

CATHOLIC LAW SCHOOLS AND *EX CORDE ECCLESIAE*, OR WHAT MAKES A LAW SCHOOL CATHOLIC?

Nicholas P Cafardi*

THE promulgation last year of draft norms by the National Conference of Catholic Bishops for the apostolic constitution, *Ex Corde Ecclesiae*,¹ and the subsequent approval of those norms by the Apostolic See,² have caused much reflection on what it means to be a Catholic university in the United States. A derivative of that question, which is of critical importance to those of us working at law schools that are part of a Catholic university, is: What does it mean to be a Catholic law school in the United States today?

I can offer a unique perspective on this question because, by education and practice, I am both a secular lawyer and a canon lawyer. Indeed, I am the only canon lawyer who is the dean of an American law school. As a result, I view this issue through a double lens, that of the Church's law and that of the civil law of the United States. Both legal systems affect what makes a law school Catholic, and so this article will proceed from this dual perspective.

I. CANONICAL PERSPECTIVE

Canon law provides a structure for the Church's life. The purpose of the Church's law was well put by Pope John Paul II in the apostolic constitution, *Sacrae Disciplinae Legis*, when he promulgated the 1983 Code. He wrote, "[The Code's] purpose is ... to create such an order of the ecclesial society that, while assigning the primacy to love, grace and charisms, it at the same time renders their organic development easier in the life of both the ecclesial society and the individual persons who belong to it."³

Just as in civil society it is the role of law to provide order and structure, so too in canon law. The Church, as a human society, needs laws for its existence as much as any other society. Laws and structure are especially necessary for the ordered existence of institutions within a society. The law provides a platform, not only for the creation of institutions within a society, but also for their ongoing administration and management. The canon law provides this perspective for institutions within

* J.D., J.C.L. Dean and Professor of Law, Duquesne University School of Law.

1. The draft norms were approved by the National Conference of Catholic Bishops on November 17, 1999

2. The Congregation for Bishops gave its *recognitio* to the norms on May 3, 2000. This was actually the end of a long process that began with the 1983 Code of Canon Law and the new canons, 807-814, on Catholic universities. Implementing these canons, Pope John Paul II issued the apostolic constitution, *Ex Corde Ecclesiae* on August 15, 1990. *Ex Corde Ecclesiae* required national bishops conferences to adopt specific norms applying the document to their own countries, which norms then had to be approved, i.e., receive a "*recognitio*," from the Apostolic See.

3. John Paul II, *Sacrae Disciplinae Legis*, CODE OF CANON LAW LATIN ENGLISH EDITION XIV (Canon Law Society of America, 1983).

the Church, among them those great institutions of education to which the Church has given birth over the ages.

The 1983 Code of Canon Law contained a new section, not present in the former 1917 Code, on "Catholic Universities and Other Institutes of Higher Studies."⁴ In 1990, Pope John Paul II authored an apostolic constitution, *Ex Corde Ecclesiae*,⁵ dealing with Catholic universities throughout the world that elaborated on these canons. As a requirement of *Ex Corde Ecclesiae*, each national episcopal conference was to draw up norms for approval by the Apostolic See that would apply the general notions of the document to its own country.⁶ The American bishops finished this process in the year 2000, and from the perspective of the Church's law, there can be no serious doubt that *Ex Corde Ecclesiae* and the now approved episcopal norms are binding on all universities in the United States that call themselves "Catholic."

