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The Golden Age That Never Was: Catholic Law Schools From 1930-1960 and the Question of Identity

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Introduction

Anyone with even a passing familiarity with Catholic higher education in the United States knows how Catholic colleges and universities in the United States have struggled with the question of their identity over the past several decades. Although the origins of this struggle predate the 1960s, that tumultuous decade witnessed a profound realignment of priorities at many of these institutions and with it the loss of a discernibly Catholic identity on many levels. The ownership and control of many colleges and universities were transferred from religious orders to lay boards of trustees, mission statements were redrafted to minimize or in some cases eliminate references to Catholic affiliation, curricula that had given students at least a rudimentary introduction to the Catholic intellectual tradition were revised in favor of course offerings that stressed student choice, departments of "theology" became departments of "religious studies," and faculty were hired based primarily on the prestige of their graduate degrees and their perceived ability to publish and obtain grants and without regard for their capacity or desire to contribute to the special mission of these institutions as Catholic places of learning.[1]

All of this culminated, at least in a formal sense, with the *Land O' Lakes Statement* in 1967, in which the representatives of several leading Catholic universities and colleges proclaimed their independence from the Catholic Church. The Statement declared that "[t]o perform

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[1] Each of these developments in the loss of Catholic identity is discussed in JAMES TUNSTEAD BURTCHAELL, THE DYING OF THE LIGHT: THE DISENGAGEMENT OF COLLEGES AND UNIVERSITIES FROM THEIR CHRISTIAN CHURCHES 557-716 (1998).

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its teaching and research functions effectively the Catholic university must have a true autonomy and academic freedom in the face of authority of whatever kind, lay or clerical, external to the academic community itself."[2] Although the *Land O' Lakes* signatories[3] insisted that Catholicism would remain "perceptibly present and effectively operative" in their institutions, Catholic identity was no longer essential.[4] It became an accidental quality – something "add[ed] to the basic idea of a modern university,"[5] and located primarily in theology departments.[6]

Catholic colleges and universities are now contending with the consequences of these fateful decisions. This is not meant to suggest, however, that the time before *Land O' Lakes* represented a kind of "Golden Age" of Catholic higher education. While the number of colleges and universities under Catholic auspices flourished from the middle of the nineteenth century until the 1960s,[7] the depth of a genuinely Catholic intellectual culture was varied greatly at these institutions. This, in part, accounts for the stunning rapidity with which the change occurred.

The same could be said of the nation's Catholic law schools. That is, although the historical circumstances surrounding the establishment and development of these schools differed somewhat from that of their host institutions, there was no "Golden Age" of Catholic legal education in the United States. Although Catholic universities could boast of sponsoring twenty-two law schools by 1960,[8] it would be wrong to think of these schools as institutions that were defined by engagement with the Catholic tradition as it relates to questions of law and justice. In the courses offered by these schools, in the methods of instruction they employed, and in the scholarship pursued by their faculties, these schools sought to imitate non-Catholic law schools in almost every respect. Aside from the fact that these schools may have been overt in

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[2] *Land O' Lakes Statement: On the Nature of the Contemporary Catholic University* ¶ 1 (1967), *reprinted in* AMERICAN CATHOLIC HIGHER EDUCATION: ESSENTIAL DOCUMENTS 1967-1990 7 (Alice Gallin ed., 1992).

[3] These signatories included Georgetown University, Boston College, Seton Hall University, Saint Louis University, Fordham University, and the University of Notre Dame. *See id.*

[4] *Id.*

[5] *Id.*

[6] *Id.* ¶¶ 2-3.

[7] The founding years for the nation's Catholic colleges and universities are conveniently set forth in BURTCHAELL, *supra* note 1, at 557-61.

[8] *See* Appendix, *infra*, listing the names of Catholic law schools, the dates when they were founded, and the subsequent dates when they received accreditation from the American Bar Association (ABA) and the Association of American Law Schools (AALA).

their self-identification as "Catholic," by the end of the 1960s, they were virtually indistinguishable from their secular counterparts. Although Catholicism had never truly served as the intellectual center of gravity in these schools, it now ceased to function as even a strong marker of cultural identity. Instead, by the end of the decade, Catholicism functioned as only a kind of ornamental decoration and reminder of the religious heritage of those who had worked to found the school in the first instance.

This need not have been the case. Although now largely forgotten, an episode in the history of Catholic law schools in the 1930s and 1940s offers a glimpse at what might have been had Catholic law schools chosen to follow a different course. During this time, a number of prominent Catholic legal academics challenged the nation's Catholic law schools to be distinctively Catholic in *fact* and not merely so in *name*. Riding the crest of the neo-Scholastic revival,[9] these academics proposed that Catholic law schools provide their students with a thorough introduction to the Thomistic understanding of the natural law as the foundation of positive law. They recommended that Catholic law schools hire law teachers who would be capable both of leading students in a close examination of the natural law and in preparing them for membership in the practicing bar. The supporters of this proposal urged Catholic law schools to retain faculty who would, in their scholarly work, seek to explore the relationship between natural law jurisprudence and the various doctrinal subject areas of American law.

The great enthusiasm with which the proposal was articulated had some effect. For a time, it succeeded in fostering a burgeoning Catholic literature in legal scholarship, and even led to the establishment of two scholarly periodicals. It inspired a number of legal academic colloquia. The proposal, however, was never fully realized at any one school. By 1960, the trajectory of development among Catholic law schools exactly followed that of non-Catholic schools.

In Part I, we introduce the proposal that Catholic law professors set forth in the late 1930s and in the 1940s: that Catholic law schools should provide their students with a kind of legal education not

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[9] *See generally* GERALD A. MCCOOL, S.J., NINETEENTH-CENTURY SCHOLASTICISM: THE SEARCH FOR A UNITARY METHOD (1977) [hereinafter MCCOOL, SCHOLASTICISM]; GERALD A. MCCOOL, FROM UNITY TO PLURALISM: THE INTERNAL EVOLUTION OF THOMISM (1992) [hereinafter MCCOOL, FROM UNITY TO PLURALISM]; GERALD A. MCCOOL, THE NEO-THOMISTS (1994) [hereinafter MCCOOL, THE NEO-THOMISTS]; FERGUS KERR, AFTER AQUINAS: VERSIONS OF THOMISM (2002).

available at secular schools – a kind of education that would be identifiably Catholic in its intention if not exclusively Catholic in its content. We also explain the ways in which the proposal had some effect in the development of Catholic law schools, though not the ambitious reformation envisioned by its proponents. Although taken up with varying degrees of enthusiasm by several Catholic law schools at the time, all that remains today are the vestiges and scattered traces of a proposal that never came to fruition.

This proposal did not, of course, emerge from an intellectual vacuum. In Part II, we describe the context that informed the proposal that Catholic law schools should offer a distinctive kind of legal pedagogy – an approach to the study of law firmly grounded in natural law jurisprudence. As set forth in greater detail below, this suggestion was a product of the Thomistic revival during the latter part of the nineteenth century and the first half of the twentieth century.

It was also a response to the growing popularity of Legal Realism in the American legal academy. The pragmatic and scientific understanding of law that Legal Realism sought to promote contradicted the moral and metaphysical premises of both classical philosophy and the Catholic understanding of law. The Catholic critics of Realism also argued that the newer jurisprudence legitimized the totalitarian and racist laws of the fascist regimes then emerging in Europe. By contrast, Catholic legal educators saw themselves and Catholic law schools as protecting, preserving, and expounding a correct understanding of law based on neo-Scholastic philosophy.

In Part III, we set forth a number of hypotheses that account for the failure of the proposal – a failure that had already occurred before the advent of the Second Vatican Council. In short, the proposal that Catholic law schools be distinctive – that they be conspicuously Catholic in the intellectual environment they provided – failed because it went against the inertia of these schools and the reasons why they were founded in the first instance. In addition, and as set forth in greater detail below, the defeat of National Socialism in World War II, the exhaustion of Legal Realism as a vibrant intellectual movement in law, and the revolt against the hegemony of Neo-Thomism in Catholic circles all contributed to the thorough-going defeat of the proposal in all but a few discreet instances.

In Part IV, we offer some initial thoughts on the significance of this history with respect to the current debate concerning the identity of Catholic law schools. What lessons can be learned from this experience?

Is there any analogue today to the Neo-Thomism of the first half of the twentieth century? Can, for example Catholic social thought, which has spawned a burgeoning literature in the legal academy, serve as a distinguishing feature and intellectually rigorous center of gravity in the way that the revival of Thomistic natural law had been envisioned prior to the 1960s?

We end with a brief description of the work we plan for the future.

I. The Proposal That Catholic Law Schools Provide Students With A Distinctive Form of Legal Education

A. The Proposal

Beginning in the late 1930s, a number of prominent Catholic legal academics issued a call for Catholic law schools to change. They advised Catholic law schools to cease mimicking their secular counterparts in every respect and instead urged them to be distinctively Catholic in the classroom instruction provided to students and in the scholarly work advanced by faculty.

Perhaps the most emphatic call for "a program whereby something like a distinctly Catholic Law School [might] be established"[10] came from James Thomas Connor, dean of the Loyola University School of Law in New Orleans. Writing in the *Catholic Educational Review* in 1938, Connor began by noting the "well-founded suspicion" that law schools in general "are not producing the kind of lawyers that [they] . . . should develop."[11] He also questioned whether Catholic law schools in particular "are properly fulfilling their duty and obligation" to educate their students.[12] For Connor, the critical atmosphere of the day, in which so many traditional legal principles had been "threatened with extinction," presented a splendid opportunity for the establishment of "a school of Catholic Lego-Philosophical," that is, "a restatement of Scholastic Philosophy in the light of modern development in the positive law."[13] Connor saw faculty at Catholic law schools as having primary responsibility for fulfilling this ambition by taking up the task "of writing and research on legal subjects from a distinctly scholastic point of view."[14]

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[10] James Thomas Connor, *Some Catholic Law School Objectives*, 36 CATH. EDUC. REV. 161, 161 (1938).

