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THE IDEAL OF A 
(CATHOLIC) LAW SCHOOL

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In this paper, I hope briefly to lay out my view of an ideal Catholic law school. In so doing, I will first try to identify its core principle, and then turn to other views of a Catholic law school that fail either because they do not sufficiently identify what is distinctive about it or because they are based on erroneous ecclesiological views. I will then try to point out the implications of my views for a number of controversial questions, such as hiring criteria for faculty, academic freedom, and the substantive intellectual framework for such a law school. I will finish by first “taking back” some of what I have said about the “distinctiveness” of a Catholic law school and indicating that there are different kinds of “Catholic” law schools, and second by pointing out one sine qua non that is essential to achieve the living spirit of a Catholic law school, of whatever type. In the course of this discussion I will also provide two explanations for why I put “Catholic” in parentheses in my title.

I should mention briefly at the start that, for the most part, I will not be taking up the often difficult questions of how to actually realize the ideal, given the enormous number of practical problems that arise from less than ideal conditions or circumstances. I recognize that these limitations will often require prudent compromises to achieve the best that is possible under a given set of conditions.

I. WHAT IS DISTINCTIVE ABOUT A CATHOLIC LAW SCHOOL?

Any discussion of the ideal of a Catholic law school must begin with some notion of what the purpose of a law school is. I take that purpose to be twofold: first, preparing students to be good lawyers, and second, promoting the study of law, partly as a means to prepare good lawyers but also, importantly, as an end in itself.

The question then becomes “what would be distinctive about a Catholic law school?” The answer, briefly, is that the ordinary function of the law school will be fulfilled within the context of the truth of the Catholic faith, with all its teachings on faith and morals. Because faith provides a deeper insight into reality—strengthening our knowledge of what is ac-

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cessible to reason and adding to our knowledge other things that reason alone could never attain to—the Catholic law school should, in principle, be a better law school than a secular law school. That is the first reason why I put the word "Catholic" in parentheses in my title: My argument is that the ideal "Catholic" law school is the best law school simply.

If what is distinctive about a Catholic law school is that the Catholic faith (as taught by the Popes and bishops in communion with him) provides the intellectual framework for its life, then what, concretely, does that mean?

One good example of what I mean by this framework is the new Catechism of the Catholic Church, the purposes of which included (among others) providing an authoritative statement of the essentials of the Catholic faith.

Somewhat more proximately, but still at a high level of generality, this intellectual framework would be provided by a jurisprudence compatible with the essentials of Catholic teaching. Catholic natural law teaching, in particular, would be an essential part of this framework.

"Catholic social thought" has been developed to a great extent since the issuance of Rerum Novarum in 1891 and would be an important element of the intellectual framework of a Catholic vision of law. Some of its key general principles would include: (1) the dignity of the human person, (2) the common good as the end of laws, and of political and social life, (3) "solidarity," the commitment of all to the common good, which must preside over and regulate self-interest, and (4) "subsidiarity," the principle that the common good is to be sought by allotting functions to the lowest level of community that can perform a given function adequately.

Other, somewhat more determinate principles of Catholic social thought might include the following:

(1) with regard to man's vocation to know the truth and live in accord with it:

(a) religious liberty (for individuals and groups);
(b) the right of each person to an adequate education (one that is comprehensive, in light of the ultimate truth about human purposes), but with due regard for the primary rights of parents in education, and recognizing legitimate interests of church and state;

(2) with regard to man's vocation to form a family:

(a) the indissolubility of marriage (against divorce);
(b) the unity of marriage (against polygamy);
(c) the integral union between marriage and sexual union (against fornication, trial marriage, prostitution, pornography, masturbation, homosexual acts, rape, and incest);
(d) the fruitfulness of marriage (against contraception, sterilization, artificial insemination and artificial procreation);
(e) the rights and duties of parenthood;

(3) with regard to man's vocation to work, to be a productive member of the economic system, and to hold and employ private property:
(a) the right to a job, and to a just wage;
(b) the rights and social duties of property, especially in light of the universal destination of goods;
(c) the right of economic initiative;

(4) with regard to man's vocation to be a citizen (of both a given political community, and also of the world):
(a) the right to political participation and information, in accordance with the just division of power within a given form of government (various forms being just, according to different conditions);
(b) the recognition of a universal common good, with its various requirements of pursuing peace and (when necessary) employing force under the limitations of just war requirements;

(5) with regard to various conditions of integral development:
(a) the right to life, including security of person and property (including the rejection of abortion and euthanasia);
(b) the right to the necessities of life: food, clothing, shelter, medical care, and appropriate rest;
(c) a right against unjust discrimination;
(d) the "preferential option for the poor," who are especially in need of assistance to achieve their proper and integral human development.