The first American commentary on the 1983 Code of Canon Law contained, as an introduction to canons 807-814 on Catholic universities, a controversial essay that implied that these canons did not apply to Catholic colleges and universities in the United States.⁷ The position of the American commentary caused serious problems. When *Ex Corde Ecclesiae* was first promulgated, and then again when the American bishops began drafting norms to apply this papal document to the United States, the argument was again made that American Catholic colleges and universities were not covered by the canon law. In turn, the argument went, they were not bound by any juridical action of the Church, papal or local, including *Ex Corde Ecclesiae* or any norms derived from it. This was the classic *lacuna legis*, except that it was a rather large *lacuna*, since most Catholic colleges and universities in the world are in the United States. If the canonical norms of *Ex Corde Ecclesiae* were not binding in the United States, there would be almost no reason for their existence. Nonetheless, this view received some rather high-level support, including that of the President of Notre Dame University and the Chancellor of Boston College in an article they co-authored in *America* magazine.⁸

The idea that American Catholic colleges and universities were not bound by the Church's law stems from a monograph written by Father John J. McGrath, who was both a canon lawyer and a civil lawyer. Father McGrath was a graduate of the Duquesne University School of Law where I am now honored to serve as dean. In 1968, Father McGrath, then an associate professor at the Catholic University of America, published *Catholic Institutions in the United States: Canonical and Civil Law Status*.⁹ His basic thesis was that Catholic hospitals, nursing homes, colleges,

4. Codex Iuris Canonici, 1983, cc. 807-814.

5. John Paul II, *Ex Corde Ecclesiae*, Aug. 15, 1990, *Acta Apostolicae Sedis* 82 (1990) 1475-1509. An English text was published in 20 *ORIGINS* 265-76 (Oct. 4, 1990).

6. *Ex Corde Ecclesiae*, Part II, General Norms, art. 1, § 1.

7. *THE CODE OF CANON LAW: A TEXT AND COMMENTARY* 571-72 (James A. Coriden et al. eds., 1985). The author of this essay is James A. Coriden. See also *NEW COMMENTARY ON THE CODE OF CANON LAW* (John P. Beal et al. eds., 2000) (a second American commentary that omits the Coriden essay).

8. Edward A. Malloy & J. Donald Monan, "Ex Corde Ecclesiae" Creates an Impasse, *AMERICA*, Jan. 30, 1999, at 6.

9. JOHN J. MCGRATH, *CATHOLIC INSTITUTIONS IN THE UNITED STATES: CANONICAL AND CIVIL*

universities and so forth, by virtue of their civil law incorporation, were neither owned by the Church nor subject to the Church's laws. Or in McGrath's own words, "If anyone owns the assets of the charitable or educational institution, it is the general public. Failure to appreciate this fact has led to the mistaken idea that the property of the institution is the property of the sponsoring [i.e., religious] body"¹⁰ and that "the charitable and educational institutions conducted under the auspices of the Church [in the United States] were recognized as civil law institutions and not subject to the canon law of the Church."¹¹

Set free by the McGrath thesis, American Catholic colleges and universities were able to shed their religious clothing. Many of them did, quickly replacing boards of trustees that were predominantly religious with boards that were predominantly lay. This did produce some salutary effects. Lay collaborators can bring to a board talents and insights that the religious founders do not possess. Unfortunately, this conversion to lay boards was underpinned by McGrath's philosophy that this transformation was necessary because these were civil and not Church institutions. Many of the talented and dedicated lay persons being invited onto the boards of Catholic colleges and universities at this time did not realize and did not intend that their presence might be used as a means of distancing these institutions from the Church and the Church's laws.

The danger of the McGrath thesis was not immediately recognized. By 1973, however, a young priest, canon lawyer, and attorney, Adam J. Maida, wrote an article in *The Catholic Lawyer* setting forth the dangers and the errors of the McGrath thesis.¹² Like McGrath, Maida is also a graduate of the Duquesne University School of Law, and he is now the Cardinal Archbishop of the Archdiocese of Detroit. His condemnation of McGrath's position was strong, proportional to the harm that he saw McGrath doing to the American Church. He wrote, "what Henry VIII did with a sword in England, what Napoleon did with his armies in France, what Lenin did with a political philosophy, McGrath has attempted to do, and has succeeded in many cases, with a legal theory"¹³

Father Maida followed with his own monograph, *Ownership, Control and Sponsorship of Catholic Institutions*, published in 1975 by the Pennsylvania Catholic Conference.¹⁴ It was Maida's position that the hospitals, colleges and universities founded by Roman Catholic religious orders¹⁵ and dioceses were either their own "moral persons" (canonical parlance for juridic entities)—even if they had not been established as such by canonical decree—or they were the apostolates of

LAW STATUS (1968).