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* at 166.

In making this proposal, Connor did not suggest that Catholic law schools abandon their traditional goal of educating students for admission to the bar and the practice of law. Instead, he suggested that Catholic law schools retain faculty who would be equipped to challenge the "treacherous doctrines" of the day. Connor believed that a faculty member "well grounded in his Christian ethics and his faith" would be able to dispel the positivist claim that "[t]here are no rights except *legal* rights" and that "might is right!"[15] To fulfill their mission, Connor urged Catholic law schools to require students to take "a minimum of five hours" in legal philosophy.[16]

Brendan Brown, professor and later dean of the Catholic University of America School of Law, provided perhaps the most elaborate articulation and defense of the proposal that Catholic law schools provide their students with a different kind of education. Brown's ambition for Catholic law schools was the establishment of a "legal culture . . . under the influence of a neo-scholastic philosophy[.]"[17] By legal culture Brown "did not mean philosophy alone, or [] courses in 'pure jurisprudence' and legal ethics . . . or the occasional reference in class to the moral goodness or badness of a particular legal principle."[18] Rather he had in mind "the literature which might be written by appraising the outstanding jural institutions and doctrines of the Anglo-American system in the light of the great generalizations which the scholastic philosopher has provided for the lawyer."[19] This literature would demonstrate the "essential harmony" and points of disagreement between the common law and scholasticism and contribute toward a better understanding of legal history while charting "[t]he scholastically desirable future of the common law."[20]

Brown acknowledged that some might attempt to justify the existence of Catholic law schools even in the absence of such a legal culture claiming "that the religious atmosphere of the church law school, apparently some intangible element over and above classroom influences, was, in itself, a sufficient reason for church law schools."[21] For Brown, however, such "atmospherics" were not a second-best sort of justification for

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[15] Connor, *supra* note 10, at 163.

[16] *Id.* at 163.

[17] Brendan F. Brown, *Jurisprudential Aims of Church Law Schools in the United States, A Survey*, 13 NOTRE DAME L. 163, 167 (1938) [hereinafter Brown, *Jurisprudential Aims*].

[18] *Id.* at 167-68.

[19] *Id.* at 169.

[20] *Id.*

[21] *Id.* at 174 (emphasis omitted).

Catholic sponsored schools.[22] They wholly failed to legitimize the presence of such law schools on Catholic campuses.[23] For Brown, "[t]he true mission of the church sponsored law school" is the preparation of "an adequate *juris ratio studiorum*, which will convince the modern mind of the eternal sufficiency of thirteenth century Thomism to solve ever changing problems."[24] Indeed, according to Brown, "[a] law school which does not realize this ideal should not be part of a church university."[25]

A third major proponent of the proposal, William F. Clarke, dean of DePaul University College of Law, was likewise cognizant of the challenges facing law schools that aspire to fulfill their Catholic character. Still, he was convinced that a Catholic law school must reflect the "extraordinary claims" that Christianity makes, including the metaphysics employed by the Church but which is not exclusively Christian.[26] This metaphysics, said Clarke, is "the common ground" where all men can meet and where "the Christian can persuade another of the reasonableness of Christianity."[27]

For Clarke, this metaphysics was also the foundation of the natural law, which "expressed man's fundamental rights and duties."[28] He saw it as the duty of Catholic law schools to "safeguard those principles which proceed immediately from the natural law" and "to stem the tide of [the] faulty and fatal progress" pursued by the Legal Realists of the day.[29] To be genuinely Catholic, however, a law school must do more than this. It must guard against "the secularism[] which creeps into the training given in our own schools" and instead "exhibit that integration of the supernatural and the natural which alone is truly and fully Catholic[.]"[30] The goal of this reform is to make each of the Catholic colleges of law "a potent influence upon legal thought" that brings the natural law "into prominence . . . by the conscious development of its nucleus in the minds of a reasonably large number of capably trained men" and eventually, members of the judiciary.[31] In this way, the Catholic

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[22] *See* Brown, *Jurisprudential Aims, supra* note 17, at 175.
[23] *Id.*
[24] *Id.* at 179.
[25] *Id.* at 177.
[26] William F. Clarke, *The Problem of the Catholic Law School*, 3 U. DET. L.J. 169, 170 (1940).
[27] *Id.*
[28] *Id.*
[29] *Id.* at 173.
[30] *Id.* at 174.
[31] William F. Clarke, *The Catholicity of the Law School*, J. RELIGIOUS INSTRUCTION 701 (April 1936).

law school might work "to engraft upon the tree of the law a branch which might well become the root of a new jurisprudence . . . namely, the principles of justice as contained in the philosophy of neo-scholasticism."[32]

B. A (Very) Modest Success

This proposal for the reform of Catholic legal education did enjoy some limited measure of success. For example, in 1932, the American Catholic Philosophical Association (ACPA) agreed to host a Round Table Discussion on the "Philosophy of Law."[33] Three years later, the ACPA established a Standing Committee on Philosophy of Law which sponsored the presentation of scholarly papers at its annual meeting and fostered an ongoing conversation designed to help launch "a movement to develop a Neo-Scholastic philosophy of law, and to work out means of applying it in the work of Catholic law Schools."[34]

Similarly, in 1947, the Notre Dame Law School founded the Natural Law Institute, a series of conferences the papers from which were subsequently published in monograph form.[35] In 1956, Notre Dame discontinued these annual gatherings and established a peer-edited journal, the *Natural Law Forum*, permitting the Institute to "function effectively on a year-round . . . basis"[36] in promoting "a serious and scholarly investigation of natural law in all its aspects."[37]

The last major success occurred in 1955 when St. John's University School of Law established the *Catholic Lawyer* as a forum "on matters of canon law, theology, morals, [and] church history" which most Catholic attorneys were "ill-equipped to discuss."[38] In providing their readers with articles addressing these and other matters, the editors of the *Catholic Lawyer* sought "to encourage and assist the Catholic lawyer in the continuance of his professional and religious education and to provide him with a permanent and easily accessible source of information, comment and other pertinent material."[39]

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[32] *Id.*
[33] *Minutes of Meetings of Executive Council*, 8 PROC. AM. CATH. PHIL. ASS'N. 130 (1932).
[34] *Reports of Standing Committees*, 11 PROC. AM. CATH. PHIL. ASS'N. 201 (1935).
[35] Joseph O'Meara, *Foreword*, 1 Nat. L.F. 1 (1956).
[36] *Id.*
[37] *Statement of Policy*, 1 Nat. L.F. 3 (1956). *See also* Edward F. Barrett, *The Notre Dame Experiment*, 2 CATH. LAW. 294, 298-307 (1956).
[38] Joseph T. Tinnelly, C.M., *The Catholic Lawyer – An Idea and a Program*, 1 CATH. LAW. 3 (1955).
[39] *Id.* at 7.

Although each of these developments represented a positive step in favor of the proposal for the reform of Catholic legal education, none of them represented the commitment of even one Catholic law school to the realization of the vision of scholastic jurisprudence set forth by Connor, Brown, and Clarke. It is perhaps true that more schools offered one or more courses that introduced students to natural law theory than would have been the case in the absence of the proposal.[40] Nevertheless, the historical record shows that none of the over twenty Catholic law schools in existence embraced the proposal as an institutional agenda for pedagogical reform and scholarly advancement. Even today, this proposal remains untried.

Moreover, the modest ways in which the proposal did affect Catholic legal education soon faded. By 1950, interest in law and legal education had waned in the ACPA prompting Brendan Brown to write the Executive Council "urging the revival of a Philosophy of Law Section of the Association." [41] In 1969 the editors of the *Natural Law Forum* changed the name of the journal to the *American Journal of Jurisprudence* explaining that the old title "put off those who might otherwise have read the magazine or written for it" since the term "natural law" was "too readily identified with a particular pat formulation, too easily taken as a slogan."[42] A kind of failure was even evident in the founding of the *Catholic Lawyer* since implicit in the effort of the journal to continue the intellectual formation of Catholic attorneys was the recognition that this formation had been lacking in their education, including the education that many of them had received at Catholic law schools.

Shortly after the proposal for the reform of Catholic legal education was first set forth, Miriam Teresa Rooney[43] celebrated the history of the

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[40] *See, e.g.*, John E. Dunsford, *St.Louis – Pioneer Catholic Law School*, 3 CATH. LAW. 237, 241 (1957) (asserting that the "underlying approach to the study of law" at St. Louis "accepts a philosophy which recognizes the divine origin and destiny of man and his responsibility to guide his actions by revealed truth and the natural law").

[41] *Minutes of Executive Council Meeting*, 24 PROC. AM. CATH. PHIL. ASS'N. 166 (1950).

[42] John T. Noonan, Jr., *Foreword*, 14 AM. J. JURIS. v (1969).