II. IMPLICATIONS FOR THE CURRICULUM

There would be a number of important curricular implications of the Catholic character of a law school. The first would be the centrality (the "architechtonic" or directive status) of jurisprudence, informed by natural law and Catholic social thought. This would help to provide a unifying principle undergirding (and, ideally, infusing) much of the
“standard” law school curriculum (property, torts, contracts, etc.). Essential elements of this jurisprudence would be a commitment to the rule of law, and an understanding as to both the purposes and limits of human law (which has important implications for the topic of law and morality).

A second curricular implication would be the special importance of legal ethics, touching as it does on the question of how lawyers must act—consistent with morality (guided by faith). One particularly important area that I would single out is the area of “material cooperation in evil.” It is never proper for any person to formally cooperate in evil, that is, actually to will the doing of an evil deed. There are occasions when a person may be justified, under certain conditions, in performing a deed that may incidentally help to bring about an evil result. For example, a book salesman may perform his job by distributing book catalogues, even if some of the books in the catalogue contain material contrary to morality. (He cannot intend the indirect furtherance of immoral ideas that might result—his intention is to earn a living by distributing books that by and large contribute to the good of human knowledge.)

Given that virtually every legal system is defective in some regard, from the standpoint of Christian morality, lawyers and judges may find themselves in positions in which they must appeal to or rule on the basis of laws that are not just or moral. For example, a Catholic practicing in the area of family law (or a judge with a case in that area) must contend with a legal system founded on the proposition that marriage involves a dissolvable human bond. In some cases, it may be necessary to cooperate in some way with acts that are not in accord with the moral law—not intending or willing the evil, but perhaps having to tolerate it to avoid a worse evil. Often, these will not be easy questions to resolve. The difficulty of the questions, and the possibility of paying a price for certain decisions, however, should not lead these lawyers and judges to ignore the fact that there are serious moral questions involved, and that certain moral standards must be followed. Legal education ought to help prospective lawyers to see the questions and to adopt sound criteria for making the necessary prudential decisions.

A third practical implication would be the special attention paid to areas of Catholic social thought applicable to legal education and research that are particularly under attack in our own culture, and this for two reasons. First, the faithful fulfill a “prophetic” aspect of their voca-

2. A hint of these implications can be found at the end of the fascinating introduction to James Gordley, The Philosophical Origins of Modern Contract Doctrine (1991).
tion when they help society see the truth and do the good, especially when that truth and goodness are obscured by corrupted thought or customs. Second, the law school thereby guards against elements of the culture that particularly threaten to undermine the integrity of its own ideals—for cultural norms that clash with faith are always a threat to subtly (or not so subtly) dilute that faith and the institutions based on its ideals.

Which areas of Catholic social thought and which American cultural tendencies do I have particularly in mind? Let me single out four (which do, however, overlap significantly). First, the cultural tendencies that John Paul II describes by the terms "materialism" and "consumerism" are very strong in our affluent American society. This means that society must emphasize the responsibilities of property as well as the responsibility of the community to foster the conditions necessary for the full development of all its members. Greed and avarice ought not to be accepted uncritically as private vices that always conduce to the public good (though a moderate desire for profit is perfectly legitimate). It should be said, with regard to this point, however, that there are many competing ideas across the political spectrum as to what concrete political actions best achieve the goals of Catholic social thought in this area.

Second, the ideal of a false autonomy, often closely allied to hedonistic tendencies in our society, ought to be rejected, especially with respect to the sanctity of human life and marriage, family, and sexuality. This means highlighting Catholic social thought on abortion, euthanasia and suicide, divorce, extramarital sex, and contraception.

Third, our society is deeply influenced by various forms of relativism. A skepticism about the knowability of human purposes or goods exerts a great influence in our intellectual and cultural life. This extends to the legal field, too (in a variety of the intellectual foundations of constitutional rights such as free speech and privacy, for example). Catholic social thought upholds the ability of human beings, through reason and faith, to grasp the essential truths about the human condition and the norms that ought to guide human conduct. In this respect, the recent encyclical *Veritatis Splendor* could not fail to be an influential document in a law school deeply rooted in Catholic social thought.

Fourth, specifically in the area of religion, our contemporary polity has been characterized as having a "naked public square." There are powerful intellectual currents that seek to marginalize religion in public life, so that "religious liberty" is considered synonymous with the utter privatization of religion. In some cases, this argument has been pushed to the point of virtually disenfranchising religious believers in some pub-
lic debates. For example, the argument that traditional laws limiting abortion and homosexuality are "establishments of religion" implies that religious believers will be singled out with the goal of prohibiting them from seeking to advance their moral ideals in public life.

