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## Justice and Jesuit Legal Education: A Critique

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# Justice and Jesuit Legal Education: A Critique

*John M. Breen\**

## I. INTRODUCTION

In April 1997, less than a year after I first joined the faculty, I was invited to participate in a panel discussion entitled "Law and Justice: Are They Still Connected?" The panel was organized not by a fellow faculty member, but by then Law School chaplain, Brother James Zullo, F.S.C. He did so in response to a request from several third-year students who had expressed an interest in the subject. Following the brief formal presentation, the panel members invited questions from the students in attendance.

A particularly memorable comment and question came from a young woman about to graduate. In a moment of incredulous reflection she complained that this was her third and final year of law school, yet this was the first time in any of her classes that she could recall any meaningful discussion of justice. She explained that the absence of this sort of discussion was especially disappointing because she had attended a Jesuit university for her undergraduate studies where such discussions had regularly taken place, and that she had been attracted to Loyola's law school because of its Jesuit identity. Indeed, she had come to Loyola with the expectation that justice, in the context of law, would be a vital part of the curriculum. This, it turned out, had not been the case. Thus, she wanted to know why discussions concerning the meaning and importance of justice were not at the heart of Loyola's efforts to prepare future lawyers for the practice of law. Why was it, she asked, that justice did not play a more prominent role in the

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education of Loyola law students?

## II. A PROFESSION ADRIFT: LEGAL PRACTICE AND THE CONNECTION TO JUSTICE

The disappointment experienced by this student over the apparent absence of rigorous classroom discussion concerning justice should come as no surprise to those familiar with the current state of the bar and American legal education.

In recent years, a number of commentators have described what they believe is a crisis in the legal profession. This crisis is marked by a high degree of anxiety and depression among lawyers with respect to their work, as well as widespread confusion and disappointment concerning the role of lawyers and the value of a life spent in practice.<sup>1</sup> Some attribute this crisis to the loss of “the ideal of the lawyer-statesman” as a normative model. In the absence of this model, lawyers as a group no longer seek to embody the virtues of prudence, even-temperedness, and the habitual disposition toward deliberative judgment.<sup>2</sup> Others argue that these problems are due to the erroneous identification of professional success with money and power. Lawyers’ seemingly insatiable desire for greater and greater levels of income has in turn led to the charging of higher fees, and the expectation of increased billable hours and more intense competition among law firms.<sup>3</sup> Still others claim that the profession suffers from a loss of meaning—a “spiritual crisis”—that can be overcome only by rediscovering the rich traditions of religious faith.<sup>4</sup> According to this view, “[i]f lawyers begin to see

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1. See generally MARY ANN GLENDON, *A NATION UNDER LAWYERS* (1994) (chronicling what the author regards as a deepening crisis of values within the legal system and a corresponding sharp decline in the level of satisfaction of work in today’s lawyers); RICHARD ZITRIN & CAROL M. LANGFORD, *THE MORAL COMPASS OF THE AMERICAN LAWYER: TRUTH, JUSTICE, POWER AND GREED* (1999) (discussing the ethical dilemma rooted in our adversarial legal system where lawyers are encouraged to serve their clients rather than seek justice).

2. See ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 1–3 (1993) (arguing that today’s legal institutions no longer seek to cultivate the character virtues once required to provide effective and genuinely deliberative counsel beyond legal expertise).

3. See Patrick Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999) (discussing the commercialization of the legal profession and how this has had a detrimental effect on the physical, emotional and moral well-being of lawyers).

4. See JOSEPH G. ALLEGRETTI, *THE LAWYER’S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE* (1996) (urging lawyers to rethink their careers in terms of a vocation where they have the potential to be true healers in society and explaining how their service to clients resembles a covenant relationship). In recent years something of a movement has developed among some academics and practitioners concerning the relationship between religious faith and lawyers’ work. See *Faith and the Law Symposium*, 27 TEX. TECH L. REV. 911 (1996) (discussing how

their work as a vocation, they will find powerful resources for coping with the inevitable tensions and disappointments of their work.”<sup>5</sup>

Each of these accounts has something to recommend it. Still, I believe that the cause of the widespread disillusionment and frustration described by these commentators is something even more basic than the absence of religious faith, the competitive pressure to generate fees and attract clients, or the loss of a normative ideal upon which to model one’s conduct as an attorney. Simply put, the fundamental problem that confounds the legal profession today is that many lawyers no longer see a connection between the ordinary work they perform for clients and the virtue of justice.<sup>6</sup> This loss of connection is often profoundly disheartening since, at least in part, it was out of a desire to promote justice that many first sought to become lawyers.

The lack of attention paid to justice in law school begins the process that leads to this ultimate dissatisfaction. From almost the first day of law school, most prospective lawyers are taught to separate their most fundamental moral beliefs (including their beliefs about justice) from their understanding of the law.<sup>7</sup> Even the suggestion that moral discourse about the law might contribute to the education of future lawyers causes some law professors to bristle. According to one experienced law teacher, such discussions are inappropriate in legal education because they “raise [] the specter of moral pontification and religious proselytization in the law school classroom.”<sup>8</sup>

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various members of the legal profession—lawyers, judges, and law professors—have reconciled their professional life with their faith); *Symposium: The Relevance of Religion to a Lawyer’s Work: An Interfaith Conference*, 66 *FORD. L. REV.* 1075 (1998) (detailing the emergence of the religious lawyering movement and exploring the implications of religion for lawyering with regard to broad theoretical issues and specific ethical questions); *Symposium: Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent*, 26 *FORD. URB. L.J.* 821 (1999) (describing the movement’s goal of creating national and local groups of lawyers, judges, and religious leaders who focus on how law and religion can create and preserve a just and principled society).

5. ALLEGRETTI, *supra* note 4, at 35.

6. *Cf.* GLENDON, *supra* note 1, at 108 (arguing that “the current devaluation of the ordinary activities to which most lawyers still devote most of their attention day in and day out, must be an important reason why so many lawyers feel bad when they should be feeling good”); Charles Silver & Frank B. Cross, *What’s Not to Like About Being A Lawyer?* 109 *YALE L.J.* 1443, 1449 (2000) (review essay) (arguing that “lawyers who help paying clients with private matters make valuable microeconomic contributions by helping create and maintain the world of commerce and make valuable micropolitical contributions by maintaining a culture in which people actively create and use legal rights”).

7. *See, e.g.*, Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 *J. LEGAL EDUC.* 247 (1978) (discussing the dominant moral framework in which legal education takes place).

8. Lee Modjeska, *On Teaching Morality to Law Students*, 41 *J. LEGAL EDUC.* 71 (1991). *See also id.* at 72 (arguing further that “the law (and legal process) essentially delimits the role of

The capacity to distance oneself from one's own deeply held beliefs, and to subject those beliefs to critical review, is surely a valuable skill that every lawyer should possess. It enables the lawyer to understand the strengths and weaknesses of the client's position, as well as the strengths and weaknesses of the client's opponent in litigation or counterpart in a transaction. Nevertheless, for many law students, the routine exclusion of moral discourse from the classroom experience "deepens into a belief in the meaninglessness of principles, the relativism of values or the non-existence of an ultimate reality."<sup>9</sup> Thus, in undergoing the transformation from a person with firmly held beliefs to one who can zealously argue on behalf of any given point-of-view, many lawyers experience a profound sense of moral dissonance and alienation. They are now divorced from the fundamental beliefs about justice that inspired many of them to pursue a career in law in the first place.

From there, it is but a short step for the lawyer to see him or herself as merely "an amoral technician whose peculiar skills and knowledge in respect to the law are available to those with whom the relationship of client is established."<sup>10</sup> They quickly learn that, as a profession, the practice of law requires a kind of agnosticism, and that the consummate professional is the consummate agnostic for whom all justice is relative: it depends solely upon the identity of one's client and how that client defines his or her interests with respect to a particular matter. Although most lawyers do not completely abandon their most basic understandings of right and wrong, they separate these "private" beliefs from their "professional" activities, or they confine them to narrow aspects of their work such as the *pro bono* matters they chose to take on.

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moral obligation in the exercise of my professional responsibilities"). Although the sort of naive agnosticism advanced by Modjeska is surely widespread in the legal academy, fortunately, some law teachers offer an alternative perspective. For example, Thomas Shaffer and Robert Cochran write that:

Law office conversations are almost always moral conversations. This is so because they involve law, and law is a claim that people make on one another. The moral content is often implicit, but it is always there. Legal claims rest on normative considerations as well as objective rules. And when clients or their lawyers take advantage of the rules, they have decided that they ought to take advantage. They might have decided that they ought not to. If it is possible for a serious conversation between a lawyer and a client in a law office to be without moral content, we cannot think of an example.

THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 1 (1994).

9. Cramton, *supra* note 7, at 253.

10. Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 *HUM. RTS.* 1, 6 (1975).

As a consequence, many no longer see justice as informing the bulk of the work they perform everyday.<sup>11</sup>

Given this state of affairs, the student's disappointment over the absence of meaningful classroom discussions concerning justice is not at all surprising. Rather, it is to be expected. It anticipates the even greater disappointment that many lawyers later experience in practice.

### III. JUSTICE AND JESUIT IDENTITY: THE SOCIETY OF JESUS FOLLOWING VATICAN II

The disappointment of the student above is, however, quite surprising in one respect. The Jesuits, in their public statements of self-identity, indicate that they expect something more from themselves and from the institutions they sponsor. They hope and expect that the graduates of Jesuit universities will gain a deep appreciation for and commitment to justice in the course of their Jesuit education. As Rev. Peter-Hans Kolvenbach, S.J., the Superior General of the Society of Jesus, recently explained, students at Jesuit universities "should learn to perceive, think, judge, choose and act for the rights of others, especially the disadvantaged and the oppressed."<sup>12</sup>

The explicit emphasis on justice as an indispensable aspect of Jesuit identity is a relatively new phenomenon, one that developed in the wake of the Second Vatican Council. In the 1960s and 1970s, under the leadership of Father Kolvenbach's predecessor as Superior General, Rev. Pedro Arrupe, S.J., the Society of Jesus began to stress as never before the importance of justice in its work.<sup>13</sup> In a now famous address given to the alumni of Jesuit schools and universities in Europe on July 31, 1973 (the Feast of St. Ignatius Loyola), Father Arrupe announced that the "prime educational objective" of Jesuit institutions "must be to form men-and-women for others."<sup>14</sup> The opposite of a man-or-woman-

11. For examples of the moral and ethical lapses of some lawyers in the current environment of practice see GLENDON, *supra* note 1 and ZITRIN & LANGFORD, *supra* note 1.

12. Peter-Hans Kolvenbach, S.J., *The Service of Faith and the Promotion of Justice in American Jesuit Higher Education*, Address at Santa Clara University 8 (Oct. 6, 2000), at [http://www.creighton.edu/CollaborativeMinistry/kolvenbach\\_speech.html](http://www.creighton.edu/CollaborativeMinistry/kolvenbach_speech.html) (last visited Jan. 8, 2005).

13. *Id.* at 5. Some regarded this as a radical reorientation of the Society's mission and concomitant repudiation of its long-standing apostolate in education. Father Kolvenbach acknowledges this response noting that "many raised doubts about our maintaining large educational institutions" and that they "insinuated, if they did not insist that direct social work among the poor and involvement with their movements should take priority." *Id.*

14. Pedro Arrupe, S.J., *Men for Others*, Address at Valencia, Spain 2 (July 31, 1973), at <http://www.creighton.edu/CollaborativeMinistry/men-for-others>. (last visited Jan. 8, 2005). Although the original phrase used by Arrupe was "men for others," the Creighton University website indicates that the posted-version has been "adapted . . . to include 'men and women' to

for-others is the person “who lives only for his or her own interests,” who “tend[s] to accumulate in exclusive fashion more and more knowledge, more and more power, more and more wealth.”<sup>15</sup> Such a person further dehumanizes a world already rife with injustice by changing other persons “into things by dominating them, exploiting them, and taking to themselves the fruit of their labor.”<sup>16</sup> By contrast, the man-or-woman-for others strives “to live more simply,” to avoid drawing profit “from clearly unjust sources,” and “to be [an] agent[] of change in society; not merely resisting unjust structures and arrangements, but actively undertaking to reform them.”<sup>17</sup>

According to Father Arrupe, this change in the orientation of Jesuit education was called for by a “new awareness in the Church that participation in the promotion of justice and the liberation of the oppressed is a constitutive element” of the Christian mission.<sup>18</sup> Arrupe acknowledged that his proposal was “directly counter to the prevailing educational trend practically everywhere in the world.” Still, he insisted that “the education imparted in Jesuit schools will be equal to the demands of justice in the world.”<sup>19</sup>

Father Arrupe was enormously influential in defining the identity of the Society of Jesus and setting the course for Jesuit education in the remainder of the 20th century.<sup>20</sup> In December 1974, Arrupe convoked the 32nd General Congregation of the Society of Jesus (“GC32”). In

make its powerful message applicable for a contemporary Jesuit alumni audience.” *Id.* at 1.

15. *Id.* at 10.

16. *Id.* at 10–11.

17. *Id.* at 12–13.

18. *Id.* Here, Arrupe took his inspiration from the Second Vatican Council which emphasized the Church’s presence and activity “in the world of today.” See SECOND VATICAN ECUMENICAL COUNCIL, PASTORAL CONSTITUTION ON THE CHURCH IN THE MODERN WORLD *Gaudium et Spes* ¶ 2 (1965), reprinted in CATHOLIC SOCIAL THOUGHT: THE DOCUMENTARY HERITAGE 166 (David J. O’Brien & Thomas A. Shannon, eds., 1997) [hereinafter CATHOLIC SOCIAL THOUGHT] (inviting the world to engage in dialogue concerning the family, culture, politics, economics, and international relations, based on a correct understanding of the human person). Arrupe also specifically relied upon a document produced in 1971 by the Synod of Bishops, a rotating body of Catholic bishops drawn from around the world who gather periodically to consult with the Bishop of Rome. This document, entitled “Justice in the World,” emphatically declares that “[a]ction on behalf of justice and participation in the transformation of the world fully appear to us as a constitutive dimension of the preaching of the Gospel, or, in other words, of the Church’s mission for the redemption of the human race and its liberation from every oppressive situation.” SYNOD OF BISHOPS, JUSTICE IN THE WORLD (1971) [hereinafter JUSTICE IN THE WORLD], reprinted in CATHOLIC SOCIAL THOUGHT, *supra* at 289.

19. Arrupe, *supra* note 14 at 2, 3.

20. For a flattering account of Father Arrupe and his leadership of the Society see JEAN LACOUTURE, JESUITS: A MULTIBIOGRAPHY 459–79 (Jeremy Leggalt trans., 1995). For a more critical view of Arrupe’s legacy see JAMES HITCHCOCK, THE POPE AND THE JESUITS: JOHN PAUL II AND THE NEW ORDER IN THE SOCIETY OF JESUS (1984).

Decree 4 of GC32, entitled “Our Mission Today,” the Society adopted and expanded upon Arrupe’s vision for the order. According to the Decree, “[t]he mission of the Society of Jesus today is the service of faith, of which the promotion of justice is an absolute requirement.”<sup>21</sup> The Decree insisted that the promotion of justice would not be a new area of work, a “social apostolate” which the Society would add to its traditional apostolates of sponsoring schools and universities, running parishes, and hosting retreats. Instead, the promotion of justice “should be the concern of our whole life and a dimension of all our apostolic endeavors.”<sup>22</sup>

Although Decree 4 of GC32 claimed that “[i]n one form or another, [the promotion of justice] ha[d] always been the mission of the Society,”<sup>23</sup> it also acknowledged that this emphasis on justice required “a thoroughgoing reassessment of our traditional apostolic methods, attitudes and institutions.”<sup>24</sup> Because the mission of the Jesuits includes “a willingness not only to recognize and respect the rights of all, especially the poor and the powerless, but also to work actively to secure those rights,”<sup>25</sup> GC32 also acknowledged that “[a]ny realistic plan to engage in the promotion of justice will mean some kind of involvement in civic activity.”<sup>26</sup>

Specifically with respect to Jesuit sponsorship of schools and universities, GC32 states that Jesuits “should pursue and intensify the work of formation in every sphere of education.”<sup>27</sup> Following Father Arrupe’s vision, GC32 provides that the goal of Jesuit education must be “to help prepare both young people and adults to live and labor for

21. THE DECREES OF THE 32ND GENERAL CONGREGATION OF THE SOCIETY OF JESUS, Decree 4, ¶ 2 (1975) *reprinted in* DOCUMENTS OF THE 31ST AND 32ND GENERAL CONGREGATIONS OF THE SOCIETY OF JESUS (1977) [hereinafter GENERAL CONGREGATION 32]. Decree 4 of the 32nd General Congregation can also be found at *Our Mission Today: The Service of Faith and the Promotion of Justice, Decree 4 of the 32nd General Congregation of the Society of Jesus* (Dec. 2, 1974–March 7, 1975), at <http://www.creighton.edu/CollaborativeMinistry/our-mission-today.html> (last visited Jan. 8, 2005).

