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HISTORIES

THE THRUST OF LEGAL EDUCATION AT THE CATHOLIC UNIVERSITY OF AMERICA, 1895-1954*

*C. Joseph Nuesse***

If the conventional measure of a generation in family life could be applied in tracing the history of an academic institution, it would be easy to delimit the scope of this lecture as devoted to the first two generations of the law school of The Catholic University of America. To be precise, however, it must be clear that it is the period from 1895 to 1954 that is under review. These were not fifty-nine years of glorious achievement. On the contrary, during these years, as will become evident, the school was several times near dissolution. The bright spots in its record reflect largely the continuing hope of its faculty for the realization of ideals that in the name of the university could never be relinquished but that, alas, were never to receive the material support that might have permitted their attainment. It is only since 1954, in its third generation, that the school has found materially firmer prospects. Its early vicissitudes would be of little interest in themselves except that they illustrate certain aspects of the development of legal education in the country as well as on the campus. But of more than historic interest are the concepts that the deans and the faculty employed in defining the university's role in legal education. These will continue to have relevance for the discussions of what is by now a fourth generation.

A brief explanation of the terminal date, 1954, may be necessary. It was in this year that the university acquired the property of the former Columbus University, moved its law school from the quarters it had occupied in McMahan Hall to the new downtown location, designated it as the Columbus School of Law, and appointed Vernon X. Miller to succeed Brendan F. Brown as dean. After twelve years, of course, the school was moved back to the campus to occupy the newly constructed Leahy Hall. Enrollment was soon to increase. Before long, indeed, the study of law was to become so generally popular as to fill the new building to capacity and to set in motion

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changes in the character of the legal education being offered that are still open to evaluation.

Brendan Francis Brown (1898-1982), whom this lecture was established to honor, first came to the campus in the fall of 1924 as a Knights of Columbus Fellow.¹ This was about the beginning of what I have called loosely the law school's second generation. Brown was to be this generation's last dean. He had been born in Sioux City, Iowa but Omaha, Nebraska had afterward become his "old home town." There, at Creighton University, he had earned his bachelor's degrees in arts, in 1921, and in law, in 1924. He earned the degree of Master of Laws from The Catholic University of America in 1925 and remained on the campus to earn additional graduate degrees and to serve as an instructor during the academic year 1926-27. The university selected him for a Penfield Scholarship and during the following years, until his return to the faculty in 1932, he traveled abroad and completed his academic preparation with a doctorate of philosophy in law from Oxford.² He was promoted to the ranks of associate professor, in 1941, and ordinary professor, in 1945.

After the entry of the United States into World War II, when the Navy called Dean Robert J. White and then also J. Edward Collins, who had first been appointed to have charge of the law school during the dean's absence, Brown was named the professor in charge. He exercised this responsibility from 1942 until White's return in October, 1945, and soon again, beginning in 1947, when White was granted leave because of the ill health that led to his resignation at the end of the academic year. The faculty proposed Brown as "the best qualified and most deserving person" to succeed to the deanship.³ A year later, after inconclusive canvasses of externs by an advisory committee and the prescribed formal consultation of the faculty, Brown was appointed dean.⁴ In 1954, when the negotiations with Columbus University were under way, the faculty again expressed its support of Brown, since his

1. After a national campaign that began in 1908, the Knights of Columbus had established in January 1914 an endowment fund of \$500,000 to provide board, room, and tuition for graduate students selected competitively. Although originally expected to support 50 students, the number of fellowships awarded was always lower—Brown was one of 33 during the academic year 1924-1925—and in 1926 it was agreed to reduce the number to 25 per year. Since then, inflation has reduced the number further.

2. In 1922, Frederick Courtland Penfield, Jr., had left bequests to The Catholic University of America, New York University, and the University of Pennsylvania to endow assistance to graduate students in diplomacy, international affairs, and belles-lettres. Brown's reports of his Oxford studies are in the Archives of the Catholic University of America [hereinafter cited as ACUA], Office of the Vice Rector, 1916-1934, Penfield Scholarships.

3. ACUA, School of Law, Minutes (June 3, 1948).

4. *Id.* (May 20, 1949).

reappointment was in question, but he soon resigned from the university.⁵

Before Brown's administrative appointment, he was described by Dean Roscoe Pound of the Harvard Law School as "not merely a law teacher of learning, experience, ability, and reputation," but "a man of sterling character, fitted for an administrative position by firmness, tact, and good sense."⁶ The university's officers were not to find him a successful administrator but none could challenge his distinguished professorial standing. The students who followed his course in jurisprudence nurtured legends about the depth and breadth of his learning. He kept them alert by his Socratic flair in the classroom. If I may inject a personal note, it was Brown's reputation as a teacher that enticed me to audit his course in jurisprudence during the academic year 1942-43 when I used it as a weekly respite from my dissertation work in the department of sociology. After 1945, when I returned to the campus, and especially after 1952, when I became a fellow dean, I came to know Brown as a colleague, although our association was not close. Thus, my own respect for him and for what he sought to foster may be discernible in the presentation that I am attempting in his honor.

It was as communities composed of scholars like Brown that universities came into existence during the thirteenth century and it was precisely its university character that was intended to distinguish The Catholic University of America from other establishments that were conducted under American Catholic auspices in the late nineteenth century. There were then more than seventy-five Catholic institutions professing collegiate character, although they often had secondary-school divisions. Some of the institutions held university charters and bore the university name—easily acquired in the United States—even if they did not shelter the reality. All were small, all were for men only, and all were competing for students not only with each other but with older American institutions. About the time that instruction in law was first offered by the university, the president of its sister institution in Georgetown, which was then beginning its second century, explained to an Assistant to the Jesuit Father General in Rome that no American Catholic institution had in its corresponding departments of the arts and sciences even half the number of the more than three hundred Catholic students then believed to be enrolled in Harvard College.⁷

The great protagonist of the university cause had been John Lancaster

5. *Id.* (June 2, 1954).

6. ACUA, Office of the Rector (McCormick), Pound to G. Ireland, Hangchow, China (June 21, 1948).

7. Archives of Georgetown University [hereinafter cited as AGU], Rector's Letters (Nov. 30, 1895-Mar. 1, 1898), J. Richards, S.J. to R. Meyer, S.J., Washington, D.C. (Feb. 5, 1896) (copy).

Spalding (1840-1916), a Kentuckian descended on both sides from the seventeenth-century Catholic settlers of southern Maryland. Although he was the bishop of the Diocese of Peoria in Illinois, which was still missionary territory, he was already a national leader in his own right and can still be regarded as the outstanding intellectual in the history of the American episcopate.⁸ When the bishops of the United States assembled in their Third Plenary Council of Baltimore in 1884, Spalding was able to persuade them that "so long as we look rather to the multiplying of schools and seminaries than to the creation of a real university, our progress will be slow and uncertain, because a university is the great ordinary means to the best cultivation of mind."⁹ What was in question and decided upon in Baltimore was the foundation of an institution for the advancement of Catholic scholarship.

At the time, it should be remembered, the American university pattern that is now familiar was only beginning to be shaped. In one particular, the distinction between undergraduate and graduate instruction had not been agreed upon. Undoubtedly, the bishops were thinking simply of advanced scholarship within the context of the inherited ideals of liberal learning. Men like Spalding were spurred also by their awareness of the nineteenth-century scientific developments that were often being cited to challenge religious belief. It was under the first rector, previously Bishop of Richmond, John Joseph Keane (1839-1918)—who, upon his selection as rector, had protested that he "had never been in a university in his life"¹⁰—that The Catholic University of America became at the outset what is now called a research-oriented institution. This development can be attributed to the influence upon Keane of the European models that he found within the ecclesiastical system and to the influence of the first professors that he had to go to Europe to recruit, as well as that of the American priests whom the university's board of trustees was persuaded to send to Europe to prepare for faculty service.¹¹ In neighboring Baltimore, the young Johns Hopkins University was leading the new graduate school movement in the United States. The influence of specialized German scholarship was ascendant.

The advanced education of the clergy was certainly uppermost in the minds of the founders, and the School of Sacred Sciences was the only

8. T.T. MCAVOY C.S.C., *John Lancaster Spalding and the Catholic Minority* (1877-1908), in *THE IMAGE OF MAN, A REVIEW OF POLITICS READER* 392 (M.A. Fitzsimons, T.T. McAvoy, F. O'Malley ed. 1955).

9. J.L. SPALDING, *UNIVERSITY EDUCATION CONSIDERED IN ITS BEARING ON THE HIGHER EDUCATION OF PRIESTS* 27 (1884).

10. Archives of the Diocese of Richmond [hereinafter cited as ADR], O'Connell Papers, Keane to D.J. O'Connell, Richmond, Va. (May 20, 1886).

11. P.H. AHERN, *THE CATHOLIC UNIVERSITY OF AMERICA, 1887-1896: THE RECTORSHIP OF JOHN J. KEANE*, ch. I (1948).

faculty from the opening of the university in 1889 until 1895. However, the very first catalogue published promised that "the Faculties for the laity will be opened within a few years."¹² Bishop Keane announced in the official report of the university's inaugural ceremonies that it was desired "to begin, at the earliest possible day, the organization of . . . a Faculty of Philosophy and Letters."¹³ To prepare the way, Edward A. Pace (1861-1938), a priest of the Diocese of St. Augustine studying in Rome, had been selected for leadership even before the institution opened. He was to become a pioneer in the introduction of experimental psychology in the United States and an outstanding administrator in the positions of Dean of the School of Philosophy, Director of Studies, General Secretary, and Vice Rector.¹⁴ Another who was selected for study abroad was Thomas Joseph Shahan (1857-1932), a priest of the Diocese of Hartford, later the fourth rector of the university.¹⁵

Keane may have assumed the necessity of a law school from the beginning. He was in correspondence soliciting books for a law library as early as 1890 and shortly thereafter he received from his respondent seventy-eight volumes of standard works and speeches.¹⁶ Before the beginning of the university's third year, and after an unsuccessful attempt to call "some months" earlier, he requested, on July 17, 1891, a consultation with William Callyhan Robinson (1834-1911), a professor of law at Yale, to discuss the establishment of "a judiciously organized School of Sociology."¹⁷ The interview that followed led Keane to count it as "the will of Providence" that Robinson should "have the legal branch, and be the Chief of our School of Sociology."¹⁸ Such a school, he later told the trustees, was to be "recognized as an indispensable department of every well organized university."¹⁹

Robinson soon produced suggested curricula and he and Keane entered into continuous correspondence about their concepts of purpose and scope, academic organization, faculty recruitment, and similar matters. Apparently, they discussed legal education at their first meeting, because before a

12. THE CATHOLIC UNIVERSITY OF AMERICA, OFFICIAL ANNOUNCEMENTS, SEPTEMBER 1889.

13. J. KEANE, in SOLEMNITIES OF THE DEDICATION AND OPENING OF THE CATHOLIC UNIVERSITY OF AMERICA 98 (1889).

14. Ryan, *Pace, Edward Aloysius*, 10 NEW CATHOLIC ENCYCLOPEDIA 850-51 (1967).

15. Purcell, *Shahan, Thomas Joseph*, 17 DICTIONARY OF AMERICAN BIOGRAPHY 16-17 (1935).

16. ACUA, Office of the Rector (Keane), B. Callaghan to Keane, Chicago, Ill. (Dec. 29, 1890 and Jan. 10, 1891).

17. ACUA, Robinson Papers, Correspondence, Professional, Keane to Robinson, Washington, D.C. (July 17, 1891).

18. *Id.*, Far Rockaway, N.Y. (July 30, 1891).

19. FOURTH ANNUAL REPORT OF THE RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA 11 (1893).

month had passed Keane related that his heart had leapt at the suggestion that, finances permitting, a "Law course" should be opened "at the same time as our School of Sociology, with which it is so obviously related."²⁰ Robinson remarked that the legal education of the time was "quite elementary, mainly practical, and generally bestowed on men who have little knowledge of philosophy or any other of the subjects." Aiming for "a better training than any University" was then demanding for doctoral degrees in law, he asked Keane to let the plan for the proposed school embrace law as well as the social sciences so as to "organize the whole together if we find it feasible."²¹ In the eventuality, after two postponements, the School of Philosophy—named according to European practice to embrace the arts and sciences in general—and the School of the Social Sciences, in which there was a Department of Law, were opened in 1895. Robinson was appointed dean of the latter school. Meanwhile, through the generosity of an aging New York pastor who had invested wisely in real estate, McMahan Hall was erected to provide for the classes. Keane Hall, soon to be renamed Albert on Keane's own initiative, to honor another donor, was erected as a residence hall for laymen.

Before these schools were opened, in a curious episode that cannot be omitted, there was an abortive attempt by the first apostolic delegate to the Church in the United States to transfer to the university the schools of law and medicine that were operating in association with Georgetown College. His communication was not with the heads of the two institutions but rather with the two deans at Georgetown. Both refused compliance outright.²² According to Keane, the delegate, Archbishop Francesco Satolli, who was later elevated to the cardinalate, had told him that he considered the relation of the two faculties to Georgetown College to be "the chief plea for the rivalry between the two institutions," and that in any event "the Jesuits had no right to have such Schools according to their rules, and that the transfer of them to our Univ. would put all things in order and assure peace."²³ The temper of the times and a contemporary judgment about the probable fate of

20. ACUA, Robinson Papers, Correspondence, Professional, Keane to Robinson, Washington, D.C. (Aug. 18, 1891).

21. ACUA, Office of the Rector (Keane), Robinson to Keane, Bethlehem, N.H. (Aug. 22, 1891).

22. The original proposal and subsequent ecclesiastical correspondence are in the Archivio Segreto Vaticano, Secretariat of State, 1903, Rubric 43, folios 37-48. For copies of the correspondence with the deans, see ACUA, *supra* note 2, Office of the Rector (Keane), the Most Rev. Apostolic Delegate to Deans of Law and Medicine Faculties of Georgetown University (Mar. 1, 1894); G.E. Hamilton to F. Satolli, Washington, D.C. (Mar. 6, 1894); and G.L. Magruder to F. Satolli, Washington, D.C. (Mar. 12, 1894).