10. *Id.* at 33.

11. *Id.*

12. See generally Adam J. Maida, *Canonical and Legal Fallacies of the McGrath Thesis on Reorganization of Church Entities*, 19 CATH. LAW. 275 (1973).

13. *Id.* at 275.

14. Adam J. Maida, *Ownership, Control and Sponsorship of Catholic Institutions*, Remarks at the Harrisburg, Pennsylvania Catholic Conference (1975) (on file with author).

15. "Religious order" is a colloquialism. The canonical term is "religious institute," or better "institute of consecrated life."

moral persons, and were, in either case, Church entities subject to the Church's laws.¹⁶

Maida's position underwent further refinement in a book that I co-authored with him, *Church Property, Church Finances and Church-Related Corporations*.¹⁷ In that lengthy treatise, which was written after the promulgation of the 1983 Code of Canon Law, we elaborated on Maida's prior position that the incorporated apostolates (hospitals, colleges and universities) shared in the canonical juridical personality of their founding religious orders or dioceses. In fact, in many instances, the work of the apostolate was the juridical person's *raison d'être* in the canon law and could not be separated from it, either logically or ontologically. We wrote that McGrath was wrong to give a canonical effect to a civil law device. The American civil law incorporation of these institutions could not, as McGrath had held, under the canonical relationship that these institutions had with their founding religious order or diocese. Rather, unless the appropriate steps were taken in canon law to separate these institutions from the religious orders or dioceses that founded them, they remained subject to the Church's laws.

My views are much less complicated now than they were in 1984 when *Church Property* was written. Without relying on sophisticated questions of canonical juridical personality, I am of the opinion that if an institution chooses to be Catholic or identifies itself as Catholic, then it is subject to the Church's laws. An institution cannot be Catholic in any meaningful sense of that word if it is not subject to the Church's legal system. It would be analogous, for example, to someone saying, "I am an American citizen, but I am not subject to America's laws." The illogic in that statement is obvious, as should be the illogic of a college or university calling itself "Catholic" yet claiming exemption from the Church's laws.

Life is not lived on a theoretical level. If we are not pure nominalists, then our principles should inform our actions. Law helps us to discipline ourselves to accomplish this end because law relates theory to life. If a society calls itself a democracy, its laws will provide an order and a structure that support a democratic form of government. If an institution calls itself Catholic, then its rules and structure will support its Catholicity.

So, Father McGrath and the American commentary on the 1983 Code of Canon Law notwithstanding, there is no exemption for American Catholic colleges and universities from the 1983 Code or any further Church legislation such as *Ex Corde Ecclesiae* and the bishops' norms. As long as they wish to remain Catholic, these institutions of higher learning must operate under the Church rules that structure and order the universe in which they operate.

16. Father Robert T. Kennedy, a member of the Canon Law Faculty at the Catholic University of America, and himself both a canon and civil lawyer, has written an illuminating article on the McGrath-Maida controversy. See R.T. Kennedy, *McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil Law Status of Church-Related Institutions in the United States*, 50 *JURIST* 35-401 (1990).

17. A.J. Maida & N.P. Cafardi, *Church Property, Church Finances and Church-Related Corporations* (St. Louis: Catholic Health Association, 1984).