Moreover, as the federal government has expanded into more areas, it has "pushed religion out" as it has advanced, on separationist grounds. If separation of church and state means that social welfare objectives must be sought through purely secular means, the implication is that religious institutions that once provided much education, care to the poor, health care, and (more recently) child care, will be edged out, as the government (with its huge financial resources) becomes the dominant player in a given area. This contributes to the privatization of religion, and it also (in my opinion) undercuts effective public policy, since in many of these areas the "mediating" institutions of civil society may accomplish these objectives better, precisely because they have a religious and moral ethos lacking in a governmental bureaucracy. ("Nonestablishment" can be satisfied without privatization simply by requiring non-discrimination among religious and nonreligious associations.) The legitimate role of religion in public life, then, is another area that naturally would be an important part of the intellectual life of a contemporary Catholic law school.

I should make two other brief points. First, the "preferential option for the poor" is a valid and important part of Catholic social thought. But it needs to be emphasized that there are different kinds of poverty, and that material poverty—while important—is not the greatest poverty of all. As Mother Theresa has said often, the poverty in the West—especially the moral and spiritual poverty—is often far worse than what she sees in the streets of Calcutta. I say this not to discount the importance of serving those who are poor in material goods, but to emphasize that those who are poor in "truth" are no less in need of a certain kind of "preferential option."

Second, one implicit—not always sufficiently appreciated—aspect of Catholic social thought is moderation. We are to strive for justice and peace, but also recognize that the human condition (above all, sin) places substantial limits on what we can achieve. This should not lead us to slacken in our efforts to improve society, nor does it eliminate the necessity and desirability of articulate criticism, but it should prevent us from drifting into utopian or violent proposed solutions. It should also (in my opinion) help us to appreciate societies like the United States that, for all their defects, have been able to achieve many of the goods of Catholic social thought.
Living as a believer in any human society is always going to involve some tensions. We must live in an imperfect world, striving to contribute to its improvement, struggling to “high-tone” our political, social, cultural, and legal life. But we will continually face serious prudential questions about what achievement of the good is practicable, and what kind of evils might have to be tolerated, in the conditions we face.3

III. SOME ALTERNATIVE VIEWS

Let me briefly relate what I have just described to other notions of a Catholic university or law school that I consider to be inadequate. First, there are some who, when asked the justification for a Catholic university, argue that a Catholic university (and presumably, mutando mutandis, a Catholic law school) is justified as a legitimate contribution to the pluralism of our society. Diversity is a valuable aspect of that pluralism, and so it is worthwhile for different faith-traditions to establish different schools.

I think that while this is true, it does not go very far. Most importantly, it does not distinguish essentially between a Catholic university and other kinds of universities. It justifies a Catholic university without really saying what it is. A Catholic university would be justified in the same way that a Polish-American university might be justified. It is therefore a greatly diluted understanding of the rationale for a Catholic university.

Others defend the idea of a Catholic university or law school on more substantive grounds, but in ways that still do not sufficiently distinguish it, in principle, from a good secular law school. Let me give two examples of this approach (noting, however, that I will “take back” a bit of this insistence on “distinctiveness” later).

Steven Barkan’s thoughtful discussion of a Jesuit law school emphasizes “six characteristics [that] should mark the spirit of Jesuit legal education.”4 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.”5

3. For some texts from St. Thomas on the limits of human law, and a prudential application of it to the contemporary abortion issue, see Christopher Wolfe, The Case for Political Compromise, 24 FIRST THINGS 22 (1992).


5. Id.
These are, indeed, characteristics that a Catholic law school should have, but I fail to see how (with qualifications noted below) they distinguish it from a good secular law school. For example, a secular law school should also be "world-affirming and focused on action" and "person-centered" and "striv[ing] for excellence." Even a "religious context" should be characteristic of a good secular law school, in the sense that the religious question is the ultimate one facing every human being and has to be asked as much in a school with no religious affiliation as in one that has one.  

The two characteristics that might have a more specifically Catholic content are the first, being conducted in a religious context, and the third, being value-oriented. In both cases, Barkan's more extended discussion does give somewhat more Catholic content to this "context" and these "values." But at the same time, he pulls back from what I think are the full implications of this. Reflecting the Jesuit educational tradition need not mean that students are taught a distinctively Catholic approach to law . . . or that the faculty produces legal scholarship from a Catholic perspective . . . or that students and faculty are predominantly Catholic . . . Most importantly, [it] need not mean that the structure of the curriculum, the standards for scholarship, the diversity of students and faculty, and other objective attributes are significantly different from those of any other mainstream law school.

But if Catholicism is distinctive in its beliefs (its religious context and values), then it seems to me that there will be a distinctively Catholic approach to law (which would help to shape a distinctive curriculum), that the faculty will (at least sometimes) produce scholarship from a Catholic perspective (though they need not call it "Catholic"), and that students and faculty must be (at a minimum) predominantly Catholic.

