Jesuit law schools separately from the fourteen non-Jesuit law schools, in order to test the above assertion of DeWolf and Araujo.<sup>252</sup> Part II.C. was not

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249. See *St. Thomas University School of Law (Florida): Student Organizations*, at <http://www.stu.edu/lawschool/studentorg.htm> (last visited Dec. 17, 2000); *University of Detroit Mercy School of Law*, at <http://www.law.udmercy.edu/slife.htm> (last visited Dec. 17, 2000).

250. *Boston College Third World Law Journal*, at [http://infoeagle.bc.edu/bc\\_org/avp/law/lwsch/thirdrev.html](http://infoeagle.bc.edu/bc_org/avp/law/lwsch/thirdrev.html) (last visited Dec. 17, 2000); *Fordham University School of Law: The Common Good*, at <http://www.fordham.edu/childcenter/commongood/home.htm> (last visited Dec. 17, 2000); *Georgetown Journal on Poverty Law and Policy*, at <http://www.law.georgetown.edu/journals/poverty> (last visited Dec. 17, 2000); Haney, *supra* note 216 (noting that Loyola students edit and publish the Public Interest Law Reporter); *Loyola University New Orleans, Gillis Long Poverty Law Center: The Loyola Poverty Law Journal*, at <http://www.loyno.edu/law/gillislong/programs.html> (last visited Dec. 17, 2000); *Seattle University School of Law: First Annual Report, Access to Justice Institute*, at <http://www.law.seattleu.edu/AccessToJustice/annual.html> (last visited Dec. 17, 2000) (stating that the public interest institute plans to offer annual conferences and sponsor the *Seattle Journal of Social Justice*); E-Mail from Carol Cochran, Director of Admission, Seattle University School of Law, to John J. Fitzgerald (Jan. 18, 2001, 09:59:17 PST) (on file with author) (noting that the *Seattle Journal of Social Justice* will debut in the Spring of 2001).

251. *Boston College Law Academic Info*, at [http://infoeagle.bc.edu/bc\\_org/avp/law/lwsch/academics.html](http://infoeagle.bc.edu/bc_org/avp/law/lwsch/academics.html) (last visited Dec. 17, 2000) (offering a J.D./M.S.W. with the School of Social Work); *DePaul University College of Law*, at <http://www.law.depaul.edu/jdmspsm.asp> (last visited Dec. 17, 2000) (offering a J.D./M.S. in Public Service Management); *Loyola University Chicago School of Law: Academics*, at <http://www.luc.edu/schools/law/academics/index.htm> (last visited Dec. 17, 2000) (offering a J.D./M.S.W. with the School of Social Work); *Notre Dame Law School: Graduate Law Programs*, at <http://www.nd.edu/~ndlaw/admissions/graduate.html> (last visited Dec. 17, 2000) (offering an LL.M and a J.S.D. in International Human Rights Law); *University of St. Thomas (Minnesota) School of Law: Community*, at [http://www.stthomas.edu/lawschool/why\\_ust\\_law/community.cfm#joint\\_degree\\_programs](http://www.stthomas.edu/lawschool/why_ust_law/community.cfm#joint_degree_programs) (last visited Dec. 17, 2000).

252. See sources cited and accompanying text, *supra* note 199. The fourteen Jesuit law schools are Boston College Law School, Creighton University School of Law, University of Detroit Mercy School of Law, Fordham University School of Law, Georgetown University Law Center, Gonzaga University School of Law, Loyola Law School at Loyola Marymount University, Loyola University

incorporated into Table I since there were not sufficient faculty data for all of the schools. On the one hand, therefore, Table I should be seen as providing a limited picture of the true nature of today's Catholic law schools. As Patrick Schiltz has remarked, "The notion that a law school can be Catholic without Catholics is preposterous."<sup>253</sup> On the other hand, it is also surely true that a law school comprised largely of committed Catholic professors and students would not be fully Catholic if the school's mission statement, curriculum, and student organizations were indistinguishable from those of secular law schools. Furthermore, information on these "surface" aspects of a Catholic law school would no doubt in turn shed some light on the number of committed Catholics at the heart of the institution. Therefore, Table I should make some meaningful contribution to the discussion about the current state of Catholic law schools around the country.