II. CIVIL LAW PERSPECTIVE

Interestingly enough, when the American bishops' draft norms on *Ex Corde Ecclesiae* were issued, the initial civil law reaction was similar to the initial canonical response: "You don't mean us, do you? If we are required to follow these Church rules, we will lose our accreditation, we will lose our government contracts, we will lose our government financial aid."¹⁸ No persuasive arguments for exemption from the Church's legislation emerged. I have written about these arguments in another venue.¹⁹

What I did not write about extensively in that earlier article, however, and what I wish to address now, is the particular civil law issue of the *Ex Corde Ecclesiae* norms and the accreditation of Catholic law schools. The accrediting agency for all American law schools is the American Bar Association. The standards for accreditation are extensive, and they deal specifically with religiously sponsored law schools.²⁰ Standard 210(e) allows religiously affiliated law schools to have both admissions policies and faculty hiring policies that reflect their religious affiliation as long as appropriate notice is given to prospective students and faculty and as long as these policies do not offend the institution's own statement on academic freedom.²¹ This is a rather broad acceptance of the rights of religiously affiliated law schools. While one might assume that the ABA is rather foresighted to have such an accreditation standard, it was achieved only after litigation by a religiously affiliated law school seeking accreditation from the ABA.²² Even now the ABA standard purports only to recognize those rights of the religiously affiliated law schools that are protected by the First Amendment. This exception for religiously

18. Monan & Malloy, *supra* note 8, at 6.

19. See Nicholas P. Cafardi, *Giving Legal Life to the Ex Corde Ecclesiae Norms: Corporate Strategies and Practical Difficulties*, 25 J.C. & U.L. 751 (1998-99).

20. See generally AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS (1998).

21. Standard 210(e) states:

This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff which directly relate to this affiliation or purpose so long as (i) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (ii) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b), concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but shall not be applied to use admissions policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, sex, or sexual orientation. This Standard permits religious policies as to admission, retention, and employment only to the extent that they are protected by the United States Constitution. It is administered as if the First Amendment of the United States Constitution governs its application.

Id.

22. The suit was brought by the now defunct O.W. Coburn School of Law of Oral Roberts University in 1979, after the school was denied accreditation by the ABA on religious grounds. The litigation lasted for two years and ended in 1981 when the ABA House of Delegates adopted the predecessor Standard to Standard 210(e).

affiliated law schools to pursue their religious affiliation, both when choosing their students and when choosing their faculty, does exist in the ABA accreditation standards. As a result, the implementation of one of *Ex Corde Ecclesiae*'s more controversial requirements, that preference be given to hiring Catholic professors so that they constitute a majority of the faculty,²³ would not pose an accreditation problem for a Catholic law school. All that would be necessary to comply with the ABA standards is notice of this religious preference to all those applying for faculty positions.

Within the ABA framework, I am unaware of any Catholic law school in this country, including my own, that makes any representation of limiting its hiring to Catholic professors. At Duquesne, when we have a faculty opening, we advertise for highly-qualified professors of law who can teach and write consistently with the Catholic values of our school.²⁴ Ave Maria School of Law, a recently founded Catholic law school whose avowed public purpose is to be a model Catholic law school for the United States, only goes so far as to state that it is "enhanced by the Catholic intellectual tradition."²⁵ In fact, that institution's first and most public faculty hire was of a prominent non-Catholic legal academic and former jurist.²⁶

The *Ex Corde Ecclesiae* hiring norm might pose a problem for the American Association of Law Schools, however. AALS is not an accrediting agency. It is a membership association to which most American law schools belong and functions, in many ways, as a type of law school faculty union. Most law schools choose to belong to AALS because of the credibility and membership benefits for faculty it provides. Like every membership organization, AALS has certain membership rules, one of which, Bylaw Section 6-4(a),²⁷ appears to be in conflict with *Ex Corde Ecclesiae*. AALS's interpretation of that bylaw prohibits admissions or employment policies that limit "the number of persons admitted or employed on religious grounds." If a Catholic law school that strictly followed *Ex Corde*'s hiring norms

23. *Ex Corde Ecclesiae*, art. 4, § 4; *Ex Corde Ecclesiae: The Application to the United States*, Part II, Particular Norms, art. 4, § 4(a).