A second example of a substantive, but still not distinctive, notion of a Catholic law school is what might be called the "social-justice model."

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6. This argument assumes that "natural theology" or "philosophy of religion" are studies that are intimately related to human reflection on the human good, and that conceptions of the human good are central to any notion of law.


8. I think that Dean Aldave's response to Professor Perry in this issue, The Reality of a Catholic Law School, falls roughly in this category. Insofar as she emphasizes that the curriculum should reflect Catholic social thought, we are in agreement, though I suspect from her listing of new courses that certain aspects of Catholic social thought might receive fuller recognition from her than others, and that we might disagree on the application of Catholic social thought to contemporary political realities.
What is distinctive about a Catholic law school is that it acts on the social justice teachings of the Church. Thus, it would, for example, offer clinical legal services for the poor and marginalized and make an effort to increase educational opportunities for the poor and minorities and expand the diversity of its own faculty and students.

I have three reservations about this model. First, it is not clear that this 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. Second, the specific notions of Catholic teaching on social justice embraced by advocates of this model are often too narrow, on one hand, and too broad, on the other. That is, it is too narrow because Catholic social thought on the family and sexual morality is sometimes ignored and even rejected. It is too broad, because economic rights receive a specification (roughly along the lines of the liberal wing of the Democratic Party) that is generally a legitimate personal interpretation of Catholic social thought, but is often treated as if it were part of the authoritative teaching of the Catholic Church, which I think it is not.

And third, the focus on action as the central distinguishing feature of a Catholic law school may obscure the primacy of teaching and research. Action for the poor (e.g., in the form of legal clinics) is a good thing in itself, and also fully justifiable as part of a program that helps law students learn to be good lawyers. But its justification as part of the law school does derive from that relation to the essential purposes of a law school. Diversity of faculty and students may be a good thing (whether it is so in any given case would be a prudential judgment), but it too would have to be justified in terms of the law school’s functions of teaching and research.

IV. THE ECCLESIOLOGICAL ISSUE

Michael Perry, in his article in this issue right places great emphasis on the ecclesiological question: What exactly does Catholicism mean? To that right question, I think, he gives a very wrong answer. His understanding of the Catholic tradition is essentially tied to a notion of “theological pluralism” that includes the right of the faithful both to reject authoritative Church teaching (even ex cathedra teaching) and to reject Church disciplinary judgments (i.e., prudential governing decisions that are not necessarily matters of dogma or doctrine). A brief list of the

9. See Christopher Wolfe, The Vatican as Nobody’s Ally, 4 This World 63 (1983); Politics and the Prudent Reserve of the Church, 80 Homiletic and Pastoral Rev. 24 (1979).

sorts of "controversial theological positions" that Catholics may refuse to assent to includes "the infallibility of the Pope when speaking \textit{ex cathedra} on matters of faith and morals; the immorality of 'artificial' birth control; the theological impossibility of women receiving the sacrament of Holy Orders;" and the immorality of homosexual acts.\footnote{Perry, \textit{supra} note 10, at 345. It presumably includes the Church's teaching on divorce and remarriage too, judging from his description of "a lifelong, monogamous relationship of faithful love" in his discussion of homosexual acts: "[b]y a 'lifelong' relationship, I mean a relationship in which the partners hope and intend that their relationship will be lifelong, and in which they struggle with all the resources at their command to bring that hope and intention to fulfillment." \textit{Id.} That is, the permanence of the relationship is a hope rather than a simple fact.}

Those who argue that faithful Catholics must accept these teachings imply that others are "faithless," says Perry, but he suggests that the better juxtaposition is "mindful" and "mindless" (the latter describing those who "claim that faithful Catholics owe religious assent to such propositions").\footnote{Perry, \textit{supra} note 10, at 353.} "Is it naive," he asks, "to think that a university that is Catholic . . . can serve the church well in identifying and repenting which among still-official Catholic propositions and ideals are in reality sinful, disfiguring propositions and ideals—in correcting the church's inevitable and all-too-human mistakes?"\footnote{Perry, \textit{supra} note 10, at 347.}

I do not know whether I would characterize it as naive, but I do think it is wrong. I believe, as the Catholic Church has always believed, that the Pope and the bishops in communion with him have been given authority by Christ to teach, to sanctify, and to govern His Church. Whatever they bind on earth will be bound in heaven, and whatever they loose on earth will be loosed in heaven. He who hears them, hears Christ. From the beginning of the Church, those with apostolic authority have exercised this power to rule, as \textit{The Acts of the Apostles} and Paul's letters show.