23. ACUA, Keane Papers, *Chronicles of The Catholic University of America from 1885*, Addendum, San Jose, Calif. (Oct. 25, 1896).

the new university were revealed in a comment made by Georgetown's president, when he was at first inclined to accept the apostolic delegate's proposal. He wrote to his provincial superior that "our consent would show a disinterested desire on our part to do whatever the Holy Father may think best for Catholic education in this country, and at the same time would open the way for the university itself to be transferred to us at some future time."²⁴ Keane was relieved at the failure of the proposal but recognized that "the odium of the attempt will be surely thrown at us by the Jesuits & their friends."²⁵

When the new schools were authorized, the university's board had stipulated that they would have only "as many chairs as the finances will justify."²⁶ The sound principle that it was following was to require that a professorial position should be endowed before it could be filled. Robinson's appointment was allowed by the receipt of a bequest of \$50,000, which was then considered sufficient to endow a chair. It was from the estate of Mrs. Celinda B. Whiteford of Baltimore and given in honor of the husband who had predeceased her. This James Whiteford Chair of Common Law is still the only endowed chair in the school of law and the annual income that the endowment provides is now only a modest portion of the salary of the professor who is named as the occupant.²⁷

Although it considered many matters in considerable detail, the board left most academic questions for determination by the faculties and the academic senate, according to procedures that had been established under the university's papal constitutions. Before inquiring into the views of legal education that were expressed at the time, however, two aspects of the new university's policies as a Catholic institution should be noted in view of their recurring importance, one concerning the admission of students, the other the Catholicity of the faculty.

With respect to the first, although the university by its name was plainly identified as Catholic in its institutional commitment, those of its schools which admitted laymen were from the beginning open to applicants of all faiths. Robinson seems to have urged that they should be open also without regard to color or sex. Keane could report that the faculty of the only school then established, that of the sacred sciences, supported him thoroughly in this respect. In the event, although Cardinal James Gibbons

24. AGU, Rector's Letters (Jan. 9, 1893-Nov. 17, 1895), Richards to W. Pardow, S.J., Washington, D.C. (Nov. 24, 1893) (copy).

25. ADR, *supra* note 10, O'Connell Papers, Keane to O'Connell, Washington, D.C. (Apr. 13, 1894).

26. ACUA, Board of Trustees, Minutes (Apr. 4, 1894).

27. Biographical data for James Whiteford seem not to be available.

(1834-1921), chancellor by virtue of his office as Archbishop of Baltimore, was at first fearful that the university would not be able to withstand the criticism that would be directed against it, no color barrier was raised.²⁸ Three American Negroes were among the first students admitted to the School of the Social Sciences in departments other than law.²⁹ One of them was later enrolled in the School of Law from 1902 to 1904 as a candidate for the degree of doctor communis juris. The board did not approve coeducation at any level and its policy in this respect was not changed until 1928, when women were officially admitted to postbaccalaureate study.³⁰

The Catholicity of the faculty had to be of particular concern. The academic senate's committee on the organization of new schools devised a statement of policy which read as follows:

- (a) Ordinarily, the professors shall be Catholics. Exceptions to this rule should be more difficult in proportion as the science in question has closer relations with Catholic truth, and should be less frequently made in favor of young men than in favor of experienced teachers whose views and character have reached a certain stability.
- (b) While assuming the obligation to respect the teachings of the Church, professors must also understand that they enjoy the freedom of investigation which the Church secures them. Both their rights and their obligations extend to their publications as well as to their lectures and intercourse with the students.
- (c) Non-Catholic teachers who may be employed in our schools and cannot make a profession of faith, should make a formal promise, as men of honor, not to antagonize in any way the doctrines of the Church.
- (d) Should reasonable doubt arise as to whether a conclusion or an opinion conflicts with Catholic faith, the matter shall be referred, in the first instance, to the Faculty of Theology.³¹

These provisions, while allowing for the long foreseen appointment of some "whose services might be desirable even though they were not

28. ACUA, Robinson Papers, Correspondence, Professional, Keane to Robinson, Atlantic City, N.J. (June 6, 1894). Within a week, Keane, planning a visit to Rome, wrote that he would "sound the Holy Father" on the points in question. *Id.* (June 12, 1894).

29. J. KEANE, *supra* note 13, at 8. Regrettably, it is necessary to add that a racial criterion was invoked on the campus two decades later, about the time of World War I, when segregation in Washington became fully institutionalized. It was not removed until the 1930's.

30. It is of interest to note that Robinson was to serve as a guest lecturer at the Washington College of Law (now the law school of The American University) which was founded by women lawyers to train women for the legal profession. See G. HATHAWAY, *FATE RIDES A TORTOISE: A BIOGRAPHY OF ELLEN SPENCER MUSSEY* 107 (1937).

31. ACUA, Keane Papers, School of Philosophy (second draft of the committee's report) (n.d.). The minutes of the academic senate of this period have been lost.

Catholics,"³² followed from the identity and purpose of the institution. They were never meant to allow the substitution of piety for scholarship. They did involve certain assumptions about the availability of Catholic candidates for appointment that proved to be too optimistic. One of the difficulties, unexpectedly, was religious. A deeply motivated man established in another institution might have to ask himself, as did one whom Keane attempted to recruit for a scientific field, whether as a Catholic professor at Harvard he was not there "more useful to the cause at large than one more among many would be at Washington."³³ Another difficulty, more characteristic, was financial. The university's salaries were never sufficient, so that in 1910 a rector who was asked to explain why two non-Catholics were appointed had to reply that it was "mainly because Catholics refused on account of the small salary offered."³⁴

In this connection, it should be noted that the founding dean of the School of the Social Sciences in 1895, and then, after two academic years, of the School of Law, was himself a convert to the Roman Catholic Church. Like a convert professor of botany appointed in the same year, he had been a Protestant Episcopal clergyman. Robinson, who was sixty-one years of age, after a prominent professional career and twenty-six years at Yale Law School, had come to the university because of its mission, according to which, as he perceived it, scholastic philosophy would be "taught as the basis of all scientific knowledge, and with it those other sciences which derive from it their principles or reach their conclusions through its methods."³⁵ Beginning in 1899, in fact, every lay student was required to follow a course of philosophy because, as the second rector put it, "it is realized that the very foundation stone of this institution is instruction in sound philosophy."³⁶

Robinson had been born at Norwich, Connecticut, and had attended Wesleyan Academy and Dartmouth College. Dartmouth conferred its baccalaureate in arts upon him in 1854 and an honorary doctorate in law twenty-five years later. Although originally a Methodist in religion, he had continued to study three years beyond college at the General Theological Seminary in New York City. His first ministry was as a resident missionary at Pittston,

32. ACUA, Board of Trustees, Minutes (Nov. 13, 1888) (Keane to Board, reporting on modifications of draft of the constitutions by the committee on statutes).

33. ACUA, Office of the Rector (Keane), T. Dwight to Keane, Nahant, Mass. (May 31, 1891). Dwight was an outstanding anatomist and surgeon.

34. ACUA, Board of Trustees, Minutes (Nov. 16, 1910).

35. ACUA, Academic Senate to 1907, General, Law School, Memorandum to Academic Senate Committee (ca. 1901-02).

36. T.J. CONATY, ELEVENTH ANNUAL REPORT OF THE RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA, OCTOBER 1900, at 12.

Pennsylvania, for two years, and then he became rector of St. Luke's Church at Scranton. Resigning from this charge on December 1, 1862, he prepared himself to embrace Roman Catholicism during the following year, reportedly under the influence of the Paulist Fathers, the American missionary congregation that Isaac Hecker had founded in 1858. He attended mission exercises at which Hecker himself preached and he received instruction from a pioneer Scranton pastor, Father Moses Whitty.³⁷

As a married man, Robinson was ineligible for ordination as a Roman Catholic priest. He read law in the office of a Scranton attorney and was admitted to the bar. He then took his family to his home state of Connecticut in 1864 and began to practice law in New Haven the following year. There he served as clerk of the city court from 1866 to 1868, as judge of the same court from 1869 to 1871, and as judge of the state court of common pleas from 1871 until he moved to Washington in 1895. During 1874 he was a representative in the state legislature. From 1884 to 1886 he was chairman of the Connecticut Tax Commission.

Meanwhile, in 1869, he was able to persuade two other young lawyers to join him in undertaking at their own risk, but with the encouragement of Yale's president, the rejuvenation of Yale Law School. The president's account is still cited in the Yale catalog: "The School was unendowed. It had almost no students. Its only lecture room was over a saloon. It had a small library of valuable but antiquated books. It had only the name of Yale to conjure by."³⁸ That name, in truth, was then not as illustrious in law as it is today. The school was rather typical of the law schools of its time—that is, it was really a "trade school." Yale as the sponsoring institution had elected to remain predominantly a college and had not yet joined the university movement that was transforming its rival, Harvard, for example. At Harvard, under the presidency of Charles William Eliot and the unwittingly revolutionary deanship of Christopher Columbus Langdell, law was being accepted, "finally and irrevocably, as an appropriate study for university education."³⁹

At Yale, Robinson taught elementary, criminal, and real property law and

37. Biographical data are conveniently summarized in an unpublished paper circulated within the Columbus School of Law in 1973, J.F. Cimini, William Callyhan Robinson, A Biographical Sketch of the First Law Dean at The Catholic University of America. For brief accounts, see *Necrology: Judge William C. Robinson*, 17 CATH. U. BULL. 806-12 (1911); C.S. Lobingier, 16 DICTIONARY OF AMERICAN BIOGRAPHY 56 (1935); *William Callyhan Robinson*, 21 YALE LAW JOURNAL 237 (1912); G. KULP, *William C. Robinson*, FAMILIES OF THE WYOMING VALLEY II 900 (1889).

38. YALE LAW SCHOOL 1984-1985, at 14 (quoting Theodore S. Woolsey).

39. R. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S, at 36 (1983).

pleading to undergraduates and patent and canon law to graduate students. He published *Notes on Elementary Law* in 1875, which he expanded into a book, *Elementary Law*, that appeared in 1882 and in a revised edition in 1910. In 1890, he published in three volumes *The Law of Patents for Useful Inventions*, which was in a field for which he was honored by the government of Japan. After coming to Washington he published his *Elements of American Jurisprudence* in 1900 and continued to contribute to legal journals. Among his other works were *Clavis Rerum*, a speculative effort that he published anonymously in 1883; *Forensic Oratory*, which became popular after its publication in 1893; and *The Origin of Law*, which consisted of two lectures given in 1894 at the Catholic Summer School that was then conducted on the shore of Lake Champlain.⁴⁰

Robinson's conception of law was philosophic. He considered it to be a division of ethics, but as such also "at once the source and the culmination" of the social sciences. The latter, of course, with the exception of economics, were still in their infancy. As Robinson saw it: "Through the development and extension of the law until it precisely meets and equitably settles all the questions which arise out of our mutual relations toward one another alone can come the elevation and perpetuation of our social life."⁴¹ He warned the rector, however, that his reputation in the law would not "hold out any promise of excellence" to specialists in sociology.⁴² Indeed, his approach to the social sciences in outlining the curriculum of the school he was to head was essentially meliorative. It was criticized by the university's learned professor of moral theology, whom Keane consulted on many things, as lacking in methodological rigor and in attention to "the general theory of the social being."⁴³

The curricular implications of Robinson's conception seemed clear to him. It is unnecessary to trace the various reorganizations of the university's legal offerings that he devised to appreciate the significance of his distinction between the three systems embodied in them. These systems were presented to the board of trustees in 1903. There were, he observed:

(1) The purely scientific system of the University School, repre-

40. ACUA, Robinson Papers, for copies of published and unpublished works, manuscripts, and lecture notes.

41. *Legal Education: Its Purposes and Methods*, 1 CATH. U. BULL. 179 (1895).

42. ACUA, Academic Senate to 1907, General, Law School, Robinson to Keane, New Haven, Conn. (May 22, 1892).

43. ACUA, Robinson Papers, Correspondence, Professional, Undated, T.J. Bouquillon to Keane (n.p., n.d.); Office of the Rector (Keane), Robinson to Keane, Laconia, N.H. (Aug. 14, 1891) and New Haven, Conn. (Oct. 22, 1891). See Nuesse, *Thomas Joseph Bouquillon (1840-1902), Moral Theologian and Precursor of the Social Sciences in The Catholic University of America*, CATH. HIST. REV. (forthcoming).

sented in the Year Book of 1901-1902 by the courses offered for the degrees of J.C.D., J.U.D. and LL.D.; (2) The combined professional and scientific system represented in the same Year Book by the courses offered for the degrees of LL.M., J.D. and D.C.L.; (3) The purely professional system represented in said Year Book by the courses offered for the degree of LL.B. and conducted by professional as distinguished from scientific methods.

He could tell the rector and the board that in the United States there were "no law schools of the first class except the one conducted by the Faculty of Law of the Catholic University."⁴⁴ In retrospect, all this may seem to be, as a recent historian has remarked, unduly pretentious for a new school with uncertain enrollment that had to "scratch and scrape" to find teachers who would accept its meager salaries.⁴⁵ Robinson's hope for a "university school," however, was akin to that of others of his time who preferred European models for legal education but were being overwhelmed by the vogue for what Harvard had initiated.⁴⁶

While the preliminary discussions were still under way, Robinson was raising the question "whether this University shall emancipate itself from subservience to variable bar requirements, shall cut itself loose from the crowd of competing professional schools, and shall confine itself to scientific methods of study in reference to all its legal instruction." It was his conviction on coming to the campus that

the teaching of law as a philosophic science involved the repudiation of the technical methods of the professional schools and the adoption of the University methods of the European schools; and as the University was neither bound by past customs or traditions nor activated by considerations of reverence, the founders of the Law School were free to follow the example of the great schools of Europe and act on the suggestions of the Bar Association of the United States.⁴⁷

Keane had agreed from the beginning that law, like all other subjects then offered, should be a graduate study.⁴⁸

In Robinson's view, the plan for the school over which he was to preside

44. ACUA, Board of Trustees, Minutes, Exhibits (Apr. 22, 1903).

45. R. STEVENS, *supra* note 39, at 40.

46. Particularly noteworthy is the abortive attempt made by Ernst Freund to establish such a model at the University of Chicago. See W.C. CHASE, *THE AMERICAN LAW SCHOOL AND THE RISE OF ADMINISTRATIVE GOVERNMENT* 46-59 (1982).