24. "It is more important, in choosing and promoting faculty ... to 'look for people of whatever [religious] persuasion whose teaching and scholarship support the transcendence of the human person and the intellectual mission of the church, than it is to have a faculty of church members. It is important to identify and reward scholarship that reflects 'a concern for the margins of society'" Thomas L. Shaffer, *Why Does the Church Have Law Schools?* 78 MARQ. L. REV. 401, 408 (1995) (quoting Robert E. Rodes, Jr., *Catholic Universities and the New Pluralism*, in THE CHALLENGE AND PROMISE OF A CATHOLIC UNIVERSITY 305, 310-11 (Theodore M. Hesburgh ed., 1994)).

25. The advertisement for the new Ave Maria School of Law in Ann Arbor, Michigan, which has been running monthly in *First Things* magazine, does not state that the school is Catholic. What it does state is, "Enhanced by the Catholic intellectual tradition, Ave Maria's approach to the study of law provides a rewarding education for law and life." Advertisement, *FIRST THINGS*, Nov. 2000, at 53.

26. "Robert Bork, former U.S. Solicitor General and nominee for the U.S. Supreme Court, came out of teaching retirement and signed on as a tenured Ave Maria professor." George Bullard, *Ave Maria Readies Its First Law Class*, DETROIT NEWS, Aug. 7, 2000, Metro Section at 1.

27. See ASSOCIATION OF AMERICAN LAW SCHOOLS, HANDBOOK 31 (2000) ("A member school shall provide equality of opportunity in legal education for all persons, including faculty and employees with respect to hiring, continuation, promotion and tenure, applicants for admission, enrolled students, and graduates, without discrimination or segregation on the ground of race, color, religion, national origin, sex, age, handicap or disability, or sexual orientation.").

was found to be in violation of this bylaw interpretation, it could face AALS sanction, even loss of membership. But since AALS's benefits are primarily to faculty, and since individual faculty members could continue to belong to AALS whether their employing law school was a member, loss of AALS institutional membership might not be a major event. In any event, for any religiously affiliated law school that imposes a religious hiring test for faculty, AALS Bylaw Section 6-4(a) will cause difficulties.

III. CATHOLIC IDENTITY

Despite the initial questions that were raised, there are no canonical or civil impediments to moving forward on the *Ex Corde Ecclesiae* norms. The basic question remains to be answered, then: What makes a law school Catholic? I can address that question rather easily as a canonist. In order to be Catholic, an institution must do three things: (1) it must publically identify itself as Catholic; (2) it must act like it is Catholic; and (3) it must maintain some formalized relationship with the hierarchical Church. These requirements are easy to state, but perhaps not so easy to apply.²⁸

The first requirement, identification of the law school as Catholic, is rather obvious. Yet, literature from the twenty-seven American law schools affiliated with Catholic universities indicates that more of them lack a Catholic self-description than those that embrace one. More common is a specification of the particular religious body that sponsors the school, such as a law school in "the Jesuit tradition" or the "Ignatian tradition," without specifying that these traditions are subsets of the "Catholic tradition." To be fair to these other Catholic law schools, I should note that the web sites of the eight schools of my own University reveal that only two of us (Law and the College of Arts) specifically mention that we are Catholic. So perhaps the designation falls through the cracks, or perhaps sometimes it is conveniently omitted. But an essential aspect of being a Catholic institution is for the institution to say that it is Catholic.

This requirement of Catholic identity is more important than one might realize. For an institution to say that it is Catholic is to put the outside world on notice that it is dealing with a particular type of entity, one that is founded on, and presumably will act on, religious beliefs and values that have an ancient history. Perhaps more importantly, it puts those inside the institution on notice of the same principles. It tells faculty, students and staff, "You have come to work at, study at, teach at, be educated at, an institution that has a well-known, well-established system of beliefs that will affect how you act here, how you act upon others here, and how others act upon you here." In the law school milieu, this announcement to the world that a law school is Catholic enables the school to meet the requirement of the ABA's Accreditation Standard 210(e). We are a Catholic law school, and because we are a Catholic law school, we will act differently than other institutions in our midst.