22. GENERAL CONGREGATION 32, *supra* note 21, at Decree 4, ¶ 47. *See also id.* ¶ 76 (“The review of our ministries and the development of our available manpower and resources must pay great attention to the role in the service of faith and the promotion of justice which can be played by our educational institutions, periodicals, parishes, retreat houses, and other apostolic works for which we are responsible”).

23. *Id.* ¶ 3.

24. *Id.* ¶ 9. *See also id.* ¶ 34 (noting that “[t]here is evidence of a widespread desire, and often a whole-hearted effort, to renew and adapt our traditional apostolates and to embark on new ones”).

25. *Id.* ¶ 18.

26. *Id.* ¶ 80.

27. *Id.* ¶ 60.

others and with others to build a more just world.”<sup>28</sup> GC32 states that the general method to be employed in discerning justice and how it can best be promoted is through “a constant interplay between experience, reflection, decision and action, in line with the Jesuit ideal of being ‘contemplative in action.’”<sup>29</sup>

The current Superior General, Father Kolvenbach, convoked the 34th General Congregation for the Society of Jesus (“GC34”) in 1995. Although more nuanced than GC32, GC34 expressly “renews [the Jesuit] commitment to the promotion of justice as an integral part of our mission, as this has been extensively developed in General Congregations 32 and 33.”<sup>30</sup> GC34 states that the Society’s dedication to the promotion of justice demands the “continuing personal conversion” of each Jesuit.<sup>31</sup> More than this, it requires that every member of the Society provide some “direct service” to the poor, that he develop an “awareness of the demands of justice joined to the social responsibility to achieve it,” and that he actually participate “in social mobilization for the creation of a more just social order.”<sup>32</sup>

As noted above, GC32 left some with the impression that intellectual formation and the Jesuit apostolate in education were no longer important or were to be valued only insofar as they promoted justice. Decree 16 of GC34 attempted to correct this view. It states that the Society holds “intellectual labor in high esteem” and “strongly reaffirms the distinctive importance of the intellectual quality” of all Jesuit activity.<sup>33</sup> At the same time, however, GC34 does not state that the intellectual life of the human person has an intrinsic value.<sup>34</sup> Instead, it directly relates intellectual formation to the promotion of justice. Thus, Decree 16 states that both the “ongoing acquisition of knowledge” and the “personal capacity to analyze and evaluate” are “indispensable if [Jesuits] wish to integrate the promotion of justice with the

28. *Id.*

29. *Id.* ¶ 73.

30. THE DECREES OF GENERAL CONGREGATION THIRTY-FOUR, THE FIFTEENTH OF THE RESTORED SOCIETY AND THE ACCOMPANYING PAPAL AND JESUIT DOCUMENTS, Decree 3, ¶ 3 (1996) [hereinafter GENERAL CONGREGATION 34]. The decrees of the 34th General Congregation are also available at <http://www.jesuit.org/sections/sub.asp?> (last visited Jan. 8, 2005).

31. GENERAL CONGREGATION 34, *supra* note 30, at Decree 3, ¶ 17.

32. *Id.* ¶ 19.

33. *Id.* at Decree 16, ¶ 1.

34. The closest GC 34 comes to making such a statement is the following: “As Jesuits, we seek knowledge for its own sake, and at the same time must regularly ask, ‘Knowledge for what?’” *Id.* at Decree 17, ¶ 6. The obvious tension between knowledge as a value independent of justice and the overriding imperative of justice necessitates the qualified nature of the statement.

proclamation of faith.”<sup>35</sup> Significantly, GC34 also notes that “an intellectual tradition continues to be of critical importance for the Church’s vitality as well as for the understanding of cultures which deeply affect each person’s way of thinking and living.”<sup>36</sup>

With respect to Jesuit universities, Decree 17 of GC34 reaffirms the “basic Ignatian intuition” that such cultural institutions are “places where a more universal good might be achieved.”<sup>37</sup> The document also clearly states that “any university calling itself Jesuit, or any university which operates ultimately under our responsibility” must evidence “authentic participation” in “basic Jesuit identity and mission.”<sup>38</sup> Thus, “in order for an institution to call itself Jesuit, periodic evaluation and accountability to the Society are necessary in order to judge whether or not its dynamics are being developed in line with the Jesuit mission.”<sup>39</sup> Although reluctant to reduce the mission of a Jesuit university “to only one legitimate goal,” GC34 nevertheless requires every Jesuit university to “act in harmony with the demands of the service of faith and promotion of justice found in Decree 4 of GC32.”<sup>40</sup>

#### IV. WORD AND DEED: THE RHETORIC OF JESUIT IDENTITY AND THE PRACTICE OF CLINICAL LEGAL EDUCATION

As the brief foregoing history makes clear, following the Second Vatican Council, the Jesuits began, in an explicit fashion, to attach enormous importance to the promotion of justice as a dimension of their mission. Indeed, with GC32 “this became the Jesuit ‘priority of priorities.’”<sup>41</sup> Every Jesuit ministry of whatever sort including the education apostolate, was now called upon to support this mission.

At least on a rhetorical level, Jesuit law schools in the United States have embraced this aspect of Jesuit identity. Language referring to “the promotion of justice,” the importance of “service,” and the goal of making “men and women for others” can be found littered throughout the mission statements and other self-descriptions of the fourteen law schools that operate under Jesuit auspices.<sup>42</sup> Together with vague

35. *Id.* at Decree 16, ¶ 3.

36. *Id.* ¶ 2.

37. *Id.* at Decree 17, ¶ 1.

38. *Id.* ¶ 7.

39. *Id.* ¶ 9.

40. *Id.* ¶ 7.

41. Thomas P. Fasse, *Policies and Predicaments for the Jesuit Educational Mission from the Past Three General Congregations*, in *THE JESUIT TRADITION IN EDUCATION AND MISSIONS: A 450-YEAR PERSPECTIVE* 131, 132 (Christopher Chapple ed., 1993).

42. An appendix to this article surveys the websites of the fourteen Jesuit sponsored law

references to the schools' Jesuit "tradition" or "heritage" and other expressions of Jesuit ideals such as the care of "the whole person,"<sup>43</sup> the use of this language in these statements and descriptions testifies to the widespread influence of the Society's own reflections on its identity, "the untiring Jesuit energy for self-study"<sup>44</sup> brought to fruition.

Although effective on a rhetorical level, the use of this language might ring hollow for many graduates of Jesuit law schools. Indeed, the Loyola student with whom we began would undoubtedly be surprised to learn that according to the University, "[i]n a very real sense, all of the education at the School of Law is focused on justice."<sup>45</sup> She would likely be very surprised to learn that "[t]he School of Law expects each of its teachers to include in every course instruction in issues of justice and professional responsibilities."<sup>46</sup> While it would be wrong to question the hope and sincerity with which these descriptions were written, it is entirely appropriate to question whether they accurately reflect the kind of education that is actually taking place.

In addition to employing the language of "justice" and "service to others" in their self-descriptions, Jesuit law schools frequently point to the clinical opportunities they make available to students to demonstrate their commitment to justice in the context of legal education. For

schools, namely, Boston College School of Law, Creighton University School of Law, University of Detroit Mercy School of Law, Fordham University School of Law, Georgetown University Law Center, Gonzaga University School of Law, Loyola University Chicago School of Law, Loyola Marymount University School of Law (Los Angeles), Loyola University New Orleans School of Law, Marquette University School of Law, Santa Clara University School of Law, University of San Francisco School of Law, Saint Louis University School of Law, and Seattle University School of Law. As others who have employed this methodology have noted, it is not without its drawbacks. See John J. Fitzgerald, *Today's Catholic Law Schools in Theory and Practice: Are We Preserving Our Identity?*, 15 NOTRE DAME J. L. ETHICS & PUB. POL'Y 245, 283 (2001) (conducting a survey of Catholic law school websites to gauge their Catholic identity but noting that an ideal survey "would include on-site visits and conversations with various administrators, professors, and students"). Still, as a matter of basic fairness, it seems appropriate to take these institutions at their word by relying on how they describe themselves on their own web pages.

43. See Kolvenbach, *supra* note 12, at 8 (noting that "Jesuit tradition has sought to educate 'the whole person' intellectually and professionally, psychologically, morally and spiritually"). See ROBERT F. HARVANEK, S.J., *THE JESUIT VISION OF A UNIVERSITY* 12-13 (1989) (discussing the concept *cura personalis*, which expresses a deep concern for the full development of each individual person). For a lexicon of terms commonly used by Jesuit educators, see GEORGE W. TRAUB, S.J., *DO YOU SPEAK IGNATIAN?: A GLOSSARY OF TERMS USED IN IGNATIAN AND JESUIT CIRCLES* (1997). Oddly enough, this booklet does not mention this concept.

44. JAMES TUNSTEAD BURTCHAELL, C.S.C., *THE DYING OF THE LIGHT: THE DISENGAGEMENT OF COLLEGES AND UNIVERSITIES FROM THEIR CHRISTIAN CHURCHES* 624 (1998).

45. Loyola University Chicago, *Who We Wish to Become: Creating Our Future Together*, at <http://www.luc.edu/jesuit/future.html> (last visited Jan. 8, 2005)

46. *Id.*

example, Georgetown University Law Center boasts that it is a “pioneer in clinical legal education” and that it “has the largest, strongest, and most highly regarded in-house clinical program in the country.”<sup>47</sup> The Law Center does not indicate that its clinical programs help it to realize the Jesuit ideal of promoting justice. Indeed, the Law Center’s website makes almost no mention of Jesuit identity or affiliation.<sup>48</sup> In the past, however, the Law Center published a booklet entitled “Faith and Justice at Georgetown University Law Center” in which the school’s clinical programs were prominently featured.<sup>49</sup> Moreover, Georgetown University’s website links visitors to the Law Center’s clinical programs on a page that describes the University’s mission of “[s]ervice to others and work for social justice.”<sup>50</sup> The University homepage in turn lists this description of service programs under the heading “Catholic and Jesuit identity.”<sup>51</sup>

Like Georgetown, Fordham University School of Law does not promote its clinical programs as being inspired by or related to the University’s Jesuit identity. Nevertheless, Fordham University’s own website does make this connection.<sup>52</sup> On a page generally describing Fordham’s Jesuit tradition, the University states that a Fordham education, “embraces rigorous scholarship and adherence to ethical values.”<sup>53</sup> In this regard, it notes that Fordham’s Law School is “internationally known for emphasizing ethics,” and that it “has several active *pro bono* programs.”<sup>54</sup>

Other Jesuit law schools are more overt in drawing a connection between their clinical programs and their Jesuit identity. For example, Seattle University School of Law says that the students in its law clinic

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47. Georgetown University Law Center, *Information for Current J.D. Students*, at <http://www.law.georgetown.edu/clinics/> (last visited Jan. 8, 2005).

48. The sole mention of “Jesuit” on the Law Center’s website appears as an oblique reference on a page recounting the history of the school. See Georgetown University Law Center, *A Little History*, at <http://www.law.georgetown.edu/tour/> (last visited Jan. 8, 2005) (noting that the school was “the first law school established in the United States by a Jesuit institution of higher learning”).

49. See FAITH AND JUSTICE AT GEORGETOWN UNIVERSITY LAW CENTER 10 (promotional booklet on file with the Loyola University Chicago Law Journal) (extolling the strength of the clinical program).

50. Georgetown Univ., *Service and Social Justice*, at <http://www.georgetown.edu/home/service.html>.

51. Georgetown Univ., *About Georgetown*, at <http://www.georgetown.edu/home/about.html> (last visited Jan. 16, 2005).

52. Fordham Univ., *Our Mission*, at [http://www.fordham.edu/Discover\\_Fordham/Fordhams\\_Jesuit\\_Trad3624.html](http://www.fordham.edu/Discover_Fordham/Fordhams_Jesuit_Trad3624.html) (last visited Jan. 8, 2005).

53. *Id.*

54. *Id.*

“learn to be lawyers . . . while advocating for justice on behalf of those most vulnerable in our society.”<sup>55</sup> Likewise, Seattle’s Access to Justice Institute states that by placing students in volunteer positions where they provide legal services to those in need it “reflects the mission of Seattle University School of Law: to lead its students toward lifetime service to justice for all.”<sup>56</sup> Likewise, the University of Detroit Mercy School of Law states that its Urban Law Clinic helps students to obtain valuable practical experience, “[i]n addition to fulfilling our School’s mission of public service.”<sup>57</sup>

Perhaps more than any other Jesuit institution, Loyola University Chicago emphasizes the connection between its various “practices” and the University’s commitment to the Jesuit identity and the promotion of justice. Likewise, of all the Jesuit law schools, Loyola University Chicago School of Law appears to draw the strongest connection between its clinical law programs and a commitment to Jesuit identity and the promotion of justice. On a web-page highlighting “Loyola’s most exemplary ‘best practices’ in the area of justice” the University boasts that “Loyola’s Community Law Center not only provides legal representation to large numbers of indigent persons who cannot afford a lawyer but in the same process, it trains Loyola students to work competently on behalf of the poor in matters involving family life, government benefits, and landlord-tenant disputes.”<sup>58</sup> It also notes that Loyola’s Childlaw Clinic “provides Loyola students with the opportunity to know first-hand the world of poor children and to represent and defend their interests.”<sup>59</sup> Elsewhere the University points to these and other clinical programs as evidence of the School of Law’s “specific commitments to justice.”<sup>60</sup> The School of Law’s own website notes that by “placing students in a law-office setting with real clients,” the Community Law Center Clinic “creates a synergy between teaching essential skills and providing needed service, consistent with the Jesuit

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55. Seattle Univ. School of Law, *Ronald A. Peterson Law Clinic*, at <http://www.law.seattleu.edu/clinic> (last visited Jan. 8, 2005).

56. Seattle Univ. School of Law, *Access to Justice Institute*, at <http://www.law.seattleu.edu/accesstojustice> (last visited Jan. 8, 2005).

57. Univ. of Detroit Mercy School of Law, *Urban Law Clinic*, at <http://www.law.udmercy.edu/currentstudents/academic/urbanlawclinic.php> (last visited Jan. 8, 2005).

58. Loyola Univ. Chicago, *Who We Are: A Multi-Storeyed Institution*, at <http://luc.edu/jesuit/institution.html> (last visited Jan. 8, 2005).

59. *Id.*

60. Loyola Univ. Chicago, *Future Together*, at <http://www.luc.edu/jesuit/future.html> (last visited Jan. 8, 2005). To its credit, Loyola raises a number of questions on this web page designed “to foster conversation about Loyola’s institutional commitment to social justice” and how this commitment might be improved. *Id.*

principle of making a difference as persons for others.”<sup>61</sup>

If the promotion of justice is as important to Jesuit identity as the Society of Jesus insists in its formal statements, then there are ample reasons to believe that clinical legal education cannot constitute the fulfillment of this identity in the law school context. The provision of legal services to the poor and disadvantaged undoubtedly makes a valuable contribution to a school’s Jesuit identity. At the same time, however, such a contribution constitutes at best only a partial and incomplete attempt to satisfy the Jesuit demand for the promotion of justice.

First, it is ironic that clinical programs are championed as the defining characteristic of Jesuit legal education since the hosting of legal clinics is in no way distinctively Catholic or Jesuit.<sup>62</sup> Indeed, “almost all law schools have civil and criminal law clinics and some have clinics that address the rights of abused women, the environment and the homeless.”<sup>63</sup> Of course, the irony that clinics are now an unremarkable feature at most law schools is, as Mark Sargent has said, “beside the point.”<sup>64</sup> A Jesuit law school dedicated to the promotion of justice must nevertheless provide strong institutional support for clinical legal education and service to the poor. Although devoting substantial financial resources to clinical programs may not set Jesuit law schools apart from their secular peers, “[t]he Catholic law school . . . must commit to such service learning [precisely] *because* it is Catholic.”<sup>65</sup>

61. Loyola Univ. Chicago, *Community Law Center Clinic*, at <http://www.luc.edu/law/academics/special/clinic/community.html> (last visited Jan. 8, 2005).