47. ACUA, Academic Senate to 1907, General, Law School, Memorandum to Academic Senate Committee (ca. 1901-02). The ABA COMMITTEE ON LEGAL EDUCATION, 1892 REPORT 360, had recommended the European approach.

48. ACUA, Robinson Papers, Correspondence, Professional, Keane to Robinson, Washington, D.C. (Aug. 18, 1891); *id.* Atlantic City, N.J. (June 6, 1894).

was the only response then being made to a condemnation of the "degeneration" of American law schools that the American Bar Association (ABA) had issued in 1893. The report, prepared by a committee of the Association and the United States Bureau of Education, had deplored the tendency that was placing professional education under the virtual control of local lawyers, thus depriving law schools of their cosmopolitan character and the universities of their authority over their own curricula.⁴⁹ In Washington, for example, the law schools of both Georgetown and the Columbian College that is now The George Washington University were thriving as evening schools taught by practicing attorneys. Harvard and Columbia, however, had already responded to the ABA committee's report by imposing higher standards of admission and by employing the case method of instruction, while Yale and Columbia were offering graduate courses.

To Robinson's chagrin, before the actual inauguration of the School of the Social Sciences in 1895, the decision was made, as he put it, "to open the School, at least for a time, to undergraduate professional students in law."⁵⁰ He attributed his acquiescence to this change in plan to a perception "that the Trustees wanted in some way to have here a law school in which young men could be educated for the bar."⁵¹ Apart from Robinson's own disappointment, Georgetown's officers saw the action as a violation of the university's earlier public commitment to offer graduate programs exclusively.⁵² Keane explained that the university was not yet "in a condition to count upon the cordial cooperation of all Catholic institutions, and still less institutions which, like the Medical and Law Schools of Georgetown, are really not Catholic in the personnel of their faculty."⁵³

It may need to be made explicit that then, and for some time to come, professional legal training in a university was not at the postbaccalaureate level. Although the law school of Harvard University began to require a college degree for admission in 1893, as late as 1921 no state required more than a high school diploma by way of formal education from those whom it

49. AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT ON LEGAL EDUCATION (1893).

50. ACUA, Robinson Papers, C.U.A.—Founding Documents, In the Matter of the School of the Social Sciences (Oct. 5, 1900).

51. ACUA, Robinson Papers, Correspondence, Professional, Robinson to Keane, New Haven, Conn. (May 29, 1894).

52. AGU, Rector's Letters (Jan. 9, 1893-Nov. 17, 1895 and Nov. 30, 1895-Mar. 1, 1898), Richards to Pardow, Washington, D.C. (May 16 and June 19, 1895) and Richards to L. Martin, S.J., Washington, D.C. (Jan. 12, 1896) (copies). Martin was the Father General of the Society of Jesus.

53. ACUA, Robinson Papers, Correspondence, Professional, Keane to Robinson, Washington, D.C. (Feb. 22, 1895).

admitted to the bar. It was not until 1923 that the American Bar Association's Council on Legal Education enforced a requirement for admission of one year of college as a standard for approval of law schools. In 1925, this standard was raised to two years.

In the beginning, therefore, applicants could be admitted to the law school of this university immediately following their graduation from high school. Although it was not deemed expedient to enforce a higher standard, in view of the "state of professional opinion" on the subject, the catalog of the school did advise that it was "regarded as most desirable that every student of law should have received a full collegiate education and have obtained the degree of Bachelor of Arts."⁵⁴ Actually, according to a statistical compilation of alumni made in 1933, sixty-eight percent of the first professional degree students entering during Robinson's deanship already had college degrees.⁵⁵ For example, four of the eight graduates in 1899, all eight in 1902, and all five in 1906, had earned baccalaureate degrees before their admission. It was not until 1934, for extern applicants, and 1938, for those from the campus, that the baccalaureate degree became a prerequisite. At that time, the law school was one of few in the country with such a standard. Georgetown's law school took the step in 1936.

Undergraduate concerns are reflected in the minutes of the faculty which are extant only for the years after Robinson's death. Individual evaluations of student progress are given by far the most space in these minutes. Unsatisfactory progress was reported to a parent, usually the father of the delinquent student. Out of deference to state bar requirements, a student who might complete his studies before attaining his majority would not receive his law degree until his twenty-first birthday. What may have counted most on the campus in later years, however, was the eligibility of law students for football.

During his sixteen years of pioneering in legal instruction at this university, Robinson lived with basic problems that were also to beset his successors. One of these, of course, was the general problem of the accommodation of a professional school in a university. This is sometimes still a source of tension, in large part because of the difference in character between education for the first professional degree and education for the advancement of liberal learning. Moreover, the profession, through such agencies as the ABA's Council on Legal Education and the Association of American Law Schools (AALS), has seemed to support a kind of "separa-

54. YEAR-BOOK OF THE CATHOLIC UNIVERSITY OF AMERICA 1896-97, at 70 [hereinafter cited as 1896-97 YEAR-BOOK].

55. ACUA, Office of the Rector (Ryan), Law School, 1933, J.M. Fox to J.H. Ryan, Washington, D.C. (Apr. 28, 1933) (relying upon a document prepared by R. Everitt).

tism" from general university procedures for professorial promotions, salaries, and the like.

Robinson had made clear in the beginning his distinction between a "university school" and a "professional school." The announcements issued during his deanship suggest that he maintained his philosophical orientation insofar as his statements of purpose emphasized "the science of law in its principles, its reasons, and its historical development" somewhat more than simply "thorough training in the intellectual and physical operations which constitute the practice of law."⁵⁶ For the students in the "professional school," nevertheless, the courses appear to have been typical of those of the time. Robinson's textbook, *Elementary Law*,⁵⁷ which was widely used nationally, was a systematic compilation of legal rules. Its later companion volume, *Elements of American Jurisprudence*,⁵⁸ which was intended to be more fundamental, was also for the practitioner. And before the school was opened, Robinson had acknowledged, "If we want lay students we have got to go into the open market for them and advertise with all the diligence and wise seductiveness that other institutions do."⁵⁹ Since preparation for the bar had been imposed upon the school, he had attempted it, he declared, "not by departing from the original idea and method of the University School but by offering additional courses having the same purpose and method as those of the ordinary Professional Schools and fulfilling the conditions imposed upon them by the customs and rules of the American bar."⁶⁰ In fact, a professional doctorate (doctor of civil law) was offered in addition to the academic doctorate.⁶¹

The curricula for the graduate degrees, it was said, were "formulated with a special view to the needs of those who may desire to make a systematic investigation of the more difficult branches of the law under the guidance of the Law Department and yet are unable to leave their homes or places of business to take up their work at the University."⁶² Work for the master's degree was described as "consisting of original research in some special branch of the Common Law elected by the student" and that for the doctorate as "comprising the Roman Law course . . . and one or more Common

56. 1896-97 YEAR-BOOK, *supra* note 54, at 58.

57. W. ROBINSON, *ELEMENTARY LAW* (1882). The textbook was revised in 1910.

58. W. ROBINSON, *ELEMENTS OF AMERICAN JURISPRUDENCE* (1900).

59. ACUA, Pace Papers, Official Correspondence 1890-1933, Faculty Matters, Robinson to Edward A. Pace, New Haven, Conn. (Feb. 3, 1895).

60. ACUA, Academic Senate to 1907, General, Law School, Memorandum to Academic Senate Committee (ca. 1901-02).

61. T.J. CONATY, *supra* note 36, at 30-31.

62. 1896-97 YEAR-BOOK, *supra* note 54, at 60.

Law Courses.”⁶³ Course requirements became more specific as the doctoral programs became more differentiated. Thus, the professional degree of doctor of civil law was given after prescribed courses in Roman and civil law and in national legal systems; the doctor communis juris after work in English and American jurisprudence; the doctor utriusque juris after completion of requirements for both the preceding degrees; and the doctor of laws after attainments in comparative jurisprudence.⁶⁴ The dissertations accepted for these degrees, although indicating by their titles investigation into historical and comparative topics, reflect only dimly the announced philosophical objectives of the school. Yet one of the first candidates for the master’s degree, addressing a commencement audience in 1896, could boast:

Having founded the fabric of the law upon a system of jurisprudence laid down by St. Thomas in his immortal principles as to the nature, character, and object of human law, we have succeeded in erecting an edifice that shall be dedicated not merely to commercial ends, but shall serve those higher purposes of right and justice in whose triumph no man so great but he may be proved to be identified.⁶⁵

After seven years, the faculty offered a series of courses without credit for the student body at large.⁶⁶ Robinson pointed with particular pride to courses in Roman law and natural law and kindred subjects that were being followed by students from other schools as well as by those from law. He reminded his colleagues that “instruction in fundamental law to the whole student body,” which he now professed to consider the most important purpose of the school, had been the work of Blackstone and his successors at Oxford and of Kent at Columbia.⁶⁷ In 1905, he presented this objective of instruction, which was intended to be serviceable in the subsequent careers of the students, as the most important “under the existing conditions of the University.”⁶⁸

Long before—in fact, almost at once—Robinson had given up his original project of uniting the study of law with the social sciences. His complaint, it was alleged, was that law was being “buried” under the name of the

63. YEAR-BOOK OF THE CATHOLIC UNIVERSITY OF AMERICA 1897-98, at 33.

64. YEAR-BOOK OF THE CATHOLIC UNIVERSITY OF AMERICA 1901-02, at 93-94 [hereinafter cited as 1901-02 YEAR-BOOK].

65. 2 CATH. U. BULL. 446 (1896) (quoting T. Mott).

66. YEAR-BOOK OF THE CATHOLIC UNIVERSITY OF AMERICA 1902-03, at 87.

67. ACUA, Robinson Papers, Lectures, Notes, Sermons, Speeches (n.d.).

68. *Report of the Dean of the Faculty of Law*, in D.J. O’CONNELL, SIXTEENTH ANNUAL REPORT OF THE RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA, APRIL 1905, at 36.

school.⁶⁹ Describing the organization that he had originally proposed as “merely tentative in character” and of “doubtful validity,”⁷⁰ he had initiated an academic reorganization, apparently without consulting his colleagues. Not all of his suggestions were followed by the senate and the trustees, but the end result was the establishment during the academic year 1897-98 of a faculty and school of law over which Robinson presided until his death in 1911.

Robinson seems never to have valued collegiality as highly as his colleagues in academic departments. Before the opening of the School of the Social Sciences, he had counseled Keane that “if one department has any control over or responsibility for another[,] jealousies and friction and dissension are almost certain to arise.”⁷¹ Looking back eleven years later, he lamented that “the development of the Law Department has not been aided as it ought by the *actual* governing body [the academic senate] of the University.”⁷² Meanwhile, during 1897 and 1898 he prepared a memorandum urging the rector to be “what the general is to his army in the field, what the Supreme Pontiff is to the hierarchy and the faithful of the Universal Church.”⁷³ Although the memorandum was prepared when the second rector of the university was being subjected to criticism, it was not used by him but was printed and circulated to assist the third rector, who was in constant disruptive conflict with the academic senate during his tenure.⁷⁴

The tension that is now commonplace between the profession at large and the university institution was perhaps foreshadowed in Robinson’s measure of the success of the so-called undergraduate instruction by a professional criterion. He held that “as long as our graduates stand well at bar examinations and hold equal rank with those of Harvard, Yale, etc. (as they have hitherto done), we need have no uneasiness as to the quality and quantity of the work we do.”⁷⁵ Although accrediting by professional associations was still in the future, the impact of the profession was being noted through “the

69. ACUA, Academic Senate, Records to 1907, C.P. Neill, *A Documentary History of the School of Social Sciences* 3 (n.d.).

70. *Report of the Dean of the Faculty of the School of Law*, in T.J. CONATY, *EIGHTH ANNUAL REPORT OF THE RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA* 38 (1897) [hereinafter cited as *EIGHTH ANNUAL REPORT*].

71. ACUA, Office of the Rector (Keane), Robinson to Keane, New Haven, Conn. (May 3, 1894).

72. ACUA, Office of the Rector (O’Connell), Robinson to O’Connell, Liberty, N.Y. (July 23, 1905).

73. *THE ORGANIC CHARACTER OF THE CATHOLIC UNIVERSITY* 7 (1904).

74. ACUA, Office of the Rector (O’Connell), Robinson to O’Connell, Laconia, N.H. (Aug. 3, 1904).

75. ACUA, Office of the Rector (O’Connell), Robinson to O’Connell, Liberty, N.Y. (July 23, 1905).

state authorities who fix the standard and the course of studies and control the admission of students to the Bar."⁷⁶

There was a problem of faculty recruitment. Keane and Robinson were grappling with it almost from their first conference. After consideration of eminent jurists such as Charles Bonaparte and Frederick Coudert who were already fully occupied and some others who lacked desirable qualifications, Keane saw "a real ray of sunshine" when Robinson suggested the appointment of his brother John, who was younger in years but seemed to Keane to be "much older in appearance and manner."⁷⁷ In later years, the dean was often the only full-time professor. In an annual report to the trustees, the second rector observed that "law professors, as a class, do not yet exist in this country."⁷⁸ Robinson saw as a "crying need" the training of someone who would succeed him, fearing that upon his resignation or death the law school might collapse or be reduced "to the academic grade and methods of the common law school around us."⁷⁹ Early in his deanship he proposed that priests should be trained for faculty positions because the laymen that would be wanted would be able to "command in professional work income many times greater than any we shall ever be able to pay, and if they might be contented to sacrifice wealth to a cause, their wives and families are not likely to be."⁸⁰

In the beginning, instruction in law was described by the dean as utilizing "a combination of the text-book and case systems."⁸¹ According to the announcements of a later year, the procedure included "a thorough preliminary drill in elementary text-books covering the whole body of the law, followed by the detailed study of its principal divisions in approved treatises and collections of leading cases, and a careful training in methods of original research and in the discussion and determination of legal questions."⁸² Yale, from which Robinson had come, had taken pride in its own "method" of lectures and daily recitations and did not introduce the case method until the academic year 1903-04—and then for third-year students only.⁸³ Before

76. ACUA, Robinson Papers, Lectures, Notes, Sermons, Speeches (n.d.).

77. ACUA, Robinson Papers, Correspondence, Professional, Keane to Robinson, Washington, D.C. (Dec. 4, 1894 and Jan. 28, 1895).