28. For some other, not so different, points of view, see J.H. Provost, *The Canonical Aspects of Catholic Identity in the Light of Ex Corde Ecclesiae*, 25 *STUDIA CANONICA* 155-91 (1991); F.G. Morrissey, *What Makes an Institution "Catholic"?* 47 *JURIST* 531-44 (1987).

The next aspect of Catholic identity, acting like the institution is Catholic, is much more complex. How does a law school "act Catholic"? First, there are the obvious external signs. Duquesne's law school, for instance, has a crucifix in every classroom and in the student lounge. We do not hold classes on any Catholic holy day. We have Mass offered twice a year, the first week of advent, the first week of lent, in the law school building, even though the University chapel, where daily Mass is offered, is only a short 500 foot walk away. The law school also begins and ends the academic year with a group Mass for all of our students in the University chapel. We have a spiritual reading group, which is open to all students, and which treats religious themes that all of our theistic students would feel at home with.

Our course catalogue contains elective listings in Canon Law, Law and Philosophy, and Law and Religion that provide students with a Catholic perspective on their legal training. We have renewed our focus on legal ethics in the classroom, by establishing a professorship in professional responsibility, by increasing the number of credits in ethics that are required to graduate, by instituting a series of lectures in legal ethics, and by attempting to inculcate ethical issues into every course. We make an extremely high priority of treating our students with respect. As our literature states, "the study of law at Duquesne is never a dehumanizing experience." I must also say that the faculty treat each other with respect. The brutal infighting and internecine strife that characterize too many law school faculties is notably absent at the Duquesne University School of Law.

But is this enough? *Ex Corde Ecclesiae* says that every Catholic university must imbue itself with the following *essential characteristics*:²⁹

1. A Christian inspiration not only of individuals but of the university community as such;
2. A continuing reflection in the light of the Catholic faith upon the growing treasury of human knowledge, to which it seeks to contribute by its own research;
3. Fidelity to the Christian message as it comes to us through the Church; and
4. An institutional commitment to the service of the people of God and of the human family in their pilgrimage to the transcendent goal which gives meaning to life.

It follows that a Catholic law school would also have these characteristics. Indeed, these four items provide a checklist that puts flesh on the bones of the second requirement discussed above, namely how an institution "acts Catholic." How does a law school that wishes to act Catholic manifest these four *essential characteristics* of *Ex Corde Ecclesiae*?

First, how does a Catholic law school manifest a Christian inspiration of individuals and of the larger law school community? Inspiration is the reason we are here as educators. There is no doubt that Duquesne Law School exists because, in 1911, the Holy Ghost Fathers made a commitment to the professional education of the immigrants they had come to Pittsburgh to serve. The institution does have a Christian inspiration. It was and remains a part of the educational apostolate of the

29 *Ex Corde Ecclesiae*, *supra* note 5, at Part I A.1.13.

Holy Ghost Fathers. Does this Christian inspiration extend to the individuals who presently occupy its campus and its law school? That is a more difficult question. A number of our students sit in our classrooms because they see law as an attractive and lucrative career. But there are also those students who enroll and work relentlessly because they realize that a law degree is a way to give voice to the marginalized in society, to help bear the burdens of others. Moreover, not all of those students are Catholic. A number of them are from other faith traditions.