62. See Mark Tushnet, *Catholic Legal Education at a National Law School: Reflections on the Georgetown Experience*, in *GEORGETOWN AT TWO HUNDRED: FACULTY REFLECTIONS ON THE UNIVERSITY’S FUTURE* 321, 324–25 (William C. McFadden ed., 1990) (noting that Georgetown “has an extensive program of clinical education whose justification lies in part in its provision of service to the community” but pointing out that Stanford has an even “more fully developed program” and arguing that “while certain Catholic institutions stand out with respect to particular activities, so do some secular institutions, thus undercutting the argument that specifically Catholic commitments generate such programs”); Christopher Wolfe, *The Ideal of a (Catholic) Law School*, 78 MARQ. L. REV. 487, 495 (1995) (arguing that it is not clear that the sponsorship of clinical legal services for the poor and marginalized “would make the Catholic law school very distinctive, since Stanford and Yale should have the same concern for social justice as any Catholic law school”).

63. Jeffrey S. Brand, *Jesuit Law Schools and the Pursuit of Justice: Unique Opportunities, Unique Responsibilities*, *CONVERSATIONS*, Spring 2001, at 28, 31. Notwithstanding the prevalence of clinics, Dean Brand also argues that “Jesuit law schools have a unique opportunity and special responsibility to be even more creative in developing programming to fulfill [their] mission.” *Id.*

64. Mark A. Sargent, *An Alternative to the Sectarian Vision: The Role of the Dean in an Inclusive Catholic Law School*, 33 U. TOL. L. REV. 171, 187 (2001).

65. *Id.*

Indeed, notwithstanding the great expense involved, a powerful case can be made that a Jesuit law school should insist on the completion of some formal clinical experience as a requirement for graduation.

Second, and more importantly, clinical legal education is too discrete an activity to demonstrate a Jesuit law school's thorough-going commitment to the promotion of justice. GC34 renewed the Jesuit "commitment to the promotion of justice as an integral part of our mission."<sup>66</sup> As such, GC34 envisions that the promotion of justice will pervade every aspect of Jesuit life. To designate clinical education as the earmark of Jesuit identity is to confine the promotion of justice to a relatively narrow set of functions within the law school that involve a comparatively small percentage of the student body.<sup>67</sup> In a Jesuit law school, justice should know no such bounds. Thus, in the absence of the ability to fund a mandatory clinical experience for all students, the special status accorded clinical programs actually undermines the promotion of justice throughout the law school. It allows law school administrators and educators to engage in the delusion that they are actually fulfilling the Jesuit mission in an integral fashion, and to share this mistaken belief with others.

Third, and most importantly, clinical instruction does not teach students how to *think* about justice. It encourages an affective rather than an analytical approach to situations involving injustice. It seeks to "promote justice" by exposing students to people in difficult circumstances in need of legal representation. It exposes the nascent

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66. GENERAL CONGREGATION 34, *supra* note 30, at Decree 3, ¶ 3.

67. At best, only a little more than one-third of law students nationwide participate in the clinical experiences offered by law schools. See Peter A. Joy, *The Ethics of Law School Clinic Students as Student-Lawyers*, 45 S. TEX. L. REV. 815, 822-824 & n. 38 (2004) (examining the importance of real client clinical education courses over traditional law school courses and how they can help develop increased sensitivity in students). Professor Joy estimates that approximately thirty-five percent of graduates of ABA-approved institutions take in-house clinical courses each year. *Id.* at 822. Joy arrives at this conclusion by aggregating the data found in the 2002, 2003, and 2004 editions of the *ABA-LSAC Official Guide to ABA-Approved Law Schools*. Joy totaled the number of students that each law school reported as having taken a clinical course, and then compared this figure in proportion with the total number of students enrolled as third-year full time or fourth-year part time students. *Id.* at n. 38. Based on this, Joy concludes that in the 2000-01 academic year, approximately thirty-four percent of students in their final year of law school took an in-house clinical course. *Id.* In 2001-02, the number was approximately thirty-five percent. *Id.* The American Bar Association's "McCrane Report" contains comparable statistics. See SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 252 (1992) (discussing assumptions and interpretations made in determining clinic enrollment data in the early 1990s, and concluding that about thirty-one percent of graduating law students during that time "could well have participated in one live client clinic prior to graduation, assuming that multiple enrollment by any student in such scarce and costly courses is universally disallowed").

lawyer to blatant injustice in the hope that this will “foster a concern for justice and the competence to promote it.”<sup>68</sup> In such a situation, the law student is no longer “insulated from any real contact . . . with the hard, everyday consequences of injustice and oppression.”<sup>69</sup> Instead, this “[p]ersonal involvement with innocent suffering, with the injustice others suffer” will, says Father Kolvenbach, act as a “catalyst for solidarity which then gives rise to intellectual inquiry and moral reflection.”<sup>70</sup> Through this encounter, the Jesuit law school seeks “to instill in [its] students a desire to engage in public service and to further social justice during law school and after graduation.”<sup>71</sup>

The problem with this method is not that it is wrong, but that it is insufficient. It does not so much promote justice as it does promote an emotional response to injustice. Still, where a matter is in any way complicated, empathy is no substitute for critical thinking. By stressing “contact” with the victims of injustice rather than study of the “concepts” of justice,<sup>72</sup> students are left unprepared to think through, in a rigorous fashion, the complex kinds of moral questions they will encounter later in practice.

Instead, in the clinical context, the complexities students face are almost entirely legal and professional. That is, the students who participate in these programs are required to master a particular field of legal doctrine such as the law governing relations between landlords and tenants, the standards for determining child custody, abuse and neglect, or the requirements for lawful immigration into the United States. The students in these programs must also learn the practical skills of legal representation such as how to interview witnesses and elicit information through discovery, how to engage in effective oral and written advocacy, and most importantly, how to develop a relationship of trust and confidence with one’s client. Although the

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68. Seattle Univ., *Mission*, at [http://www.seattleu.edu/home/about\\_seattle\\_university/mission](http://www.seattleu.edu/home/about_seattle_university/mission) (last visited Jan. 8, 2005).

69. GENERAL CONGREGATION 32, *supra* note 21, ¶ 35.

70. Kolvenbach, *supra* note 12, at 8.

71. *Mission Statement* at <http://www.law.gonzaga.edu/About/Mission.htm> (last visited Jan. 8, 2005).

72. Cf. Kolvenbach, *supra* note 12, at 8 (distinguishing the two methods for learning solidarity with those in need). For a thoughtful critique of Kolvenbach’s Santa Clara address, including his emphasis on service learning, see J. Brian Benestad, *Reflections on the Santa Clara Address of Father Peter-Hans Kolvenbach, S.J.*, FELLOWSHIP OF CATHOLIC SCHOLARS QUARTERLY, Summer 2001, at 16 (noting that service programs “are already accepted by those interested in promoting the Jesuit identity on campus” and criticizing Kolvenbach for not discussing “the kind of curriculum and courses that would help students understand the meaning of justice, solidarity and the common good”).

question of justice is always present in the clinical setting, the answer to this question is presumed. Indeed, the law schools that host these sorts of clinics established them in response to various perceived injustices, of both a procedural and a substantive nature. The existence of each of these clinics presumes that the absence of legal representation is a serious form of injustice, and rightly so. In addition, depending upon its specific area of concern, a clinic may also embody the belief that the denial of decent housing, the abuse of a child by his or her parent or guardian, and the closing of our borders to those who face deprivation and repression in their home countries, constitutes a kind of injustice that lawyers should work to correct. As such, the clinical experience leaves students with the mistaken impression that the injustice of a given situation will be obvious, even self-evident. Indeed, on a certain level, it promotes the notion that justice is something that one *feels* and intuits rather than something that one *thinks* and reasons and argues about.<sup>73</sup>

Clinical legal programs are enormously valuable both as a pedagogical tool and as a means of supporting the Jesuit mission. They encourage future lawyers to see that they have a social responsibility to work to advance justice on behalf of the poor and disadvantaged, the victims of injustice. Still, we might ask together with sociologist Alan Wolfe, whether students at Catholic schools should instead “be thinking about justice rather than doing justice [without] knowing what it is?”<sup>74</sup> Put another way, in the law school context, the focus on clinics, “the focus on *action* as the central distinguishing feature of a Catholic law school may obscure the primacy of teaching and research.”<sup>75</sup>

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73. In this respect, school sponsored law clinics act as subtle promoters of emotivism as a perspective on morality. Cf. ALASDAIR MACINTYRE, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 11–12, 22 (2d ed. 1984) (defining emotivism as “the doctrine that all evaluative and more specifically all moral judgments are *nothing but* expressions of preference, expressions of attitude or feeling, insofar as they are moral or evaluative in character” and arguing that emotivism has now “become embodied in our culture”).

74. Naomi Schaefer, *Identity Crisis*, WALL ST. J., Jan. 31, 2003 at W13 (quoting Wolfe). See also Alan Wolfe, *The Intellectual Advantages of a Roman Catholic Education*, CHRON. HIGHER ED. May 31, 2002 at B9 (arguing that at Catholic colleges “commitments to social justice are treated as if they were not intellectually problematic” and that students are often “rushed into the field to make justice happen without sufficient rigorous intellectual inquiry into what justice means and how its conditions ought to be fulfilled”).

75. Wolfe, *supra* note 62, at 495. See also J. Bryan Hehir, *Comment in Response to Philip Gleason*, in *CATHOLIC UNIVERSITIES IN CHURCH AND SOCIETY: A DIALOGUE ON EX CORDE ECCLESIAE* 30–31 (John P. Langan, S. J., ed. 1993) [hereinafter *DIALOGUE*] (arguing that, in the university setting, the activist conception of Christian faith as working for justice and peace “should be intellectually grounded; indeed the university is precisely the institution that can both transmit the intellectual tradition of ‘social Catholicism’ and refine its meaning and application in relationship to the domestic and international issues of a new century”).

## V. FULFILLING THE DUTY: THE STUDY OF JUSTICE IN THE JESUIT LAW SCHOOL CLASSROOM

The obligation of a Jesuit university to promote justice has many dimensions. For example, the university must promote justice in the conduct of its internal affairs including its hiring practices, its respect for its employees' right to unionize, and the payment of just wages and fair benefits.<sup>76</sup> This obligation also requires that faculty and administrators treat every student as a person with a vocation<sup>77</sup> rather than as a faceless abstraction, a mere consumer of educational services or source of revenue for the university. The provision of clinical opportunities is another dimension of this obligation for those Jesuit universities that host law schools.

As a fundamental matter, however, a university is an intellectual endeavor. Its activity is an intellectual enterprise that takes place in an academic setting. Accordingly, while the application of fair internal policies and the creation of opportunities for public service are important, the Jesuit identity of a university must be manifest in the intellectual work that the university performs, namely, the dissemination of knowledge and the search for truth.<sup>78</sup> This intellectual

76. The Catholic Church has long been an advocate on behalf of workers. *See generally* DONALD DORR, *OPTION FOR THE POOR: A HUNDRED YEARS OF VATICAN SOCIAL TEACHING* (rev. ed. 1992) (describing the Church's concern for the poor and working classes as set forth in the Church's social magisterium from Leo XIII through John Paul II). Moreover, in her social magisterium, the Church has not exempted her own institutions such as hospitals and universities from the standards that she recommends on behalf of all society. *See* JUSTICE IN THE WORLD, *supra* note 18, at 295 (recognizing that "everyone who ventures to speak to people about justice must first be just in their eyes" and asserting that priests and vowed religious "should receive a sufficient livelihood and enjoy that social security which is customary in their region" and that lay people who work for the Church "should be given fair wages and a system for promotion"). *See also*, Joseph H. Wessling, *Are Jesuit Institutions Practicing Justice?*, CONVERSATIONS, Spring 2000, at 34 (arguing that Jesuit colleges and universities fail to practice the virtue of justice in their compensation of full-time staff and adjunct faculty and in their decision to contract-out certain kinds of services to external vendors).

77. *Cf.* PAUL VI, *ENCYCLICAL LETTER Populorum Progressio* ¶ 15 (1967), *reprinted in* CATHOLIC SOCIAL THOUGHT, *supra* note 18, at 243 ("In the design of God, every man is called upon to develop and fulfill himself, for every life is a vocation.").

78. *Cf.* Thomas F. O'Meara, O.P., *The Department of Theology at a Catholic University*, in *THE CHALLENGE AND PROMISE OF A CATHOLIC UNIVERSITY* 246 (Theodore M. Hesburgh, C.S.C., ed., 1994) [hereinafter *CHALLENGE AND PROMISE*] (arguing that even though "[r]etreats, liturgy, personal counseling, and social activism will bestow Catholic identity," these activities nevertheless "lie partly outside of the educational purpose and business of the university"); DAVID L. SCHINDLER, *HEART OF THE WORLD, CENTER OF THE CHURCH: COMMUNIO ECCLESIOLOGY, LIBERALISM AND LIBERATION* 147 (1996) (arguing that although "theology departments that are faithful to the teaching of the Church, dormitory life that is a model of morality" and opportunities for prayer and service are "indispensable for a college or university that would be vibrantly Catholic," these qualities do not specify "a Catholic institution as a university" since "[t]o have a Catholic university . . . it is necessary (also) to develop a Catholic

work takes place primarily in the courses offered by the university in its curriculum, including the manner in which those courses are taught, as well as in the research and other scholarship that the university sponsors and conducts. A law school, no less than any other academic unit within a university, participates in and contributes to the intellectual enterprise that defines the university as such.

Although every university and every law school shares this basic work in common, they all have different ways of carrying it out. Indeed, “[t]here is no such thing as a university pure and simple.”<sup>79</sup> While they may or may not be acknowledged, every university and every law school has a number of attributes that describe the context and manner in which the dissemination of knowledge and the search for truth takes place. Thus, an institution might be described as “private,” “state-sponsored,” “liberal arts,” “professional,” “graduate-oriented,” “urban,” “secular,” “Catholic,” “Jewish,” or “Mormon.”<sup>80</sup> To the extent that any of these descriptives can be meaningfully applied to a given university, it indicates one of the myriad ways in which the intellectual work of a university can be conducted. “In short, there is no such thing as a university, full stop. There are different kinds of universities, beholden to diverse educational traditions.”<sup>81</sup> Put another way, “[a] secular university is not a university pure and simple; it is a secular university. Secular is not a synonym for neutral.”<sup>82</sup>

A law school which forthrightly identifies itself as Jesuit implicitly acknowledges this fact. It acknowledges that there is no such thing as legal education pure and simple, but that legal education always takes place within a given context informed by certain values. If the mission statements and self-descriptions of the fourteen Jesuit law schools are to

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*mind*”).

79. Richard John Neuhaus, *The Christian University: Eleven Theses*, FIRST THINGS, January 1996, at 20.

80. By contrast, GC 34 suggests that there is a tension between the noun “university” and the adjective “Jesuit.” See GENERAL CONGREGATION 34, *supra* note 30, at Decree 17 (distinguishing the noun “university” as “guarantee[ing] a commitment to the fundamental autonomy, integrity, and honesty of a university precisely as a university . . .” while “the adjective ‘Jesuit’ nevertheless requires that the university act in harmony with the demands of the service of faith and promotion of justice found in Decree 4 of GC 32.”); see also Theodore M. Hesburgh, C.S.C., *Introduction: The Challenge and Promise of a Catholic University*, in CHALLENGE AND PROMISE, *supra* note 78, at 4 (“One may add descriptive adjectives to this or that university, calling it public or private, Catholic or Protestant, British or American, but the university must first and foremost be a university, or else the thing that the qualifiers qualify is something, but not a university.”).

81. David B. Burrell, C.S.C., *A Catholic University*, in CHALLENGE AND PROMISE, *supra* note 78, at 38.

82. Neuhaus, *supra* note 79, at 20.

be believed, the foremost value that informs Jesuit legal education is “the promotion of justice.” Nevertheless, if the promotion of justice is truly the mission of Jesuit law schools, then it cannot be confined to the periphery of the academic enterprise.<sup>83</sup> It cannot be relegated to clinical programs that involve the delivery of legal services to the poor.