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Chicago School of Law, Loyola University New Orleans School of Law, Marquette University Law School, Saint Louis University School of Law, University of San Francisco School of Law, Santa Clara University School of Law, and Seattle University School of Law. See *Marquette University Law School: Why Not Consider a Jesuit Law School?*, at <http://www.marquette.edu/law/academic/doc/jesuit.html> (last visited Dec. 17, 2000). The fourteen non-Jesuit Catholic law schools included in the survey are Ave Maria School of Law, Barry University Law School, The Columbus School of Law at the Catholic University of America, University of Dayton School of Law, DePaul University College of Law, Duquesne University School of Law, Notre Dame Law School, University of San Diego School of Law, Seton Hall University School of Law, St. John's University School of Law, St. Mary's University School of Law, St. Thomas University School of Law in Florida, University of St. Thomas School of Law in Minnesota, and Villanova University School of Law. See sources cited and accompanying text, *supra* note 8.

253. See Schiltz, *supra* note 241.

TABLE I  
 COMMITMENT OF CATHOLIC LAW SCHOOLS TO  
 CATHOLIC IDEALS (AS MANIFESTED ON THE  
 SCHOOLS' WEBSITES)<sup>254</sup>

Criteria	All Schools	Jesuit Schools	Non-Jesuit Schools
<b>Administrative/Institutional Commitment</b>			
1. Mission Statement (% out of schools which post one on their websites)	70% (7/10)	50% (2/4)	83% (5/6)
2. Mission Statement (% out of all schools)	25% (7/28)	14% (2/14)	36% (5/14)
3. Dean's Message (% out of schools which post one on their websites)	38% (6/16)	22% (2/9)	57% (4/7)
4. Dean's Message (% out of all schools)	23% (6/28)	14% (2/14)	29% (4/14)
<b>Curriculum</b>			
5. Three or More Courses (on natural law or Judeo-Christian/Christian/Catholic teachings)	15% (4/27)	7% (1/14)	23% (3/13)
6. One or More Courses (on natural law or Judeo-Christian/Christian/Catholic teachings)	48% (13/27)	28% (4/14)	69% (9/13)
7. Religious/Moral Perspective Integrated into Curriculum	35% (6/17)	25% (2/8)	44% (4/9)
8. No Religious/Moral Perspective Integrated into Curriculum	29% (5/17)	25% (2/8)	33% (3/9)
9. Jurisprudence Course Emphasizes Natural Law/Catholic Teachings	20% (4/20)	10% (1/10)	30% (3/10)
10. Require Jurisprudence Course	11% (3/27)	0% (0/14)	23% (3/13)
11. Require Jurisprudence or Humanities Course	30% (8/27)	29% (4/14)	31% (4/13)
12. Advertise Joint Degree in Law and Theology	18% (5/28)	7% (1/14)	29% (4/14)
<b>Student Organizations</b>			
13. Pro-Life	35% (8/23)	25% (3/12)	45% (5/11)
14. Catholic	65% (15/23)	58% (7/12)	73% (8/11)
15. Gay/Lesbian	52% (12/23)	58% (7/12)	45% (5/11)
16. Reproductive Issues/Rights	9% (2/23)	17% (2/12)	0% (0/11)
17. ACLU but No Pro-Life	17% (4/23)	33% (4/12)	0% (0/11)
<b>Other</b>			
18. Catholic Journal/Institute/Frequent Conferences	7% (2/28)	0% (0/14)	14% (2/14)
19. Religious Journal/Institute/Frequent Conferences	23% (6/28)	7% (1/14)	36% (5/14)
<b>Public Interest</b>			
20. <i>National Jurist</i> Honor Roll	28% (7/25)	50% (7/14)	0% (0/14)

254. Each school was contacted via E-Mail in early January 2001 and asked to reply if it was aware of any deficiencies in its website with regard to the above information. In a few instances, schools did convey to me additional relevant information that was incorporated into the footnotes on the preceding pages and into this chart. In one instance, I incorporated into the survey personal knowledge that was not reflected on the websites or in any e-mail responses—the existence of a Catholic law student organization at Notre Dame.

21. Job Placement: 3% or More in Public Interest Fields	12%	(3/25)	23%	(3/14)	0%	(0/11)
22. Job Placement: 1% or More in Public Interest Fields	76%	(19/25)	83%	(12/14)	64%	(7/11)
23. Clinic Positions: Filled by 15% or More of Total Enrollment	28%	(7/25)	23%	(3/14)	36%	(4/11)
24. Clinic Positions: Filled by 6% or More of Total Enrollment	84%	(21/25)	93%	(13/14)	73%	(8/11)
25. Clubs: Three or More	26%	(6/23)	50%	(6/12)	0%	(0/11)
26. Clubs: One or More	91%	(21/23)	92%	(11/12)	91%	(10/11)
27. Journal or Newsletter	22%	(6/27)	43%	(6/14)	0%	(0/13)
28. Advertise Joint Degree in Law and Public Service	18%	(5/28)	14%	(2/14)	23%	(3/14)