Second, how does a Catholic law school reflect, in the light of the Catholic faith, on the treasury of human knowledge? Strictly speaking, this would require that our faculty and our students bring a Catholic perspective to the legal issues they discuss. It also means that our law review and the published scholarship of our faculty in other reviews would manifest this same Catholic perspective. In other words, we would be Catholic in our classrooms and Catholic in our scholarship. I suspect that, on this criterion, this law school and most other Catholic law schools do poorly. There is after all, no such thing as Catholic tort law or Catholic contract law or Catholic criminal law.³⁰ Yes, there is a Catholic perspective on certain legal issues, those affecting social justice and especially issues respecting life,³¹ but this perspective is not co-extensive with every topic studied in law school.³² If the purpose of a Catholic law school is to give the larger world a Catholic perspective on current legal issues, then I think Duquesne Law School does very well at showing what religious presuppositions make possible in the life of the larger community, without in any way threatening the commitments of the non-Catholic students and faculty. I can illustrate what I mean by a particular episode that occurred here last year.

As a part of the legal ethics curriculum at the Law School, every year Professor Robert Taylor invites a leading voice challenging the assumptions of the legal profession and related groups in America. In 1999, Professor William Simon of Stanford Law School, the author of *The Practice of Justice*, spoke here. At the conclusion of his talk, members of the faculty, and the bench and bar responded to his book and to his talk. In turn, Professor Simon commented on the responses.

Duquesne Law Professors Margaret Krasik and Bruce Ledewitz and Father Sean Kealy of the University's Theology Department challenged Professor Simon rather vigorously on moral grounds. Professor Simon's response was revealing. He characterized the criticism, which he dubbed "the Duquesne critique," as a rejection of his tendency to "subsume the language of morality into the language of law." Professor Simon admitted that he did this because secular Americans only have

30. See Ferdinand N. Dutille, *A Catholic University, Maybe, But a Catholic Law School?* in *THE CHALLENGE AND PROMISE OF A CATHOLIC UNIVERSITY* 71, 77 (Theodore M. Hesburgh ed., 1994) ("Obviously, there is no 'Catholic law' of torts, contracts, or criminal procedure.").

31. See Daniel Gordon, *Ex Corde Ecclesiae: The Conflict Created for American Catholic Law Schools*, 34 GONZ. L. REV. 125, 139-40 (1998/1999) ("For instance, when in constitutional law, state constitutional law, family law or other classes in which the law and public policy of abortion is taught, the professor should add a component to the lesson about Catholic values concerning the respect for life.").

32. See generally Christopher Wolfe, *The Ideal of a (Catholic) Law School*, 78 MARQ. L. REV. 487 (1995) (considering the areas of intersection between Catholic teaching and law school subject matter).

access to the language of law and public values and not to the language of religion and morality. Then he said that it was no surprise that this criticism of his book was voiced at Duquesne, and not elsewhere, because the conversation around law and public life at Duquesne, because of its religious identity, "is a much richer one" than other Americans can have.

These comments by Professor Simon, which appear in full in the *Duquesne Law Review*,³³ please me very much, even though I do not agree with him about the potential depth of the language of law purged of its religious and symbolic sources. What pleases me, first, is that Professor Simon could sense, even in the short time that he was here, that Duquesne Law School is a place where religion and morality are taken with utmost seriousness in terms of public issues and public discourse. This is indeed a function of our Catholic heritage, and that is the way we reflect the light of faith on the treasury of human knowledge.

But what pleases me just as much is that Professor Simon may not have realized that the two professors who launched the "Duquesne critique" were not Catholic but Jewish. It is possible for a Catholic law school to liberate all religious traditions to engage the world in light of their insights. That is what we strive to do at Duquesne Law School.

Third, how is a Catholic law school faithful to the Christian message as it comes to us through the Church? The basic Christian message is creedal, the Nicene Creed being one of the earliest statements thereof. How is a law school faithful to this message? Unlike some other university departments, a law school's course content is not creedal, so there is no risk of any type of creedal distortion in the law school curriculum. But faith is not simply belief; it is action consistent with that belief. Another way to be faithful to the Christian message is to act like we believe it, and this is something that a law school can take affirmative steps to carry out. Do we treat others—our students, our faculty colleagues—as sons and daughters of God, divinely created and divinely redeemed? If not, then we are being unfaithful to the Christian message.