Instead, if the true mission of a Jesuit law school is the promotion of justice, then the exploration of the meaning of justice must reach down into the heart of the academic enterprise, into the intellectual work of the institution. That is, the curriculum of a Jesuit law school must require students to engage in a rigorous, sustained examination of the subject.<sup>84</sup> At the very least, a law school that purports to be Jesuit should require its first-year students to complete an introductory course in moral theory and jurisprudence.<sup>85</sup> It should also require its upper-level students to complete some other course in jurisprudence of a more specific nature (e.g. feminist jurisprudence, law and economics, Legal Realism, etc.). Such a school could then at least plausibly claim that it encourages its students to think seriously about the questions of justice

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83. Cf. Joseph H. Daoust, S.J., *Legal Education in a Catholic University—Mission and Possibilities*, 78 U. DETROIT MERCY L. REV. 27, 30 (2000) (“A Catholic university of any kind cannot claim to be Catholic because of surface or marginal characteristics that do not affect the heart of the educational endeavor.”). Elsewhere, Father Daoust argues that teachers at Jesuit law schools “should teach what the law currently is” but should also urge students to think about “the interests and social policies” promoted by the law and imagine alternate interests and policies that could contribute to the law’s development. *Id.* at 34. In conducting this critical inquiry Daoust contends that it would not “be educationally appropriate in a law school to argue from church authority to definitions of what the law is or should be.” *Id.* Instead, Daoust would look to “[l]egislatures and courts [as] the authorities in our society for that” and he would evaluate their work in terms of the “fundamental justice dimensions of our society.” *Id.*

Daoust is correct to suggest that it would be wrong to present “church authority” as an authoritative source of law in the way that a court decision or legislative enactment is. Indeed, it would be wrong to present the moral and political teachings of the Catholic Church as *legal authority*, that is, as something to which a person is obliged to give assent by virtue of its origin. Plainly, religious authority and legal authority should not be confused. At the same time, however, it seems entirely appropriate to introduce the content of these teachings as ideas worthy of consideration. Moreover, where the “fundamental justice dimensions of our society” fail to establish the premises of a just social order, the positive law must be subject to critique from some perspective external to it. The Church’s teachings on law and politics provide one such perspective, a perspective that should be highly valued at a Jesuit law school.

84. Cf. Philip J. Grib, S.J., *Legal Education in Jesuit Universities*, in PROCEEDINGS OF ASSEMBLY 1989 JESUIT MINISTRY IN HIGHER EDUCATION, Georgetown University 17 (June 7, 1989) (“I see the key characteristic in delineating the distinctive purpose or purposes of Catholic legal education as revolving about the curriculum, the academic program for which university law schools exist. Serious scholarly work in the area of general and applied jurisprudence is essential in Catholic faculties of law.”).

85. For a thoughtful essay on why legal educators should require the study of jurisprudence in the first year and how such a requirement has been implemented at one law school, see J. Stanley McQuade, *Procrustean Jurisprudence: Squeezing Legal Philosophy into an Already Crowded Law School Curriculum*, 40 AM. J. JURIS. 79 (1995).

that will inevitably present themselves elsewhere in the curriculum and later on in legal practice. Although their avowed Jesuit identity would seem to dictate otherwise, at present, *none* of the fourteen law schools operating under Jesuit auspices requires any of their students to take such a course.<sup>86</sup> Accordingly, if Jesuit identity requires the promotion of justice, and the promotion of justice demands that students give serious thought as to the meaning of the term, then at present Jesuit legal education must be judged an abysmal failure, not as *legal* education, but as *Jesuit* education.

It is not enough simply to make jurisprudential course offerings available to students. Every law school does as much. Most students avoid these courses even as they later bemoan the lack of meaningful classroom discussions concerning justice.<sup>87</sup> Experience has shown that students are more likely to take a required course seriously, especially in the first year. In general, students understand that the designation of a course as mandatory represents the judgment of the faculty that study of the subject is necessary for one to become a competent member of the legal profession.

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86. Although this statement is true, it is in need of some slight qualification. Loyola University New Orleans School of Law requires all of its students to take a two-hour course entitled "Law and Poverty" that involves a critical examination of law's response to poverty and the various problems that accompany it. Loyola New Orleans also requires students to take courses that emphasize "philosophical or historical perspectives on law." Similarly, first-year students enrolled in Georgetown University Law Center's "B" curriculum are required to take two courses which contain "substantial jurisprudential content." First-year students enrolled in Georgetown's "A" curriculum have no such requirement. Moreover Georgetown does not require its upper-level students to take any sort of jurisprudence course. Several Jesuit law schools require their students to take one or more courses that provide students with an historical or humanistic perspective on law, but no school specifically requires any course devoted to the study of justice as such. The Appendix which follows this article contains additional information concerning these curricular features.

87. This lack of interest may have as much to do with the way in which such courses are taught as with their actual content. Some students may be reluctant to enroll in a presumably dry course in "legal philosophy," especially where they lack a general philosophical background. Moreover, oftentimes, jurisprudence courses do not venture down from the ethereal heights of philosophical abstraction. It is, of course, altogether proper for a teacher to demand intellectual rigor from his or her students with respect to the concepts and arguments of individual authors. It is also, however, incumbent on the teacher to help his or her students see the connection between these concepts and the actual questions that courts resolve in the concrete world of legal practice. If students fail to appreciate this connection, then, notwithstanding the teacher's efforts, the course is likely to be forgotten as a curious exercise which has no bearing on one's life as a lawyer. Cf. Paul A. LeBel, *Blame This Messenger: Summers on Fuller*, 83 MICH. L. REV. 717, 717-18 (1985) (book review) (noting that jurisprudence textbooks often follow either a "philosopher-centered approach" that can very easily lapse into a tedious parade of historical figures, or an "idea-centered approach" that can convey the mistaken impression that jurisprudential ideas emerge as full-blown entities rather than through an incremental process that involves "thinking about the nature of law").

In the absence of such courses, it is entirely possible, indeed likely, that a student may graduate from a Jesuit law school without ever having been challenged to think deeply about the nature of justice in general and the meaning of justice in particular circumstances. A student may be lucky enough to have a professor who raises the question of justice from time to time in his or her class. This sort of pedagogy *must* be encouraged in a Jesuit law school. Indeed, if this sort of teaching is not encouraged, then the school may unwittingly suggest to students that the study of justice is a discrete academic subject rather than an unavoidable set of questions that pervade law and legal practice. At the same time, however, no matter how well intentioned the practice may be, it is difficult to see how the occasional mention of justice in standard doctrinal courses could serve as a meaningful substitute for a thorough examination of the subject.

Indeed, without the structure of a course and the opportunities for discussion it provides, to the extent that students reflect on the nature of justice at all, such reflection will likely be piecemeal and *ad hoc*. It will take the form of a preference for *this* judicial decision over *that* one, without any attempt to state the general principles of justice in a comprehensive and coherent fashion. What is worse, if students are not encouraged to think about justice, only to *feel* if injustice is present, it will be easy for them to conclude that “justice” is like so many other insoluble questions in life—something that is not subject to rational scrutiny, let alone definition. They will be left with the mistaken impression that defining justice in a given situation is simply a matter of intuition: “You just know it when you see it.”<sup>88</sup> The best way to avoid these sorts of pitfalls is to require students to concentrate on justice as an academic subject in a course specifically devoted to it.

#### VI. THE REAL *MAGIS*: THE SOMETHING MORE OF JESUIT LEGAL EDUCATION

A law school that challenged its students to think seriously about the meaning of justice through both its required and elective curriculum would do much to serve the core ideal of Jesuit identity, namely, the promotion of justice. Without something more, however, such course offerings would neither satisfy the demands nor fulfill the promise of that identity. It would, after all, be possible for a wholly secular law school to encourage its students to engage in the same sort of reflection

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88. Cf. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart J., concurring) (expressing his dissatisfaction with the Court’s attempt to define obscenity and admitting that he might “never succeed in intelligibly doing so” but asserting that “I know it when I see it”).

by requiring and offering precisely the same sorts of courses. Doing so would not, however, render such a law school "Jesuit" in character.<sup>89</sup> Instead, the Jesuit quality of a Jesuit law school must inform the intellectual work it performs, including the kind of reflection it encourages among its students. While engaged in dialogue with the rest of the academy and the wider culture, a Jesuit university must have the courage to think in ways that are not widely accepted in either forum.<sup>90</sup>

There are many different conceptions of justice vying for attention within the academy. Moreover, these different conceptions are not fungible. That is, they differ greatly with one another, not only as abstract statements of principle, but in the theories that support them and in their concrete application to particular situations. Simply put, while everyone is in favor of "justice," people often mean radically different things by the use of that term.<sup>91</sup> The Jesuit law school

89. To make such a claim would be to equate being "Jesuit" with being "thoughtful" or "reflective." The two are not synonymous. Plainly one can possess the latter quality without the former. Although some members of the order are well-known for their ample pride on behalf of the Society and its accomplishments, such an identification would seem to exceed the claims of even the most boastful Jesuit.

90. See Timothy R. Scully, C.S.C., *What Is Catholic about a Catholic University?*, in CHALLENGE AND PROMISE, *supra* note 78, at 318 (noting that universities differ according to the questions they ask and the knowledge they think most worth having and that "[t]his implies that Catholic universities will risk to be different"). Although a Catholic university need not at every moment be "the voice of one crying in the wilderness" (*Mark* 1:1-4), it must at times have the courage to "give voice to those uncomfortable truths which do not please public opinion but which are necessary to safeguard the authentic good of society." JOHN PAUL II, APOSTOLIC CONSTITUTION *Ex Corde Ecclesiae* ¶ 32 (1990) [hereinafter *Ex Corde Ecclesiae*], reprinted in DIALOGUE, *supra* note 75, at 229.

91. To cite one particularly conspicuous example, the answer to the question of whether justice requires legal recognition of a woman's right to terminate her pregnancy, or whether justice requires legal recognition of an unborn child's right not to be killed *in utero* varies greatly depending upon the conception of justice employed. Compare RONALD DWORKIN, LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM (1993) and LAURENCE H. TRIBE, ABORTION: THE CLASH OF ABSOLUTES (1990) with THE MORALITY OF ABORTION: LEGAL AND HISTORICAL PERSPECTIVES (John T. Noonan, Jr. ed., 1970), PHILIP E. DEVINE, THE ETHICS OF HOMICIDE (1978) and PATRICK LEE, ABORTION & UNBORN HUMAN LIFE (1996).

It is also worth noting in this regard that the Jesuits in the United States have recently issued a statement in which they emphatically declare their collective opposition to abortion as a matter of justice. See STANDING FOR THE UNBORN: A STATEMENT OF THE SOCIETY OF JESUS IN THE UNITED STATES ON ABORTION 5 (2003) ("There can be no service of faith without the promotion of justice. Jesuits, therefore, must seek an end to the injustice of abortion."). While acknowledging that the topic is "delicate and controversial," *id.* at 1, the Jesuits make plain that "among all the justice issues [which they view] with grave concern, abortion is a key social evil." *Id.* at 2. Moreover, because abortion involves life and death, they conclude that it cannot as a matter of policy be relegated "to the private realm, no matter how appealing and convenient such arguments appear on the surface." *Id.* I strongly suspect that most faculty, students, and staff at most Jesuit universities are wholly unaware of this document and its contents. Despite the overt connection that Jesuits repeatedly draw between justice and Jesuit identity and the clear

classroom should be open to all of these diverse points-of-view, *without exception*. Indeed, students at a Jesuit law school should be introduced to the many competing theories of justice and invited to fairly consider how these different theories would define justice in practice.

No matter how broad this introduction might otherwise be, a university cannot honestly claim to be authentically Jesuit unless the intellectual work that it performs involves a serious engagement with the Catholic intellectual tradition.<sup>92</sup> Sadly, some faculty at Jesuit schools may regard the “Catholic intellectual” tradition as a contradiction in terms.<sup>93</sup> Others may sincerely claim to be unfamiliar with the tradition. It is not, however, some new-fangled academic trend or intellectual fad. Instead, the Catholic intellectual tradition is at least as old as St. Paul’s debate with the citizens of Athens in the Areopagus.<sup>94</sup> It is the tradition that gave rise to the first universities in Europe<sup>95</sup> and deeply influenced the development of virtually every

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identification of the cause of justice with the cause of the unborn that appears in the document, I know from my own experience at Loyola, and anecdotally from colleagues at other Jesuit schools, that the document has been virtually ignored on Jesuit campuses. This widespread indifference suggests either a lack of courage or a lack of conviction on the part of Jesuits, faculty and administrators at Jesuit universities.

92. This point enjoys widespread acceptance across the spectrum of Catholic opinion. See Margaret O’Brien Steinfels, *The Catholic Intellectual Tradition*, 1 OCCASIONAL PAPERS ON CATHOLIC HIGHER EDUCATION 5 (Nov. 1995) (arguing that in the context of Catholic universities and colleges “Catholic intellectual life is central to Catholic identity”); Marvin R. O’Connell, *A Catholic University, Whatever That May Mean*, in CHALLENGE AND PROMISE, *supra* note 78, at 235 (describing as “alarming” the “almost complete absence from our colleges and universities of any sense of the glorious Catholic intellectual tradition”).

93. This view reflects not only a profound ignorance of history, but a form of bigotry that has proven to be remarkably resilient even in an age of heightened cultural sensitivity and political correctness. See MARK S. MASSA, *ANTI-CATHOLICISM IN AMERICA: THE LAST ACCEPTABLE PREJUDICE* 7 (2003) (noting the common reference to anti-Catholicism as the “anti-Semitism of the intellectuals”); *id.* at 14 (noting that “[a]lthough all religiously affiliated institutions in the United States came to be seen as suspect by university intellectuals, Catholic colleges and universities were especially targeted for criticism and questioning, not least because of their insistence on making both theology and ecclesiastical identity central components of their university mission”). For an account of the Catholic intellectual response to the rise of fascism, totalitarianism and relativism in the 1930s and 1940s and the virulently anti-Catholic reaction of secular intellectuals see EDWARD A. PURCELL, *THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM AND THE PROBLEM OF VALUE* 161–73, 202–05 (1973). See also JOHN T. MCGREEVY, *CATHOLICISM AND AMERICAN FREEDOM: A HISTORY* 166–88 (2003) (describing the disdain shown by American intellectuals for Catholicism and Catholic culture in the 1930s–1950s as anti-scientific and anti-democratic phenomena at odds with American values).

94. *Acts* 17:16–34.

95. See generally 1 HASTINGS RASHDALL, *THE UNIVERSITIES OF EUROPE IN THE MIDDLE AGES* (F.M. Powicke & A. B. Emden eds., 1936) (providing in depth descriptions of Medieval Universities including their origins, student life, and administrative details); GORDON A. LEFF, *PARIS AND OXFORD UNIVERSITIES IN THE THIRTEENTH AND FOURTEENTH CENTURIES: AN*

discipline in the sciences and humanities.<sup>96</sup> It remains a vital, if underappreciated, intellectual force today.<sup>97</sup>

Specifically, within the context of legal education, the duty to engage the Catholic intellectual tradition means that a Jesuit law school must expose its students to the tradition as it pertains to questions of law and justice. This means more than a few facile references to passages from Augustine's *City of God*<sup>98</sup> or Aquinas' *Treatise on Law*.<sup>99</sup> Instead, it means a serious encounter, not only with Augustine and Aquinas, but with other, more contemporary participants within the tradition such as John Courtney Murray,<sup>100</sup> Jacques Maritain,<sup>101</sup> John Finnis,<sup>102</sup> Mary

INSTITUTIONAL AND INTELLECTUAL HISTORY (1968) (discussing the development, curriculum and organization of the Paris and Oxford Universities).

96. The sheer size and scope of the Catholic intellectual tradition make it difficult to summarize. After all, its participants over the centuries have included not only theologians and philosophers like Augustine of Hippo, Gregory of Nazianzus, Anselm of Canterbury, Thomas Aquinas, Edith Stein, G.E.M. Anscombe and Hans Urs Von Baltasar, but scientists such as Roger Bacon, Nicholas Copernicus, Blaise Pascal, and Pierre Teilhard de Chardin, as well as writers and poets such as Geoffrey Chaucer, Dante Alighieri, Erasmus, G.K. Chesterton, Flannery O'Connor, Sigrid Undset, Graham Greene and Walker Percy.

Moreover, the many participants in the tradition represent not only the various disciplines, but diverse points-of-view within each discipline. The tradition does not demand slavish adherence to a particular methodology or school of thought within a discipline, but a genuine appreciation of and critical engagement with one's intellectual predecessors and contemporaries. Although some participants in this vast conversation disagree with one another with respect to some particular claims, it is, I think, possible to identify certain general themes and commitments that have characterized the Catholic intellectual tradition through the ages. I believe that some of the tradition's more salient features include (1) a perspective on existence that is realist rather than idealist or skeptical; (2) a belief in the intelligibility of nature; (3) an understanding of the human person as a being who is rational and free but conditioned, a being who is broken and fallible but who possesses a calling to pursue goodness, truth and beauty, including the ultimate goodness, truth and beauty of the Divine; (4) an understanding of faith and reason as complimentary; and (5) a perspective that takes belief in a personal God and indeed all religion seriously. See generally JOHN PAUL II, ENCYCLICAL LETTER *Fides et Ratio* (1998). For a somewhat different list of characteristics that define the Catholic intellectual tradition, see Steinfelds, *supra* note 92, at 7-9.