78. EIGHTH ANNUAL REPORT, *supra* note 70, at 40.

79. ACUA, Office of the Rector (O'Connell), Robinson to O'Connell, Liberty, N.Y. (July 23, 1905).

80. ACUA, Academic Senate to 1907, General, Law, Robinson to Conaty, Laconia, N.H. (July 19, 1898).

81. KEANE, SEVENTH ANNUAL REPORT OF THE RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA, MARCH 1896, at 36.

82. 1901-02 YEAR-BOOK, *supra* note 64, at 29.

83. R. STEVENS, *supra* note 39, at 61-62.

Robinson's death, however, members of the first-year class at this university claimed to show "great interest in the weekly discussion of previously prepared cases" while the second-year's work was reported to consist "almost entirely of a study of carefully prepared and selected cases."⁸⁴

Seen from the point of view of the administrative officers and the trustees, the problem of student enrollment could not but loom largest. The reason was financial. Although, as Keane put it, financial considerations made it "desirable that the number of chairs should at first be as small as necessary completeness will permit," he could add that "what is necessary must be done."⁸⁵ After twenty-one students enrolled in law during the first year, there was even some anticipation on the part of Keane's successor that the law school might become "the largest section of the University."⁸⁶ This hope was soon dashed, although mention should be made in passing that the geographical origins of the students who came to the new school were nationally dispersed. Ethnically, the students appear to have been predominantly of Irish descent, but graduate students from Japan, the Philippines, and Turkey added to the cosmopolitan character of the small student body. That the students valued their experience can be inferred from the recollection of a disgruntled survivor of the first graduate class. He wrote to the chancellor of the university when the fiftieth anniversary of the admission of the first laymen was approaching, expressing his opinion that "we had a wonderful Law School for some ten years after its opening."⁸⁷

Enrollment became a crucial problem for the entire university—which had no more than about 250 students even in Robinson's last years—when a financial crisis was revealed in 1904. The principal of the endowment of the university had been invested by its treasurer, a trustee and highly respected real-estate broker, to finance sales of property in the Woodley Park area of Washington. After he was declared involuntarily bankrupt in 1904, the university was able to recover by protracted litigation only about 40% of its funds. There was speculation at the time of the collapse that the university might not be able to reopen. Fortunately, during the previous year papal approval had been obtained for an annual collection for the university in the dioceses of the United States and this, for many years, was to supply about thirty percent of the institution's total revenues. But the original intention of the founders to finance instruction entirely from endowment income was

84. Walsh, *THE UNIVERSITY SYMPOSIUM* 31-32, 76 (Feb. & Apr. 1911).

85. ACUA, Robinson Papers, Correspondence, Professional, Keane to Robinson, Washington, D.C. (Aug. 18, 1891).

86. *EIGHTH ANNUAL REPORT*, *supra* note 70, at 7.

87. Archives of the Archdiocese of Baltimore [hereinafter cited as AAB], Nelligan Papers, J.L. Kennedy to M.J. Curley, Greensburg, Pa. (July 26, 1945).

shattered. It was not easy to respond, therefore, to such urging as that of a law alumnus of 1901, who in 1932 was elected president of the American Bar Association and who upon joining the board of trustees in 1925 went so far as to assert that "outside of the School of Sacred Sciences, the School of Law should receive more favorable consideration than the other departments because of the character of the activities of its graduates."⁸⁸

The problems were both of number and of quality. Although at the bachelor's level there were never more than eight graduates in a class during Robinson's time, he complained that in the eyes of both students and "outside parties," the school had "suffered amazingly already from the reception of utterly unqualified boys." They were being admitted, apparently, under procedures then in effect. Robinson held that "no man who cannot study in Latin text-books ought to be admitted to the University" unless he would agree to acquire the facility before his third year, when the Latin would be used.⁸⁹

One of the reasons for lack of numbers was seen as the university's distance from the central city. The second rector raised the problem with the trustees as early as 1897 and in 1901 virtually recommended relocation of the school.⁹⁰ So far as undergraduates were concerned, Robinson described the 1,100 law students in Washington as "with scarcely an exception, young men in government employ, who after a long day's work occupy their weary evenings in attending lectures and finally acquire knowledge enough to obtain a degree." With four law schools to serve them in the central city, they could hardly be expected to come out to remote Brookland, even if the university should wish to recruit "from this class of men." Graduate students, on the other hand, pursuing advanced study while engaged in professional practice, could find Washington "a favorable place for their class of work" and might increase in number if the school were moved downtown.⁹¹

Undoubtedly another reason for the small numbers was the lack of practical appeal in the school's announced aims which Robinson had drafted. It was true, as he emphasized to the board, that in the United States "the number seeking instruction in the abstract sciences" was "very slight" and that this was "particularly true of Catholic laymen." Robinson ventured the opinion that if it had not been for "opportunities for training in law, engi-

88. AAB, Curley Papers, M588, C.E. Martin to Curley, Martinsburg, W. Va. (Aug. 7, 1926).

89. ACUA, Academic Senate to 1907, General, Law School, Robinson to P. Garrigan, Laconia, N.H. (Sept. 4, 1899). Garrigan was Vice Rector.

90. EIGHTH ANNUAL REPORT, *supra* note 70, at 39-40; TWELFTH ANNUAL REPORT OF THE RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA 8 (1902).

91. ACUA, Robinson Papers, Lectures, Notes, Sermons, Speeches (n.d.).

neering, journalism and the practical physical sciences, the lay schools of the University would have long since closed their doors."⁹²

The cumulative effect of these problems of clientele, curriculum, faculty, and enrollment inevitably led to doubts about the viability of the university's legal programs. Robinson had begun with doubts as to whether the professional venture might not "eventually prove to have been an unfortunate concession," noting that it had "certainly very much complicated the work of [the] instructors and tended to obscure the real character and purpose of the School."⁹³ Even at the graduate level, the contemporary policy of allowing students to privately pursue their studies raised questions "growing out of the character of such a training as can be gained by private study without personal contact and with instruction from the Faculty, the cheapening of the University degrees, the danger of conferring academic honors upon persons comparatively unknown, etc."⁹⁴ To maintain his basic organizational distinction, the name Professional was substituted for Undergraduate in 1898, so that the single faculty was understood to be conducting two schools, the Professional and the University. In 1902, these became the School of Law, projected to be conducted in the city, and the School of Jurisprudence.⁹⁵

Robinson was consistently placed on the defensive, it seems, even against his own judgment, as when he eventually proposed that the university "could do as the other Law Schools in Washington do—namely—procure good instruction from the City Lawyers in the evening," if only the university would provide the necessary facilities and salaries.⁹⁶ Years after Robinson's death, a comptroller who wanted the law school closed recalled that Robinson "said he had been disillusioned" and had become "strongly convinced that the School could not be made a success."⁹⁷ In 1908, the board actually voted to discontinue the professional program as "unnecessary and unprofitable" while continuing Robinson in his capacity as a professor in common and civil law.⁹⁸ But this decision seems not to have been imple-

92. ACUA, Board of Trustees, Minutes, Exhibits, Robinson to Rector and Board (Apr. 22, 1903).

93. ACUA, Robinson Papers, C.U.A.—Founding Documents, In the Matter of the School of the Social Sciences (Oct. 5, 1900).

94. T.J. CONATY, NINTH ANNUAL REPORT OF THE RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA, OCTOBER 1898, at 32-33.

95. ACUA, Academic Senate, Minutes (Mar. 25, 1898 and Mar. 12, 1902).

96. ACUA, Office of the Rector (O'Connell), Robinson to O'Connell, Liberty, N.Y. (July 23, 1905).

97. ACUA, Office of the Rector (McCormick, Acting Rector), Law, 1935, J. Harvey Cain, The Catholic University Law School (Nov. 5, 1935).

98. ACUA, Board of Trustees, Minutes, Exhibits (May 6, 1908); *id.* Academic Senate, Minutes (May 21, 1908).

mented. Two years later, the board's permanent visiting committee recommended additions to the undergraduate department of common law and Robinson reported that "twenty-six students were doing graduate work with him in the city."⁹⁹ Actually, as letters that he had written much earlier reveal, although he had first looked upon his move to Washington as possibly temporary, fearing that his health might be impaired by the climate, he had long since "embraced the cross" and cast his lot with the university.¹⁰⁰

Robinson's immediate successors were by no means as articulate as he was about the purposes of legal education. It is particularly paradoxical, in view of the basic conceptions that he held, that he prepared the way for the predominance of professional training in the school. The statistical measures are clear. During Robinson's deanship, twenty-two doctorates were earned, thereafter only eight. Candidates for the master's degree remained more numerous, allowing for a sizeable exodus when the school was reorganized under Robinson's successor. Eighteen master's degrees were conferred under Robinson, ninety-seven afterward, and as late as the first semester of the academic year 1953-54, just before graduate programs in law were suspended, there were seventeen students enrolled for the degree. At the bachelor's level, after Robinson's administration, the number increased somewhat, although irregularly, to a high point of twenty-three degrees in 1940. After World War II there was a temporary surge in the classes from 1949 to 1952, when there were successively forty-nine, forty-eight, thirty-eight, and thirty-four graduates. Then enrollment plummeted again.

Robinson's immediate successor was Thomas C. Carrigan (1872-1921) who had only just come to the university from Worcester, Massachusetts to give part of his time to instruction in law and to assist the Reverend Thomas E. Shields. Father Shields was an ingenious priest who was then founding the Catholic Sisters College and summer sessions, which were an innovation at the time, and also the university's program of affiliation through which it was to assist Catholic high schools and colleges for more than half a century. While supporting himself by teaching in evening schools, Carrigan had completed his baccalaureate education at Boston College and legal studies at Boston University and had been admitted to the Massachusetts bar. His interest in the practice of law may have been limited. After locating in Worcester, he had earned master of arts and doctor of philosophy degrees at

99. ACUA, Board of Trustees, Minutes (Apr. 6, 1910); *id.*, Academic Senate, Minutes (Nov. 9, 1910).

100. Jackson, *William C. Robinson and the Early Years of The Catholic University of America*, 1 CATH. U.L. REV. 58-62 (1951) (reviewing correspondence with Simeon E. Baldwin, one of the New Haven associates who, with Robinson, was a guiding power of the Yale law school after 1869).

Clark University. A compiler of a statistical history of the law school in 1933 was critical of Carrigan as having "little if any legal training or experience,"¹⁰¹ but probably greater weight should be given to the testimony of Frederick J. DeSloovere, who was a member of the faculty from 1917 until he left for New York University in 1922, and who evaluated Carrigan confidentially as "a good administrator and a man of hardheaded practical experience."¹⁰²

Carrigan was dean for a decade, until his death late in the summer of 1921. When he was appointed acting dean, there was only one other full-time member of the faculty. Part of the school's reorganization was the adoption of a rule forbidding the engagement of part-time teachers.¹⁰³ The only exception made was to continue in service Judge William H. DeLacy, whom Theodore Roosevelt had appointed in 1906 to be the first judge of the juvenile court of the District of Columbia and who continued in this office until 1913. At the beginning of the second semester, in February, 1912, Peter J. McLoughlin, who was pursuing the degree of juris doctor, and Walter B. Kennedy, who later went to Fordham, were appointed to full-time positions. At the November meeting of the trustees, Carrigan was officially appointed to the Whiteford Chair of Common Law and to the deanship.

The minutes of the faculty during Carrigan's deanship reveal his systematic attention to faculty responsibilities and student progress. Acquisitions for the library were obtained and the faculty was asked "to set [a] good example to the students" who were judged to be "seriously deficient" in their use of the library.¹⁰⁴ Preparation for state bar examinations was facilitated. With the help of a trustee, Walter George Smith, a prominent attorney of Philadelphia, the Supreme Court of Pennsylvania approved a petition to recognize the university's law degrees without further examination.¹⁰⁵ Moreover, the school was granted certification by the Board of Regents of the State of New York.¹⁰⁶ Characteristically, during his final illness Carrigan

101. ACUA, Office of the Rector (Ryan), Law, 1933, J.M. Fox to J.H. Ryan, Washington, D.C. (Apr. 28, 1933) (forwarding document prepared by R. Everitt).

102. AAB, Curley Papers, D726, DeSloovere to Ryan, New York, N.Y. (May 26, 1930) (copy).

103. Responding to a questionnaire of the American Association of Law Schools in 1921, Carrigan wrote: "This Law School was reorganized after the death of Dean Robinson in 1911. Since re-organization [sic] no part time instructor has or can be engaged, for a rule forbidding it was adopted in 1912." ACUA, *supra* note 2, School of Law, 1932-54, AALS 1928-35. The rule does not appear in the minutes.

104. ACUA, School of Law, Minutes (Oct. 28, 1919).

105. ACUA, School of Law, Minutes (Apr. 17, 1912); ACUA, School of Law, 1932-34, Law School, Miscellaneous Documents, C.L. McKeehan to T.J. Shahan, Philadelphia, Pa. (June 4, 1912). On Smith, see T. BRYSON, WALTER GEORGE SMITH (1977).

