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## The Manion Era 1941-1952

ON THE RESIGNATION OF THOMAS KONOP FROM THE OFFICE of dean in the spring of 1941, Clarence E. Manion, a professor in the law school, was appointed his successor. In a recent letter to the writer Mr. Manion wrote, "Thus undoubtedly, I am the only remaining official link between the beginning and the end of the Law School's first One Hundred years."<sup>1</sup> His claim to this distinction is firmly founded. He knew well the first dean of law at Notre Dame, William Hoynes, and William B. Lawless, who takes up the duties of dean in this centennial year, received his law degree from

Notre Dame during the Manion era. Mr. Manion first met Hoynes in September 1919, when he enrolled as a first-year law student, and after years of close association he was appointed administrator of the Hoynes estate in 1933. As student, professor and dean, he was associated with the law school for thirty-three years.

Clarence Manion was born in Henderson, Kentucky, in 1896. He attended St. Mary's College, Kentucky (a school that Father Sorin showed some interest in during the 1840s) from which he received his degree of bachelor of arts in 1915. Upon graduation, he won a Knights of Columbus graduate fellowship for the Catholic University of America, where he spent the next two years, earning the degree of master of arts in 1916 and the degree of master of philosophy in 1917. In 1919, as has been mentioned, he enrolled in law at Notre Dame. At the same time, he was appointed a part-time instructor of history. In 1922 he was one of the first students to receive from the university the degree of doctor of jurisprudence instead of the bachelor of laws. After completing his law studies, Manion practiced law in Evansville, Indiana, for two years, and was then invited to join the Notre Dame law faculty in 1924. While continuing his teaching duties, he served as Director of the National Emergency of the State of Indiana from 1935 to 1938. In 1941 he received appointment as dean. Since his resignation from this position eleven years later, he has been a member of the law office of Doran, Manion, Boynton and Kamm in South Bend.<sup>2</sup>

When Dean Manion resigned his position, it was immediately bruited across the country that he had

been "fired" by the university, the alleged reason being his conservative politics. This was not true, and it would be a serious reflection on Notre Dame as a university if it were. The fact was that by 1952, Dean Manion had become so engaged in activities outside Notre Dame that he could no longer do justice to his duties as dean. Both he and the president of the university, Father John J. Cavanaugh, recognized this; Dean Manion submitted his resignation and Father Cavanaugh accepted it. To put an end to the rumor, Father Cavanaugh made a public announcement which was widely distributed, in which he quoted excerpts from the dean's letter of resignation. In his announcement Cavanaugh said that Dean Manion had resigned because "the pressure of private business, together with a constantly lengthening schedule of writing and speaking commitments, now makes it physically impossible for him to continue to administer the affairs of the Law School." This was but a quotation from the dean's letter. Then the president went on to say, "Dean Manion, in his twenty-eight years on our faculty, and even in his undergraduate years in our College of Law, exemplified the qualities Notre Dame exists to implant. He has contributed in a singular way to American life. His career has marked the personal, the professional and the spiritual that add up to a remarkable epitome of what Notre Dame means by moral, responsible leadership."<sup>3</sup>

When Dean Manion took over the leadership of law at Notre Dame in the summer of 1941, he found it in a stronger position than it had been when any of his three predecessors assumed the duties of dean. But Pearl Har-

bor and World War II were less than six months ahead, and these events were to create a problem both harrowing and prolonged, that of a diminishing student body. The depression years of the 1930s had reduced the number of students from what it had been at the end of the 1920s, but the situation became critical only with the World War. Mr. Manion has described how precarious the very existence of the law school became, and in view of this description, it may be surmised that Dean Hoynes was faced with the same kind of situation when World War I broke out in 1917; it was probably this situation which in large part caused the conditions of which Francis Vurpillat complained in his letters to Fathers John W. Cavanaugh and James A. Burns.<sup>4</sup> Vurpillat said nothing explicitly about the number of students but he did emphasize the inadequate teaching staff; in the same vein Dean Manion was able to add no full-time faculty member to his staff between 1941 and 1946, while at the end of his first year he lost two full-time members.