97. See, e.g., RADICAL ORTHODOXY (John Milbank et al. eds., 1999) (collection of essays from Catholic and traditional Anglican scholars addressing diverse topics ranging from music and aesthetics to politics, sexuality and epistemology). The vibrancy and diversity of the Catholic intellectual tradition is also readily on display in the latest issues of *Commonweal*, *America*, *Crisis*, and *First Things*.

98. ST. AUGUSTINE, CITY OF GOD (Gerald G. Walsh, S.J., et al. trans., 1958).

99. ST. THOMAS AQUINAS, TREATISE ON LAW (Stanley Parry intro. 1949) (*Summa Theologica*, Questions 90-97).

100. JOHN COURTNEY MURRAY, S.J., WE HOLD THESE TRUTHS: CATHOLIC REFLECTIONS ON THE AMERICAN PROPOSITION (1960).

101. See, e.g., JACQUES MARITAIN, MAN AND THE STATE (1951); JACQUES MARITAIN, THE PERSON AND THE COMMON GOOD (1947).

102. JOHN FINNIS, NATURAL LAW AND NATURAL RIGHTS (1980).

Ann Glendon,<sup>103</sup> Alasdair MacIntyre,<sup>104</sup> and Charles Taylor.<sup>105</sup> It also surely includes an engagement with the Catholic Church's magisterium, not as a privileged voice of unquestioned authority, but as a thoughtful participant in the wider conversation.<sup>106</sup>

More than an encounter with specific authors, exposure to the Catholic intellectual tradition means an encounter with ideas—ideas that often challenge the dominant conception of justice embodied in American law. The historic liberalism that informs so much of our law and legal system focuses almost exclusively on legal rights as a means of guaranteeing the exercise of individual autonomy. Indeed, because the liberal tradition tends to equate freedom with the mere absence of restraint,<sup>107</sup> it also regards the maximization of freedom through the recognition and extension of individual rights as the primary goal of law. At the root of this jurisprudence is a view of human nature in

103. See, e.g., GLENDON, *supra* note 1; MARY ANN GLENDON, *ABORTION AND DIVORCE IN WESTERN LAW: AMERICAN FAILURES, EUROPEAN CHALLENGES* (1987); MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* (1991) [hereinafter GLENDON, *RIGHTS TALK*].

104. MACINTYRE, *supra* note 73; ALASDAIR MACINTYRE, *WHOSE JUSTICE: WHICH RATIONALITY?* (1988).

105. CHARLES TAYLOR, *SOURCES OF THE SELF: THE MAKING OF MODERN IDENTITY* (1989); CHARLES TAYLOR, *THE ETHICS OF AUTHENTICITY* (1992); CHARLES TAYLOR, *MODERN SOCIAL IMAGINERIES* (2004).

106. In the context of legal education the Church's social teaching should be of special importance. See Robert J. Araujo, S.J., *Legal Education and Jesuit Universities: Mission and Ministry of the Society of Jesus?* 37 *LOYOLA L. REV.* 245, 256–60 (1991) (discussing Catholic social thought as one of the sources of the moral principles relevant to Jesuit legal education); Wolfe, *supra* note 62, at 490–93 (emphasizing the “special attention” which several aspects of Catholic social thought should receive in Catholic legal education); Leonard J. Nelson, III, *God and Man in the Catholic Law School*, 26 *CATH. LAW.* 127, 145 (1981) (arguing that “[p]apal encyclicals and other writings on Roman Catholic Social Theology are much neglected sources for a distinctively Catholic approach to legal education”).

107. This understanding of “freedom” or “liberty” has been a defining characteristic of liberalism from the beginning. See, e.g., THOMAS HOBBS, *LEVIATHAN: ON THE MATTER, FORME AND POWER OF A COMMONWEALTH ECCLESIASTICAL AND CIVIL* 103 (Michael Oakeshott ed., 1962) (1651) (“By liberty is understood, according to the proper signification of the word, the absence of external impediments: which impediments may oft take away a man's power to do what he would . . .”); JOHN STUART MILL, *On Liberty*, reprinted in *THE ENGLISH PHILOSOPHERS FROM BACON TO MILL* 958 (Edwin A. Burt ed., 1939). Mill asserts that, in addition to freedom of conscience and freedom of association, the principle of human liberty must also include:

liberty of tastes and pursuits; of framing the plan of our own life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow creatures so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong

*Id.* Among contemporary writers, the seminal discussion of this “negative” understanding of freedom is Isaiah Berlin's essay, *Two Concepts of Liberty*. See ISAAH BERLIN, *LIBERTY* 166–217 (Henry Hardy ed., 2002).

general and of human beings in particular as radically autonomous individuals who create value through the exercise of individual choice.<sup>108</sup> In practice this has led to an impoverished discourse concerning the common good<sup>109</sup> and an understanding of justice in law that is almost entirely procedural in nature.<sup>110</sup>

Although the Catholic tradition of reflection on questions of law and justice plainly recognizes the importance of procedure, it also emphasizes substance. Indeed, the tradition contends that a legal system should be judged based upon how it treats society's most vulnerable members.<sup>111</sup> Accordingly, in the Catholic intellectual tradition, students will discover a body of thought that vigorously defends the rights of the human person. Although the tradition demands that these rights receive legal recognition in the positive law, it does not view them as the product of a "social contract" or widely-recognized custom. No matter how well-established such conventions may be, they are always open to change and so may leave individuals and groups subject to manipulation and oppression. Instead, the tradition holds that these rights derive from the innate and inalienable dignity that every human being enjoys as a *person*.<sup>112</sup> Moreover, persons are not simply

108. Perhaps no language in American law and legal commentary better captures this point of view than the so-called "mystery passage" from the Supreme Court's plurality opinion in *Casey*:

Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education . . . These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

Planned Parenthood of Southeastern Pennsylvania v. *Casey*, 505 U.S. 833, 851 (1992).

109. See generally DAVID HOLLENBACH, S.J., *THE COMMON GOOD AND CHRISTIAN ETHICS* (2002) (arguing that although "the idea of the common good is in trouble," it is an idea "whose time has once again come"). For an interesting collection of essays that attempt to address the difficulty liberalism has in articulating a vision of the good, see *LIBERALISM AND THE GOOD* (R. Bruce Douglass, Gerald M. Mara & Henry S. Richardson eds., 1990).

110. See, e.g., MICHAEL J. SANDEL, *DEMOCRACY'S DISCONTENT* 4 (1996) (noting that because "liberalism asserts the priority of procedures over particular ends, the public life it informs might be called the procedural republic"); *c.f.* *McNabb v. U.S.*, 316 U.S. 332, 347 (1943) (Frankfurter, J.) ("The history of liberty has largely been the history of observance of procedural safeguards").

111. See, e.g., NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *ECONOMIC JUSTICE FOR ALL—PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY* ¶ 123 (1986), reprinted in *CATHOLIC SOCIAL THOUGHT*, *supra* note 18, at 572 ("The way society responds to the needs of the poor through its public policies is the litmus test of its justice or injustice.").

112. Although this point can be found in many places throughout the long history of the tradition, it is nowhere better summarized than in JOHN XXIII, *ENCYCLICAL LETTER, Pacem in*

rights-bearers who enjoy freedom of action. They also have moral and political responsibilities. Indeed, from the Catholic perspective, justice requires not only the recognition of rights, but the fulfillment of duties. These duties include not only the obligation to respect the rights of others, but the duty to support the common good of society.<sup>113</sup>

By adopting a kind of official agnosticism with respect to the moral content of human nature, American law seeks to avoid questions of the good. By contrast, the Catholic intellectual tradition recognizes that “[e]very system of law reflects certain foundational assumptions about what it means to be human.”<sup>114</sup> In the Catholic tradition, these assumptions hold that the human person is not simply a conduit for individual choice. Instead, because human nature is constituted in a particular fashion, it enjoys a good proper to itself.<sup>115</sup> Consequently, although freedom is part of what it means to be human, it is not the sum of our humanity. Genuine human freedom means more than the absence of restraint. It also has a positive dimension. Indeed, from the perspective of the Catholic intellectual tradition, freedom cannot be divorced from truth, including the truth of the human person and his or her authentic good.<sup>116</sup>

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*Terris*, ¶ 9 (1963) [hereinafter *Pacem in Terris*], reprinted in CATHOLIC SOCIAL THOUGHT, *supra* note 18, at 131.

Any human society, if it is to be well ordered and productive, must lay down as a foundation this principle, namely, that every human being is a person; that is, his nature is endowed with intelligence and free will. Indeed, precisely because he is a person, he has rights and obligations flowing directly and simultaneously from his very nature. And as these rights and obligations are universal and inviolable, so they cannot in any way be surrendered.

*Id.* It is also important to note in this regard that the very concept of personhood has its origin in Catholic theological reflection. See John T. Noonan, Jr., *A Catholic Law School*, 67 NOTRE DAME L. REV. 1037, 1042 (1992) (noting that the greatest debt law owes “to theology is the idea of the person—a concept that can be philosophically defended, but which historically developed under theological auspices, with human beings understood by analogy to the divine persons” of the Holy Trinity) (footnote omitted).

113. See *Pacem in Terris*, *supra* note 112, at ¶¶ 28–29, (describing the rights and correlative duties of the human person); see also GLENDON, RIGHTS TALK, *supra* note 103, at 76–108 (discussing the near total absence of public discourse concerning responsibilities).

114. John J. Coughlin, O.F.M., *Law and Theology: Reflections on What It Means to be Human From a Franciscan Perspective*, 74 ST. JOHN’S L. REV. 609, 610 (2000).

115. For useful discussions of the anthropology that informs Catholic social thought, in addition to Coughlin, *supra* note 114, see Angela C. Carmella, *A Catholic View of Law and Justice*, in CHRISTIAN PERSPECTIVES ON LEGAL THOUGHT 255, 260–65 (Michael W. McConnell et al. eds., 2001) and Francis Canavan, S.J., *The Image of Man in Catholic Thought*, in CATHOLICISM, LIBERALISM, AND COMMUNITARIANISM 15 (Kenneth L. Grasso et al. eds., 1995).

116. This idea—the claim that authentic human freedom cannot be divorced from truth—is as old as Plato’s cave and as recent as *The Matrix*. See THE REPUBLIC OF PLATO 514a–517c (Allan Bloom trans. 1968); *The Matrix* (Warner Studios 1999). It has, however, received its most thorough examination and rigorous development in the Catholic intellectual tradition. See, e.g.,

Because the Catholic tradition refuses to equate the good of the human person with the immediate desire of the autonomous self, it makes available to students a more robust and integral vision of the common good. Under this vision, the common good is not understood as a calculus of particular interests, but as the good of all and of each individual achieved through “the sum total of these conditions of social living whereby [human beings] are enabled more fully to achieve their own perfection.”<sup>117</sup> Accordingly, by introducing students to this tradition, Jesuit law schools can challenge students to think of law not only as a way of protecting the rights of individuals but as a means of fostering the authentic good of each person and encouraging solidarity among individuals and groups.<sup>118</sup>

Finally, it must be understood that, in the absence of a mandatory curricular dimension to Jesuit identity, such an identity is destined to

JOHN PAUL II, ENCYCLICAL LETTER, *Veritatis Splendor* ¶¶ 31–53 (1993) [hereinafter *Veritatis Splendor*]; *id.* at ¶ 84 (noting that the “fundamental question” posed by moral theory “is ultimately the question of the relationship between freedom and truth”); *Fides et Ratio*, *supra* note 96, at ¶ 13 (“Put differently, freedom is not realized in decisions made against God. For how could it be an exercise of true freedom to refuse to be open to the very reality which enables our self-realization?”); George Weigel, *A Better Concept of Freedom*, *FIRST THINGS*, March 2002, at 14 (arguing that “[t]he idea of freedom for excellence and the disciplines of self-command it implies are essential for democracy and for the defense of freedom”); Charles Taylor, *What’s Wrong with Negative Liberty?*, in *THE IDEA OF FREEDOM: ESSAYS IN HONOR OF ISAIAH BERLIN* 179 (Alan Ryan ed., 1979) (examining various concepts of liberty and critiquing negative liberty).

117. JOHN XXIII, ENCYCLICAL LETTER *Mater et Magister* ¶ 65 (1961), *reprinted in* *CATHOLIC SOCIAL THOUGHT*, *supra* note 18, at 84.

118. As noted above, a secular law school could manifest the same commitment to exploring the meaning of justice in its curriculum that a Jesuit law school must manifest as part of its Jesuit identity. *See supra* notes 88–90 and accompanying text. In a similar way, a purely secular law school could present the Catholic intellectual tradition to its students as part of its mission to introduce them to different conceptions of justice. Such a law school would embody the ideals of Jesuit legal education in a number of important respects. A Jesuit law school would, nevertheless, distinguish itself from this sort of secular counterpart through its institutional commitment to the principles of justice reflected in the Catholic intellectual tradition. That is, the law school as an entity would bear witness to these principles in its actions and in the lived example of some portion of its faculty and staff. This sort of commitment would tell students that the principles of justice in the Catholic intellectual tradition are not merely propositions deserving thoughtful consideration, but truths worth living. This commitment would also reflect the law school’s juridical relationship with and sacramental participation in the Church. *See Ex Corde Ecclesiae*, *supra* note 90, ¶ 22 (“Christians among the [university’s] teachers are called to be witnesses and educators of authentic Christian life, which evidences attained integration between faith and life, and between professional competence and Christian wisdom.”), and *id.* art. 2, § 2 (providing that a Catholic university “informs and carries out its research, teaching, and all other activities with Catholic ideals, principles and attitudes” and that it “is linked with the Church either by a formal constitutive and statutory bond or by reason of an institutional commitment made by those responsible for it”); art. 2, § 4 (providing that “Catholic teaching and discipline are to influence all university activities” and that “[a]ny official action or commitment of the University is to be in accord with its Catholic identity”).

remain a “fuzzy” abstraction.<sup>119</sup> A Jesuit law school that does not require its students to engage in a rigorous examination of justice that includes a serious engagement with the Catholic intellectual tradition will offer a legal education that is “distinctive” in only marginal ways, if at all. Triumphant claims to the contrary notwithstanding, such a school will no more “challenge the mainstream” of American legal education than Disney challenges the mainstream of American culture or McDonald’s challenges the mainstream of the American diet.<sup>120</sup> Such a

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119. See Alfred C. Kammer, S.J., *Why Should a Jesuit University Have a Law School*, 10 ST. LOUIS PUB. L. REV. 565, 586 (1991) (criticizing the “fuzziness” of other commentators’ efforts to define Jesuit identity in the context of legal education). The eight characteristics Father Kammer delineates (i.e. “collaboration,” “sharing the tradition,” etc.), see *id.* at 587–91, seem to be at least as amorphous and malleable as the descriptions offered by other commentators and thus subject to the same criticism. With respect to law school curriculum and Jesuit identity, Father Kammer believes that it is not “sufficient to require jurisprudence, ethics or social justice courses, although these may also be helpful in pushing the law school community to deeper analysis of the enterprise itself and its role in the wider society.” *Id.* at 584. I have not argued, nor do I mean to suggest, that requiring a course in which students are made to think seriously about justice in a classroom setting is *sufficient* to satisfy the demand that a Jesuit law school must work to promote justice. I do mean to argue that requiring such an experience is a *necessary* component of Jesuit legal education.

120. Steven Barkan has argued that the “objective attributes” of a Jesuit law school should not be “significantly different from those of any other mainstream law school.” Steven M. Barkan, *Jesuit Law Schools: Challenging the Mainstream*, CONVERSATIONS, Spring 1993, at 7, 11. Specifically, Barkan asserts that students at Jesuit schools need not be taught “a distinctively Catholic approach to law . . . or that the faculty produce legal scholarship from a Catholic perspective.” *Id.* at 10. Because teaching and scholarship constitute the core activity of any academic institution, however, this essentially relegates Jesuit identity to the margins of any would-be Jesuit law school.

Nevertheless, Barkan claims that a Jesuit law school should be marked by “a distinctive spirit . . . which on a subjective level distinguishes it from the mainstream.” *Id.* at 11. For him, the distinguishing features of Jesuit legal education are that it is “(1) conducted in a religious context, (2) world-affirming and focused on action, (3) value-oriented, (4) person-centered, (5) broad-based and interdisciplinary, and (6) devoted to excellence.” *Id.*

As others have noted, there is nothing distinctly Jesuit or Catholic with respect to any of these characteristics. See, e.g., Fitzgerald, *supra* note 42, at 285 (arguing that while Barkan’s ideals “may reflect the current philosophy of many Jesuit schools,” it is difficult to separate his approach “from a Protestant, Orthodox, or even secular law school”). Surely legal education takes places within “a religious context” at Baylor, Brigham Young, and Cardozo. Moreover, even the most secular law schools today seem to have no difficulty being “world affirming and focused on action” or “broad-based and interdisciplinary.” Every institution claims to be “devoted to excellence.”