In our own day, Vatican II used to be cited by those eager to resist "the Vatican bureaucracy" (as they call it), but that most recent ecumenical council is now itself apparently outdated and no longer authoritative. For Vatican II stated the doctrine of the authority of the hierarchy quite strongly:

the faithful, for their part, are obliged to submit to their bishops' decision, made in the name of Christ, in matters of faith and morals, and to adhere to it with a ready and respectful allegiance of mind. This loyal submission of the will and intellect must be given, in a special way, to the authentic teaching authority of the
Roman Pontiff, even when he does not speak *ex cathedra* in such wise, indeed, that his supreme teaching authority be acknowledged with respect, and that one sincerely adhere to decisions made by him, conformably with his manifest mind and intention. . . .

Indeed, nothing is authoritative, except nebulous "fresh appeals to Christ" and "[t]he great commandments of love of God and of neighbor, the great principles of justice and charity."

Perry's main argument to the "mindless" Catholics who insist on assenting to the Church's teachings is drawn from John Noonan's *Theological Studies* article on "Development in Moral Theology." Noonan gives as examples of development past Church teaching on usury, marriage, slavery, and religious liberty, and argues that "diplement of a principle or principles that had been taken as dispositive" in these areas justifies dissent from Church teaching on controversial matters today.

But Noonan overstates the change in Church teaching. For example, "[m]uch development is merely refinement or, as in the case of slavery, a movement from what was condoned without a firm judgment to a clear condemnation." In other cases, the original moral principle of Church teaching is still intact, and changes are due to changes in the subject matter, as in the case of usury and religious liberty.

Moreover, the fact of some change in noninfallible Church teaching does not authorize wholesale withholding of religious assent to the Church's noninfallible teaching, as the above quotation from Vatican II's *Dogmatic Constitution on the Church* makes clear.

Is there any "right to dissent" in the Church? Not as that term is commonly understood today. What has occurred is an essential shift from a much narrower principle to a very broad and quite different one. It is legitimate for a competent theologian or expert to withhold assent to noninfallible teaching in unusual cases, while still obeying the teaching and the directions of Church authorities on the legitimate scope of

17. Perry, *supra* note 10, at 349.
19. *Id.* at 893-94. For a discussion of the changes in the Church's teaching on religious liberty, see Brian W. Harrison, *Religious Liberty and Contraception: Did Vatican II Open the Way for a New Sexual Ethic?* (1988).
But this quite narrow principle has been expanded into a
general right of theologians to dissent (sometimes even to the extraordi-
nary Magisterium) and then into a general right of the individual "con-
science" to dissent and disobey and finally into a right to criticize Church
"authoritarianism" and "bureaucracy" and to organize and encourage
resistance and disobedience. The end result has no recognizable connec-
tion to the starting point.

Nor is this radical "dissent" necessary to bring about change in even
reformable Church teachings. Who were the great "dissenters" who
brought about changes (such as they were) in Church teaching on slav-
ery and usury? There were none. And the influential theologian John
Courtney Murray, who contributed to a modification of the Church's
teaching on religious liberty, obediently accepted silence for a time,
without feeling the need to denounce Church authorities and organize
"dissent."

It is striking that today's dissent is not a "prophetic" denunciation of
a Church that has let itself slide into the typical vices of the age. Rather,
it is a dissent in the service of the Zeitgeist, condemning the Church for
not accommodating itself to contemporary mores (especially those of in-
tellectual elites).

A response to radical dissent today might finish by doing as Thomas
More did at his trial: After making all the fine legal arguments necessary
to gain acquittal, and then being convicted anyway, he noted that ulti-
mately the issue was not the fine legal arguments over royal supremacy
and the oath, but was rooted in his refusal to countenance Henry's desire
to reject his lawful wife and marry another. In a similar way, it is neces-
sary to say that there is a sad truth—though stated backwards—in
Perry's citation of Bernard Haring's reaction to Pope John Paul II's mag-
nificent encyclical Veritatis Splendor. He argued that all its beauty was
lost in its being directed toward the goal of total submission to the pope,
especially on artificial birth control.22 While this is manifestly a carica-
ture of the encyclical, it backhandedly reveals what I think is the most
powerful engine behind contemporary theological dissent: the inability
of people, most especially in affluent Western countries, to accept the
limitations on their sexual activity implied in the Church's teaching on
marriage, family, and sexuality. (As the protagonist of Saul Bellow's Mr.

22. Perry, supra note 10, at 336.
Sammler's Planet observed, a "sexual madness [i]s overwhelming the Western world."\textsuperscript{23}

In the end, it comes down to a question of who one considers to be the more credible representative of the belief of the Catholic Church: John Paul II, backed up by the Vatican Council II (and Joseph Ratzinger and Mother Teresa, among others), or a group of theologians and laypeople who (many of the latter never having heard an articulate presentation of the Church's substantive teaching) have ceased to follow the unvarying teaching of the Church on the transmission of human life (and, increasingly, on other issues). It seems to me that the only answer that has an arguable continuity with two millennia of Church history is the former.