Fourth, how does a law school manifest an institutional commitment to the service of the people of God and of the human family in their pilgrimage to the transcendent goal which gives meaning to life? Certainly, education is a service to the people of God. In our daily operations, we provide service to the people of God. Our numerous clinics provide many services to God's poor, and, hopefully, instill in our students a lifelong commitment to such service.³⁴ This standard of *Ex Corde Ecclesiae* requires not just service to the people of God, but a service that gets people to heaven, the "transcendent goal which gives meaning to life." How can a law school help anyone get to heaven?

Actually, that question is not all that hard to answer. We are forming character at Duquesne Law School. Our mission statement says that we take laypersons and educate them into "highly resourceful, highly responsible" lawyers. The final adjective sums it up. We must train lawyers who are not only highly skilled, they

33. See generally William H. Simon, *Thinking Like a Lawyer—About Ethics*, 38 DUQ. L. REV 1015, 1017 (2000).

34. See Randy Lee, *Catholic Legal Education at the Edge of a New Millennium: Do We Still Have the Spirit to Send Forth Saints?* 31 GONZ. L. REV 565, 571-73 (1995/1996).

must also be highly responsible and highly moral. Henry David Thoreau observed that “Most ... lawyers ... serve the state chiefly with their heads; and, as they rarely make any moral distinctions, they are as likely to serve the devil, without intending it, as God.”³⁵ Lawyers must make moral distinctions, and well-trained lawyers will make moral distinctions. Returning to the Duquesne Law School mission statement, “The Duquesne lawyer is well-trained in the law, but also understands that there is a difference in what the law allows us to do and what we should do—the difference between what is legal in a given situation and what is right.”

That is a lofty goal, but how does a law school give life to those words? There is an oft-told story about the first year law student who, in the course of a Socratic dialogue, opines to the professor that the conclusion being reached in the classroom dialogue is not “just,” whereupon the professor informs the student that this is the *law school* where we study what is legal. If the student is interested in studying justice, the professor advises, the *divinity school* is down the street. No Catholic law school can accept that great divide between what is legal and what is just. It must not only insist on an overlap, it must teach its students to work towards reconciling the twin aims of adhering to the law and achieving justice. The great Oliver Wendell Holmes was wrong when he wrote, “I hate justice, which means that I know if a man begins to talk about that, for one reason or another he is shirking thinking in legal terms.”³⁶ If justice is not the end of law, then law has no reason to exist. Talking about justice is talking about the law in its loftiest terms.³⁷

The third element that makes an institution Catholic is some formalized relationship with the hierarchical Church. Law schools at Catholic universities do not have a direct, formal relationship with the hierarchical Church, but they do have this relationship through the university of which they are a part. At Duquesne, for example, the law school is responsible to the Provost and the President, who are, in turn, responsible to the Board of Directors of the University. The Board is responsible through the device of corporate membership to the Provincial Council of the Holy Ghost Fathers, which is responsible to the Generalate of the Holy Ghost Fathers, which is under the authority of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, which is a department of the Apostolic See.

This is what makes a law school Catholic. The school publicly identifies itself as Catholic. The school, in its institutional life, acts Catholic, as described in *Ex Corde Ecclesiae* and it maintains a formal relationship with the hierarchical Church. Simply stated, but not so simply done. Nonetheless, the rules are clear. The Church’s law does provide a structure for law schools to follow which, if followed, will allow the law school to label itself “Catholic” in the most meaningful sense of that term.

35. Henry D. Thoreau, *Civil Disobedience, 1849* in 4 WRITINGS OF HENRY DAVID THOREAU 356, 359 (1906).

36. Letter from Oliver W. Holmes, Jr. to John C.H. Wu (July 1, 1929), in JUSTICE HOLMES TO DR. WU: AN INTIMATE CORRESPONDENCE, 1921-1932, at 53 (1947).

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