Barkan comes closest to correctly defining Jesuit legal education when he says that it is “value oriented.” Jesuits, he says, do not engage in the conceit of morally-neutral education, but “acknowledg[e] that the subject of values has a place in the law school classroom.” Barkan, *supra*, at 13. Barkan insists, however, that this does not mean that students be “indoctrinated” with specifically Catholic values or that they be made to learn the “correct” answers to moral and legal questions suggested by these values. *Id.* There are, however, “three core values . . . so basic to Judeo-Christian ethics and to the mission of the Society of Jesus that they must be considered inherent themes of Jesuit legal education and a suitable context for discussion.” *Id.* He identifies these values as (1) “the dignity of the individual”; (2) “a commitment to justice”; and (3) “a

school may treat its students more humanely, perhaps offering them more opportunities for service projects and campus liturgies. These sorts of activities cannot, however, compensate for such a fundamental omission.

## VII. JUSTICE AND HIRING FOR MISSION

No matter how an institution defines its ambitions, talk of “mission” inevitably leads to talk of “hiring for mission.” Though awkward and potentially divisive, if a university is to have any hope of realizing its mission, such a discussion simply cannot be avoided. Indeed, “the issue must be raised explicitly.”<sup>121</sup>

If, instead, a strategy of silence is followed—the path of least resistance—if the suitability of candidates for mission is not discussed, then, over time, a law school will find that its mission has been covertly altered. More correctly, a school will discover that, while its mission statement and other descriptions of Jesuit identity remain in place, the reality of the law school’s operations will have become something quite different. Indeed, the woeful neglect of hiring for mission is in large part responsible for precisely this situation in Jesuit law schools today.<sup>122</sup>

‘preferential option,’ for the poor and disadvantaged.” *Id.*

A proper examination of these values would, however, require precisely the kind of curricular innovations that Barkan says are unnecessary for Jesuit legal education. Properly implemented, these kinds of curricular changes would avoid the sort of “indoctrination” that Barkan fears, while inviting students to consider the fruits of Catholic reflection on questions of law and justice. Without courses that introduce students to the Catholic intellectual tradition (and faculty willing to teach them) the distinctiveness that Barkan claims for Jesuit law schools will remain at best a rhetorical ploy used to attract law school applicants.

121. Wilson D. Miscamble, C.S.C., *Meeting the Challenge and Fulfilling the Promise: Mission and Method in Constructing a Great Catholic University*, in CHALLENGE AND PROMISE, *supra* note 78, at 218. See also *id.* at 220 (noting that the matter of faculty hiring is “not a subject easily expressed in felicitous phrasing or beautiful conception” but insisting that “[i]t is a matter that must be faced and now”).

122. Perhaps the most inane defense of what currently passes for Jesuit identity in legal education comes from Rev. Robert Drinan, S.J., former member of Congress, dean of Boston College Law School, and now professor of law at Georgetown University Law Center. In defending his school’s Catholic identity, Drinan insists that “[t]he Catholic and Jesuit ideal of engaging in public service is prominent in every expression of the mission of Georgetown University Law Center.” Robert F. Drinan, *Pizza Bucks Back Hyper-Catholic Law School*, NAT’L CATH. REP. May 7, 1999 (criticizing the creation of Ave Maria School of Law). By contrast, however, Drinan’s Georgetown colleague Mark Tushnet, has noted that “many local law schools ha[ve] developed an ideology of service to validate [their activities] compared to national law schools” and that Catholic law schools grounded this ideology “in a humanistic philosophy inspired by the Bible.” Tushnet, *supra* note 62, at 322. In becoming a national law school, Tushnet notes that Georgetown has seen a “drastic decline in the number of graduates” who seek positions in public interest law. *Id.* at 323. Thus, he concludes, contrary to Drinan, that at

If the mission of a Jesuit law school is indeed the promotion of justice, attained not only through clinical programs but through an encounter with the Catholic intellectual tradition, then plainly the school must have faculty who are willing to take up this mission, embrace it, and carry it forward.<sup>123</sup> Presumably, many of these faculty members will be Catholic due to their familiarity with the tradition and the likelihood that they will find the mission appealing.<sup>124</sup> However, the

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Georgetown the ideology of service now seems to be “the irrelevant product of an abandoned past.” *Id.*

Drinan also asserts that Georgetown’s Catholic and Jesuit identity are evident in the fact that the school “publishes the prestigious *Journal of Legal Ethics*, the nation’s premier journal in this field.” Drinan, *supra*. By contrast, however, Tushnet argues that devoting time and resources to legal ethics does not advance a specifically Catholic or Jesuit identity. Indeed, Tushnet cites to the *Georgetown Journal of Legal Ethics*, which Drinan helped to found, and notes that it “might be seen as the product of a Catholic institution’s concern for ethics generally.” Tushnet, *supra* note 62, at 324. He notes, however, that almost simultaneously Harvard began a program in professional ethics. According to Tushnet, this simply shows that law schools respond to trends in legal education and that different schools “interpret those trends in the terms with which they are familiar, whether religious or secular.” *Id.* at 325. The fact that many secular law schools sponsor institutes and centers devoted to legal ethics “undercut[s] the argument that specifically Catholic commitments generate such programs.” *Id.* Moreover, the fact that the University of Alabama School of Law and Hofstra University School of Law now publish rival periodicals, the *Journal of the Legal Profession*, and the *Journal of the Institute for the Study of Legal Ethics*, respectfully, seems to confirm Tushnet’s point.

Most importantly, however, Drinan suggests that Georgetown’s Catholic identity is secure because the school “has three full-time Jesuit lawyers on its faculty.” Drinan, *supra*. This suggestion belies either a profound ignorance of the real issue involved in Catholic and Jesuit identity or a deliberate attempt to misstate it. That is, Drinan appears to see this identity simply in terms of quantity and form (i.e., how many Jesuits are on the faculty) rather than in terms of the academic substance of what occurs in the classroom. He seems not to understand that even if every teacher in every classroom was a Jesuit priest, the law school would still not be *genuinely* Catholic and Jesuit if the faculty did not engage the Catholic intellectual tradition in its teaching and research. Indeed, Drinan’s remark suggests that he believes that Jesuit and Catholic identity can be located in something as superficial as the clerical dress of a faculty member or the appearance of the letters “S.J.” following his name rather than in the intellectual work of the institution. Perhaps this explains the near universal consensus that Georgetown University Law Center is in no way discernibly Catholic and that it is Jesuit only in the most cursory sense. Obviously this is a judgment that Drinan’s colleague shares. See Tushnet, *supra* note 62, at 331–32 (concluding that a national law school, like Georgetown, “take[s] its primary identification from its national status” such that its identification as Catholic is “at best subsidiary”). Plainly, Jesuits must do more than simply show up. Their mere presence on campus is not enough to ensure the Catholic and Jesuit identity of the institutions with which they are affiliated.

123. Unfortunately, the general practice has been to talk about Jesuit identity and ignore the issue of faculty hiring. See BURTCHAELL, *supra* note 44, at 609 (noting that “[c]ountless manifestoes tried to describe what a ‘Jesuit institution’ would look like, but were silent about how to assure that it happened—or, more to the point, how to people these campuses with people who would want it to happen”) (citing numerous statements of Jesuit identity). Burtchaell’s chapter on Boston College meticulously documents the loss of identity that occurred both at Boston College and at Jesuit colleges and universities generally beginning in the 1960s. *Id.* at 563–634.

124. Craig S. Lent, *Becoming a Great Catholic University*, in CHALLENGE AND PROMISE, *supra* note 78, at 148 (noting that on a Catholic University’s faculty “[o]ne would expect many

faculty needed to advance the mission *need not be Catholic*,<sup>125</sup> and indeed Jesuit law schools would be poorer institutions if people from other faith traditions were not welcomed and included as colleagues in the project of Jesuit legal education.<sup>126</sup> Still, to be a true colleague requires genuine collaboration in support of the mission, not passive indifference, let alone veiled or open hostility.<sup>127</sup>

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members of such a community to be Catholics” but insisting that “the essential requirement is not a particular creedal affiliation but a respect for Catholic intellectual tradition” since “[a]bsent such respect, the whole enterprise of a Catholic university must appear foolish”).

David Gregory and Charles Russo note that “there are virtually no Catholics teaching” at the nation’s elite private and public secular law schools, and that some nominally Catholic schools “may not have [a] significantly more visible or quantitatively or qualitatively deeper, Catholic faculty presence than the Harvards and the Yales of the legal educational world.” David L. Gregory & Charles J. Russo, *Proposals to Counter Continuing Resistance to the Implementation of Ex Corde Ecclesiae*, 74 ST. JOHN’S L. REV. 629, 636, 638 (2000). Indeed, they argue cynically, if not without foundation, that the administrators of some Catholic schools have “meticulously avoid[ed] recruiting Catholics for new faculty openings,” *id.* at 633, and that these schools are “overtly or instinctively, doing their perverse best to reduce their number of Catholic faculty.” *Id.* at 638. Under these circumstances they propose “affirmative action in the hiring of Catholic faculty as a primary method of preserving and enhancing the religious identity of Catholic law schools.” *Id.* at 640–41. See also Robert John Araujo, S.J., “*The Harvest Is Plentiful, But the Laborers Are Few*”: *Hiring Practices and Religiously Affiliated Universities*, 30 U. RICH. L. REV. 713 (1996) (arguing that religiously affiliated schools may, consistent with Title VII of the Civil Rights Act of 1964, adopt an affirmative action hiring policy in support of the school’s religiously inspired mission).

As a prudential matter, the use of “affirmative action” in support of a law school’s mission may or may not be appropriate. The fundamental point, however, is that the work needed to fulfill a school’s mission requires initiative. The mission will not simply “take care of itself.” Instead, it requires, in some fashion, the deliberate, active participation of every faculty member and administrator.

125. A Jesuit law school must have faculty who are willing to engage in the promotion of justice as informed by the Catholic intellectual tradition. The actual religious affiliation of faculty is not of primary importance. Rather, what is crucial “is that there is a sufficient amount of faculty to sustain the Catholic identity of the university and that of the schools within the university. The means used is secondary.” Andrew L. Anderson, *Ex Corde Ecclesia: Obstacle or Opportunity for Catholic Affiliated Law Schools?*, 34 GONZ. L. REV. 103, 115 (1998).

126. See Noonan, *supra* note 112, at 1045 (concluding that in preserving the Catholic identity of a Catholic law school “[t]he real issue is recruitment” but insisting that not all faculty need be Catholic since “[t]here are Protestants and Jews and agnostics who would be attracted to such a school” and that “[i]t would be a mistake to exclude them”).

127. See Miscamble, *supra* note 121, at 217 (stating: “The faculty is located at the heart of a university. When a faculty is hostile to the mission of the institution, its attenuation is likely.”). As might be expected, there is a variety of opinion among educators and administrators at Jesuit universities regarding the wisdom of “hiring for mission” and how such an activity ought to be carried out. See, e.g., Richard H. Passon, *Hiring for Mission: An Overview*, CONVERSATIONS, Fall 1997, at 5, 13 (rejecting the idea that hiring for mission “will have a chilling effect on academic quality” and concluding that “[h]iring for mission has raised our level of discomfort sufficiently to convince me, for one, that we must be on to something good”); Joseph J. Feeney, S.J., et al., *Hiring Faculty for Mission: A Case Study of a Department’s Search*, CONVERSATIONS, Fall 1997, at 20 (describing the hiring process in the English Department at St. Joseph’s University); John J. Pauly, *Mission Talk and the Bugaboo of Modernity*,

## VIII. CONCLUSION

Although some might find the arguments set forth above to be somewhat pointed and the conclusions blunt, this has been a friendly critique. This has been the critique of an ally, of one who supports the project of Jesuit legal education. I share Robert Araujo's view that "the Society of Jesus, along with its lay colleagues, has a strong, even compelling mission to educate prospective lawyers who will work and practice their profession" in the context of the American legal system.<sup>128</sup> Still, friendship requires honesty, and honesty sometimes demands an unflattering appraisal of one's conduct.

By defining Catholic and Jesuit identity in terms that are at best marginal to the academic mission of the law school, some participants in Jesuit legal education have sided—whether knowingly or not—with those who seek the demise of that identity. The truth is that there are indeed some legal academics who oppose any sort of meaningful religious sponsorship of American law schools. There are some who want to see the entire project of Catholic legal education abandoned if it means anything beyond hosting a Red Mass to begin the academic year, or including a prayer of benediction as part of a school's graduation ceremony.<sup>129</sup> If the Jesuits aspire for something more than this from the law schools that operate in their name, then they need to engage in an honest assessment of these institutions. The heart of this assessment must include an honest conversation about how justice is and is not

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CONVERSATIONS, Fall 1997, at 28, 29 (arguing that "[m]ission talk has done little harm so far precisely because we have had the good sense not to take it too seriously" and that "[i]f we had more faith in what we do each day, we would not carelessly fiddle with what already works in order to solve a problem that does not really exist").

Marquette University has made available on its website a useful discussion of the University's mission and of the need to hire faculty and staff with an eye towards that mission. The site even includes a series of questions that the University recommends posing to candidates in the hiring process. The site makes clear that the questions are designed to elicit a candidate's commitment to the University's mission without imposing any sort of religious litmus test. Marquette Univ., *Hiring for Mission*, at <http://www.marquette.edu/umi/mission/hiring.shtml> (last visited Jan. 8, 2005).

128. Araujo, *supra* note 106, at 256.

129. See, e.g., Daniel Gordon, *Ex Corde Ecclesiae: The Conflict Created for American Catholic Law Schools*, 34 GONZ. L. REV. 125 (1999) (arguing, laughably, that because *Ex Corde Ecclesiae* requires that Catholic law schools be faithful to their Catholic identity, and Catholic identity requires condemnation of abortion, teachers at Catholic law school cannot teach the positive law with respect to abortion and so competently prepare students for the practice of law); Leonard Perno & Daniel Gordon, *Would Alan Dershowitz Be Hired to Teach Law at a Catholic Law School? Catholicizing, Neo-Brandeisism, and an American Constitutional Policy Response*, 23 SEATTLE U. L. REV. 355 (1999) (arguing that Catholic law schools cannot define their mission in a distinctive way and hire faculty in support of that mission because doing so would demean and demote those faculty who do not subscribe to the mission).

being taught.

Sadly, however, honesty is a quality that seems in short supply, both in the world generally and in the life of the Catholic Church and her institutions—a fact brought into sharp relief by the recent sexual abuse crisis involving the criminal acts of some priests and the wanton neglect and even deliberate cover-up of those acts by certain bishops and religious superiors.<sup>130</sup> Still, if such an honest conversation were to take place,<sup>131</sup> it would result in something other than the self-laudatory statements of Jesuit law schools now generated for the consumption of older alumni and prospective students; statements that celebrate a distinctiveness which simply does not exist.

There is, however, a distinctiveness that could be realized and which would be worth celebrating. This distinctiveness consists of a law school culture and curriculum informed by serious engagement with the Catholic intellectual tradition, especially as it pertains to questions of law and justice. As practiced within the Jesuit charism, this distinctiveness could offer future lawyers something which the legal academy largely ignores. Specifically, the Jesuit law school could introduce students to the many varieties of justice (i.e., commutative, distributive, corrective, etc.) all of which are grounded in the dignity of the human person and the common good of society, understood not as mere conventions but as aspects of reality. Without demanding any sort of adherence, whether intellectual, religious or otherwise, and without precluding the presentation of other points of view—even those inimical to the Catholic faith—the Jesuit law school can offer for consideration this rich patrimony of thought in a non-coercive fashion.<sup>132</sup>

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130. See generally THE NATIONAL REVIEW BOARD FOR THE PROTECTION OF CHILDREN AND YOUNG PEOPLE, A REPORT ON THE CRISIS IN THE CATHOLIC CHURCH IN THE UNITED STATES (2004) (providing a comprehensive study of the content and context of the crisis besetting the Catholic Church); see also MATT CARROLL ET. AL., BETRAYAL: THE CRISIS IN THE CATHOLIC CHURCH (2002) (documenting the sexual abuse crisis in the Archdiocese of Boston). For an astute discussion of dishonesty in the Church (including dishonesty about the faith itself) and how it became so rampant in the United States in recent years, see GEORGE WEIGEL, THE COURAGE TO BE CATHOLIC: CRISIS, REFORM AND THE FUTURE OF THE CHURCH (2002).