V. THE JURIDICAL QUESTION

The reader will have noted, perhaps with some puzzlement, that I have not said anything about the question of an explicit juridical control of Church authorities over Catholic universities or law schools. That is because I agree with Michael Perry and others that it would be perfectly possible to have a "Catholic law school," in the most interesting sense of that term, without direct juridical control. The essence of a Catholic law school is not in its formal governing relation to the hierarchy, but in what it is.

On the other hand, accepting the authority of the Church (which I do not regard, with hostility, as a mere "bureaucracy"), I have no problem with the full requirements of \textit{Ex Corde Ecclesiae}, with its assertion of quite limited ecclesiastical control over educational institutions that tout themselves as "Catholic."\textsuperscript{24} Under current circumstances, that jurisdiction is a minimal form of self-defense by the Catholic Church, denying the legitimacy of efforts by dissenters to assert their own magisterium, independent of and contrary to the Church's, in Catholic institutions.

Again, however, as I have said, the essence of a Catholic institution lies in its members completely and freely embracing the teaching of the Church. The members of such a law school would find the juridical question, as it respected themselves, quite secondary.\textsuperscript{25} They would

\textsuperscript{23} Saul Bellow, \textit{Mr. Sammler's Planet} 63 (1969).

\textsuperscript{24} See Apostolic Constitution \textit{Ex Corde Ecclesiae} of the Supreme Pontiff John Paul II on Catholic Universities, in Catholic Universities in Church and Society: A Dialogue on \textit{Ex Corde Ecclesiae} 229 (John P. Langan ed., 1993).

\textsuperscript{25} This is not to deny, of course, that those who exercise such juridical control might use it in imprudent ways. While I deny that church teaching has been "sinful" in the ways that Michael Perry asserts it has, the members of the Church on earth, including its hierarchy, can
carry on their teaching and scholarship, in light of their faith, not because of any religious authority, but because they regard that approach as the best way to understand the truth about the law.26

VI. CRITERIA FOR MEMBERSHIP

What would be the criteria for selection of faculty, students, and administrators? It would be all the usual characteristics of professional legal excellence, plus willingness to accept and an ability to contribute to the purpose or mission of the school (teaching and pursuing knowledge of law, in light of Catholic faith). This would be the basis for selection of all those who form part of the very institution itself. Faculty and administrators, given their roles in governance of and carrying out the ends of the institution, would particularly need to be hired in light of these criteria.

To say that the “center of gravity,” or the “critical mass” must be seriously Catholic (in the above sense—believing it, trying to practice it, bringing it to bear on their professional work) is the minimum that could be said. This question of the minimum arises from the fact that in the real world (as opposed to my “ideal” Catholic law school) there are often difficult prudential decisions or trade-offs to make. How does one choose between a person who is professionally excellent but marginally committed to the institution’s purpose, and another person who is professionally mediocre, though fully committed to that purpose?27 That is a prudential question, with no ready-made answers. But one can say at least this: that “most” of the members of the institution ought to be fully committed to its purposes and that all of them should be generally sympathetic with its aims, and respectful of Catholic teaching on points where they might differ from it.28

be sinful and imperfect in many ways, and will not always make the right concrete decisions, especially at much more specific levels of detail. I do trust that humility, obedience, and fidelity to the Church—in spite of these failings—and reliance on divine providence, together with efforts to persuade those in authority to consider other paths, where that is permitted, are the best response to such failings.

26. I believe that Ex Corde Ecclesiae acknowledges the legitimacy of such de facto Catholic schools. Cf. Ex Corde Ecclesiae, supra note 24.

27. Moreover, even a faculty of uniformly excellent law professors would stand to benefit considerably from various particular excellences of some teacher-scholars who did not fully share the faith on which the institution is based.

28. I have no idea what bearing it might have on this discussion, but I will pass on this anecdote. A friend of mine who has been an outstanding headmaster of several high schools inspired by Catholic ideals once commented to me that it was possible to keep the tone of the school consistent with its mission, despite having some students whose habits and orientation
I would immediately acknowledge that there is a serious potential danger here of insularity. This is so especially because the goal of the law school in contributing to legal knowledge extends beyond the law school itself, to other scholars and law schools, the vast majority of which will not share Catholic views and may often be hostile to them. Influencing these other scholars and schools will be made more difficult as the distinctiveness of a Catholic school is emphasized.