[43] Miriam Theresa Rooney was a philosopher with a Ph.D. from CUA who wrote extensively about Legal Realism, the nature of law, and the Neo-Thomist movement. *See, e.g.*, MIRIAM THERESA ROONEY, LAWLESSNESS, LAW AND SANCTION (1937); Miriam T. Rooney, *Relativism in American Law*, 20 PROC. AM. CATH. PHIL. ASS'N. 157 (1945); Miriam Theresa Rooney, *The Movement for a Neo-Scholastic Philosophy of Law in America*, 18 PROC. AM. CATH. PHIL. ASS'N. 185, (1942) [hereinafter Rooney, *Movement*]. During the period of much of her scholarly writing, however, Rooney did not have the benefit of a formal academic appointment. She later became the chief law librarian at CUA under Dean Brendan Brown, and in 1951 the inaugural dean at Seton Hall University School of Law. *See* C. Joseph Nuesse, *The Thrust of Legal Education at the Catholic University*

ACPA's Committee on Philosophy of Law as having inaugurated a "movement for a Neo-Scholastic Philosophy of Law in America" – a movement "which may some day be recognized as one of the most important of this twentieth century."[44] As a practical matter, Rooney – much like Connor, Brown, and Clarke – stressed the "immediate need" for publications, bibliographies and "guides to the places where Neo-Scholastic principles of law can be studied" as well as "for more critiques of invalid juridical postulates in current jurisprudence" and a text-book on jurisprudence that Catholic law professors "can turn to quickly to supply them with compact and accurate information about the movement, its aims, its principles, and its sphere within the law school curriculum."[45] However, ten years later, the preparation of these materials was still an unfinished task. Ten years after that, the "immediate need" for them was all but forgotten.

II. The Intellectual and Political Context Out of Which the Proposal Emerged

The proposal for the reform of Catholic legal education was in part a response to the rise of Legal Realism. Catholic legal scholars contested many of the Realists' claims which they argued were wrong as a substantive matter. They also saw these claims as a threat not only to Catholic legal education but to the foundations of legal order in the West.

The origins and identity of this movement among American legal academics in the 1920s and 1930s are complex and contested.[46] This is not surprising given that Legal Realism was less an organized school of thought[47] than it was a disparate collection of scholars[48] united around

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of America, 1895-1954, 35 CATH. U. L. REV. 33, 73 (1985); The History of Seton Hall University School of Law: 1951-Present, http://law.shu.edu/About/history_of_ seton_hall_ law.cfm. *See also* Miriam T. Rooney, *Seton Hall University School of Law*, 5 CATH. LAW. 305 (1959).

[44] Rooney, *Movement*, *supra* note 43, at 186.

[45] *Id.* at 201.

[46] For a small sampling of works focusing on American jurisprudence, including legal realism, see NEIL DUXBURY, PATTERNS OF AMERICAN JURISPRUDENCE (1995); JAMES HERGET, AMERICAN JURISPRUDENCE, 1870-1970: A HISTORY (1990); ANTHONY J. SEBOK, LEGAL POSITIVISM IN AMERICAN JURISPRUDENCE (1998).

[47] *See* Karl N. Llewellyn, *Some Realism About Realism – Responding to Dean Pound*, 44 HARV. L. REV. 1222, 1256 (1931) ("A group philosophy or program, a group credo of social welfare, these realists are not. They are not a group.") (emphasis omitted). *See also id.* at 1233 ("There is no school of realists.").

[48] *See* MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW 1870-1960: THE CRISIS OF LEGAL ORTHODOXY 169 (1992) ("Legal Realism was neither a coherent intellectual

a set of common themes.[49] The figures identified with Legal Realism include Roscoe Pound, Underhill Moore, Karl Llewellyn, Benjamin Cardozo, Louis Brandeis, Jerome Frank, Max Radin, Walter Wheeler Cook, Arthur Corbin, Thurmond Arnold, Felix Cohen, [50] and Oliver Wendell Holmes, Jr., whose provocative writings in the late nineteenth century are credited by many with inspiring the movement.[51] The scope of this article does not permit a full exposition of Legal Realism and its various permutations. Although abbreviated and so necessarily incomplete, the summary that follows sets forth the basic themes in which the Legal Realists found common cause.

First, the Realists maintained that the law was not a-political or neutral as between competing conceptions of the good.[52] Instead, law was a product of the society in which it existed and that it should reflect the social realities facing that society.[53] For instance, then-judge Benjamin Cardozo argued that the law "is not found, but made," and that judges and legislators have "analog[ous]" functions.[54] The Realists argued that the substance of American law was the result of substantive policy decisions.[55] When those policies no longer served society well, new legal doctrines should take their place.

Second, the Realists tended to take a pragmatic approach to the resolution of legal questions.[56] At the core of Legal Realism was a claim

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movement nor a consistent or systematic jurisprudence. It expressed more an intellectual mood.").

[49] *See id.* at 170 (arguing that the central theme of RLT was the critique of CLT's "attempt . . . to create a sharp distinction between law and politics and to portray law as neutral, natural, and apolitical."); *see also* Wilfrid E. Rumble, *The Legal Positivism of John Austin and the Realist Movement in American Jurisprudence*, 66 CORNELL L. REV. 986, 988 (1981) (arguing that "one can discern certain tendencies in the work of men generally acknowledged to be legal realists").

[50] Given the lack of consensus on what constituted Legal Realism, it is not surprising that there is similarly "no universal standard for determining who is a legal realist." Rumble, *supra* note 49, at 987.

[51] Llewellyn, *supra* note 47, at 1245.

[52] HORWITZ, *supra* note 48, at 170, 189-90.

[53] *Id.* at 187-88.

[54] BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 115, 119 (1921).

[55] *See* HORWITZ, *supra* note 48, at 200 (finding that legal realists "insisted that legal classifications and categories were not natural but social constructs. The way to determine whether a legal classification was good or not depended on the purposes for which the category was created.").

[56] *See id.* at 200 ("Just as pragmatism had attacked the essentialist claims of philosophical idealism . . . so did the Realists treat the value of concepts and categories in terms of the results that they produced."). *See also* ROSCOE POUND, INTERPRETATION OF LEGAL HISTORY 157 (1923) ("the essence of good is simply to satisfy demand"). Many of

about how judges should go about deciding cases: When faced with an uncertain legal doctrine a judge should seek to fashion the rule or result that will bring about the most desirable effects.[57] Having dismissed out of hand the idea of an objective foundation for normative judgments in law, the Realists were "content to borrow from early-twentieth-century pragmatism"[58] believing that the law should be judged based on its consequences. Thus, Roscoe Pound insisted that the question of whether or not a particular legal doctrine is appropriate should be answered by its measure of "practical utility," by the "results it achieves."[59]

Third, the Legal Realists argued that the American legal system was significantly unjust in many important respects. In this, they were responding to the enormous changes that had taken place in American society beginning shortly before the Civil War. These changes included industrialization, urbanization, and the tremendous concentration of wealth in the hands of a few. Realism claimed that the legal system had not kept pace with the complexity of economic relations and the resultant social stratification. A gross disparity had developed between the concrete facts of social reality and the legal norms used to govern society. Indeed, "[a]ll Realists shared one basic premise—that the law had come to be out of touch with reality."[60] This incongruence often led to morally perverse results.[61]

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the Legal Realists regarded the law as largely indeterminate such that legal judgments were a product of "pure subjectivism." *See* Max Radin, *Statutory Interpretation*, 43 HARV. L. REV. 863, 881 (1930). They explain that such subjective judgments reflect a mere "hunch" or "intuitive sense of what is right or wrong for [a given] cause." Joseph C. Hutcheson, Jr., *The Judgment Intuitive: The Function of the "Hunch" in Judicial Decision*, 14 CORNELL L. Q. 274, 285 (1929). For Jerome Frank, judicial opinions were not the genuine basis of the judgments rendered but mere "rationalizations" on the part of the judge. JEROME FRANK, LAW AND THE MODERN MIND 130 (1930).

[57] *Id. See also* CARDOZO, *supra* note 54, at 102 ("This means, of course, that the juristic philosophy of the common law is at bottom the philosophy of pragmatism.").

[58] SEBOK, *supra* note 46, at 116.

[59] POUND, *supra* note 56, at 605, 609.

[60] *See* HORWITZ, *supra* note 48, at 187 ("All Realists shared one basic premise—that the law had come to be out of touch with reality.").

[61] A major instance of the Realist, and before them the Progressive challenge to the substance of American law, was in the context of economic relations. *Id.* Realists argued that legal doctrines governing economic relations did not fit the facts of an increasingly stratified society. *Id.* Assumptions of equal bargaining power between employer and employees, for instance, failed to recognize the dramatic disparity between an industrial employer and low-skilled laborers. *See id.* at 195 (noting how realist critics of CLT argued that the market was not natural and neutral, and that instead "the organization of the market w[as] entirely debatable social choices that could not be justified in scientific terms").

Fourth, the Realists held that the resolution of specific legal questions was not determined by logic and deduction from general rules or principles. There is, said Jerome Frank, "no compelling reason of pure logic which forces the judge to apply any one of the competing rules urged on him by opposing counsel."[62] The express dictates of "what the books there say 'the law' is" were, in Llewellyn's parlance, often only "pseudo" or "paper rules."[63] Although stated with great authority, in substance, judges would often only pay lip service to such rules "while practice runs another course."[64] Because legal doctrine did not itself determine the outcome of concrete disputes, judges possessed enormous discretion in deciding cases.[65] Indeed, according to Frank "the law is at its best when the judges are wisely and consciously exercising their discretion" since "justice depends on a creative judiciary."[66]

Fifth, because legal rules were not determinate, the Realists encouraged courts and other government officials to turn to the emerging social sciences in exercising their discretion. Thus, Oliver Wendell Holmes exhorted that "every lawyer ought to seek an understanding of economics"[67] and predicted that "the man of the future [would be] the man of statistics and master of economics."[68] Jerome Frank, by contrast, insisted that "[o]ur law schools must become, in part, schools of psychology applied to law in all of its phases,"[69] and Underhill Moore embraced the behaviorism of psychologist J.B. Watson.[70]

In sum, the "realism" of the American Legal Realists was the realism of scientific naturalism and pragmatism. It was the realism of empiricism and an unelaborated common sense. As such, the critique of what the Realists took to be the then dominant understanding of law "rejected any concept of a higher law that could provide judges with objective, rational guidance to assure a just operative law."[71]

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[62] FRANK, *supra* note 56, at 130.