131. There is evidence that the possibility of having such an honest conversation still exists, at least among some faculty. See C. N. Sue Abromaitis, *Letter to the Editor*, CONVERSATIONS, Spring 2003, at 52–53 (inviting Jesuit educators to have a candid discussion of Jesuit identity with “no evasions, no jargon, no ambiguity”). Whether Professor Abromaitis’ challenge will be taken up remains to be seen.

132. As Pope John Paul is fond of saying “The Church proposes; she imposes nothing. She respects individuals and cultures, and she honors the sanctuary of conscience.” JOHN PAUL II, ENCYCLICAL LETTER *Redemptoris Missio* ¶ 39 (1990). Even if such efforts were not morally objectionable, attempts to impose the truth would in any case prove to be fruitless since “[t]he truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power.” SECOND VATICAN ECUMENICAL COUNCIL, DECLARATION ON

If Jesuit law schools continue to fail to engage the tradition which inspired their creation, then they should cease to go by the name “Jesuit” or “Catholic.”<sup>133</sup> Truth in advertising would require as much.<sup>134</sup> If, however, Jesuit law schools take up this tradition in earnest, then what are now mere slogans might in fact accurately describe the kind of education they seek to convey and the kind of graduates they hope to produce. If Jesuit law schools see it as their obligation to introduce students to the Catholic intellectual tradition—the tradition which Martin Luther King, Jr. relied upon in his struggle for civil rights,<sup>135</sup> which refuted the evils of European fascism and Soviet totalitarianism,<sup>136</sup> and which challenges the individualism and

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RELIGIOUS FREEDOM *Dignitatis Humanae Personae* ¶ 1 (1965), reprinted in THE DOCUMENTS OF VATICAN II 675 (Walter M. Abbott, S.J. ed., Joseph Gallagher trans., 1966). Moreover, specifically within the context of a Catholic university, John Paul has made clear that freedom of religion and conscience hold a special place, both for the institution and its constituents. Thus, “[n]on-Catholic members are required to respect the Catholic character of the university, while the university in turn respects their religious liberty.” *Ex Corde Ecclesiae*, *supra* note 90, at ¶ 27. See also *id.* at ¶ 39 (“When the academic community includes members of other churches, ecclesial communities, or religions, their initiatives for reflection and prayer in accordance with their own beliefs are to be respected.”); *id.* at art. 2 § 4 (“Catholic teaching and discipline are to influence all university activities, while the freedom of conscience of each person is to be fully respected.”).

133. Cf. *Veritatis Splendor*, *supra* note 116, ¶ 116 (noting that “[i]t falls to [the bishops] in communion with the Holy See, both to grant the title ‘Catholic’ to Church-related schools, universities, health-care facilities and counseling services, and, in cases of a serious failure to live up to that title, to take it away”) (footnotes omitted). See also *Codex Iuris Canonici*, 1983 CODE c. 803 and c. 808 (providing that no school or university may bear the title “Catholic” “without the consent of the competent ecclesiastical authority”).

134. See Nelson, *supra* note 106, at 144 (“Why should a Catholic law school which is indistinguishable from a state law school continue to exist? I submit that a Catholic law school which has lost its sense of mission should either close its doors or seek state support, as well as state control.”); Robert John Araujo, S. J., *Realizing a Mission: Teaching Justice as “Right Relationship,”* 74 ST. JOHN’S L. REV. 591, 595 (2000) (noting that many Jesuits point to rigorous academic work, care for the whole person, and commitment to service and social justice as distinguishing features of Jesuit legal education, but concluding that “[a]pplaudable as these elements may be, they are really no different than the educational mission of many other schools which have secular foundations”); Ralph McInerney, *The Advantages of a Catholic University*, in CHALLENGE AND PROMISE *supra* note 78, at 182 (“A university is chiefly concerned with the mind and imagination. If the faith has no influence on what goes on in the classrooms and laboratories, studios and stages, of the university, the university is not Catholic.”).

135. Martin Luther King, Jr., *Letter from a Birmingham Jail* (April 16, 1963), in A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 289, 293 (James Melvin Washington, ed., 1986) (relying upon St. Augustine and St. Thomas Aquinas to draw the distinction between “just” and “unjust” laws).

136. Perhaps the most powerful example of this refutation can be found in the life and work of Karol Wojtyła who survived the Nazi occupation of Poland as a young man and who later as Archbishop of Krakow and Bishop of Rome helped topple Poland’s Soviet-sponsored Communist regime. See GEORGE WEIGEL, WITNESS TO HOPE: THE BIOGRAPHY OF POPE JOHN PAUL II (1999) (chronicling the life and achievements of Pope John Paul II).

materialism of liberal democracies today<sup>137</sup>—then they will offer law students something which secular schools do not. Then they can realistically hope to form “men and women for others.” Then the life of these institutions, including Loyola, can again be *Ad Majorum Dei Gloriam*.

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137. See *supra* notes 107–10 and accompanying text (explaining how the Catholic intellectual tradition requires exposure to ideas which challenge the dominant conception of justice embodied in American law).

## APPENDIX

In compiling this survey of the websites of the fourteen American law schools operating under Jesuit sponsorship, I have paid particular attention to each law school's respective mission statement and other self-descriptions. Where I could not locate a law school mission statement I consulted the host university's mission statement for evidence of the institution's professed commitment to the promotion of justice and other Jesuit ideals. I also closely examined each school's curricular requirements and elective offerings including its clinical programs. For the reasons set forth in the text, I did not pay particular attention to a school's efforts at campus ministry, or its dedication to professional ethics, or its interest in matters involving law and religion. The point of the survey was not to obtain a sense of the standing of Catholic identity in general, but Jesuit identity as it relates to the teaching and promotion of justice.

### BOSTON COLLEGE LAW SCHOOL

*http://www.bc.edu/schools/law* (last visited March 17, 2005)

In its mission statement, Boston College Law School states that it is "rooted in the Jesuit tradition of service to God and others" and that its "commitment to social and economic justice" can be seen in "its curricular offerings and in the extracurricular projects that it supports." <http://www.bc.edu/schools/law/about/history/mission/>. It also states that the school encourages students "to explore those themes which are central to the Jesuit mission: the dignity of the human person, the advancement of the common good and compassion for the poor." *Id.*

While Boston College does not require students to take a course in jurisprudence, legal theory, or legal history, it does recommend that second and third-year students "select at least some courses which focus on [these topics] directly or make them a major topic of class discussion." <http://www.bc.edu/schools/law/services/academic/programs/curriculum/principals>.

In his message to prospective students, Dean John Garvey likewise states that the Law School is "proud to be part of the long Jesuit tradition that combines the highest regard for learning with an emphasis on service to others." <http://www.bc.edu/schools/law/about/message>. Thus, the school "stress[es] professional responsibility throughout the curriculum, anchored in a sense of obligation that is rooted in religious faith as well as other values." *Id.* Dean Garvey also insists that "[m]any of our classes and co-curricular activities connect directly to seeking justice" and that as a consequence Boston College "emphasizes the importance of pro bono

services.” *Id.*

### CREIGHTON UNIVERSITY SCHOOL OF LAW

<http://culaw2.creighton.edu> (last visited March 17, 2005)

Creighton University School of Law has no mission statement available on-line. Creighton University’s mission statement, however, says that it is a “Catholic and Jesuit comprehensive university.” <http://www.creighton.edu/mission.html>. It further states that as a Catholic institution, Creighton “is dedicated to the pursuit of truth in all its forms and is guided by the living tradition of the Catholic Church.” *Id.* It also states that “[s]ervice to others” and “the inalienable worth of each individual” are the “core values of Creighton.” It also provides that education at Creighton “is directed to the intellectual, social, spiritual, physical and recreational aspects of student’s lives and to the promotion of justice.”

Creighton also completed a self-study of its efforts to educate its students concerning justice. Education for Justice at Creighton University Since 1975: A Self-Study (Feb. 1, 1999), at <http://www.creighton.edu/Justice/JusticeReport.pdf>.

The law school does not require students to take a course in jurisprudence. <http://culaw2.creighton.edu/academic/index.aspx?page=2&category=>.

### UNIVERSITY OF DETROIT MERCY SCHOOL OF LAW

<http://www.law.udmercy.edu> (last visited March 17, 2005)

The University of Detroit Mercy School of Law has no mission statement available on its website. It does have a site entitled “Why UDM Law?” which says that “[a]s a Catholic law school, UDM has a historic commitment to diversity and social justice.” <http://www.law.udmercy.edu/whyudmercyaw/index.html>. As evidence of this commitment, the site notes that the School of Law “[o]ffers numerous clinical opportunities, from our immigration and mediation clinics to a mobile law office in which students provide legal services to people in distressed areas.” *Id.* Further, the School of Law’s site for its Urban Law Clinic provides that “[i]n addition to fulfilling our School’s mission of public service,” the clinic helps students acquire valuable skills. <http://www.law.udmercy.edu/currentstudents/academic/urbanlawclinic.php>.

Aside from these few references, the contents of the Law School website make no mention of the school’s Jesuit Mercy sponsorship or to any special obligation the school has to promote justice or form men and women for others.

Dean Mark Gordon’s message to prospective students likewise stresses UDM Law School’s commitment to legal ethics and public

service. <http://law.udmercy.edu/prospective/deansmessage/index.html>.

One required first year course, Applied Legal Theory & Analysis, contains a jurisprudential component. Although primarily a writing course, this six credit two semester course class also provides students with a series of lectures addressing such topics as “Hohfeldian Analysis” and an “Introduction to the Application of an Economic Analysis to Tort and Contract Law.” <http://law.udmercy.edu/currentstudents/courselistings/alpha.php>. The school offers several elective courses in jurisprudence or with a jurisprudential theme.

## FORDHAM UNIVERSITY SCHOOL OF LAW

<http://law.fordham.edu> (last visited March 17, 2005)

Fordham University’s mission statement provides that it is “an independent university in the Jesuit tradition.” [http://www.fordham.edu/Discover\\_Fordham/Fordham\\_at\\_a\\_Glance/Mission\\_11711.html](http://www.fordham.edu/Discover_Fordham/Fordham_at_a_Glance/Mission_11711.html). It insists that “[t]he Jesuit tradition is characterized by excellence in teaching and by the care and development of each individual student.” *Id.* This means that a Fordham education “goes beyond the transmission and acquisition of basic knowledge to the exploration of questions of values and ethics.” *Id.* Fordham states that it “encourages its students to develop an individual commitment to others and explore those themes that are central to the Jesuit tradition: the dignity of the human person, the advancement of the common good, and the option for the poor.” *Id.*

Fordham elsewhere states that Jesuit education begins with a deep respect for the individual “a principle the Jesuits call *cura personalis*” [http://www.fordham.edu/Discover\\_Fordham/Fordams\\_Jesuit\\_Trad\\_3624.html](http://www.fordham.edu/Discover_Fordham/Fordams_Jesuit_Trad_3624.html). The University encourages its students to follow “the Jesuit philosophy of *homines pro aliis*, men and women for others, by contributing their time and talent to the community.” *Id.* In this regard the University notes that “[t]he School of Law, internationally known for emphasizing ethics, also has several active *pro bono* programs.” *Id.*

In contrast to Fordham University’s website, Fordham Law School’s website has nothing to say about Catholic or Jesuit identity. It does not draw a connection between Fordham’s Jesuit identity and the Law School’s programs in legal ethics and clinical legal education. Indeed, absent its affiliation with Fordham University, the Law School’s website does not indicate that it is in any way Catholic or Jesuit. Although the Law School offers a number of courses in jurisprudence and legal theory, <http://law.fordham.edu/html/jd-guide18.htm>, it does not require students to enroll in any such course.

## GEORGETOWN UNIVERSITY LAW CENTER

<http://www.law.georgetown.edu> (last visited March 17, 2005)

Georgetown University Law Center has a link on its website entitled “History of the Law Center Jesuit and Catholic Identity,” however, the link provides the visitor with only a description of the campus and a series of photographs. It contains no information about the Jesuit and Catholic identity of the Law Center other than to boast that “[i]t was the first law school established in the United States by a Jesuit institution of higher learning.” <http://www.law.georgetown.edu/tour/>.

Georgetown makes plain that “[j]urisprudence is not a required course at the Law Center.” [http://www.law.georgetown.edu/curriculum/tab\\_clusters.cfm?status=cluster&detail=18](http://www.law.georgetown.edu/curriculum/tab_clusters.cfm?status=cluster&detail=18). However, the Law Center does offer a number of courses in the area. Moreover, those first-year students enrolled in the “B” curriculum do take two courses entitled “Legal Justice Seminar” and “Democracy and Coercion,” which have “substantial jurisprudential content.” *Id.*

Georgetown University Law Center claims that it has “the largest, strongest, and most diverse in-house clinical program in the country.” <http://www.law.georgetown.edu/clinics/>. While this may well be true, the Law Center’s web-site does not indicate that its clinical programs are in any way a reflection of the Law Center’s or the University’s Jesuit identity. The Law Center also maintains an Office of Public Interest and Community Service whose mission “is to foster in all law students a commitment to public service that they will carry with them throughout their professional lives.” <http://www.law.georgetown.edu/opics/>. Similarly, however, the Law Center does not draw any connection between that activity and the Law Center’s purported Jesuit identity. On its website, however, Georgetown University does see the Law Center’s clinical programs as a reflection of Jesuit and Catholic identity. <http://www.georgetown.edu/home/service.html> and <http://www.georgetown.edu/home/about.html>.

## GONZAGA UNIVERSITY SCHOOL OF LAW

<http://www.law.gonzaga.edu> (last visited March 17, 2005)

Gonzaga University School of Law’s mission statement provides that it shares “the Catholic, Jesuit, and humanistic traditions of the Gonzaga University Mission.” <http://www.law.gonzaga.edu/About/mission.htm>. It further states that the “[p]rimary emphasis at the School of Law is on the exploration of the concepts of law and justice as they have evolved in the Anglo-American legal tradition.” *Id.* In addition to giving students “the work-a-day skill necessary for the actual practice of law” Gonzaga says that it seeks to impart to its students “an intellectual understanding and appreciation of the

philosophies which produced and underlie our democratic society.”  
*Id.*

These pedagogical goals are similar to the kinds of goals found in many other law school mission statements. Gonzaga’s mission statement goes beyond this, however, in actually endorsing a particular view of law. In setting forth this view, Gonzaga appears to rely heavily on both the Declaration of Independence as well as the Catholic intellectual tradition in general and the Church’s social magisterium in particular. For example, the mission statement says that “Gonzaga Law School believes that laws and legal institutions are subject to a moral order which transcend [sic] whim and caprice” and that the “central premise of this moral order is that all human beings are created equally and are endowed by their Creator with certain natural rights and obligations.” *Id.* Gonzaga also affirms that these rights and obligations “are the cornerstone of true human dignity to which every person . . . is entitled” such that even the political state does not have the right “to take them away.” *Id.* Indeed, Gonzaga states that it seeks to “foster a learning environment for all students to pursue the knowledge of these natural rights and obligations because . . . the legal profession exists to ensure that [they] are met and available to all.” *Id.*

An obvious way to foster precisely this kind of learning environment would be to require a course in jurisprudence which would expose students to these ideas while subjecting them to critical examination. Gonzaga, however, has no such requirement. <http://www.law.gonzaga.edu/Academics/Courses/Courses.htm>. To its credit Gonzaga does require each student to complete a thirty-hour public service component for graduation. <http://www.law.gonzaga.edu/StudentServices/RegistrantOffice/Public+Service>.

## LOYOLA UNIVERSITY CHICAGO SCHOOL OF LAW

<http://www.luc.edu/law> (last visited March 17, 2005)

Loyola University Chicago School of Law’s mission statement states that it is “inspired by the Jesuit tradition of academic excellence, intellectual openness, and service to others.” [http://www.luc.edu/law/prospective/mission\\_statement.shtml](http://www.luc.edu/law/prospective/mission_statement.shtml). Moreover, Loyola claims that “[b]eyond the academic structure, the school offers an atmosphere that encourages learning while nurturing personal growth through the Jesuit ideals of service and ethics.” <http://www.luc.edu/law/prospective/about.shtml>.

The Law School states that “it provides its students with many opportunities to investigate and reflect upon the historical, philosophical, moral and social dimensions of law.” <http://www.luc.edu/law/academics/curriculum.shtml>. Although the website lists a

number of courses that address these various dimensions, none of them is required. Loyola does see a connection between its Jesuit identity and the opportunity it provides for clinical legal education. The Law School's website states that "Loyola understands that placing students in a law-office setting with real clients creates a synergy between teaching essential skills and providing needed service, consistent with the Jesuit principle of making a difference as persons for others." <http://www.luc.edu/law/academics/special/clinic/community.shtml>.