The years of World War II were a trying period in the history of law at Notre Dame, albeit a challenging time as Mr. Manion now recalls it:

My administration soon became known as the "famine and feast" period. The military draft was cutting into our enrollment when I took over and Pearl Harbor practically cleaned us out of all but the "4Fs." When the Abbé Seyes was asked what he did during the French Revolution, he replied, "I survived." This is my reply to the question of what the Law School did during the War Years. More than half of the

American law schools closed down at least for some period during the War. Father Hugh O'Donnell [thirteenth president of the university] thought we should suspend and I talked him out of it only with the firm promise that I would cut down our expenses to the level of our tuition income. Literally, we were unable to do that, of course, but I came close to the mark by charging the Navy and the other Colleges of the University "room rent" for the use of our Law Building classrooms. . . . The one dubious "distinction" from which I sweated to escape was that of being the dean who closed "the oldest Catholic Law School in this country."

Besides the ploy of charging room rent to other units of the university, Dean Manion made great efforts to recruit students, presumably "4Fs," by writing and lecturing on the advantages of legal education at Notre Dame before bar associations and college audiences across the country. A fringe benefit of this activity was his receiving from Boston University an honorary degree of *Juris Utriusque Doctoris*. This so pleased Father O'Donnell that he authorized the dean to say that the Notre Dame Law School would remain open "for the duration." "Nobody," concludes the former dean, "but Father O'Donnell and I know how precariously we were walking the razor's edge of continuity. But we made it."<sup>5</sup>

With the ending of the war, the "feast" years of the Manion era in regard to student enrollment began. The student body jumped from around fifty to two hundred and twenty-five in two years, reached an all-time high of

over three hundred in the late 1940s and then dropped back to around two hundred by 1952.

It was noted above that Dean Manion was able to add no full-time faculty member to the law staff between 1941 and 1946. During these years the only new member was Mrs. Lora Lashbrook who from 1942 to 1947 served as librarian, teacher of research, registrar, and secretary to both the dean and the faculty, and to whom Mr. Manion gives great credit for the survival of the law school during the critical war years. From 1946 to 1952, however, eleven full-time members joined the law faculty, five of whom remained for two years or less. In the spring of 1948, the Vice-President for Academic Affairs, Father Howard Kenna, wrote the dean: "I feel that the College of Law has made fine progress this year and I hope that it can be continued. I feel that the faculty members that you have recommended will be the equal of the young men we engaged last year and I am sure that the results will justify your judgment in the matter."<sup>6</sup> But something must have gone wrong because in the fall of 1948 a Mr. Jack Miller was the only new faculty member and he stayed only one year.

During the last six years of the Manion era nine part-time faculty members or lecturers also joined the staff. In the faculty lists given in the Appendix, attempt is made to distinguish them from full-time faculty members because today the term *lecturer* has supplanted the term *part-time faculty member*, at least at Notre Dame. In consequence it is necessary to distinguish between two categories of lecturers, those who hold faculty status

and teach or lecture in the classroom and those who are invited in for a lecture or two at various times. The first category may be designated *regular lecturers*, the second, *special lecturers*. The regular lecturers are appointed to teach or lecture on a subject in substantive law or to conduct a course in practical law for which they are particularly qualified through specialization or through experience; the special lecturers are engaged to give the students opportunity to meet outstanding jurists and to broaden their perspective of the legal profession.