[63] Karl N. Llewellyn, *A Realistic Jurisprudence – The Next Step*, 30 COLUM. L. REV. 431, 448 (1930).

[64] *Id.* at 449.

[65] HORWITZ, *supra* note 48, at 176-78. *See also* FRANK, *supra* note 56, at 19 (arguing that the fear of uncertainty hindered many from correctly perceiving the discretion wielded by judges).

[66] FRANK, *supra* note 56, at 141-42.

[67] Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 474 (1897).

[68] *Id.* at 469.

[69] FRANK, *supra* note 56, at 145-46.

[70] *See* HERGET, *supra* note 46, at 195.

[71] EDWARD A. PURCELL, JR., THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM AND THE PROBLEM OF VALUE 91 (1973).

Many Catholic legal educators saw themselves as defending and expounding on a correct understanding of law derived from neo-Scholasticism. The purpose of the proposal for the reform of Catholic legal education was to make Catholic law schools into institutions that would perform these tasks in the face of Realism's advances in the academy.

III. Possible Reasons Why the Proposal Was Not Embraced By Catholic Law Schools

We believe that a number of reasons account for the failure of the proposal to take hold in Catholic legal education. In this section, we discuss six possible factors that contributed to the decisions of Catholic law schools not to pursue the idea first set forth by Connor, Brown, and Clarke. Although it is difficult to determine the precise weight that each factor carried in the process, we present them in the order that we believe approximates their importance in persuading Catholic law schools to carefully mimic their secular counterparts rather than strike out in a new direction. In our further research, we hope to flesh out these hypotheses and evaluate their respective contributions.

A. The Call for a Robust Catholic Intellectual Culture Was Something New

First, the proposal for a distinctly Catholic intellectual environment at Catholic law schools went against the idea that animated the creation of these schools in the first instance. These schools were not founded with an eye toward creating centers of Catholic legal thought. As Brendan Brown noted in 1941, "Catholic law schools, with perhaps few exceptions, were established and developed with little, if any thought to their juristic responsibilities beyond making it possible for students to prepare for bar examinations and ultimately make a living at the bar in specialized techniques."[72] As such, the founding of Catholic law schools, like the modernization of Catholic colleges and universities in the first quarter of the twentieth century in general, "represented a response to both the galloping professionalization of one aspect of American life after another, and to the mobility aspirations of American Catholics, increasing numbers of whom perceived the connection between higher education and enhanced life chances."[73] American law schools of Catholic affiliation were founded

[72] Brendan F. Brown, *The Place of the Catholic Law School in American Education*, 5 U. DET. L.J. 1, 9 (1941) [hereinafter Brown, *The Place*].

[73] PHILIP GLEASON, CONTENDING WITH MODERNITY: CATHOLIC HIGHER EDUCATION IN THE TWENTIETH CENTURY 96 (1995) [hereinafter GLEASON, CONTENDING].

to meet the practical needs of the Catholics who aspired to entry into the legal profession and all that came with it.

For example, the Notre Dame Law School, the nation's oldest Catholic law school in continuous operation, began offering classes in 1869.[74] Although some might regard the early founding of a law school on the edge of the Indiana wilderness as somewhat premature, perhaps even quixotic, this was not the case with Notre Dame's founder and first president, Rev. Edward Sorin, C.S.C. The creation of a law school reflected Sorin's desire to attract more students and revenue to the fledgling institution and his ambition to make it into a place that could rightly be called a "university" – a title that the State of Indiana had bestowed on Notre Dame in 1844, only a few months after the first students arrived for classes at what was then little more than a high school.[75] Indeed, Notre Dame's catalogue indicates that Father Sorin actually contemplated adding both a medical school and a "Department of Law" as early as 1854.[76] Thus, it seems that the Law School more reflected Sorin's embrace of the American entrepreneurial spirit than a specific design for legal education.[77]

The DePaul University College of Law likewise reflected the institutional ambitions of the host university's first generation of leaders. The DePaul College of Law came into existence when the University acquired Howard Ogden's financially troubled Illinois College of Law in 1912.[78] Reverend Francis McCabe, C.M., DePaul's then-president

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[74] St. Louis University proudly and correctly claims that it established the first law school in the United States under Catholic auspices in 1843. However, the school ceased operations in 1847, following the death of Judge Richard Buckner, and did not resume operations again until 1908. *See* EDWARD J. POWER, A HISTORY OF CATHOLIC HIGHER EDUCATION IN THE UNITED STATES: A HISTORY 223 (1958). Some texts mistakenly date the beginning of St. Louis University School of Law to 1842. John E. Dunsford, *St. Louis – Pioneer Catholic Law School*, 3 CATH. LAW. 237 (1957).

[75] In January of 1844, only a few months after the first students arrived to begin their studies among the modest collection of buildings and huts, the Indiana Legislature granted a charter to Notre Dame not as a college, "but as a full university, with the power to grant all degrees." John Theodore Wack, *The University of Notre Dame du Lac: Foundations, 1842-1857, in* THE STORY OF NOTRE DAME ch. 1 (1967), *available at* http://archives.nd.edu/wack/wack.htm.

[76] *Id.* (ch. 7); PHILIP S. MOORE, C.S.C., A CENTURY OF LAW AT NOTRE DAME 2 (1970). Both sources cite the *University Catalogue* for 1854-55.

[77] This is not to suggest that Father Sorin was somehow opposed to idea of natural law or the idea of a law school dedicated to the producing graduates inspired by Catholic sensibilities. Sorin was by all accounts a faithful and devoted priest.

[78] Lester Goodchild, *American Catholic Legal Education and the Founding of DePaul's College of Law*, 37 DEPAUL L. REV. 379, 397-98 (1988).

wanted to make the University a place of "liberal, professional and graduate learning" following the model of the University of Chicago.[79] Indeed, given that DePaul's first president, Reverend Peter Byrne, C.M., defined DePaul's Catholic character merely "as a university conducted under Catholic auspices,"[80] the College of Law plainly was not established to further a specifically Catholic intellectual mission.

The University of San Francisco School (USF) of Law was likewise founded in 1912.[81] Like most Catholic law schools, and unlike DePaul's College of Law, USF School of Law was created by its host institution from the ground up. In creating a law school, USF "sought to meet the needs of an urban, middle-class constituency aspiring to professional status."[82] In San Francisco, this constituency was predominantly Irish such that most of the students came "from Irish-Catholic families – most of them the sons of first- or second-generation immigrants."[83] All the men listed in the University's bulletin for 1912-1913 as lecturers in law were Catholic, and all but one of them "the progeny of Irish parents."[84] The local Catholic population feared that their sons would be discriminated against in applying to state universities like the University of California at Berkeley, which worked "to effectively exclude the graduates of Catholic institutions from the university's professional schools by requiring a course in evolution as a standard of undergraduate education."[85] The USF School of Law was not founded as a center for Catholic legal thought as such but as a place that would provide opportunities for Catholics seeking professional advancement.

Likewise, Fordham University established a law school in 1905 to help it become a "major urban university."[86] As this stated goal suggests, Fordham Law School was primarily focused on professional excellence, and its Catholic identity was tangential to the school's mission. Fordham's curriculum was modeled after Harvard's and sought to advance the School's primary aim by giving its students competence in the day-in-and-day-out law they would practice as lawyers.[87] Like

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[79] *Id.* at 395.
[80] *Id.* at 396.
[81] ERIC ABRAHAMSON, THE UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW: A HISTORY 1912-1987, 16 (1987).
[82] *Id.* at 29.
[83] *Id.* at 23.
[84] *Id.* at 19.
[85] *Id.* at 16.
[86] Robert M. Hanlon, Jr., *A History of Fordham Law School*, 49 FORDHAM L. REV. xvii, xvii (1980-1981).
[87] *Id.* at xix.

many of her sister schools, Fordham Law School was a night-school serving primarily working-class people aspiring to move up the social and economic ladders of American society.[88]

Many more schools could be added to this list.[89] Although there are exceptions to the pattern set forth above,[90] in almost every case the driving force behind the founding of one or another Catholic law school was the ambition of its host institution to obtain greater financial resources, attain true university status, and to serve as a means for Catholics and other immigrants seeking entry into the legal profession. Most of these schools offered something by way of a course on jurisprudence or legal ethics.[91] These course offerings manifested the self-conscious belief, or at least a tacit understanding, that Catholic legal education ought to be distinctive in substance. Still, it would be wrong to see these modest curricular adjustments as the animating force behind the creation of Catholic law schools. As such, the proposal set forth by Connor, Brown, Clarke, and others represented something new and different that would require a change both in an institution's self-understanding and in its day-to-day operations.

B. Institutional Inertia and the Problem of Personnel

The task of implementing the Thomistic revival at Catholic colleges and universities presented a number of practical difficulties, foremost among which was the need to attract and retain interested faculty

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[88] More precisely, it was a late-afternoon school with classes running from 4:30 to 6:30 p.m. *Id.* at xviii. Another indication of the law school student body's working-class background is the fact that the law school did not require a college degree for admission until 1946. William Hughes Mulligan, *The Fiftieth Anniversary of Fordham University School of Law*, 2 CATH. LAW. 207, 211 (1956).

[89] We plan an exhaustive history of Catholic legal education in future installments of the more comprehensive research project of which this essay is only a kind of brief summary and introduction.

[90] *See generally* Nuesse, *supra* note 43.