The Law School's Ministry page states that Loyola seeks to provide students with "a values-based legal education" and that it sees the law "primarily as a service calling, with lawyers having a public responsibility to promote justice and to serve the community." <http://www.luc.edu/law/current/ministry.shtml>. Moreover, Loyola regards this view of the lawyer's role in society as "consistent with Loyola's position as a school within a Jesuit university." *Id.*

The Loyola University Chicago website indicates that the University sees the Jesuit mission of promoting justice in the work of the Law School more clearly than the Law School does itself. Loyola notes that with the 32nd General Congregation of the Society of Jesus, Jesuit institutions "began to assume the promotion of justice as integral to their own mission and purpose." <http://www.luc.edu/jesuit/institution.html>. Since that time, Loyola's work on behalf of justice may have changed but not "the basic commitment to serving the less fortunate." *Id.* In citing to some of the University's "most exemplary 'best practices' in the area of justice," Loyola points to the Law School's Community Law Center which "not only provides legal representation to large numbers of indigent persons who cannot afford a lawyer but, in the same process, it trains Loyola students to work competently on behalf of the poor in matters involving family life, government benefits, and landlord-tenant disputes." *Id.* Together with the Law School's Childlaw Clinic, the Community Law Center "provides Loyola students with the opportunity to know first hand the world of poor children and to represent and defend their interests." *Id.*

Elsewhere the University claims that "[i]n a very real sense, all of the education at the School of Law is focused on justice, since its graduate[s] [sic] will for the most part, be engaged in the actual practice of law." <http://www.luc.edu/jesuit/future.html>. The University sees the Law School's "specific commitments to justice" in its legal clinics, course offerings and co-curricular activities. *Id.* Loyola states that "[t]he School of Law expects each of its teachers to include in every course instruction in issues of justice and professional responsibilities." *Id.* Loyola sees this alleged emphasis on ethics as distinctive since it claims that the Law School is one of only twelve in the country that "emphasize ethical values in their courses." *Id.* As

evidence of this it notes that “all students are required to take a course in Professional Responsibility . . . focusing on ethical questions in the practice of law.” *Id.* Such a requirement is, however, in no way distinctive since every law school accredited by the American Bar Association must have its students complete such a course for purposes of accreditation.

#### LOYOLA LAW SCHOOL—LOS ANGELES

<http://www.lls.edu> (last visited March 17, 2005)

Loyola School of Law in Los Angeles states that its mission is to provide “legal education within the context of Loyola Marymount University and its goals as a Catholic Institution in the Jesuit and Marymount traditions.” <http://www.lls.edu/about/mission.html>. Loyola further states that it seeks to produce leaders who will demonstrate “the highest standards of personal integrity, professional ethics, and deep concern for social justice.” *Id.* Loyola gives some clue as to what it means by this concern for “social justice.” Immediately after this assertion the statement provides that the Law School “should continue its efforts to provide opportunities for legal education to the poor, the underprivileged, and minorities” while making note of the School’s “long-standing commitment to affirmative action.” *Id.*

Loyola does not specifically require its students to enroll in a jurisprudence course. It does, however, require each of its students to complete a “Breadth Course” after the first-year <http://www.lls.edu/academics/jdday.html> and the school’s jurisprudential offerings satisfy this requirement. <http://www.lls.edu/courses/>.

Loyola does demand that its students complete a Pro Bono Graduation Requirement so as to foster in its students “a desire for public service . . . as natural as a reflex.” <http://www.lls.edu/community/probono.html>.

#### LOYOLA UNIVERSITY NEW ORLEANS SCHOOL OF LAW

<http://www.law.loyno.edu> (last visited March 17, 2005)

The mission statement for Loyola University New Orleans School of Law provides that “[i]n the Jesuit tradition of academic rigor, pursuit of justice, and service to others, the College of Law has as its mission to educate future members of the Bar to be skilled advocates and sensitive counselors-at-law committed to ethical norms in pursuit of dignity for all.” <http://www.law.loyno.edu/purpose.html>. The School of Law’s website also states that it “is committed to excellence in legal education in the tradition of its spiritual heritage with its goal being wisdom, not merely technical competence.” <http://www.law.loyno.edu/>.

The Law School describes its Law Clinic as giving students the “opportunity to further the Jesuit ideals of scholarship and service at Loyola by providing legal representation to the needy.” <http://www.law.loyno.edu/clinic/about.html>. The Law School also hosts the Gillis Long Poverty Law Center which assists in “providing legal services to those unable to afford representation.” <http://www.law.loyno.edu/gillislong/about.html>. The webpage describing the Center notes that “[t]he Loyola University Character and Commitment Statement states that ‘Jesuit education must be a catalyst for needed social change, hence dedicated to fostering a just social order.’” *Id.* The Law School sees the Gillis Poverty Law Center as “a vital part” of the University’s commitment “to excellence in scholarship and the pursuit of social justice.” *Id.*

Unlike the other thirteen Jesuit law schools, Loyola New Orleans requires its students to complete a two-hour course entitled “Law and Poverty” which involves a critical examination of the legal system’s response to poverty and the social problems that accompany it. <http://www.law.loyno.edu/jdrequirements.html>. Moreover, although the Law School does not specifically require the study of jurisprudence, it does require students to take “one of three courses emphasizing philosophical or historical perspectives on law.” *Id.*

## MARQUETTE UNIVERSITY LAW SCHOOL

<http://www.law.marquette.edu> (last visited March 17, 2005)

Marquette University Law School states that it benefits from the University’s “rich heritage” as a Jesuit institution and the “centuries-old tradition of values education” that it embodies. [http://law.marquette.edu/cgi\\_bin/site.pl?2130&pageID=154](http://law.marquette.edu/cgi_bin/site.pl?2130&pageID=154). Although this webpage says that Marquette’s President, Rev. Robert Wild, S.J., and Professor Janine Geske have “articulated the Jesuit mission specifically for the Law School,” these texts are not available on the website. *Id.*

Marquette University’s website provides visitors with an extensive amount of information concerning Marquette’s Jesuit identity, <http://www.marquette.edu/about/jesuit>, its history, <http://www.marquette.edu/about/history>, as well as the University’s mission and vision, <http://www.marquette.edu/about/mission/>. Moreover, the University hosts an Office of Mission and Identity to help realize the ideas contained within these statements. <http://marquette.edu/umi/about/index.shtml>.

By contrast, Marquette Law School either does not have a mission statement or it does not make such a statement available on its website. In his message to prospective students, Dean Joseph Kearney states that “[a]s a Catholic and Jesuit law school, we have a particular obligation to assure that the education that is provided at Marquette is

designed to enhance our students' respect for all people, while assuring that our students become skilled lawyers who can excel in the legal profession." <http://law.marquette.edu/cgi-bin/site.pl?2130&pageID=1222>. Dean Kearney notes that "[p]art of the Jesuit tradition in education is encouraging students to become agents for positive change in society." *Id.* Kearney addresses the "fear" that Marquette's Catholic and Jesuit identity might affect the school's curriculum. While he does not explicitly disaffirm any such influence, Dean Kearney does make clear that the Law School's affiliation does not interfere with "the core concept of academic freedom" and instead makes possible "a broader exchange of views" on issues. *Id.* Thus, Marquette's Jesuit identity has a positive influence which also includes a "commitment to care for the person [that] is reflected in the way we view students, and how we expect students to view themselves and each other." *Id.*

Whatever fears one might harbor concerning Catholic or Jesuit influence with respect to Marquette's courses, they should be allayed by a review of the Law School's curriculum. Marquette does require its students to complete a "Perspectives Course" and a "Seminar Course." Although a course in jurisprudence will not satisfy the former requirement, presumably it would satisfy the latter. *Id.* Like its sister Jesuit law schools, Marquette does not require its students to take any course specifically devoted to the study of justice. <http://law.marquette.edu/cgi-bin/site.pl?2130&pageID=1959>. Like its Jesuit sister schools, Marquette does have jurisprudential offerings which a student can elect to take. [http://www.law.marquette.edu/cgi\\_bin/site.pl?current/courseDescriptions05](http://www.law.marquette.edu/cgi_bin/site.pl?current/courseDescriptions05).

#### SANTA CLARA UNIVERSITY SCHOOL OF LAW

<http://www.scu.edu/law> (last visited March 17, 2005)

In its Statement of Purpose, Santa Clara University School of Law makes no mention of Catholic or Jesuit education, values, heritage, or inspiration. [http://www.scu.edu/law/admissions/statement\\_of\\_purpose.html](http://www.scu.edu/law/admissions/statement_of_purpose.html). Likewise, Dean Donald Polden's welcome to website visitors fails to mention the Law School's Jesuit affiliation, but he does say that Santa Clara is well known for "promoting social justice and public service." <http://www.scu.edu/law/visitors/index.html>.

Santa Clara does, however, provide a history of the Law School on its website, which states that "consistent with the ethics and values of a Jesuit university, the Law School places a high value on public service." [http://www.scu.edu/law/visitors/historical\\_tour.html](http://www.scu.edu/law/visitors/historical_tour.html). Elsewhere, the website states that Santa Clara "strives to integrate a sound legal education with a concern for the ethical administration of justice" as this is "[i]n keeping with the Jesuit philosophy of education." <http://www.scu.edu/law/alumni/scholarships.html>. The

Law School asserts that it has “a long tradition, drawn from its Jesuit roots, of academic excellence as well as a strong and continuing commitment to engagement, ethics and social justice.” <http://www.scu.edu/law/academics/index.html>.

In introducing its many clinical programs, the Law School states that “[p]art of Santa Clara’s Jesuit educational philosophy is active engagement learning through experience.” <http://www.scu.edu>. In addition to a traditional Community Law Clinic, the clinical programs hosted by Santa Clara include the Northern California National Innocence Project and the Bryan R. Shechmeister Death Penalty College. *Id.*

Santa Clara hosts the Center for Social Justice and Public Service to serve as “a locus for public interest and social justice study and service.” <http://www.scu.edu/law/socialjustice/>. Students at Santa Clara can earn a Public Interest and Social Justice Law Certificate as part of the J.D. degree. Requirements for the certificate include course work, a practicum and community service. The certificate is also available in three areas of concentration: consumer law, criminal justice, and critical race jurisprudence. <http://www.scu.edu/law/socialjustice/certificate.html>.

Santa Clara offers a number of courses with a jurisprudential theme, [http://www.scu.edu/law/academics/course\\_list.html](http://www.scu.edu/law/academics/course_list.html), but it does not require that students enroll in any of them. [http://www.scu.edu/law/academics/jd\\_degree.html](http://www.scu.edu/law/academics/jd_degree.html).

## UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW

<http://www.usfca.edu/law> (last visited March 17, 2005)

The website for the University of San Francisco School of Law (“USF”) makes no mention of Jesuit identity or the goal of promoting justice. It does state that the goal of USF Law School “is to educate students to be effective lawyers with a social conscience, highly ethical standards, and a global perspective.” [http://www.usfca.edu/law/html/about\\_L2.html](http://www.usfca.edu/law/html/about_L2.html). Elsewhere, the Law School states that its curriculum is intended to develop “a full awareness of an attorney’s special obligations to society” and that faculty make a particular effort “to engage students in legal, political, ethical, philosophical, and social discussion.” <http://www.usfca.edu/online/colleges/law.html>.

The University website, by contrast, contains an elaborate “Vision, Mission and Values Statement.” It provides that USF hopes to be recognized “as a premier Jesuit Catholic, urban University” that “educates leaders who will fashion a more humane and just world.” <http://www.usfca.edu/mission/index.html>. It further states that the mission of the University is “to promote learning in the Jesuit Catholic tradition” and that it offers students not only knowledge and skills, but

“the values and sensitivity necessary to be men and women for others.” According to the statement, USF is “sustained by the faith that does justice.” *Id.*

Like its sister Jesuit law schools, USF Law School offers several jurisprudence courses, none of which are required. [http://www.usfca.edu/law/html/instructional\\_pro\\_L3.html](http://www.usfca.edu/law/html/instructional_pro_L3.html). The School also offers students a number of clinical opportunities. *Id.* The Law School does not, however, draw any connection between its clinical offerings and the School’s Jesuit identity. This is in no way surprising since the Law School website nowhere mentions this identity.

## SAINT LOUIS UNIVERSITY SCHOOL OF LAW

<http://law.slu.edu> (last visited March 17, 2005)

The mission statement for the Saint Louis University School of Law, which appears in the School’s Student Handbook provides that “[t]he School of Law is guided by the Jesuit tradition of academic excellence, freedom of inquiry and respect for individual differences.” [http://law.slu.edu/student\\_services/Student\\_Handbook.doc](http://law.slu.edu/student_services/Student_Handbook.doc). Although the School’s mission statement makes no other mention of Catholic or Jesuit character, the School’s non-discrimination statement which immediately follows provides that “[a]ll University policies, practices and procedures are administered in a manner consistent with our Catholic, Jesuit identity.” *Id.* In its Accommodations Policy the School likewise states that it is “committed to providing an inclusive environment, responsive to the needs of all students” and that this is “[c]onsistent with its mission as part of a Catholic, Jesuit University.” *Id.*

Dean Jeffrey Lewis’s welcome to prospective students makes no mention of the Law School’s Jesuit or Catholic identity. [http://law.slu.edu/about\\_school.html](http://law.slu.edu/about_school.html). The webpage describing the history of the Law School is likewise silent on the subject. <http://law.slu.edu/overview/schoolhistory.html>. These omissions are surprising given the fact that elsewhere the website states that “[s]ince its inception the School of Law has adhered to the Jesuit spirit of ‘Men and Women for Others’ and that this creed is incorporated in all facets of our community.” <http://law.slu.edu/alumnihistory.html>. Although St. Louis provides an impressive array of clinical opportunities for its students, the School does not draw any explicit connection between these programs and the School’s Jesuit identity. <http://law.slu.edu/clinics/>.

Saint Louis does make clear its belief that, before they graduate, “students should have been exposed to, in one way or another, the varied philosophical approaches to law, the history of law and the ethical dimensions of problems that confront the practitioner.” <http://law.slu.edu/curriculum/planning.html>. However, despite this

firm belief, Saint Louis, like its fellow Jesuit law schools, does not require its students to enroll in a jurisprudence course. The School does have a 2-3 hour "Humanities" requirement which may be satisfied by a course in jurisprudence, as well as courses in legal history and comparative law. [http://law.slu.edu/student\\_services/Student\\_Handbook.doc](http://law.slu.edu/student_services/Student_Handbook.doc).

## SEATTLE UNIVERSITY SCHOOL OF LAW

<http://www.law.seattleu.edu> (last visited March 17, 2005)

Seattle University School of Law's mission statement says that the School is committed to preparing its students "for the highest degree of professional performance" and that this reflects "the Jesuit tradition of academic distinction." <http://www.law.seattleu.edu/mission?mode=standard>. It also states that Seattle's faculty recognizes that "the pursuit of justice is furthered by dialogue with colleagues inside and outside of the law." *Id.* Further, the School says that it is committed "to freedom of conscience, thought, and speech" and that this reflects "the Jesuit tradition of open inquiry, social responsibility, and concern for personal growth." *Id.* Beyond "the mere observance of a professional code," Seattle says that it challenges its students "to contribute to the common good by shaping an equitable legal system so that the American people may honor the law and respect its lawyers." *Id.*

Seattle does not require its students to study jurisprudence, <http://www.law.seattleu.edu/registrar/handbookII.pdf>, although it does make such courses available. <http://law.seattleu.edu/courses?Mode=standard>. Students at Seattle can, however, choose to concentrate in one of several "Focus Areas" including "Inequality and Poverty Law." <http://www.law.seattleu.edu/academics/foci?mode=standard>. Seattle does not, however, attribute this concentration to the School's Jesuit identity. <http://www.law.seattleu.edu/academics/foci/poverty?mode=standard>.

Seattle hosts the Ronald A. Peterson Law Clinic through which over one hundred law students provide legal services to those in need each year. <http://www.law.seattleu.edu/clinic?mode=standard>. Although Seattle does not attribute the clinic to the School's Jesuit identity, it makes clear its belief that in the clinic students learn "the skills and values essential for the practice of law" while "advocating for justice on behalf of those most vulnerable in our society." *Id.* The Law School also hosts the Access to Justice Institute which gives students the opportunity to serve the unmet legal needs of individuals in a number of ways. These include helping victims of domestic violence obtain unemployment benefits and assisting immigrant women fight removal proceedings in U.S. Immigration Court. <http://www.law.seattleu.edu/accesstojustice>. The School believes that

the Institute “reflects the mission of Seattle University School of Law: to lead its students toward lifetime service to justice for all.” *Id.* The Law School also sponsors the Seattle Journal of Social Justice. <http://www.law.seattleu.edu/launch-sjsj?mode=standard>.