Some of the individual schools that fared consistently well in the various categories should come as no surprise. John Noonan calls Notre Dame "the preeminent Catholic law school,"<sup>255</sup> and other articles in the scholarly literature have praised the school's unabashed commitment to the Catholic faith.<sup>256</sup> Similarly, a brief perusal of Ave Maria's website leaves no doubt as to the school's intent to maintain a distinctively Catholic identity.<sup>257</sup>

However, judging simply from the information on the various websites, it appears as though Shaffer's observations have been largely confirmed; Catholic law schools on the whole could improve their overall commitment to Catholic ideals. The percentages of schools meeting the various criteria routinely fall below fifty percent; this fact suggests that a few schools are setting a standard in each individual category that most of the other schools have not yet met. It is possible that many of these individual schools are truly distinctively Catholic in ways that are not readily apparent from the limited data above. However, it seems unlikely that these schools are sustaining a strong religious commitment in actuality when publicly they are largely silent about the Catholic faith. Certainly a prospective student perusing the various websites would draw the conclusion that these schools were not run much differently from many secular law schools.

Furthermore, there does appear to be a tangible difference between the Jesuit and the non-Jesuit schools when taken as a whole. For example, the Jesuit schools rank higher than the non-Jesuit schools in seven of the nine public interest criteria. Most tellingly, all seven Catholic law schools that made the *National Jurist* honor roll (which took into account several fac-

255. Noonan, *supra* note 141, at 1047.

256. See, e.g., Lynn Buzzard, *Religiously Affiliated Law Schools: Macro-Dynamics in Contemporary Culture*, 78 MARQ. L. REV. 283, 284 (1995); Martha Vazquez, *Notre Dame Law School: Catholicism, Conscience, and Commitment*, 69 NOTRE DAME L. REV. 1005 (1994).

257. See generally *Ave Maria School of Law*, at <http://www.avemarialaw.edu> (last visited Dec. 17, 2000) and related links.

tors) are Jesuit. The Jesuit schools should be praised for helping to give Catholic law schools on the whole more of a reputation for being committed to public interest work; seven of the twenty schools that made the honor roll are Catholic (35%), while only 25 of 184 of all A.B.A.-accredited law schools are Catholic (14%).<sup>258</sup> On the other hand, the Jesuit schools rank lower than their non-Jesuit counterparts in eighteen of the first nineteen categories in Table I, the lone exception being the eighth criterion. This fact appears to validate the contentions of DeWolf and Araujo above, and implies that the “social justice model” of a Catholic law school frowned upon by Christopher Wolfe may very well be a widespread reality.<sup>259</sup>

Similarly, while the non-Jesuit Catholic law schools should be commended for setting a higher standard in all but one of the first nineteen categories, the performance of these schools in the public interest categories seems relatively lacking. For example, as noted above, Ave Maria is known for its outspoken public commitment to the Catholic faith. However, the school’s website appears to be largely silent on the issue of serving the needs of the underprivileged in society.<sup>260</sup>

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258. See *ABA Approved Law Schools*, at <http://www.abanet.org/legaled/approvedlawschools/approved.html> (last visited Dec. 17, 2000).

259. See sources cited and accompanying text, *supra* notes 78-81. I do not want to belittle these contributions to social justice; certainly one of the most important things a Catholic law school can do is to actively bring God’s justice to the world through the law. However, I do want to make a case for the importance of the “non-public-interest” criteria above (numbers one through nineteen on Table I). As Christopher Wolfe notes, the primary functions of the Catholic law school (as opposed to, say, a legal aid clinic affiliated with the Church) are teaching and research. See *id.* Therefore, Catholic law schools should seek to develop their more scholarly aspects (such as curricula, journals, institutes, conferences, and academic interests of the faculty) in accordance with *Ex Corde Ecclesiae* in order to make a fuller commitment to being distinctively Catholic (a commitment which Part I.D., *supra*, argues is a good thing). Developing these aspects, along with mission statements and student organizations faithful to Catholic ideals, can in turn reinforce the commitment to putting Catholic social teachings into practice. See sources cited and accompanying text, *supra* note 157.