[91] *See* MOORE, *supra* note 76, at 100 (citing the Notre Dame Law School's Bulletin for 1951-1952 and stating that "[t]he Natural Law has been an integral part of the training of a Notre Dame lawyer since the first law courses were established in 1869" and that the School "carries on the basic Natural Law philosophy of the American Founding Fathers and seeks not merely to set forth the abstract concepts of the Natural Law but also to correlate them with the various courses of the Positive Law"); Mulligan, *supra* note 88, at 210 (noting that the curriculum at Fordham Law School contained a course on jurisprudence which was taught by Rev. Thomas Shealy, S.J., from the natural law perspective); ABRAHAMSON, *supra* note 81, at 34 (noting that, in the early days of the University of San Francisco School of Law, in addition to a standard array of doctrinal courses, "Jesuit fathers offered instruction in oratory, logic, psychology, parliamentary law, and ethics").

suited to the task. That is, the program of introducing Thomism to large numbers of undergraduate students – not only in philosophy and theology but elsewhere in the curriculum – meant that "many teachers were needed, not all of whom were equally well prepared or effective, and teaching loads were quite heavy."[92] This, in turn, led to an "undue reliance on textbooks, too much use of objective tests, and complaints from students that philosophy was simply 'memory work.'"[93] Moreover, because the kind of education envisioned was thought to involve a presentation and lived example of an integral Catholic worldview:

> [i]t rapidly became evident . . . that developing the right kind of faculty would be a problem – and one that almost guaranteed a high level of institutional inbreeding, for where else could teachers be found who not only knew their specialties but also how to integrate them with religion and philosophy?[94]

The proposal for the reform of Catholic legal education presented similar difficulties with respect to the make-up of faculties at Catholic law schools. When anything new is proposed with respect to how a given organization will identify itself and carry forward its operations, one can expect some degree of resistance. Such a reaction is even more likely where the organization in question is an academic institution since faculty – the people primarily responsible for carrying forward the teaching and scholarly enterprise – are accustomed to defining that enterprise rather than having it defined for them. Further, such resistance is likely to be even more acute where the proposal for change contains at least a tacit criticism of current faculty – the suggestion that they are somehow inadequate for the task at hand. Each of these sources of resistance was likely a significant factor in the failure of Catholic law schools to embrace the proposal for the reform of Catholic legal education.

Proponents of the reform, like Brendan Brown, believed that "[t]he logical custodians of a scholasticized category of natural law and its accompanying jurisprudence are the faculties of Church law schools."[95]

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[92] GLEASON, CONTENDING, *supra* note 73, at 299.

[93] *Id.* (footnote omitted).

[94] PHILIP GLEASON, KEEPING THE FAITH: AMERICAN CATHOLICISM PAST AND PRESENT 145 (1987) [hereinafter GLEASON, KEEPING]. This last possibility – that of hiring faculty who were themselves the product of scholastic training at a Catholic college or university – was not a viable strategy in the hiring of law faculty at Catholic law schools since no existing Catholic law school provided the kind of education that the proposal sought to provide. The Catholic University of America was sensitive to the desirability of hiring Catholic faculty early on. *See* Nuesse, *supra* note 43, at 39-41.

[95] Brendan F. Brown, *Natural Law and the Law-Making Function in American Jurisprudence*, 15 NOTRE DAME L. REV. 9, 25 (1939) [hereinafter Brown, *Natural Law*].

Indeed, "[t]he undertaking of making understandable the full meaning of the category of scholastic natural law in the every day workshop of the Common lawyer and judge" would be possible "only if legal educators endeavor to gain a better knowledge of natural law and make it the starting point in their everyday pedagogy."[96] What was needed, according to Brown, was for Catholic law schools to attract faculty who would have the time to write[97] about the law in a way that would "demonstrate[e] . . . the recognition of the validity of many scholastic principles by the common law," and chart "[t]he scholastically desirable future of the common law."[98] What was needed was the preparation of texts that would assist lawyers and judges in fashioning legal solutions to contemporary problems based on the principles of scholastic jurisprudence.

Brown clearly recognized that the "revival of natural law jurisprudence in the theo-philosophical sense will be short lived unless it is enforced by the active support of the faculties at Church law schools."[99] He knew that the "success [of the project] depend[ed] upon the spirit and the will of the personnel of American church law schools."[100] Dean Connor likewise warned that "[i]f some effort is not put forth by the individual teacher to infuse his lectures and comments with sound philosophical observations, the complete secularization of Catholic law schools will soon be accomplished."[101] Yet others like William Clarke openly wondered:

> [h]ow many of our teachers . . . "could exhibit that integration of the supernatural and the natural which alone is truly and fully Catholic?" For that matter, how many could or would point out in a class in law (when the opportunity is given) that there is what is natural, what is unnatural and what is supernatural?[102]

The problem, then, was not simply the unavailability of law teaching materials addressing various legal subjects from a scholastic point of view. The problem was a lack of interest among existing faculty at

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[96] *Id.* at 21-22.

[97] Brown, *The Place*, supra note 72, at 10 (observing the relative paucity of Catholic contributions to legal scholarship and noting the responses to his survey of Catholic law schools that "[t]he chief reason given for failure to make a greater contribution to the science of law were heavy teaching schedule, absence of research assistance, and inadequacy of library").

[98] Brown, *Jurisprudential Aims, supra* note 17, at 169.

[99] Brown, *Natural Law, supra* note 95, at 21.

[100] Brown, *Jurisprudential Aims, supra* note 17, at 189.

[101] Connor, *supra* note 10, at 163.

[102] Clarke, *supra* note 26, at 174 (quoting the remarks of Robert C. Pollock at the National Catholic Alumni Federation conference in 1939).

Catholic law schools, a point that was apparent even in the limited responses Brown received to his survey of church-sponsored schools.[103] Indeed, some responses from existing faculty openly questioned the justification for the existence of church-sponsored law schools as such,[104] while others defended the continued existence of such schools even in the absence of any distinctively Catholic features.[105]

Thus, the problem was also the absence of a strategy for identifying and attracting prospective faculty who could carry out the project, and then convincing current faculty to hire this new breed of legal academic. As Connor made clear, the law teacher needed to be "familiar with the philosophical systems which have had influence in the legal order, he must be conversant with Scholasticism and its restatement, and he must be conversant with the Positive Law and its technicalities."[106] Brown knew that "[c]ooperation, not discord, among teachers in church law schools [was] essential if the movement toward a scholastic jurisprudence is to succeed"[107] but he did not confront the already existent discord and unwillingness among Catholic law schools to change.

C. Faculty Misgivings and the Difference Between Philosophy and Theology

Catholic legal academics produced an enormous amount of scholarly literature that both defended traditional natural law theory and challenged the premises underlying Legal Realism.[108] Yet, as historian

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[103] For example, some responses expressed misgivings "as to the extent to which [the reform] should be carried out at the present time." Brown, *Jurisprudential Aims, supra* note 17, at 170. Others said that "a scholastic critique should be confined to certain courses." *Id.* at 173. One reply stated that "busy practitioners, even though part time lecturers in church law schools, should not be asked to waste time on an indefinite and aimless jurisprudence." *Id.* at 171.

[104] Many responses stated "that the religious atmosphere of the church law school, apparently some intangible element *over and above classroom influences*, was *in itself*, a sufficient reason for church law schools." *Id.* at 174. Others openly admitted that there was no justification for church sponsored law schools. *Id.* at 176 n.28. Some schools offered no justification for its existence as such. Brown, *Jurisprudential Aims, supra* note 17, at 188 n.85.

[105] *Id.* at 185, n.70.

[106] Connor, *supra* note 10, at 164-65.

[107] Brown, *Jurisprudential Aims, supra* note 17, at 167.

[108] For a representative sampling of this literature see Brendan F. Brown, *Natural Law and the Law-Making Function in American Jurisprudence*, 15 NOTRE DAME L. REV. 9 (1939); Walter B. Kennedy, *A Review of Legal Realism*, 9 FORDHAM L. REV. 362 (1940); Francis E. Lucey, S.J., *Natural Law and American Legal Realism: Their Respective Contributions to a Theory of Law in a Democratic Society*, 30 GEO. L.J. 493 (1942).

Edward Purcell bluntly concludes, "[t]heir arguments . . . simply were not convincing to most American intellectuals."[109] According to Purcell, the reason for this failure was that "[t]he almost inextricable intertwining of their rational philosophy with their particular theology raised doubts as to where the one began and the other left off."[110] James Herget likewise concludes that "by the late 1950s it was clear that the Thomists were talking to themselves."[111] For Herget, this one-sided conversation was due to the fact that "[t]o accept the medieval doctrine of natural law one had to accept the other trappings"[112] of Catholicism, including the fact that it "had historically justified a feudal system, slavery . . . and an ultra-authoritative, anti-democratic church structure."[113] Thus "Thomistic natural law was unconvincing unless a scholar was willing to see the world through its accompanying and reinforcing metaphysics, epistemology and perhaps theology."[114] Because most American academics were unwilling to undertake such an intellectual conversion and spiritual leap of faith, Thomism was destined to largely remain an insular Catholic concern.