106. ACUA, School of Law, Minutes (Nov. 10, 1914 and Dec. 8, 1914); ACUA, School of

was still sending word to the faculty that “under no circumstances must they forget that the school standards are to be upheld.”¹⁰⁷

Carrigan was later alleged to have striven to increase the enrollment of the school by “high-pressure salesmanship” which produced “large numbers and equally large losses.”¹⁰⁸ Actually, as he reported to the Association of American Law Schools, there were never “over eighty students at one time.”¹⁰⁹ Through Trustee Smith, Carrigan was receiving and perhaps heeding the advice of Roscoe Pound to the effect that Catholic schools should “be content with small things in the way of numbers” and begin “thoroughly at the bottom, along some carefully chosen line,” as Langdell had done at Harvard, so that “instead of acquiescing in an inferior position and looking for their ideals and methods to the academic or proprietary law schools of the country” they might “set up an ideal and method of their own and become in that way a real force in the legal education of the country.” Otherwise, Pound counseled, they should “bestir themselves thoroughly to rank with the best of American academic schools.”¹¹⁰

Carrigan was straightforward about the Catholicity of the school, first in claiming to graduate “no *Catholic* student . . . without a knowledge of the principles and operation of the Constitution of the Catholic Church,”¹¹¹ and further, as being serious in his attempt

to develop in the student the consciousness that, as a Catholic, the observance of law is “bred in the bone”; that, as a Catholic, he is a member of a great law-making and law-abiding body; and that as a lawyer and a Catholic, he ought to have in and out of court a sympathetic attitude towards the observance of laws that cannot be so readily expected from those not fortunate enough to be members of the Catholic Church.¹¹²

He may have been stretching a bit, however, in describing the case method, by then “the prevalent method of teaching,” as “a modification of that found in medieval universities” and in use “in many Catholic seminaries in their

Law, 1932-34, Law School, Miscellaneous Documents, A.S. Downing to Carrigan, Albany, N.Y. (Dec. 1, 1914) (copy).

107. ACUA, School of Law, Minutes (Apr. 12, 1921).

108. ACUA, Office of the Rector (Ryan), Law, 1933, Everitt, in Fox to Ryan, Washington, D.C. (Apr. 28, 1933).

109. ACUA, School of Law, 1932-54, AALS, 1928-35, Carrigan to H.C. Jones, Washington, D.C. (June 6, 1921) (copy).

110. ACUA, Office of the Rector (Ryan), Law, 1928-30, J.M. Fox to Ryan, Washington, D.C. (Aug. 30, 1930) (quoting excerpts from letters of Pound to Smith sent by Smith to Carrigan, Feb. 11, 1916 and Feb. 29, 1916).

111. *The Catholic University Law School and Law Library*, 24 CATH. U. BULL. 73 (1918).

112. Carrigan, *The Catholic University Law School*, 21 CATH. U. BULL. 158 (1915).

classes in moral theology."¹¹³

Although his colleagues eulogized him especially for completing the transition to the case method of instruction and for his improvement of the law library, undoubtedly the most noteworthy development of Carrigan's administration was the decision of the faculty to apply for membership in the AALS.¹¹⁴ Carrigan seems to have been reluctant to press for this decision out of fear that the school might not have been able to maintain the standards of the American Bar Association, which were about to be raised. The secretary-treasurer of the AALS, who had visited the school during June 1920, asked its most prominent alumnus, Clarence E. Martin, to talk to Carrigan, "feeling," as Martin reported the talk, that the application would be "a boost to legal education generally because of the standing of the Catholic University." Martin added his own argument that the university should "assist in the moulding of the ideals of this association by becoming a pioneer in its movements."¹¹⁵ When the application was presented, the AALS officer wrote that it was the opinion of the reviewing committee that "your school clearly meets the requirements for admission and more too."¹¹⁶ Carrigan took the invitation from the AALS as a vindication of the standards that the law school had held, minimal for any day law school as he regarded them, although they had proven costly in terms of enrollment.¹¹⁷

Before the school was elected to membership by unanimous vote at the December 1921 meeting of the AALS,¹¹⁸ Carrigan had died and McLoughlin (1874-1928), his vice-dean, had succeeded him. It was gratifying that the school was the first in the District of Columbia to be officially recognized as being in compliance with ABA standards. The immediate implications were in requirements for admission. Beginning in September 1923, applicants had to present one year of college work or its equivalent, and in September 1925, the requirement became two years. The result was that there was no entering class at all in 1923. Bishop Shahan, who was then in his third and last term as rector, informed the trustees that the undergraduate program would have to be discontinued and in their spring meeting the next year the estab-

113. *Id.*

114. ACUA, School of Law, Minutes (Oct. 19, 1920). For the resolutions adopted by the academic senate after Carrigan's death, see 27 CATH. U. BULL. 68-69 (1921).

115. ACUA, School of Law, 1932-54, AALS 1928-35, Martin to Carrigan, Martinsburg, W. Va. (Sept. 18, 1920).

116. ACUA, School of Law, 1932-54, AALS 1928-35, Jones to Carrigan, Urbana, Ill. (Sept. 29, 1921).

117. *Report of the Dean of the School of Law and Law Libraries*, in ANNUAL REPORT OF THE RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA . . . APRIL 1920, at 24.

118. ACUA, School of Law, 1932-54, AALS 1928-35, Jones to McLoughlin, Urbana, Ill. (Jan. 3, 1922).

lishment of a graduate school of law was authorized.¹¹⁹ As it had done before, however, the professional program survived this decision. Soon Shahan reviewed both sides of the issue for the trustees and concluded that "since the complete elimination of Law from the University is not to be considered," it seemed to be "more practical and more hopeful" to "build up the undergraduate School and retain as many students as possible for graduate courses."¹²⁰

The reasoning that Shahan set forth reflected both the ideals of the university and a calculation of the probable effects of the movement to make professional training in law postbaccalaureate in character. This movement, incidentally, was not to be as rapid as seemed likely in 1923 and 1924. Martin was actively defending professional training. When he learned of the plan to discontinue what was named the undergraduate program, he called it "more of a step backward" than any other action he could think of, and at the same time he defended the purpose of the ABA drive for the baccalaureate requirement for admission.¹²¹ He professed his belief that

if the Catholic University would live up to its ideal, it will send to every state in the Union each year, a Catholic lawyer better trained than the average man in the science of the law. This man will have an undergraduate degree, as well as his law degree; he will be looked upon by the examining boards of the country as a Harvard graduate is regarded today.¹²²

Shahan's assessment of the possibilities was just as speculative:

It is quite clear that the entrance requirements, at least in the stronger universities, are to be continually raised until the point is reached where the A.B. degree will be necessary for admission to the first year of the Law School. When this requirement becomes general in the universities our School of Law will be on a level with other Law Schools in this respect and have an equal chance of attracting students. These will make their choice in view of the reputation of the different Schools as regards faculty, equipment and courses. In the meantime, we shall have to be contented with a small number of students. This is not necessarily a drawback. It may be an advantage, provided we can make up in quality of instruction and the attainments of our graduates what we lack in

119. ACUA, Board of Trustees, Minutes (May 2, 1924); see AAB, *supra* note 87, Curley Papers, S839, Shahan to Curley, Washington, D.C. (Apr. 25, 1924).

120. THE RECTOR'S REPORT 1923-24, at 10.

121. ACUA, Office of the Rector (Shahan), Correspondence, School of Law, Martin to Shahan, Martinsburg, W. Va. (Feb. 25, 1924).

122. AAB, Curley Papers, M588, Martin to Curley, Martinsburg, W. Va. (Aug. 7, 1926).

numbers.¹²³

Martin wrote optimistically to the chancellor that “[a]fter we are certain of a number of students and secure a faculty commensurate therewith, the school will take care of itself.”¹²⁴ Of course, enrollment was not to increase for many years. During the seven years that McLoughlin was dean, only 103 students entered first-year law and of these only 53.5% obtained the first professional degree.¹²⁵ Despite this situation, the faculty rejected Shahan’s suggestions that the undergraduate program should be relocated downtown and that the first-year students of the law school and of the unaccredited Columbus University should be combined. It also declined to act on Shahan’s further suggestion that an attempt should be made to induce the Knights of Columbus to allocate scholarships for the school.¹²⁶

In the spring of 1923, just before the prerequisite of a college year for admission was to take effect, the faculty proposed that the time was “ripe for the establishment of a pre-legal course,” such as was common in other institutions at the time. After discussions in three meetings of the senate, the program was authorized in December, when the effect of the new prerequisite was already apparent.¹²⁷ At the close of the following year, the dean could report that the ten teachers in the school had given thirty-two courses to seventy-seven students and that of the latter, thirty-four were registered in the school, fifteen in the prelegal program, and the remaining twenty-eight in the School of Science, following the university law lectures.¹²⁸

There was also a combined six-year arts and law course, through which a student could enroll for three years in academic fields and three years in the conventional law program to earn both the bachelor of arts and the bachelor of laws degrees in six years.¹²⁹ Use of this program appears to have been irregular at first, partly because the faculties went their separate ways in scheduling and partly because at least some faculty members objected in principle. The program was to gain ground somewhat in the 1930’s, until in 1938 it was superseded by the baccalaureate requirement for admission.

Before the beginning of the first semester in 1928, a new rector, James

123. THE RECTOR’S REPORT, 1923-24, *supra* note 120, at 8-9.

124. AAB, Curley Papers, M587, Martin to Curley, Martinsburg, W. Va. (June 8, 1925).

125. ACUA, Office of the Rector (Ryan), Law, 1933, Everitt, in Fox to Ryan, Washington, D.C. (Apr. 28, 1933).

126. ACUA, Office of the Rector, Correspondence, School of Law, McLoughlin to Shahan, Annual Report for 1924-25.

127. ACUA, School of Law, Minutes (May 8, 1923); ACUA, Academic Senate, Minutes (May 24, 1923, June 9, 1923, and Dec. 13, 1923).

128. ACUA, Office of the Rector (Shahan), Correspondence, School of Law, McLoughlin to Shahan, Annual Report (May 22, 1925).

129. ACUA, School of Philosophy, Minutes (Oct. 7, 1919).

Hugh Ryan (1886-1947), noting McLoughlin's death, was able to remark that "[w]e were sorry to see him go, but his going does make easy for the Administration here a very serious problem concerning the School of Law."¹³⁰ The comptroller of the university had characterized the school as "hopelessly in the dumps as present[ly] constituted, and maintained only for sentimental reasons," since no new students had registered in the previous year and there had been no graduates at the year's close.¹³¹ It was no wonder, perhaps, that when "the question arose as to the necessity of having a telephone in the office of the Dean," the request was denied.¹³² Martin, as a trustee, had earlier moved that a committee of the trustees should be appointed to study and plan for the development of the law school.¹³³ While the work of this committee and the search for a new dean were under way, Judge DeLacy took on the duties of acting dean.

The new rector was a vigorous leader. He addressed the problems of the law school in association with Trustee Martin, although not always in agreement with him. An attempt was made to include outstanding Catholic lawyers in informal discussions and in a meeting called for March 4, 1929. Justice Pierce Butler of the United States Supreme Court was one of the participants. Although Ryan began with the view that the school should be closed, he found that with one exception those who had been brought together believed that it should be maintained.¹³⁴ He found both an insistence upon the need for a graduate school and a majority in favor of the professional program as well—those opposed, he observed, "were interested in other undergraduate Law Schools."¹³⁵ It was more difficult to identify a prospective dean. John J. Burns, the assistant to Pound at Harvard, was the first choice. He wrote that the mission of the school "would indeed be fulfilled if two or three of its graduates should go to the bar thoroughly equipped technically and be imbued with the traditions and ideals which all true leaders seek to find in the product of a first grade law School."¹³⁶ Burns elected to remain at Harvard. DeSloovere also declined after observing that "a period of many years may be necessary to recast the reputation of the

130. AAB, Curley Papers, R1384, Ryan to Curley, Washington, D.C. (Oct. 1, 1928).

131. ACUA, Office of the Rector, General Administration, Budget 1928-35; J.H. Cain, Report of the Auditor on the Budget for 1927-28 (June 30, 1928).

132. ACUA, School of Law, Minutes (Mar. 13, 1928 and May 8, 1928).

133. ACUA, Board of Trustees, Minutes (Sept. 13, 1927).

134. AAB, Curley Papers, R1433, Ryan to Curley, Washington, D.C. (Mar. 5, 1929).

135. ACUA, Board of Trustees, Executive Committee, Minutes (Mar. 11, 1929).

136. ACUA, Office of the Rector, Law, 1928-30, Burns, Preliminary Remarks (Mar. 29, 1930).

school.”¹³⁷ Since the executive committee of the board was unable to decide among other candidates, it left the choice to Ryan and Trustees Martin and John J. Sullivan. John McDill Fox (1891-1940) of Marquette University, a graduate of the University of Notre Dame and Harvard Law School, and a member of a politically prominent Wisconsin family, was appointed dean on June 24, 1930.

With Fox's appointment, the rector felt that he could report “that the Law School has again been put on the road originally outlined by the late Dean Robinson, to produce a learned, scholarly, and cultured Catholic bar,” with prospects for attaining this purpose that seemed “very bright.”¹³⁸ Fox not only obtained a secretary and a telephone, but launched immediately into a general plan for the reorganization of the school. The improvement of standards was his first objective. By 1934 he was able to require a baccalaureate degree for admission from all applicants except those enrolled in the university's six-year arts and law program. When he became dean, there were only seven law schools in the country with a baccalaureate requirement and four others that applied the requirement to externs as the university did. He made a weighted average a requirement for graduation and demanded that students spend at least eighteen hours weekly in the law library. By emphasizing specialization in the assignment of courses, he fostered faculty development. He abolished the moot court and substituted for it law clubs and a legal aid society. Opposing the organization of the National Catholic Lawyers Guild, he nevertheless saw possibilities for national service in the establishment at the university of a bureau for diocesan attorneys. When budgetary problems pressed, he opposed movement of the bachelor's program downtown, as was proposed by the rector.