The key way to resist this danger, I think, is for the members of a Catholic law school, particularly its faculty, to be deeply “engaged” in discussion with those other scholars. Those responsible for the institution should strive to make this one aspect of the “ethos” of the school. They should study and understand the arguments of “mainstream” scholarship as well as its best exponents do, appreciating its strengths, and engaging in “internal critiques” (those that operate from within the basic assumptions of the author), before moving on to external critiques (based on assumptions of Catholic scholarship). Why, after all, should mainstream scholars pay attention to Catholic scholars, unless the latter show that, on assumptions common to both, they are “worth listening to?”

Insularity can also be resisted by arranging for visiting professorships, the purpose of which is precisely to bring in outstanding scholars representing different points of view, in order to foster a dialogue with them. Conferences bringing in such scholars can likewise contribute to this goal. So could discussions and reading groups with faculty from other, non-Catholic institutions in the vicinity. The point is simply that, while insularity is a danger, ways can be devised to resist that danger, without compromising the spirit of the law school.29

Moreover, I would add that insularity is not a problem particular to the Catholic, or other religiously affiliated, law school. In my view, there is a great deal of insularity in secular law schools today. While I have only limited impressions, not having taught in a law school, I must say that many legal scholars seem to have little knowledge of the classical and medieval traditions of political philosophy and law (such study having been omitted from what passes as liberal education in many institu-

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29. I should add that a law school inspired by faith would want to bring in scholars with different perspectives, not only to benefit from their talents and to guard against insularity, but also so that others could benefit from the talents of its scholars and to mitigate the “insularity” of mainstream scholars and institutions. This positive dimension or opportunity is as important to consider as prospective tensions.
tions of higher learning today)—an omission that deprives them of a contrast that would help them to understand the nature of modern law better. The fact that a law school may reflect majority sentiment in the legal profession, or even of society at large, would be no proof that it is “less” insular than an institution oriented toward an ideal to which fewer people in a given society (or even cultural epoch) are committed. (Indeed, to the extent that scholars at a good Catholic law school, if only for reasons of desiring to influence society, should and would be likely to study “mainstream” thought, they might very well be much less “insular” in their study than scholars at a “mainstream” institution, who might feel little need to study thought “outside the mainstream.”)

VII. ACADEMIC FREEDOM

If it has been established that the members of the institution are chosen according to the above criteria, then the question of academic freedom should not be a big issue. (If it does become a big issue, one can assume that either hiring has been done on the basis of other criteria or that the school has not been sufficiently clear in articulating its criteria to incoming members.) The key point is that there is no principled “right” to teach and pursue scholarship in ways that undermine the principles to which the institution is committed. There would be reasonable procedures to protect the legitimate freedom of faculty and students, within the context of the institution's mission, especially against hasty or arbitrary action. (No one thinks that administrators or faculty committed to a Catholic conception of an institution are incapable of acting improp-erly.) But this limited form of academic freedom does not include a principled right to teach against and pursue scholarship whose principles are contrary to the institution's.  

Will this inevitably lead to a “lack of respect” by other, mainstream scholarly communities, and thereby to a lessened ability of the Catholic law school and its scholars to have influence in society? To some extent that will probably occur—prejudice is inevitable. But, in principle, it need not. The respect of others for the scholars in a Catholic law school would likely depend, not on their institutional affiliation, but on the reputation they earn by their scholarship. If they avoid the insularity, as

30. It should be clear, I hope, that “scholarship not contrary to the institution's principles” need not be restricted to advocacy of some kind of ideal law, divorced from the conditions of a given legal system. Legal scholars typically operate within a given system of law and must often recognize that positive laws, despite falling short of what they should be, are still genuinely law in some serious sense. Prudential acceptance of less than ideal law is common and necessary for a Catholic scholar as for any other.
discussed above, they will be in a position to earn respect and are likely to receive a fair measure of it, though perhaps never as much as they deserve. But that is an acceptable price for preserving the character of the institution and the intrinsic quality of their own scholarship—without which the respect of others is of quite limited value.

While this notion of academic freedom will certainly scandalize the typical mainstream academic, it is worth noting that it does not differ so radically from the prevailing practice at many secular schools, as far as one can tell. It is rather hard to believe that political conservatives and traditional religious believers are so little represented at "big-name" law schools simply because, as a group, they are less competent. "Diversity" is a very prized principle at many leading schools today, but it is more often sought with respect to race and gender than it is with respect to intellectual views which are at the fringe of the cultural elite (as political conservativism and traditional religious belief are).31

The fact of the matter is that hiring and tenure decisions are always going to include as a key factor the question of the professional competence of the person being considered, and there is no easy way to insulate that question from substantive views. Who will be surprised if feminists and liberals consider those with traditional and conservative views on sexual differentiation to be, if not sheer crackpots, at least less intelligent than those with views closer to their own? And if an effort is made to avoid this by establishing "peer review" standards, based largely on publication in good professional journals, then who will doubt that decisions by referees or editorial boards about what to publish are affected by the substantive content of the articles? Of course, sometimes the efforts to obtain "neutrality" with regard to substantive views will succeed—there are the occasional scholars and articles that succeed in mainstream schools and journals despite being "heterodox." But these may simply be cases of exceptions proving the rule.