The distinction between philosophy and theology – as well as the related distinctions between reason and faith, nature and grace, the secular and the religious – have been recurring themes and sources of continuing reflection throughout the two millennia of the Christian intellectual tradition. Each of these distinctions is important in helping to advance the Church's self-understanding of her own identity and role in the world. With respect to university education, however, the distinction between philosophy and theology is foundational. It is the distinction between the process of reflection within a religious community in light of the commitments of the faith to which it subscribes and the process of reflection in the absence of those commitments.[115]

The failure of non-Catholic legal academics to grasp the distinction between philosophy and theology – between, on the one hand, those methods of thought and reflection which regard certain texts and

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[109] PURCELL, *supra* note 71, at 169.
[110] *Id.*
[111] HERGET, *supra* note 46, at 238.
[112] *Id.*
[113] *Id.* at 238-39.
[114] *Id.* at 238.
[115] Aquinas addressed the distinction at the very beginning of his master work. *See* ST. THOMAS AQUINAS, SUMMA THEOLOGICA I, Q. 1, Arts. 1-10 (Fathers of the English Dominican Province trans., 1918). For a set of contemporary essays exploring the distinction between philosophy and theology, and the relationship between faith and reason, see REASON AND THE REASONS OF FAITH (Paul J. Griffiths & Reinhard Hutter eds., 2005).

events in history as authoritative sources of divine revelation and, on the other hand, those that do not – while regrettable, is perhaps understandable. By contrast, it is difficult to excuse the failure of Catholic legal academics to grasp this same distinction and appreciate its significance. It was, however, precisely the failure of Catholic law professors to understand that the proposal for a distinctively Catholic kind of legal education was not a call for theological training in law school that led to the proposal being left untried. As Brendan Brown noted in commenting on his first survey of faculty at church-sponsored law schools, "[t]here was evidence among the replies to indicate that there is some doubt as to the essentially philosophical character of the suggested project."[116] Some objected to the use of scholastic jurisprudence in teaching law courses because "their church law school was said not to be sectarian." As Brown noted, however, this objection "confus[ed] theology and philosophy."[117]

It seems then that the failure to articulate in a convincing fashion the operative significance of the distinction between philosophy and theology in the context of jurisprudence was one of the reasons that Catholic law schools declined to embrace the proposal for a new kind of Catholic legal education. Plainly, Brown and the other proponents of reform did not suggest "that the development and presentation of a scholastic legal culture should supersede and exclude from the church law school the expounding of law as it exists in statute and case"[118] nor deny that "a proper balance between positive rule and jurisprudence must be maintained in the classroom."[119] Nevertheless, faculty members simply were not persuaded that the reform they were being asked to undertake was truly philosophical in nature. The fear was that "scholastic jurisprudence" was religious faith dressed up in philosophical garb. From this perspective, to implement the proposal would be to transform schools of professional training operating under Catholic auspices into Catholic seminaries for laymen who wanted to practice law.

D. The Incentive Not to Change

As noted above, the proposal set forth by Connor, Brown, Clarke, and others was far-reaching in its aspirations. It would have required Catholic law schools to change their operations, their pedagogical

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[116] Brown, *Jurisprudential Aims, supra* note 17, at 189.
[117] *Id.* at 183.
[118] *Id.* at 168.
[119] *Id.* at 170.

approach, and even their personnel. In addition to these sorts of practical and political challenges, Catholic law schools had other strong incentives not to change.

Both the formal apparatus of institutional accreditation and the informal process of peer recognition and reputation within the legal academy strongly discouraged the development of a distinctive kind of legal training. Indeed, the whole point of accreditation among law schools, as elsewhere in education, was to ensure a kind of uniformity through standardization – to establish a baseline experience that any student at any accredited school could expect to find.[120] This discouragement was even more pronounced where educational innovations were associated with a particular religious tradition – and in particular, the tradition of a religious minority that had been the target of animus by large numbers of social elites and average citizens.[121]

Most of the Catholic law schools in existence at the time the proposal was issued already enjoyed accreditation from the Association of American Law Schools and the Section on Legal Education and Admission to the Bar of the American Bar Association.[122] This sequence of events would seem to suggest that the decision on the part of these schools not to pursue the vision of scholastic jurisprudence in Catholic legal education was not made in order to obtain accreditation.

Although fear of denial of accreditation plainly cannot, in any direct sense, account for the tepid response to the proposal by Catholic law schools that were already accredited, the accreditation process may help explain this response in a more subtle way. As Brendan Brown noted in an article summarizing the history of Catholic legal education, the "tendency among Catholic law schools to conform to the standards of accrediting agencies was not entirely a matter of free choice" in that "[t]he moral authorities of these agencies became so influential."[123]

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[120] *See* ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 93 (1983) (noting that "[a]t its first meeting in 1879, the ABA Committee on Legal Education and Admissions to the Bar not only urged national comity for lawyers of three years standing – its original chore – but it began the crusade for an expansive program for standardization").

[121] For an overview of anti-Catholicism in American history, see MARK S. MASSA, S.J., ANTI-CATHOLICISM IN AMERICA: THE LAST ACCEPTABLE PREJUDICE (2003); PHILIP HAMBURGER, SEPARATION OF CHURCH AND STATE 201-19 (2002)

[122] *See* Appendix, *infra*, listing: the various Catholic law schools; the respective years in which they were founded; when they received ABA accreditation; AALS accreditation; and when they began publishing a scholarly law journal.

[123] Brown, *The Place*, supra note 72, at 9.

Plainly, if a Catholic school desired to be held in high regard by its peer institutions and by members of the bar who were graduates of these institutions it would have made little sense to have adopted a pedagogical program that differed markedly from what these other schools were doing. Indeed, it seems likely to have been the case that the accreditation process established a homogenized version of legal education as the norm in a way that dissuaded law schools from giving serious consideration to innovations in legal pedagogy, including the proposal for a curriculum centered on scholastic jurisprudence.

E. Legal Realism as an Exhausted Project and the (Perceived) Practical Triumph of Natural Law

With the advent of post-war America, Legal Realism had become an exhausted project. Although it had succeeded in displacing the widely-held belief in the objective, moral foundation of law in the minds of many, it failed to provide an alternate account of the legitimacy of law and legal decision-making. While some legal academics maintained their faith in scientific naturalism, others turned to the "*constitutive* or *procedural* understandings . . . about how questions . . . are to be settled."[124] Still others recognized this failure for what it was, which in some instances led to a reversal of positions previously assumed. For example, in the "Preface to the Sixth Printing" of his Realist tome *Law and the Modern Mind*, Jerome Frank affirmed the natural law foundations of the legal order – something that would have been unthinkable when he first published the book in 1930. "I do not understand," Frank declared, "how any decent man today can refuse to adopt, as the basis of modern civilization, the fundamental principles of Natural Law, relative to human conduct, as stated by Thomas Aquinas."[125]

Of course much had changed in the intervening years between the giddy debut of Legal Realism in the 1920s and the liberation of Auschwitz in 1945. Prior to the cataclysmic events of the Second World War, Catholic legal scholars had warned that the innovations introduced by the newer jurisprudence could be used to legitimize the rise of totalitarian legal regimes. Indeed, prior to the war, Catholic legal scholars noted, without controversy, that legal positivism insisted upon

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[124] *See* HORWITZ, *supra* note 48, at 254 (quoting HENRY HART & ALBERT SACKS, THE LEGAL PROCESS 3-4 (tent. ed. 1958)).

[125] JEROME FRANK, *Preface to the Sixth Printing of* LAW AND THE MODERN MIND xxxii (1948).

the analytic separation of law from morality.[126] Beyond this, however, they argued that this separation neutered jurists and lawyers in nations infected with totalitarian ideologies. Focusing their energies on Germany and, to a lesser extent, the Soviet Union, Catholic scholars noted that significant portions of those nations' legal establishments blithely – and often enthusiastically – supported totalitarianism.[127] In the same way, Catholic legal scholars argued that Legal Realism's abandonment of a tie between law and morality[128] laid open the possibility that American law could become an instrument of oppression.[129] The horrors revealed in the aftermath of the War led some Realists to respond in a way that was defensive and humble.[130]

In an ironic turn of events, however, the defeat of the racist ideologies in Nazi Germany and Imperial Japan on the battlefield actually undermined efforts to implement the proposal for the reform of Catholic legal education. That is, with the Allies' victory over the totalitarian Axis powers and the waning of Legal Realism as a vibrant intellectual movement in the United States, the impetus for a distinctively Catholic form of legal education was no longer immediate. In fact, the world that emerged after the war *seemed* to embrace the natural law perspective advocated by Catholics. Indeed, the Nuremberg and Tokyo Military War Crimes Tribunals could be seen as a vindication of the natural law,[131] on a practical if not theoretical level, insofar as the defendants were tried for crimes against humanity – an offense not recognized in the positive law of any operative jurisdiction at the time the acts were committed.[132] This practical if not theoretical endorsement of the

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[126] This is generally known as the separation thesis. *See* H.L.A. HART, THE CONCEPT OF LAW 185 (2d ed. 1994) ("Here we shall take Legal Positivism to mean the simple contention that it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality.").

[127] Brown, *Natural Law*, *supra* note 95, at 23-24.

[128] SEBOK, *supra* note 46, at 116.

[129] Walter B. Kennedy, *A Review of Legal Realism*, 9 FORDHAM L. REV. 362, 373 (1940). Although rejecting an ultimate jurisprudential link between positivism and totalitarianism, more recent scholars have affirmed the link between Realism and positivism. *See, e.g.*, Kent Greenawalt, *Too Thin and Too Rich: Distinguishing Features of Legal Positivism, in* THE AUTONOMY OF LAW: ESSAYS ON LEGAL POSITIVISM 2 (Robert P. George ed., 1996).

[130] Laura Kalman criticizes the Realists for assuming this defensive posture. LAURA KALMAN, LEGAL REALISM AT YALE, 1927-1960, 268 n.101 (1986).

[131] Rodger D. Citron, *The Nuremberg Trials and American Jurisprudence: The Decline of Legal Realism, the Revival of Natural Law, and the Development of Legal Process Theory*, 2006 MICH. ST. L. REV. 385 (2006).