At the outset, Fox determined that, while maintaining and strengthening preparation for the bachelor's degree, “the best immediate results may obtain from focusing on the graduate work.”¹³⁹ He praised the advice he received from the dean of the graduate school, whom Ryan had selected for leadership in the reorganization of the university that he was initiating. He emphasized that he wanted “really graduate work” in law.¹⁴⁰ Attention had to be given to coordinating requirements for graduate degrees with those of other schools. The rector's view, expressed publicly some time later, was

137. AAB, Curley Papers, D726, DeSloovere to Ryan, New York, N.Y. (May 26, 1930) (copy).

138. J.H. RYAN, ANNUAL REPORT OF THE RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA 1929-30, at 7.

139. ACUA, Office of the Rector (Ryan), Law, 1928-30, Fox to Ryan, Washington, D.C. (Aug. 30, 1930).

140. ACUA, Office of the Rector (Ryan), Fox to Ryan (Apr. 13, 1931).

that all professional education on the campus "should be conducted in a graduate way and should follow and even be controlled somewhat by the standards laid down for the Graduate School."¹⁴¹ In this connection, Fox and other members of the faculty promoted the incorporation and activity of the Riccobono Seminar of Roman Law that had been organized in 1929 following lectures that the distinguished Italian scholar, Salvatore Riccobono, had delivered in Washington. After six years the university assumed financial responsibility for this seminar, to which outstanding scholars made presentations.¹⁴² It should be noted also that the decision of the university in 1928 to admit women to postbaccalaureate study had opened the law school to them, although none had yet enrolled and upon taking office Fox had not been clear about the application of this new policy.¹⁴³

Throughout, Fox placed great emphasis upon the development of a "the-
philosophical" jurisprudence, explaining to Professor Joseph H. Beale of Harvard:

This being a Catholic University, we are stressing wherever possible Scholastic Philosophy and Neo scholasticism. We feel that there has been no attempt on the part of the Catholic law schools to do anything in this regard heretofore, except possibly by certain selected courses in what is usually called "natural law," or "Jurisprudence." Our plan is to integrate what we can into the various courses, rather than segregate the subject matter¹⁴⁴

This approach was emphasized in faculty meetings, in reports to the rector and trustees, and in articles that Fox published.¹⁴⁵ When Georgetown law school attempted to recruit Brendan Brown for its faculty, Fox made strenuous representations for Brown's retention, pointing out that in the law world only DeSloovere at New York University and Kennedy at Fordham—both once affiliated with The Catholic University of America—were preeminent as Catholic teachers of law.¹⁴⁶

The university, it should be noted, was being regarded "rightly or wrongly" by such agencies as the Carnegie Foundation for the Advancement

141. Ryan, ANNUAL REPORT OF THE RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA 1935, at 4.

142. ACUA, Office of the Rector (Ryan), Law, 1934, Fox to Ryan (June 9, 1934).

143. ACUA, Law, 1928-30, Fox to Ryan (Oct. 7, 1930 and Nov. 13, 1930).

144. ACUA, School of Law, 1932-54, AALS 1928-35, Fox to Beale, Washington, D.C. (Oct. 16, 1930) (copy).

145. Fox, *The School of Law at The Catholic University of America*, 3 CATH. U. BULL. 4-5 (1935); Fox, *The Higher Law* 22 COMMONWEAL 231-32 (June 28, 1935).

146. ACUA, Office of the Rector (Ryan), Law, 1934, Fox to Ryan, Washington, D.C. (Apr. 18, 1934).

of Teaching as "the real educational authority in Catholic circles."¹⁴⁷ Its representative remarked that he felt "that Harvard and Catholic University can do a great deal in the improvement of Legal Ethics."¹⁴⁸ Fox reported that in visiting other schools he found "a very active opposition, if not open antagonism against the University as a whole and particularly against the undergraduate work and the School of Law," which he attributed in part to the fear of Catholic colleges that the school might seek to recruit law students after their sophomore year and in part to resentment of a school "ostensibly in competition with Georgetown."¹⁴⁹ Fox's achievements as dean were indeed progressive and it was most unfortunate that, because of his problem with alcohol, his resignation had to be requested in 1935, after a year's warning.

Father Robert J. White (1893-1984), who had been appointed to the faculty in 1932 and who was to be appointed dean in 1937, was asked to serve as acting dean but felt that other commitments would interfere with his responsibilities in the office.¹⁵⁰ James J. Hayden (1894-1970), who had begun as an instructor in 1924, was placed in charge of the school. He had earned a bachelor of philosophy degree at the University of Wisconsin, a master of arts degree at The Catholic University of America, and a bachelor of laws from Georgetown University, which he had recently received when he was first appointed to the faculty. He earned the graduate degree of juris doctor in 1929 while in faculty service. During the interim between the deanships of McLoughlin and Fox, he had forwarded to the new rector numerous "[s]uggestions for the Faculty of Law," charging the late dean with handling all academic business "without reference to the Faculty for advice or discussion."¹⁵¹ His report in the fall of 1935 indicated that there were nine students in the first year, eleven in the second, and twelve in the third.¹⁵² There were six members of the faculty and five part-time teachers. That fall, the school received one of the periodic inspections of the AALS, made in this instance by its president, Rufus C. Harris. The weaknesses he

147. ACUA, Office of the Rector (Ryan), Law, 1932, Fox to Ryan, Washington, D.C. (Jan. 18, 1932).

148. ACUA, Office of the Rector (Ryan), Law, 1933, R.J. White to Fox, Washington, D.C. (Feb. 7, 1933) (copy).

149. AAB, Curley Papers, F946, Fox to Curley, Washington, D.C. (Aug. 26, 1935).

150. ACUA, Office of the Rector (Ryan), Law, 1935, Ryan to White, Washington, D.C. (July 24, 1935); ACUA, Office of the Rector (Ryan), White to Ryan, Washington, D.C. (July 27, 1935) (copy); ACUA, Office of the Rector (Ryan), Ryan to White (telegram), Washington, D.C. (July 29, 1935) (copy).

151. ACUA, Office of the Rector (Ryan), Law School, 1928-30, Hayden to Ryan, Washington, D.C. (Jan. 15, 1929).

152. ACUA, Office of the Rector (Ryan), Law, 1935, Hayden to Ryan, Washington, D.C. (Sept. 28, 1935).

pointed to were deficiencies in the library, the slowness with which members of the faculty were promoted, and the need for a young and active dean.¹⁵³

Hayden appears to have been not at all reticent in proposing departures from past practice. There probably would have been little quarrel with his urging of the need for advertising to quell a reported rumor that the school would not open, one that he suspected had "originated in competitive sources."¹⁵⁴ But almost immediately he resurrected the old question of moving the school to a downtown location, even to the point of identifying specific buildings, for which he had obtained blueprints. He maintained his position, based upon "local experience among our competitors," and argued that "suitably established downtown, the enrollment could be readily multiplied and without lowering the standards of admission or of accomplishment, the Law School would be self-sustaining within a few years."¹⁵⁵ When the faculty outlined possible alternative policies, other than keeping the school as it was, it began to consider adding an evening division to the campus program.¹⁵⁶ This proposition was opposed by White and others. He emphasized to the vice rector that "every law school which has added an evening course has consciously or unconsciously lowered [its] standards."¹⁵⁷

Other positions that Hayden took were consonant with the view of legal education that was implied in his proposals. He regarded graduate work as "secondary in importance" because, it seems, there were so few graduate students in the law schools of the country.¹⁵⁸ After a member of the faculty called attention to the school's admission to graduate work of some who had lacked collegiate prelegal education or who had come from unaccredited law schools, he thought it necessary to apologize for bringing up the matter because, he said, he did so "with a full realization" that Hayden sensed "the need of lower standards until the enrollment in the graduate school can be built up."¹⁵⁹ Although Brown, who had been appointed in 1932, was urging the necessity of a law review as "the most effective argument to show that a

153. AAB, Curley Papers, M271, P.J. McCormick, Acting Rector to Curley, Washington, D.C. (Dec. 9, 1935).

154. ACUA, Office of the Rector (Ryan), Law School, 1928-30, Hayden to Ryan, Washington, D.C. (Aug. 24, 1935).

155. ACUA, School of Law, Minutes (Dec. 17, 1935 and Jan. 14, 1936); ACUA, Office of the Rector (Corrigan), Law, 1937-38, Hayden to Corrigan, Washington, D.C. (Apr. 15, 1937 and May 14, 1937).

156. ACUA, School of Law, Minutes (Jan. 28, 1936).

157. ACUA, Office of the Rector (Corrigan), Law, 1936, White to McCormick, Washington, D.C. (Mar. 25, 1935) (emphasis omitted).

158. ACUA, Office of the Rector (Corrigan), Law, 1937-38, Hayden to Corrigan, Washington, D.C. (Nov. 16, 1936 and May 14, 1937).

159. ACUA, School of Law, Minutes, Mar. 11, 1937.

law school is not a mere factory,"¹⁶⁰ Hayden was repudiating the contention because among the eighty-two law schools in the AALS, only forty-three had such a publication.¹⁶¹ To the pleas of Brown, White, and Monsignor Francesco Lardone, who taught Roman law, that Catholic law schools "should not only turn out graduates with a technical education in the law, but should justify their existence by discriminating a distinctively Catholic legal culture,"¹⁶² Hayden remarked only that "[i]t is not easy to see how any law school can attempt to color the entire curriculum with the Catholic point of view."¹⁶³ To facilitate education for legal practice, he accepted membership in the Legal Aid Bureau of the District of Columbia; previously, however, second- and third-year students had been recommended to serve as assistants to staff attorneys.¹⁶⁴

At the time, a movement began which ultimately did not materialize, but which nevertheless prompted Hayden to write that he would not have been surprised "to see a four year law course become the rule instead of the exception among the better schools within the next ten years."¹⁶⁵ By 1937, the University of Chicago, Louisiana State University, and the University of Minnesota had already taken steps in that direction. Pound and Beale at Harvard were among the proponents. In the files of the school of law there is a draft of a memorandum that Hayden might have prepared recommending the adoption of a four-year program restricted to those who had completed at least three years of college. It provided for the conferral of either the bachelor of arts or bachelor of science degree at the end of the first year of law school and the award of the LL.B. at the end of the fourth year.¹⁶⁶ When the rector consulted the faculty before appointing the next dean, five votes were cast for White, one for Hayden, and one for an extern.¹⁶⁷ Hayden continued on the faculty until his appointment as dean of the Columbus University Law School during the academic year 1941-42.¹⁶⁸

160. ACUA, Office of the Rector (Corrigan), Brown to Corrigan, Washington, D.C. (Oct. 6, 1936).

161. ACUA, Office of the Rector (Corrigan), Hayden to Corrigan, Washington, D.C. (Nov. 16, 1936 and May 14, 1937).

162. Brown, *A Distinctive Law School at the Catholic University of America*, 3 THE ALUMNUS No. 4, at 3-4 (1935).

163. ACUA, Office of the Rector (Corrigan), Law, 1936, Hayden to McCormick, Washington, D.C. (Apr. 18, 1936).

164. ACUA, School of Law, 1932-54, Legal Aid Bureau, Hayden to H. Stanley, Washington, D.C. (Dec. 19, 1935) (copy).

165. ACUA, School of Law, 1932-54, Four Year Course, Hayden to F.K. Beutel, Washington, D.C. (May 15, 1937) (copy).

166. *Id.*

167. ACUA, School of Law, Minutes (May 13, 1937).

168. ACUA, School of Law, Minutes (Jan. 9, 1942).

White's leadership was strong and evident. After service in the United States Navy during World War I, he had graduated from Harvard College and Harvard Law School, and had practiced law in Massachusetts until 1927. That fall, he had entered the Sulpician Seminary across the street from the campus. After his ordination to the priesthood in 1931, he was appointed to the faculty of law even while pursuing studies in canon law. In 1934, he was elected national chaplain of the American Legion. At the first meeting of the faculty after his appointment as dean, he was ready to outline a program.¹⁶⁹ His premise, he wrote to the rector, was that "the most important decision that has been made with reference to the Law School is the fixed decision of University policy to retain a law school." White also recorded a further agreement:

The second point of equal importance is the announcement of a *fixed and clear-cut policy* for the school. The possibility of moving downtown and becoming a law factory is definitely behind us. The pleasant inertia of dreaming about a million dollar endowment and a large school is also definitely behind us. We have determined upon the policy of building the school up to one hundred carefully chosen students, who, by their scholastic records and character, give promise not only of success as lawyers, but real Catholic influence in public affairs.¹⁷⁰

To attain this objective, White scoured the country both for talent and for the scholarship funds that would attract and support the talent. He did not want the students to be distracted from their preparation by the need for self-support. The amount of funds that he gathered annually, in donations of different sizes, varied from \$15,000 to \$28,000. In the late 1930's such allocations for current expenditures on scholarships attracted to the school men and a few women who have since become successful practitioners. Some, such as Joseph Alioto of San Francisco and Stephen K. McNichols of Denver, have attained political prominence. The school established its prestige among alumni who, in 1940, met for the first time to lay plans to constitute themselves as a chapter of the university's alumni association.¹⁷¹ By this time, what the school was doing had become generally known.¹⁷²

169. ACUA, School of Law, Minutes (June 10, 1937).

170. ACUA, Office of the Rector (Corrigan), Law, 1937-38, White to Corrigan, Washington, D.C. (June 21, 1937).

171. ACUA, Office of the Rector (Corrigan), Law, 1937-38, White to Corrigan (Oct. 29, 1940). It is of interest that 18% of the respondents to an alumni survey during the previous year had held or were holding public office.