Recognition and tribute are due to all those members of the faculty who have given years of dedicated service to the law school, but the list of such men is too long to make acknowledgment of every individual feasible. However, in Chapter 2 Timothy E. Howard was singled out for recognition, and now like recognition can be made of a present member of the law faculty, Professor John J. Broderick. Professor Broderick came to Notre Dame in 1947. In 1932 he received the bachelor of arts degree *summa cum laude* from Washington and Lee University, and in 1936 the bachelor of laws from St. John's University Law School. Immediately upon leaving law school, he entered the graduate school of Public Administration at New York University as a graduate fellow. Then followed several years of practice, broken by a three-year stint in the Navy during World War II. Several years after he began his teaching career, Professor Broderick returned to New York University and completed work for the M.P.A. He has held the position of assistant dean of the law school for most of

his twenty-two years at the university. Several generations of law students hold him in admiration and affection for his wise counselling, effective teaching, and devoted service as assistant dean. Expert in the field of labor law, he has for years represented the law school in the Labor-Management Conferences held each year at the university under the direction of the Reverend Mark Fitzgerald of the Department of Economics. A Phi Beta Kappa in his undergraduate years, Professor Broderick was in no small measure responsible for the Epsilon of Indiana Chapter of Phi Beta Kappa, installed at Notre Dame in February of 1968. For his long years of devotion to the university and dedicated service to the law school Notre Dame reveres his name.

The war was the occasion for a significant addition to the requirement for admission to the law school. As early as 1942-1943 the *University Bulletin* carried the notice: "As part of the accelerated program of the University for the wartime, the University Council has modified the minimum requirement for admission to the College of Law so that the student who has as much as sixty semester hours of acceptable credits for college work as preparation may be admitted to the three year course of law for the degree of bachelor of laws."<sup>7</sup> This announcement continued to appear until well into the 1950s, although in 1953 the minimum was raised to ninety semester hours or three years of college work. Then, as was remarked in the preceding chapter, in 1946 graduation from an approved college became mandatory admission requirement for all non-veterans except Notre Dame students who were in one of the combination programs.<sup>8</sup>



No change was made in the methods of instruction in the Manion era. The case method continued to be primary, supplemented by textbook assignments and lectures. In fact there was no noticeable change in teaching methods from 1905 until 1952. The aim of the law course also remained the same—to give students a thorough preparation for the practice of law in any State.

Small changes in the program of courses continued to be made, but substantially the curriculum remained stable. An example is the course program for 1946–1947, the half-way mark of the Manion era, and the last program for which Dean Manion was responsible, 1952–1953. The 1946–1947 Program: First Year: year course in Procedure I and II; semester courses in Contracts (5 hrs.), Torts (5 hrs.), Personal Property, Fundamental Law, Criminal Law, Bibliography (1 hr.), Domestic Relations, Landlord and Tenant, and Air Law; Second Year: year courses in Real Property I and II, Practice Court and Briefing I and II; semester courses in Evidence and Equity; Third Year: Practice Court and Briefing (1 hr. each semester), Private Corporations, Public Corporations, Constitutional Law and Conflict of Laws. The 1952–1953 program: First Year: year course in Procedure I and II; semester courses in Contracts (5 hrs.), Torts (5 hrs.), Criminal Law, Fundamental Law, Personal Property, Bibliography (1 hr.); Second Year: year course in Real Property I and II; semester courses in Bills and Notes, Legal Ethics, and Constitutional Law; Third Year: year course in Practice Court and Briefing (1 hr. each semester); semester courses in Constitutional Law, Legal Research, and

Mortgages. By 1952–1953 forty-six hours of electives were not only allowed but required to fill out the student's program, but in 1953–1954, under a new dean, electives were abolished.<sup>9</sup> In regard to electives, Dean Manion recommended to Father Kenna in 1948 that, besides Jurisprudence which was already offered, Roman Law, International Law and the History of English and American Law should be made available to the students as electives, the courses to be taught by qualified faculty members in other departments of the university.<sup>10</sup> In his reply Father Kenna approved this recommendation and suggested that they be made required courses,<sup>11</sup> but nothing came of this suggestion.

In view of the precarious situation in the law school during the war years, with its very survival in question, it is no surprise that there was little or no increase in library holdings during those years. After the war conditions improved and some six thousand volumes had been added by 1952, bringing the total holdings from approximately sixteen thousand volumes in 1941 to twenty-two thousand in 1952. Nevertheless, the building up of the library was still painfully slow. In 1945 Miss Marie K. Lawrence was appointed law librarian and she gave excellent service over the next twenty-one years.