[132] *See, e.g.*, Christian Tomuschat, *The Legacy of Nuremberg*, 4 J. INT'L CRIM. JUST. 830 (2006); R. John Pritchard, *The International Military Tribunal for the Far East and Its*

natural law was further underscored by the widespread adoption of the United Nations' Universal Declaration of Human Rights.[133] Each of these developments could be seen as a reason why it was unnecessary for Catholic law schools to swim against the tide of American legal education by altering their curricula and pedagogies to serve as a vehicle for scholastic jurisprudence.

F. The Tensions of Neo-Thomism from Within

The proposal that Catholic law schools educate students in the positive law while also providing them with a critique of that law based on the premises of scholastic jurisprudence was an outgrowth of the neo-Thomistic revival. The aim of this movement in philosophy and theology was the recovery of the thought of St. Thomas Aquinas and the application of Thomas' thought to the modern world.[134] Although it was well underway by 1850, in 1879, Pope Leo XIII gave the revival of Thomism the prestige of pontifical endorsement in his encyclical *Aeterni Patris.*[135] With this encyclical "[t]he highest authority in the Catholic Church . . . directed her official institutions to effect their apostolic approach to the modern world through the rediscovery, purification, and development of St. Thomas' philosophy and theology."[136]

The revival of Thomistic studies was enormously successful in the United States. Philosophy and theology were taught in every Catholic college and university in the country according to Thomistic methods and principles. The revival led to the creation of a number of scholarly publications including the *Modern Schoolman*, the *New Scholasticism,* the *Review of Metaphysics*, *The Thomist*, and *Theological Studies.*[137] In sum, the movement served as the unifying theme and vision of Catholic higher education in the second quarter of the twentieth century.

Contemporary Resonances, 149 MIL. L. REV. 25 (1995). *See also* Beth Van Schaack, *Crimen Sine Lege: Judicial Lawmaking at the Intersection of Law and Morals*, 97 GEO. L.J. 119 (2008).

[133] Mary Ann Glendon, *Foundations of Human Rights: The Unfinished Business*, 44 AM. J. JURIS. 1 (1999).

[134] MCCOOL, THE NEO-THOMISTS, *supra* note 9, at 1. *See also* Russell Hittinger, *Introduction to* HEINRICH A. ROMMEN, THE NATURAL LAW xxiv (1998) (describing the "two main traits" of Neo-Thomism as, first, "scholarly attention to the original texts, which in turn led to fresh interpretations of the premodern natural law traditions," and second, "a lively interest in making the old traditions relevant to contemporary political and legal problems").

[135] POPE LEO XIII, AETERNI PATRIS (1879).

[136] MCCOOL, SCHOLASTICISM, *supra* note 9, at 236.

[137] *See* GLEASON, CONTENDING, *supra* note 73, at 86, 135, 297

By the time the proposal for the reform of Catholic legal education was made, however, there were already "counter-indications of restlessness, a growing sense that the Neo-scholastic framework had become too confining."[138] Indeed, by the end of the 1950s, "the ideal of a 'Thomistic synthesis' had sunk far below the horizon of live options in American Catholic higher education."[139] Many Catholics took to heart John Tracy Ellis' indictment of Catholic intellectual life for its "failure to produce national leaders and to exercise commanding influence in intellectual circles."[140] Although Ellis supported the Neo-Scholastic movement,[141] those who bristled under the hegemony of Thomism seized on Ellis' criticism as an opportunity to call for change.

Perhaps most important of all, change was already present in Neo-Thomism itself. By the time of the proposal for the reform of Catholic legal education "three irreducibly distinct Thomisms [had] emerged: the traditional Thomism of Maritain, the historical Thomism of Gilson, and the transcendental Thomism of Marechal."[142] In this new climate of pluralism, legal educators could no longer propose Neo-Thomism as a singular approach to the study and critique of law.

IV. The Search for a Distinctive, Unifying Force in Catholic Legal Education Today

Plainly, we no longer live in an era in which Neo-Thomism holds pride of place in the contemporary Catholic academy. Perhaps even this description presumes too much. It may well be an open question as to whether there is such a thing as "the contemporary Catholic academy" within and across institutions. It may instead be the case that there are only isolated pockets of Catholics and other intellectuals who value the tradition but who find themselves serving on faculties that are oblivious to the claim that they are in fact participants in an intellectual enterprise that goes beyond their particular disciplines.

A given Catholic college or university may be blessed with a faculty that understands that the school's "Catholic identity" is not merely an ornamental feature to be trotted out on ceremonial occasions. Indeed, a school may even be blessed with some portion of the faculty who recognize

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[138] *Id.* at 298.
[139] *Id.*
[140] John Tracy Ellis, *American Catholics and Intellectual Life*, 30 THOUGHT 351 (1955).
[141] *See* GLEASON, CONTENDING, *supra* note 73, at 289.
[142] MCCOOL, SCHOLASTICISM, *supra* note 9, at 263.

that the school's "Catholic identity" must somehow be operative in the intellectual work of the institution. Even if this is the case, however, the content of that identity must still be determined. As Philip Gleason makes clear:

> [the challenge] facing Catholic academics today is to forge from the philosophical and theological resources uncovered in the past half-century a vision that will provide what Neo-Scholaticism did for so many years – a theoretical rationale for the existence of Catholic colleges and universities as a distinctive element in American higher education.[143]

Given the fragmentation that defines modern academic life and the already prevalent lack of interest in making Catholic colleges and universities intellectually distinctive from their secular counterparts, few candidates leap to mind. One possibility, however, is the body of papal, conciliar, episcopal, and other magisterial texts and their attendant commentaries known collectively as "Catholic social teaching" or "Catholic social thought."[144] In an overdrawn and often self-indulgent fashion, Catholic social thought is commonly referred to as the Church's "best kept secret."[145] In fact, Catholic social thought is now a major component of contemporary catechesis at every level of faith formation.[146]

More importantly, with respect to Catholic law schools, Catholic social teaching has given rise to a burgeoning discourse in legal academic literature.[147] This should come as no surprise since this rich body of

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[143] GLEASON, CONTENDING, *supra* note 73, at 322.

[144] For a convenient collection of many of the main magisterial texts from this tradition, see CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE (David J. O'Brien & Thomas A. Shannon eds., 1992) [hereinafter CATHOLIC SOCIAL THOUGHT]. For useful commentaries on these documents, see A CENTURY OF CATHOLIC SOCIAL THOUGHT: ESSAYS ON *RERUM NOVARUM* AND NINE OTHER KEY DOCUMENTS (George Weigel & Robert Royal eds., 1991); MODERN CATHOLIC SOCIAL TEACHING: COMMENTARIES AND INTERPRETATIONS (Kenneth R. Himes, O.F.M. ed., 2005) [hereinafter MODERN CATHOLIC].

[145] EDWARD P. DEBERRI ET AL., CATHOLIC SOCIAL TEACHING: OUR BEST KEPT SECRET (4th rev. ed. 2003).

[146] Catholic social thought is now a major component in religious education in Catholic primary and secondary schools. *See, e.g.*, ANNE E. NEUBERGER, TO ACT JUSTLY: TEACHING CATHOLIC SOCIAL THOUGHT TO CHILDREN WITH STORIES AND ACTIVITIES (2002). To make Catholic social teaching even more accessible, the Holy See prepared a summary of Church's social doctrine. *See* PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH (2004).

[147] Indeed, this publication, the *Journal of Catholic Social Thought,* is a powerful witness to this fact. For a representative selection of articles that engage Catholic social thought in other legal periodicals, see Michael A. Scaperlanda, *Immigration Justice: Beyond Liberal Egalitarian and Communitarian Perspectives,* 57 REV. SOC. ECON. 523 (1999); Susan J. Stabile, *A Catholic Vision of the Corporation,* 4 SEATTLE J. SOC.

thought addresses a wide array of topics including the rights of workers and the need to care for the poor and underprivileged,[148] the pursuit of development and the need to establish a just economic order,[149] the plight of refugees, immigrants, and racial minorities,[150] the extermination of human life and the denial of human dignity in acts such as capital punishment, euthanasia and abortion,[151] and the cause of peace as the foundation of relations between peoples and states.[152]

As an alternative to Neo-Scholasticism, Catholic social teaching offers several advantages as the source of a possible unifying vision and theoretical rationale for a distinctively Catholic form of legal education. First, Catholic social thought has the advantage of being generally accessible to a lay readership. It is written in a contemporary idiom that largely abjures from technical theological and philosophical jargon. Thus, what was debilitating in the case of Neo-Thomism – namely, a lack of instructors with the depth of knowledge necessary to carry the enterprise forward[153] – is not a concern with respect to Catholic social thought.

Second, Catholic social thought has the potential to be widely appealing to law faculty who tend to be both politically liberal and secular in their outlook.[154] That is, it has long been remarked that Catholic social thought defies ready categorization, that "the themes from Catholic social teaching provide a moral framework that does not easily fit

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JUST. 181 (2005-2006); Amelia J. Uelmen, *Toward a Trinitarian Theory of Products Liability*, 1 J. CATH. SOC. THOUGHT 603 (2004); John M. Breen, *Neutrality in Liberal Legal Theory and Catholic Social Thought*, 32 HARV. J. L. & PUB. POL'Y 513 (2009).

[148] POPE LEO XIII, RERUM NOVARUM (1891); POPE JOHN PAUL II, LABOREM EXERCENS (1981).

[149] POPE BENEDICT XVI, CARITAS IN VERITATE (2009); POPE JOHN PAUL II, CENTESIMUS ANNUS (1991); POPE PAUL VI, POPULORUM PROGRESSIO (1967); POPE PIUS XI, QUADRAGESIMO ANNO (1931).