172. At the outset, White found that "two men on the faculty of Harvard Law School were unusually enthusiastic and stated that they would welcome participation in such an opportunity as is ours." ACUA, Office of the Rector (Corrigan), Law, 1937-38, White to Corrigan, Washington, D.C. (June 21, 1937). The New York Times, in a March 10, 1940, article, helped

White's program was predicated upon high standards of academic attainment. He announced early in 1938 "that he considered it an opportune time . . . to abolish the combined course and to join the list of select schools that made a baccalaureate degree in arts or its academic equivalent a prerequisite to candidacy for the degree of Bachelor of Laws." The faculty agreed unanimously that this was a desirable objective. Regardless of how individual members may have assessed its feasibility, the appropriate motions to implement the recommendation were passed.¹⁷³ A year later, White asked the faculty to consider broadening admission to master's degree programs for experienced lawyers. He also recommended restricting admission to doctoral programs to those with accredited baccalaureate and law degrees who would be in residence for at least a year and follow courses as advised by a faculty committee, one of whose members would be a teacher of jurisprudence.¹⁷⁴

These revisions in formal requirements were accompanied by other academic measures. At his first meeting with the faculty, White recommended attention to the curriculum, the annotation of case material, inducements for the use of the library, and the toughening of grading practices. At the same meeting he expressed his doubts that an evening program was in accord with AALS standards.¹⁷⁵ Some months later the faculty also recorded its "sense" of opposition to offering courses during summer sessions.¹⁷⁶ Even after Pearl Harbor, the faculty thought "that the conducting of undergraduate classes at night did not offer a satisfactory solution to the law school's wartime problems."¹⁷⁷ One of White's most innovative and popular efforts was the Religious Round Table for Law Students and Lawyers that was led each year on a series of Sunday mornings by invited apologists and which stemmed from a university requirement that students who had not attended Catholic colleges take courses in religion.¹⁷⁸ White consistently held that "the School of Law was intended and has functioned as a small school which would give not only individual legal instruction, but, as well, the effective influence of Catholic philosophy and ethics in molding the minds and char-

to give prominence to the school. And the dean could report that "when Boston College wrote to Harvard Law School for its revised curriculum, it was referred to the Catholic University." ACUA, School of Law, Minutes (June 7, 1940).

173. ACUA, School of Law, Minutes (Jan. 28, 1938). At this time The Catholic University of America and Georgetown University were the only AALS-approved law schools under Catholic auspices requiring a baccalaureate degree for admission.

174. ACUA, School of Law, Minutes (Feb. 10, 1939 and June 9, 1939).

175. *Id.* (June 10, 1937).

176. *Id.* (Dec. 4, 1937).

177. *Id.* (Dec. 14, 1941).

178. ACUA, Office of the Rector (Corrigan), Law, 1937-38, Annual Report; ACUA, School of Law, Minutes (Feb. 10, 1939).

acter of Catholic young men who plan to enter the legal profession."¹⁷⁹

A variety of other innovations enriched the curriculum and the lives of the students. Outstanding lecturers were invited to the campus. For example, following plans developed by Brown and a faculty committee for the commemoration of the university's golden jubilee in 1939, Roscoe Pound delivered a series of four lectures on "The Church in Legal History" in which he investigated the ideas of universality, authority, good faith, and law. A second series by four prominent scholars addressed "The Function of Law in Society Today."¹⁸⁰ Samuel Williston delivered four lectures on "The Progress of the Law of Contracts" as the Dean Robinson Memorial Lectures of 1940 and followed them up in 1941 with a lecture on "Some Effects of the War Emergency on Contracts."¹⁸¹ Social nights were inaugurated to which such publicists as Adolf Berle, Arthur Krock, and Walter Lippmann were invited to speak.¹⁸² Prominent jurists, usually including justices of the United States Supreme Court, the United States Court of Appeals, and the District Court of the United States for the District of Columbia, judged the annual appellate competition at the school. An annual Red Mass attended by distinguished representatives of the judiciary and other branches of government, members of the diplomatic corps, and others of prominence was inaugurated in the jubilee year and continued until the Archdiocese of Washington became its sponsor.

Under the dean, the faculty considered law club work to be "a definitive part of the curriculum," so that "any charter drafted should carefully reserve powers to the Faculty."¹⁸³ Fraternities did not escape notice and when the national office of Gamma Eta Gamma asked the campus chapter to encourage the withdrawal of a Jewish student whom it had admitted, the dean made it clear "that anti-semitism would not be tolerated."¹⁸⁴ A Law School Council was organized by the students.¹⁸⁵ The enactment of the national conscription law in 1940 led White to fear that the "morale of the school could easily be broken by a small entering class," but the rector, feeling that he had no choice but to await "the disclosure of Divine Providence," resisted

179. ACUA, Office of the Rector (Corrigan), Law, 1936, White to McCormick, Washington, D.C. (Mar. 25, 1936).

180. ACUA, School of Law, Minutes (June 10, 1938); ACUA, Office of the Rector (Corrigan), Law, 1937-38, White to Corrigan, Washington, D.C. (Nov. 22, 1938); ACUA, Office of the Rector (Corrigan), Law, 1939-40, Jubilee Law Lectures.

181. ACUA, Office of the Rector, Law, 1939-40; ACUA, Office of the Rector, Law, 1941.

182. ACUA, School of Law, Minutes (June 7, 1940 and Mar. 21, 1941).

183. ACUA, School of Law, Minutes (Nov. 28, 1939).

184. ACUA, School of Law, Minutes (June 10, 1938 and May 26, 1939).

185. *Id.* (Nov. 28, 1939 and Dec. 15, 1939).

White's appeal for tuition scholarships from university funds.¹⁸⁶

Under the university's revised statutes of 1937, the law school was exempt from certain general provisions affecting appointments and had its own regulations.¹⁸⁷ Instead of the two-year terms of White's first appointments to the deanship—and despite some rather emphatic correspondence between Trustee Martin and himself—he received a five-year appointment in 1941.¹⁸⁸ Not long after reporting to the faculty that the trustees were “dedicated to a policy of unbroken continuity” and that he was formulating plans for additional scholarships and the recruitment of women students after the war, he announced his leave for service as a chaplain in the United States Navy with the rank of commander.¹⁸⁹ Although he returned for a period after World War II, and later attained the rank of rear admiral, he found it necessary to resign from the deanship and the faculty because of continuing ill health.¹⁹⁰

The war depleted the ranks of students drastically. During the first semester of the academic year 1942-43, there were four students in the first year, four in the second, six in the third, and twelve graduate students.¹⁹¹ Among the compensatory measures that were being suggested was an “intensive effort . . . to secure women students . . . and . . . to contact the religious orders with the idea of inducing each order to send a student or two to the Law School.”¹⁹² Although the faculty at first declined to follow AALS suggestions for the relaxation of the baccalaureate requirement for admission of veteran applicants, and found the rector also opposed to such relaxation, the school came to permit temporarily “the discretionary admission of veterans of World War II, who have had at least three years of college education in

186. ACUA, Office of the Rector (Corrigan), Law, 1939-40, White to Corrigan, Washington, D.C. (Aug. 1, 1940); ACUA, Office of the Rector (Corrigan), Corrigan to White, Washington, D.C. (Aug. 16, 1940) (copy).

187. ACUA, Board of Trustees, Minutes (Oct. 11, 1938 and Apr. 19, 1939); ACUA, Office of the Rector (McCormick), Law, 1948, Special Regulations of the School of Law (Nov. 13, 1939).

188. ACUA, Office of the Rector (McCormick), Law, 1941 (Sept. 26, 1941). On relations with Martin, see ACUA, Office of the Rector (McCormick), Law School, Regulations, Martin to Corrigan, Martinsburg, W. Va. (Aug. 9, 1939 and Sept. 12, 1939); ACUA, Office of the Rector (McCormick), Law, 1939-40, White to Martin, Washington, D.C. (Aug. 16, 1940) (copy). The disgruntled alumnus quoted earlier wrote: “It is a great mistake to have a clergyman for Dean of the School of Law. Especially a Harvard man. Harvard,—hotbed of atheism and contempt for Catholic jurisprudence and traditions.” He may have had Fox in mind also. ACUA, Office of the Rector (McCormick), Law, 1941-49, Kennedy to White, Greensburg, Pa. (Feb. 27, 1942) (copy).

189. ACUA, School of Law, Minutes (Dec. 15, 1941 and Mar. 6, 1942).

190. ACUA, Office of the Rector (McCormick), Law, 1948, White to McCormick, Washington, D.C. (May 28, 1948).

191. ACUA, School of Law, Minutes (Oct. 26, 1942).

192. *Id.* (May 22, 1942).

approved schools and have obtained individual records in college and military service, justifying such admission in the opinion of the Committee on Admissions."¹⁹³ There seems even to have been a proposal for a collaborative arrangement with Georgetown University, although authorship of the document that remains is not indicated. Under the proposal, all instruction for the bachelor's degree in law offered during the day and all graduate instruction would have been given at The Catholic University of America, all instruction during evening hours—but no graduate instruction—at Georgetown's law school. One dean would have administered both schools.¹⁹⁴

After the war there was a revival of interest in alumni organization that became manifest at a meeting of the Law School Alumni Association during the university's alumni reunion in 1947, in New York City.¹⁹⁵ After a little more than two years, the association approved a constitution, ratified its sponsorship of the school's annual appellate court competition, and appointed a board to cooperate in the publication of a law review.¹⁹⁶ During the same year, luncheons during the annual ABA convention were initiated.¹⁹⁷ But when the class of 1951 expressed a wish to establish a building fund for the law school, the association, which in 1947 had resolved to solicit for such a fund, was not ready "to take definite steps in the matter."¹⁹⁸

White's loss was felt. His conspicuous prewar success in obtaining funds for the recruitment and support of able students had been a departure from university tradition with respect to the responsibilities of deans. Brown, the scholar, was not an entrepreneurial type. He reviewed for the rector the need of a national Catholic center for legal studies and his personal need to consider where he could make "the greatest possible contribution to the cause of legal education and the science of law," but he emphasized that the university could not hope to have the needed center "unless the hierarchy of the United States is prepared to proceed financially without reference to the income from the tuition of law students."¹⁹⁹ In this way, he put his finger on

193. *Id.* (Apr. 24, 1942); ACUA, Office of the Rector (McCormick) Law, 1941-47, Brown to E.B. Jordan, Washington, D.C. (Feb. 23, 1944) (copy); *id.* Office of the Rector (McCormick), Brown to A.T. Vanderbilt, Washington, D.C. (Jan. 27, 1949) (copy).

194. ACUA, Office of the Rector (McCormick), Law, 1944-49, Tentative Outline of Suggestions for Collaboration in Law between C.U.A. and G.U.

195. ACUA, School of Law, Minutes (Nov. 24, 1947).

196. *Id.* (Apr. 25, 1950).

197. ACUA, School of Law, 1932-54, American Bar Association, Student Bar Association, Convention (1950).

198. ACUA, Office of the Rector (McCormick), Law, 1951, Brown to J.A. Magner, Washington, D.C. (June 7, 1951).

199. ACUA, Office of the Rector (McCormick), Law, 1948, Brown to McCormick, Washington, D.C. (Apr. 24, 1948).

the historic central financial problem, not only of the law school, but of the entire institution.

The search for a successor to White began in earnest after his resignation. Trustee-alumnus Martin, who thought that the law school had not had "a real Dean since Judge Robinson's time,"²⁰⁰ urged that an outstanding figure should be sought and compensated appropriately. William L. Galvin of Baltimore, who as treasurer had an important role in university affairs, looked to a larger enrollment and broader curriculum. The Red Mass, he thought, "may be very nice, but it will never make up for any deficiency in the curriculum."²⁰¹ Soon, "because of the national importance of this School," as the new Archbishop of Washington and chancellor of the university wrote in his letter of invitation, an advisory committee was appointed "to assist in the nomination of a qualified man for the post of Dean and possibly also, at the same time, to lend the benefit of its thought on questions presently involved on the function, objectives, and expansion of the School of Law itself."²⁰²

The advisory committee, according to its minutes, showed a "common conviction . . . that the School should place its first concentration upon graduate studies."²⁰³ The member charged with expressing that conviction wrote that there was certainly no need "for a school that has as its objective a large enrollment and a purpose no higher than the teaching of case law to enable its graduates to pass a State bar examination," but that "from the Catholic viewpoint there is need of a school that can and will meet the demand for leadership in law."²⁰⁴ Martin thought that his colleague had gone too far and replied that "[t]he reasoning in your memorandum is excellent and idealistic, but, unfortunately, your conclusion would destroy the work of fifty years."²⁰⁵

The members were divided in their preferences for dean. Offers were apparently declined by John C. Fitzgerald of Loyola University of Chicago and John F.X. Finn of Fordham University.²⁰⁶ Paul M. Hebert of Louisiana University expressed his interest with misgivings. Thinking he was "possibly

200. ACUA, Office of the Rector (McCormick), Law, 1948, Martin to McCormick, Martinsburg, W. Va. (June 9, 1948).

201. *Id.* Galvin to Martin, Baltimore, Md. (June 24, 1948) (copy).

202. AAB, Keogh Papers, The Catholic University of America, General (1), P.A. O'Boyle to F.B. Keogh, Washington, D.C. (Oct. 14, 1948).

203. ACUA, Office of the Rector (McCormick), Law, 1949, Minutes of Special Advisory Committee for the School of Law (Dec. 4, 1948) (forwarded by Magner to McCormick, Washington, D.C., Feb. 9, 1949).

204. ACUA, Office of the Rector (McCormick), J.V. McKee to McCormick, New York, N.Y. (Dec. 22, 1948).

205. ACUA, Office of the Rector (McCormick), Law, 1948, Advisory Committee, Martin to McKee, Martinsburg, W. Va. (Dec. 27, 1948) (copy).