The moot court did not change in its essential function in the preparation of the students for the law—to give them experience in practical law, improve their speaking skill, and sharpen their ability to think on their feet in the midst of argumentation—but it was brought into greater prominence and made more mean-

ingful in 1950, when Moot Court Competition was adopted at Notre Dame. This competition was a growing activity among American law schools and included three phases, local, regional and national competitions. The first announcement of this competition read: "The Notre Dame Moot Court Competition was inaugurated in the second semester of 1950 as an activity of the Student Law Association. . . . It is on a voluntary basis, used as a device of Appellate Procedure, and is open to all students in the law school."<sup>12</sup> Eligibility to enter the competition was later restricted; first-year students were required to brief and argue at least one appellate case each semester, but the competition was open to second-year students. The four men who survived the elimination rounds in that year were paired into two teams, representing plaintiff and defendant, in a final argument held in the fall of their third year before the University Court, which later would be dubbed the Supreme Court of the State of Hoynes, in memory of the first dean of law at Notre Dame. The four students prepared briefs and presented arguments and rebuttals before a panel of three judges. The judges scored the four on the basis of briefs submitted and arguments and rebuttals presented; the two highest were announced the winners. Until 1961 when Notre Dame became dissatisfied and dropped out of the regional and national competitions, the winning students became a team to represent the law school in these competitions, and did so with fair success. In 1950, the first year in competition, Notre Dame won the regional competition and went on to represent the Seventh Circuit Court of



*William Hoynes*  
1883-1919

FROM  
1883  
TO  
1968



*Francis Vurpillat*  
1919-1923



*Clarence Manion*  
*1941-1952*



*Joseph O'Meara*  
*1952-1968*

*Above:*  
*Thomas Konop*  
*1923-1941*

Appeals of Chicago in the national competition, held in New York. The regional was also won in 1951, 1956 and 1957.

The adoption of the moot court competition was one of the achievements of the Manion era. To show his continuing interest in the competition, the Clarence E. Manion Award is still annually conferred on the winning students—their names are added to a plaque which hangs in the law library. In addition, cash awards were at first made by the Notre Dame Law Association; for several years now the cash awards have been contributed by A. Harold Weber, a prominent alumnus and member of the Law Advisory Council of the university.

Two activities in practical law were introduced in the last years of the Manion era, a Practicing Law Institute and Court Attendance. The first was held for the first time in 1949 as a Federal Tax Institute, but quickly broadened its scope. It was a two-day meeting, divided into several sessions. The *Bulletin* announcement reads simply: "Once a year Practice Law Institutes are held at the Law School under its auspices, in cooperation with the Indiana Bar Association. Members of the law faculty and prominent attorneys conduct the sessions."<sup>13</sup> The second was inaugurated in 1949: "Each student in the Law School is required to attend sessions of the local Federal and/or Circuit and Superior Courts for at least ten hours a semester."<sup>14</sup> These activities were dropped after 1952.

Two other important achievements during the Manion era were the establishing of a Natural Law Institute and the founding of the Notre Dame Law Association

by the law alumni. In its teaching of the positive substantive law and in developing the skills which a lawyer must have in the practice of his profession, the Notre Dame Law School does not differ from other American law schools. But as the law school of a Catholic university, it has from its beginning aimed to integrate the teaching of positive law with a natural law philosophy or to ground its teaching of the positive law in a natural law philosophy. With the passing years this aim became more explicit and emphasis on a natural law philosophy has been achieved in several ways. One of these ways has been through the *Notre Dame Lawyer*, as noted in an *Alumnus* article, "Progress of the College of Law": "The College of Law was one of the first to place in its curriculum a special course in jurisprudence having for its purpose the direct integration of law and philosophy. The *Notre Dame Lawyer* . . . is devoting much space to the development and dissemination of a scholastic philosophy of law. Many articles have been published on Natural Law and its relations to other philosophies, so that it truthfully may be said that the *Notre Dame Lawyer* has become the organ of Scholastic jurisprudence among the periodicals of the legal profession."<sup>15</sup>