[150] POPE PIUS XI, MIT BRENNENDER SORGE (1937); POPE JOHN PAUL II, SOLLICITUDO REI SOCIALIS (1987); NATIONAL CONFERENCE OF CATHOLIC BISHOPS, BROTHERS AND SISTERS TO US (1979).

[151] POPE JOHN PAUL II, EVANGELIUM VITAE (1995).

[152] POPE JOHN XXII, PACEM IN TERRIS (1963); NATIONAL CONFERENCE OF CATHOLIC BISHOPS, THE CHALLENGE OF PEACE: GOD'S PROMISE AND OUR RESPONSE (1983).

[153] *See* GLEASON, KEEPING *supra* note 94, and accompanying text.

[154] *See* James Lindgren, *Conceptualizing Diversity in Empirical Terms*, 23 YALE L. & POL'Y REV. 5 (2005) (discussing the political leanings and religious affiliations of law professors); John O. McGinnis et al., *The Patterns and Implications of Political Contributions of Elite Law School Faculty*, 93 GEO. L. J. 1167 (2004-2005) (discussing data that shows of politically active faculty among the nations elite law schools 81% donate funds wholly or predominantly to Democratic candidates whereas only 15% donate wholly or predominantly to Republicans).

ideologies of 'right' or 'left,' 'liberal' or 'conservative,' or the platform of any political party."[155] Thus, the practical conclusions recommended by the magisterial texts urge the elimination of capital punishment, but also abortion. The texts argue for the rights of workers but also support the premises of a democratic capitalism. They stand against discrimination on the basis of gender,[156] but for recognition of the complementarity of the sexes.[157] The hope then is that it might be the case that the positions in Catholic social teaching commonly thought of as "liberal" may make engagement with the social tradition in law school not simply tolerable, but downright appealing.

Third, the kinds of social problems Catholic social teaching addresses may or may not be susceptible to a legal solution, but they do at least lend themselves to consideration in legal terms. To cite but one example, poverty may well be endemic to the human condition, but that is not to say that legal structures have no role to play in limiting its frequency or severity.

Fourth, a large number of students at Catholic law schools might be expected to have some familiarity with Catholic social thought if they experienced some kind of Catholic education earlier in their course of studies. As noted above, Catholic social teaching is a part of religious education for students in most Catholic parochial and high schools, and courses in Catholic social thought are widely available on most Catholic undergraduate campuses. Indeed, most dioceses and many parishes have offices devoted to "justice and peace" or "Christian service," which seek to promote the Church's social teaching. To the extent law students will have already been exposed to Catholic social teaching prior to coming to law school, so much the better.

But these same virtues might also be construed as shortcomings. That is, because Catholic social thought need not be taught by someone who is specially trained in a particular discipline such as theology or philosophy, it may be regarded as intellectually light and lacking rigor. A facile reading of the tradition and its connection to law will not gain many admirers. If law faculty teach Catholic social thought in a manner that lacks rigor and if law students experience it in this fashion, then Catholic social thought will quickly be dismissed as a needless requirement that has no place in the public square, let alone the curriculum of

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[155] UNITED STATES CONF. OF CATHOLIC BISHOPS, FORMING CONSCIENCES FOR FAITHFUL CITIZENSHIP ¶ 55 (2007).

[156] POPE JOHN PAUL II, MULIERLIS DIGNITATEM (1988).

[157] POPE JOHN PAUL II, LETTER TO WOMEN (1995).

a demanding law school. Likewise, because Catholic social thought is extremely broad in scope, and seldom offers concrete recommendations,[158] it can be treated as capacious and flexible enough to accommodate almost any policy preference. One who approaches the magisterial texts of the Catholic social tradition in good faith discovers that their protean qualities are not without limit. The documents speak of the need to protect the human dignity of the both the man on death row and the child in the womb. Still, like any text, they are subject to unscrupulous manipulation by those who may wish to ignore one or another aspect of the tradition. This is perhaps more likely to be the case where the instructor has no affinity for the text or expertise with respect to the subject matter.

Finally, Catholic social teaching may be unable to serve as a unifying principle and distinctive feature of Catholic legal education because of its religious character. That is, faculty may perceive the introduction of Catholic social thought into the curriculum as an ill-advised attempt to teach theology to law students. Indeed, unlike traditional natural law theory which can be presented in a cleanly philosophical manner, the magisterial texts of Catholic social teaching more closely intertwine philosophical reasoning and theological reflection.[159] In addition, the distinction between philosophy and theology, between faith and reason, may be even less well understood today than it was when Connor, Brown, and Clarke made the proposal for the reform of Catholic legal education in the late 1930s. This combination of publicly accessible reason and Christian revelation may make Catholic social thought less accessible to diverse groups of law students and less palatable to a secularly-minded law faculty. In this way, Catholic social thought may suffer the same fate as the proposal to introduce students at Catholic law schools to the principles of neo-Scholastic jurisprudence more than half-a-century ago.

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[158] CENTESIMUS ANNUS, *supra* note 149, ¶ 43. *See* DONAL DORR, THE SOCIAL JUSTICE AGENDA 93 (1991) ("The Church does not have a 'blueprint' for the ideal society. What the Church has to offer is not a system but certain values and principles that must be respected in any system that claims to be truly human.").

[159] For an interesting discussion on the use of scripture in Catholic social teaching, see John R. Donohue, S.J., *The Bible and Catholic Social Teaching: Will This Engagement Lead to Marriage?, in* MODERN CATHOLIC, *supra* note 144, at 9. For essays that criticize the official texts of Catholic social teaching for their simplistic or insufficient use of scripture, see Sandra M. Schneiders, *New Testament Reflections on Peace and Nuclear Arms, in* CATHOLICS AND NUCLEAR WAR: A COMMENTARY ON *THE CHALLENGE OF PEACE*, THE U.S. BISHOPS' PASTORAL LETTER ON WAR AND PEACE 91 (Philip J. Murnion ed., 1983); Alan C. Mitchell, *The Use of Scripture in* Evangelium Vitae: *A Response to James Keenan, in* CHOOSING LIFE: A DIALOGUE ON *EVANGELIUM VITAE* 63 (Kevin Wm. Wildes, S.J. & Alan C. Mitchell eds., 1997).

Conclusion

The point has elsewhere been made that there has never been a "Golden Age" of Catholic law schools,[160] and true enough. Still, the history just reviewed demonstrates that while the promise of a distinctively Catholic form of legal education was never fulfilled, the idea to provide students at Catholic law schools with such an experience was proposed and widely publicized by a number of leading Catholic academics. Yet the proposal to develop materials examining American law from a Thomistic perspective and to use those materials in legal education was never realized. The call for the reform of Catholic legal education went unanswered.

We have argued that a variety of causes account for the failure of the proposal. These include the fact that Catholic law schools were not founded for jurisprudential reasons but to satisfy the practical ambitions of their host institutions and the Catholic populace; the desire of Catholic law schools to be respected by their secular peers and the accrediting bodies; the confusion caused by the subtle and sometimes blurred distinction between theological ethics and the philosophical understanding of natural law that found its fullest expression in the Catholic tradition; and the waning importance of Legal Realism in postwar America and the perceived practical triumph of natural law in the new world order. All of these factors made the vision of Catholic law schools as centers of Thomistic natural law theory seem an unnecessary distraction that might jeopardize the success these schools had already managed to achieve.

This brief Article represents the beginning of much larger and more elaborate project – a project to examine the history of Catholic law schools in the United States and how it is that they came to so closely mimic their secular counterparts. In the later stages of this project, we hope to examine the historical narrative outlined above in greater detail, and to test the hypotheses we have put forth. In doing so, we hope to uncover the lessons of history – to learn how the renewed call for a distinctive kind of Catholic legal education today can avoid the same fate suffered by the proposal set forth in the first half of the twentieth century.

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[160] John M. Breen, *The Air in the Balloon: Further Notes on Catholic and Jesuit Legal Education*, 43 GONZ. L. REV. 41, 46 (2007-2008).

Appendix
Catholic Law Schools

Law School	AALS Accreditation	ABA Accreditation	Year Founded	Year Law Review
Boston College	1937	1932	1929	1959
Catholic University of America	1921	1925	1897	1950
Creighton University	1907	1924	1904	1968
University of Dayton	1984	1975	1922-35/1974 (opened, re-opened)	1974
University of Detroit-Mercy	1934	1933	1912	1931
DePaul University	1924	1925	1897 (affiliated with DePaul in 1912)	1951
Duquesne University	1964	1960	1878	1963
Fordham University	1936	1936	1905 (as St. John's) 1907 (as Fordham)	1914
Georgetown University	1902	1924	1870	1912
Gonzaga University	1977	1951	1912	1966
Loyola University Chicago	1924	1925	1908	1970 (continuous publication)
Loyola Law School (Loyola Marymount University)	1937	1935	1920	1968
Loyola University New Orleans	1934	1931	1914	1920, 1941
Marquette University	1912	1925	1908	1916
University of Notre Dame	1924	1925	1869	1925
St. John's University	1946	1937	1925	1926
Saint Louis University	1924	1924	1843	1915
St. Mary's University	1949	1948	1934	1969
St. Thomas University (Florida)	2001	1988	1984	1988

(Continued)

Appendix (continued)

Law School	AALS Accreditation	ABA Accreditation	Year Founded	Year Law Review
University of San Diego	1966	1961	1949	1964
University of San Francisco	1937	1935	1912	1966
Santa Clara University	1940	1937	1911	1961
Seattle University	1974	1994	1972	1977
Seton Hall University	1959	1951	1951	1967
Villanova University	1957	1954	1953	1956