260. Ave Maria’s website states that “[s]tudents in the externship program may choose from a variety of opportunities including . . . participating in legal aid programs for the poor.” *Ave Maria School of Law Curriculum: Learning Beyond the Classroom*, at <http://www.avemarialaw.edu/curriculum/beyond.html> (last visited Dec. 17, 2000). However, the school’s extensive website does not appear to otherwise elaborate on the school’s commitment to serving the poor, or on the social justice teachings of the Catholic Church. See generally *Ave Maria School of Law*, at <http://www.avemarialaw.edu> (last visited Dec. 17, 2000) and related links.

One might respond to all of the above data by saying that perhaps most Catholic law schools are not at fault in those areas where they fall short because they *can't* all be Catholic at once; there simply aren't enough good Catholic professors and students to go around.<sup>261</sup> While perhaps it would be impossible to have twenty-eight Catholic law schools with as many unabashedly Catholic professors as, say, a Notre Dame, it does seem clear that most individual schools could make a little more of an effort to be distinctively Catholic. They could start by formulating a mission statement that reflects the spirit of *Ex Corde Ecclesiae*. Then, they could begin to implement that mission by offering incentives to expand the pool of qualified Catholic professors, deans, and students; these incentives could include increased salaries or even simply public representations of the school as distinctively Catholic.<sup>262</sup> Even if each school was able to hire only a few full-time and part-time professors who were devoted to the distinctively Catholic mission of the school, these acquisitions could help make an impact in other areas. For example, they could teach courses that directly examine the relationship between law and Catholic thought, and they could incorporate religious discussion into other courses as well.

Catholic law schools could also begin to foster a distinctively Catholic mentality in other ways: for example, by avoiding professors who would be hostile to the Catholic mission of the school, by hosting a distinctively Catholic conference or institute, and by dealing responsibly with controversial student organizations that seek official recognition. Of course, it would be unreasonable to expect a Catholic law school to change overnight in all of the above respects. After the first few steps, however, change should become increasingly easier. The more professors and students

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261. One of my colleagues (Liz Cheung) raised this point; two others (Rich Ambrow and Conor Dugan) assisted me in formulating an answer.

262. The power of a distinctively Catholic law school to lure qualified professors and students—even those who might not otherwise want to teach or study law—should not be underestimated. My colleague Rich Ambrow, who is familiar with several of the faculty and staff at Ave Maria, tells me that hundreds of people applied for only a handful of faculty positions. One student in Ave Maria's entering class states: "I was really dismayed with higher education and had no plans to go back. I wouldn't have ever applied there if it wasn't a Catholic institution. I don't feel like you can study law without the truth. So that was fundamental to me." See Bullard, *supra* note 3. David Link, former dean of Notre Dame Law School, adds: "The more schools that concentrate on moral values as a base, the better. I think that will increase the number of people who are saying, 'Gee, that's what I'm looking for in a legal education,' just by getting it into people's minds." Mike Petrucelli & Jason Callicoat, *Catholic Law School to Open in Ann Arbor*, SOUTH BEND TRIB., Apr. 8, 1999.

that are acquired to contribute to the mission of the school, the more that others will be inspired to join them.

### III. FINAL THOUGHTS

The discussion in the preceding pages should call Catholic law schools on the whole to bring out their lamps from under the bushel basket so that they might shine more brightly. These schools have been provided by their Church and by the scholarly literature with an inspiring model, one that can be seen as worthy from both a religious and a secular standpoint. Hopefully they will increasingly choose to accept the challenge to conform themselves to this model, but in doing so to avoid emphasizing certain elements of the Catholic tradition to such a degree as to drown out the importance of others. As the National Conference of Catholic Bishops has recently stated:

The Catholic community is large and diverse. We are Republicans, Democrats, and Independents. We are members of every race, come from every ethnic background, and live in urban, rural, and suburban communities. We are CEOs and migrant farm workers, senators and persons on public assistance, business owners and union members. But we are all called to a common commitment to protect human life and stand with those who are poor and vulnerable.<sup>263</sup>

If Catholic law schools can keep in mind that their purpose transcends each of the political ideologies and social distinctions of this world, their contribution to the faithful and to the legal community as a whole will be a distinct and exciting one indeed.

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263. See FAITHFUL CITIZENSHIP, *supra* note 122, at 313. The *Faithful Citizenship* document is one of impressive scope, and is well worth reading by those who are interested in how Church teaching applies to concrete political problems in our society. See *id.* at 314–16 (covering issues as diverse as abortion, euthanasia, physician-assisted suicide, war and violence, global trade in arms, the death penalty, marriage, just wages and economic justice, education, the media, health care, housing, agricultural policy, the environment, immigration and refugee policies, foreign aid to poor countries, and assistance in resolving regional conflicts abroad).