The inauguration of the Natural Law Institute was a second and even more explicit means of emphasizing a natural law philosophy as foundation for the teaching of positive law. The first Institute was held in the law building December 12 and 13, 1947. In his letter to the writer, former Dean Manion wrote: ". . . its establishment grew out of the Great Books seminars that we

began in 1945 with the help of Judge Roger Kiley of Chicago and Father John Cavanaugh,"<sup>16</sup> then vice-president of the university. These seminars were monthly discussions of Judge Kiley of the Appellate Court of Illinois and Father John Cavanaugh with a selected group of law students on the nature of justice, based on comparative readings from Plato, Aristotle, St. Thomas Aquinas, Locke, Blackstone, Montesquieu and others.<sup>17</sup>

The function of the Natural Law Institute, as conceived by those who inaugurated it, is best stated in the *Bulletin* for 1951-1952, several years after the first Institute convocation was held: "The Natural Law has been an integral part of the training of a Notre Dame lawyer since the first law courses were established in 1869. The College of Law thus carries on the basic Natural Law philosophy of the American Founding Fathers and seeks not merely to set forth the abstract concepts of the Natural Law but also to correlate them with the various courses of the Positive Law. . . . In 1947 the College of Law founded the Natural Law Institute to extend this approach to legal study beyond the narrower limits of formal classroom instruction."<sup>18</sup> The purpose of the Institute is well expressed in a pamphlet *Notre Dame's College of Law* (pp. 14-15), published in 1952: "It is the purpose of this Institute to re-examine and re-state the doctrine of the Natural Law in the light of modern times and changing situations. To the annual sessions of the Institute . . . are invited the foremost lawyers, judges, legal philosophers and scholars at home and abroad to lead the discussions participated in by all who wish to attend."



During the five years that the Institute held its annual meetings, prominent jurists, legal philosophers and scholars from both "at home and abroad" appeared on the program. Those who founded the Institute had a well-defined position on the meaning of natural law and on its fundamental importance in determining or assessing the validity of all positive law. This position finds its more remote roots in Greek and Scholastic philosophy, and its proximate foundation in the writings of such great English jurists as Sir Edward Coke (1552-1634) and Sir William Blackstone (1723-1780), who championed a necessary relation between the natural law and the common law of England, and whose legal teachings profoundly influenced Jefferson and the other authors of the Declaration of Independence and of the American Constitution. Nevertheless, the Institute did not identify itself with any particular position, school or doctrine of natural law, as is evident from the papers read at the convocations, but was open to the investigation and discussion of various conceptions of the meaning of natural law and its role in the formulation of positive law and in the solution of concrete problems.

The papers read at the annual meetings of the Institute were published as *Natural Law Institute Proceedings*, and the resulting five monographs are a valuable contribution to the perennially important subject with which they deal. For his sponsoring of these publications and for his initiating the Natural Law Library at Notre Dame, the university is indebted to Alvin A. Gould. Mr. Gould's generosity was acknowledged in this official announcement: "At the Third Convocation

of the Natural Law Institute held December 9 and 10, 1949, there was inaugurated in the College of Law the Natural Law Library. The initial collection of books was given to the Natural Law Library by Alvin A. Gould, the sponsor of the Second and Third Natural Law Institutes. It is the purpose of the library to collect and to make available for research all existing materials which will be of value in studying the natural law and in promoting its application."<sup>19</sup>

The Notre Dame Law Association was founded at an organizational meeting convoked on June 5, 1948 in the Law Building. It had, however, been in the making since September 1946, when a few law alumni were called together at the South Bend home of Francis Jones, who was to become the association's first president, and a planning committee appointed. The official announcement of the association sets forth its purpose and also some of its projected activities: "The Notre Dame Law Association, an organization of Notre Dame men in the legal profession, was organized in the June of 1948. In addition to fostering loyalty among the members . . . , its purpose is to inject a moral responsibility into the practice of law through the introduction of the Natural Law philosophy of jurisprudence. Initial objectives are the publication of a Legal Directory, procuration of qualified students, and counselling and placement service for those Notre Dame graduates interested."<sup>20</sup> In the minds of those participating in its founding the association was to serve the law alumni directly and the law school only indirectly. Some stress was also put on its independence of the university. The

association was to be composed of law alumni, to serve their interests and to be managed and controlled by them. This independence has been maintained but with the passing years it has also been of great, direct help to the law school.