VIII. Conclusion

In my conclusion, I want to make two points that may seem contradictory, though I do not believe that they are.

As an alert reader will have noticed by this point, there is a problematic relationship between my earlier assertion of the radical distinctiveness of an ideal Catholic law school and my appeal to "Catholic social

thought.” Why? Because a very large part of Catholic social thought is not based simply on the Gospel and revelation, but on reason and natural law. That is, a large part of what I have said above should be as true of Harvard or Chicago, as of Notre Dame, or Marquette, or some ideal Catholic law school. The fact that a certain understanding of natural law principles happens to be associated with Catholic social thought does not mean that one must be Catholic to arrive at those conclusions.

Of course, one of the arguments for the necessity of revelation is to give greater certitude to truths knowable to reason, but often not easily grasped because of human defects and limitations. Moreover, there is what might be called a kind of “Augustinian” critique of society. In *The City of God* Augustine took classical thinkers—e.g., Plato—at their word, and then showed that their wonderful ideals could not be realized because of human sinfulness: Actual political communities, such as Rome, were not much better than robber bands. That is, faith and grace offer to “the world” the opportunity—the only way—to attain ideals that otherwise would be vain.

On the other hand (adopting what I think is a more Thomistic approach), we can emphasize that there is much indeed that the Christian and the secular citizen have in common, for through reason we can know many truths about politics, society, culture, and law.

At some points in this article, I have stressed the distinctiveness of the Catholic law school—and I think that is justified, since “in the real world,” a law school composed of members informed by faith and the Catholic intellectual tradition would certainly be distinctive in our society. But I now want to make some assertions that may seem surprising after my insistence on this distinctiveness.

In fact, one can imagine different kinds of “ideal” Catholic law schools. One kind would be very publicly “sectarian,” in a sense (although, of course, Catholics are somewhat distinctive in their denial that the Church is a “sect”). That is, it would emphasize the centrality of Catholicism as a religious tradition in a very formal and public way, throughout the life of the law school. (This might be especially appropriate in an ecclesiastically established law school, for example.)

Another kind of law school, however, might pretty much eschew the public trappings of Catholicism as a religious tradition, while at the same time its entire intellectual life could be informed by the Catholic ideals, without calling them (or itself) “Catholic.” That is, the substance of an

32. See supra note 1.
intellectual life informed by the faith, but articulated largely in terms of reason, would be the foundation of the law school. Almost all of the “Catholic” social thought I described above could be put forward, not on the basis of religious authority, but simply on the basis that it is true (as much from the standpoint of reason as of faith). One can imagine, then, a truly “Catholic” law school that might not even put itself forward as “Catholic.” This is the second reason, by the way, that I put the word “Catholic” in parentheses in my title.

One last point: Ultimately, from the standpoint of faith itself, the vital spirit of a Catholic law school—of either sort that I have just mentioned—would be impossible without the vitality that comes from supernatural sources. In addition to all their human talents and ability, the faculty and administration and students at a vitally Catholic law school would generally be men and women of prayer, deeply in love with Jesus Christ (a love of the will, not necessarily feelings); their constant motive in all their work and throughout their lives would be love of God and others for His sake; the center of their lives would be the Eucharistic sacrifice, the perfect prayer of Christ, to which they would unite themselves and their work; they would have frequent recourse to the sacrament of Reconciliation, to obtain forgiveness of their sins and the strength to overcome their sins and defects; and they would share their faith with others “naturally,” not by preaching, but in the ordinary course of their friendships, with great respect for the personal freedom of all.

Without this supernatural dimension, no institution could long be Catholic in much more than name. It would be an empty shell or husk, without the enlivening spirit of faith. Whether this life of faith was more publicly and communally-celebrated, as might be true at a formally Catholic institution, or communal primarily in the invisible bonds that unite people who live a shared faith, as might be true at the “less-officially” Catholic law school, in either case it would be the ultimate foundation for achieving the distinctive mission of a law school inspired by faith. That is an inevitable corollary of a religion whose founder said “Without me, you can do nothing.”

33. Of course, as a matter of “truth in advertising,” it would be necessary to communicate straightforwardly to others, especially prospective students, faculty, administrators, and donors, the substantive character of the school. But, in principle, this could be done by describing the substantive principles without attaching the label “Catholic” to them.