206. ACUA, Office of the Rector (McCormick), Law, 1949, Fitzgerald to Magner, Chi-

the only Catholic law dean in a major secular institution," he eventually declined to be considered because without a tripling of the budget it would have been "improbable that any considerable program of development could actually be accomplished."²⁰⁷ When he was shortly thereafter appointed university dean at Louisiana University, the Archbishop of New Orleans observed that he "might be rendering a greater service to the Church as Dean of the entire State University than he would undoubtedly render as Dean of the Catholic University Law School." The rector of the university replied in agreement.²⁰⁸

The choice then fell upon Brown. The committee had before it recommendations for his selection from the Attorney General of the United States, Tom Clark; from the Chief Justice of the United States Court of Appeals of the District of Columbia, Harold M. Stephens; from Roscoe Pound, and from many others. Martin, who wanted a major figure, remarked that "[i]f we are going to recommend a law teacher, then I do not think that we need to go beyond Dr. Brown."²⁰⁹ Galvin argued to the committee that Brown had academic standing, proven institutional loyalty, and willingness to accept the university's salary scale, and that he could be evaluated after his first two-year term. There was dissent from this view because of unrecorded reservations expressed by Charles Fahy which were evidently accepted by the committee.²¹⁰ After two other candidates declined the position, however, the rector held a formal consultation with the faculty in which Brown, receiving eight of the fourteen votes cast, was favored over Hebert, who, like several others, received only one vote.²¹¹

Brown attempted to maintain and add to the programs initiated by White. Even while soliciting contributions for scholarships as acting dean, he was able to describe the school as "one of a very few completely accredited, co-educational, full time day law schools, which requires a baccalaureate de-

cago, Ill. (Apr. 2, 1949); ACUA, Office of the Rector (McCormick), Finn to McCormick, New York, N.Y. (Apr. 28, 1949).

207. ACUA, Office of the Rector (McCormick), Hebert to McCormick, Baton Rouge, La. (May 18, 1949 and June 2, 1949).

208. ACUA, Office of the Rector (McCormick), J.F. Rummel to McCormick, New Orleans, La. (June 22, 1949); ACUA, Office of the Rector (McCormick), McCormick to Rummel, Washington, D.C. (June 27, 1949) (copy); ACUA, Office of the Rector (McCormick), McCormick to Hebert, Washington, D.C. (July 8, 1949) (copy).

209. ACUA, Office of the Rector (McCormick), Law, 1948, Advisory Committee, Martin to McKee, Martinsburg, W. Va. (Dec. 27, 1948).

210. ACUA, Office of the Rector (McCormick), Law, 1949, Minutes of the Special Advisory Committee for the School of Law (Feb. 5, 1949) (forwarded by Magner to McCormick, Washington, Feb. 9, 1949).

211. ACUA, School of Law, Minutes (May 20, 1949).

gree."²¹² Additionally, he devoted effort to the St. Thomas More Society of America, which had been established in 1936 and was convening at annual meetings of law associations. The society's headquarters were at the university. Brown also was conspicuously concerned for the Riccobono Seminar in Roman Law. After the war, the council responsible for the program felt that the seminar had reached its maximum usefulness as a Washington activity. The council was unsuccessful, however, in arousing the necessary interest when it sought funds to extend the seminar's growth nationally.²¹³

Brown obtained approval for the appointment of a full-time librarian.²¹⁴ Difficulties arose between the appointee, Miriam Theresa Rooney, and Brown and exacerbated other problems concerning the relationship of the law library to the director of libraries.²¹⁵ After prodding by the faculty for something more systematic than the Religious Round Table, Brown enforced the requirement that Catholic students who had not attended a Catholic college take a course in religion.²¹⁶ The school was criticized for the appointment of non-Catholics to its teaching staff and for insensitivity to religious candidates for faculty positions.²¹⁷ After lengthy discussions in the ranks of both students and faculty, the school's chapter of Gamma Eta Gamma was reactivated.²¹⁸

Probably Brown's most significant innovation was the establishment of the *Catholic University Law Review*, which was approved by the university at the end of 1949 on the conditions that it have a faculty adviser and advance funding.²¹⁹ Professor Gordon Ireland was appointed adviser.²²⁰ In introducing it, Brown attributed the creation of the *Law Review* to a "combina-

212. ACAU, School of Law, 1932-54, D (M-Z), Circular Letter (June 23, 1944).

213. ACUA, Office of the Rector (McCormick), Law, 1941-47, Riccobono Seminar, Council to McCormick, Washington, D.C. (Mar. 11, 1947).

214. ACUA, School of Law, Minutes (Nov. 24, 1947, Dec. 15, 1947, and Feb. 9, 1948).

215. ACUA, School of Law, Minutes (Feb. 21, 1949 and Oct. 25, 1949); ACUA, Office of the Rector (McCormick), Law, 1949, Magner to Brown, Washington, D.C. (Feb. 24, 1949) (copy).

216. ACUA, School of Law, Minutes (June 2, 1949 and Oct. 25, 1949).

217. ACUA, Office of the Rector (McCormick), Law (unidentified clipping and note, n.d.); ACUA, Office of the Rector (McCormick), Law, 1952, G. Leech, Bishop of Harrisburg, Pa., to J.M. Fitzpatrick, President, Law Alumni Association, Harrisburg, Pa. (Jan. 29, 1952); ACUA, Office of the Rector (McCormick), Brown to McCormick, Washington, D.C. (Feb. 21, 1952); ACUA, Office of the Rector (McCormick), Law, 1954-55 (clipping of *Enemy Within the Gates*, Fla. Cath., May 21, 1954).

218. ACUA, School of Law, Minutes (Jan. 30, 1950 and Feb. 18, 1952); ACUA, Office of the Rector (McCormick), Law, 1952, Brown to McCormick (Apr. 22, 1952); ACUA, Office of the Rector (McCormick), McCormick to Brown (Apr. 25, 1952) (copy).

219. ACUA, Office of the Rector (McCormick), Law, 1949, Magner to Brown, Washington, D.C. (Dec. 15, 1949) (copy).

220. ACUA, School of Law, Minutes (May 16, 1950). Ireland, an independently wealthy scholar, had begun as a visiting professor in 1944.

tion of favorable factors, objective as well as psychological, occurring at a time when the growth and traditions of the Law School had reached the requisite maturity."²²¹ Among the factors were the relief of "administrative uncertainty" by his appointment as dean, the largest student enrollment ever, achievements in legal composition resulting from the appellate court competitions, and the cooperation of the faculty and of the administration of the university. Soon the journal grew in size to approximately one hundred pages.²²²

Unfortunately, as the veterans of World War II completed their studies, enrollment in law not only declined drastically but the rate of success on the bar examinations of the District of Columbia also declined.²²³ Early in 1953 the faculty voted for the school to expand into the field of continuing education,²²⁴ and soon thereafter it discussed the desirability of a move to "a more central location."²²⁵ The proposal for the school's absorption of the Columbus University School of Law was in the offing and was adopted by the officers of the university.²²⁶ The agreement provided that the university would mark the event by renaming the law school the Columbus School of Law.

Not long before the merger, the school received one of its periodic visits from the Section on Legal Education and Admissions to the Bar of the American Bar Association. John G. Hervey, who conducted the visitation in 1950, reported that the school's faculty and student body were above the average in comparison to other law schools in the area. He found that faculty salaries were on a par with the faculties of Columbus University and the National School of Law rather than those of Georgetown University and The George Washington University. In addition, he noted that although "weak and inept students" were being encouraged to withdraw voluntarily, it seemed impossible "that no person would flunk out of law school during the year." Hervey further remarked that "the chief problem of the School is to persuade the University Administration to convert its high estimate of the

221. Brown, *Foreword*, 1 CATH. U.L. REV. ix (1950).

222. ACUA, School of Law, Minutes (Apr. 21, 1953).

223. ACUA, School of Law, 1932-54, D.C. Bar (containing a compilation).

224. ACUA, School of Law, Minutes (Jan. 30, 1952).

225. ACUA, School of Law, Minutes (Apr. 21, 1953).

226. ACUA, School of Law, Minutes (Mar. 19, 1954); ACUA, Office of the Rector (McEntegart), Law, 1954, Press Release (Jan. 5, 1954); ACUA, Office of the Rector (McEntegart), H.P. Sullivan to B.J. McEntegart, Manchester, N.H. (Jan. 27, 1954) (protesting lack of consultation with the law alumni council); ACUA, Office of the Rector (McEntegart), McEntegart to S.D. Elliott, Washington, D.C. (Feb. 23, 1954) (copy) (forwarding a copy of the merger agreement to the AALS); ACUA, Office of the Rector (McEntegart), Magner to McEntegart, Washington, D.C. (Mar. 17, 1954) (proposing lower tuition on the premise that the new downtown location would change the school's competitive situation).

function of a law school into dollars for the Law School."²²⁷

This was a pithy statement of the law school's predicament. Since it could be extrapolated to apply to the institution as a whole, it did not solve the problem of the proper priority of the law school among the competing claims from other faculties. This problem does not seem to have been addressed. Brown was able to state in an address circulated to the advisory committee that "apparently the only *raison d'être* for bringing legal studies into the university curriculum was the presentation of law in its jurisprudential phases."²²⁸ Such a presentation in a Catholic institution, he believed, while "directed to some extent to the objective of contemporary problem-solving," would be "incomplete, according to its own principles, unless its activity is associated with a fixed set of objective values or standards." This "introduction of permanent norms into the teaching process" was consistently defended by Brown against contemporary movements in legal education.²²⁹ Brown criticized two reports from the AALS, having found in them "a movement to indoctrinate law students with the jurisprudence of legal Realism, which unreasonably stresses behaviorism and the economic interpretation of law, doubts the existence of a metaphysical order and denies ethical values, except the norm of materialistic utility in the satisfaction of interests or desires."²³⁰ A major aim in his founding of the *Law Review* had been "to combat secularism in the law"²³¹ and in its early volumes one or more philosophical articles appeared annually.

In retrospect, the six decades of the law school's existence prior to 1954 can be characterized by the numerous contrasts that they provided between declarations of ideals and lived actualities. At the beginning, Dean Robinson, confronted by a situation that he found extremely disappointing, nevertheless relinquished his ties with Yale, which he had retained as insurance for his career, because he had an acute sense of the university's mission. Through the years, the university gave testimony to the inclusion of the law

227. ACUA, Office of the Rector (McEntegart), Law, 1952, Report on a Visit to the School of Law, The Catholic University of America (Feb. 1950); ACUA, Office of the Rector (McEntegart), Law, 1954, Hervey to Brown, Oklahoma City, Okla. (May 1, 1953) (copy); ACUA, School of Law, Minutes (June 24, 1953).

228. Brown, *Jurisprudential Aims of Church Law Schools in the United States, A Survey*, 13 NOTRE DAME LAW. 163-89 (1938) (summarizing a study for a standing committee of the American Catholic Philosophical Association).

229. ACUA, School of Law, 1932-54, AALS 1942 (n.d.) (memorandum responding to a Memorandum on Curriculum by a Professor Sharp) (copy).

230. ACUA, School of Law, Minutes (Nov. 27, 1942). The attacks on legal realism made by Catholic scholars, including Brown, are reviewed in E.A. PURCELL, JR., *THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM AND THE PROBLEM OF VALUE* 164-71 (1973).

231. Brown, *Foreword*, 1 CATH. U.L. REV. x (1950).

school in this mission by maintaining it in spite of low enrollments and low faculty-student ratios. The school's continued existence was assisted also by the support of a few prominent alumni, by the embarrassment that the closing of the school would have occasioned, and by sheer administrative inertia. Probably the administration of Dean White early in the school's fifth decade was seen as confirming the faith of his predecessors. The existence of the school did not come into question again. Its survival, however, did not bring about any significant change in the financial posture of the university. The institution as a whole remained underfunded and tuition-dependent. No clear principle seems to have guided the annual allocations of funds to the law school or to other schools, for that matter. The move to a downtown location in 1954, therefore, was consistent with previous policies of seeking tuition income, even if it was spurred by the acquisition of valuable property.

Three themes of lasting relevance can be traced through the six decades. To recognize them as perennial leads to the further observation that their underlying issues must be confronted by both present and succeeding generations. The first of these themes arises out of the relationship between the American system of legal education and certain professional standards. The development of legal education under university auspices in the United States has not been uniformly inspiring. It can be said, however, that adherence to the standards of admission promulgated by the American Bar Association and the Association of American Law Schools was consistently sought by the deans and the faculty of the law school. On the other hand, consistency in the results of instruction measured by performance on bar examinations was not achieved. There were high and low periods. Professional control of standards seems to have advanced steadily, however, so that the issues presented by the relation of the school to the profession, although they will never disappear, are probably no longer as simple as they may have been before 1954.

A second theme that is perennial has arisen from the inclusion of law schools in universities. At The Catholic University of America the ideal of advancement of scholarship was embodied in the foundation of a research-oriented institution. Of course, the original intention to emphasize graduate offerings in law, which in subsequent years was several times restated by advisory committees, was superseded at an early date by the concern of the organized profession to improve gradually the standards of legal education in this country. This was almost inevitable, given the original decision of the trustees to offer professional instruction in law and the realities of university finance. It was a development, however, which gave rise to tensions concerning such matters as criteria for faculty rank and salary levels. However these and other tensions may be resolved, a law school in a university will be

constantly challenged to exemplify the standards of scholarship appropriate to its sponsoring institution.

The third theme presented arises out of the religious underpinnings upon which The Catholic University of America rests. As Brown put it, the *raison d'être* of the institution itself implies the objective of bringing home to its students "the existence of the controlling ethical order which communicates meaning and significance to positive law."²³² It has available to it not only what he called "the relatively well defined standards of the objective natural law of Scholastic Philosophy, scrutinized and interpreted for centuries by a long line of gifted and inspired writers,"²³³ but also the current scholarship of all those who retain the truth of the "starting point" of that philosophy, which he found in the principle "that man is a union of body and spirit."²³⁴ This was a theme upheld explicitly, although not with consistent intensity, by the university and by the law school from Robinson's deanship to Brown's. It will never lose its relevance.

232. *Report of the Dean of the Faculty of the School of Law* in P.J. MCCORMICK, ANNUAL REPORT OF THE RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA, JUNE 30, 1944, at 33.

233. *Id.* at 31.

234. *A Scholastic Curriculum and Teaching Method for the Catholic Law School in War Time*, N.S. 10, No. 4 CATH. U. BULL. 12 (Jan. 1943).