At the organizational meeting, attended by ninety-three alumni, a constitution and bylaws were adopted. In these the governance of the association was invested in the officers and a board of directors. The officers were honorary president, president, vice-president, secretary-treasurer, and executive secretary; the board of directors was composed of fifteen members. The first officers were Clarence Manion, Honorary President, Francis Jones, President, Charles Vaughn, Vice-President, Hugh Wall, Jr., Secretary-Treasurer and Robert E. Sullivan, Executive Secretary. The president of the association was also the president or chairman of the board of directors. An executive committee made up of officers and members of the board was appointed. Later the office of secretary-treasurer was separated into two offices; the board increased in numbers as time went by, and today has forty-two members.

An item in the minutes of the preliminary meeting held in 1946 reads: "Publication: *The Notre Dame Lawyer*, supplemented by a News-Letter." Although the *Lawyer* has been sent to all members from the outset, it in no sense ever became a publication of the association. As for the News-Letter, a resolution was passed in a meeting on June 9, 1951: "Resolved: that the Notre Dame Law Association, in view of the necessity of keeping its members informed of the affairs of the Associa-

tion and to accomplish the objectives of advancing the cause of legal education and of injecting a moral responsibility, into the legal profession through the leadership of Notre Dame men, authorizes and approves the publication and distribution quarterly of the official organ of the Association, entitled *The Law Association News*." But this publication lapsed within a year and has never been re-instated. However, members are kept abreast of the activities of the association through various mailings from the central office.

The Notre Dame Law Association was just getting well underway when the Manion era ended. The minutes of the association's early meetings illustrate the dedication of its founders and early officers, but also show a basic defect not in organization but in operation. For years the executive secretary was either a faculty member or a local attorney, for whom management of the association or promotion of its activities were merely adjunct to their pressing academic or professional duties. In spite of much good will, the affairs of the association necessarily suffered. Dues-paying members, for example, numbered 230 in the first year and rose to 530 two years later, but there the number leveled off for several years. Also a *Legal Directory* was published, but efforts to keep it current were without much success, and other activities lagged. Nevertheless, the great potential of the association was always recognized and there have always been law alumni who have given unselfishly of their time and effort to fulfill this potential. The process of fulfillment continues to the present day, as shall be seen in Chapter 6.

# NOTES

1. Manion to Moore, January 30, 1969.
2. *Who's Who in America* (1968-69), 1400.
3. *Alumnus* (January-February 1952), 7.
4. Cf. Chapter III, notes 1 and 3.
5. Manion to Moore, January 30, 1969.
6. Kenna to Manion, March 17, 1948, Office of the Vice-President for Academic Affairs, Manion file. Of the young men brought in in 1947, Edward Barrett and John Broderick are presently on the law faculty. Other present members who joined the faculty during the Manion era are Thomas Broden, Anton Hermann Chroust and Roger Peters.
7. *University Bulletin* (1942-43), 334.
8. Manion to Moore, January 30, 1969. Former Dean Manion calls attention to one exception for students in other schools. Arrangement was made with DePauw University and Wabash College to admit their students to freshman law on completion of three years of college work. Then these schools conferred their bachelor degrees on such students at the end of one year of successful study at Notre Dame.
9. For the programs of courses in 1946-47 and 1952-53, cf. respectively *Bulletin of the College of Law* (1946-47), 9-10, and (1952-53), 11-12.
10. Manion to Kenna, January 30, 1948, Office of the Vice-President of Academic Affairs, Manion file.
11. Kenna to Manion, February 24, 1948, Office of the Vice-President of Academic Affairs, Manion file.
12. *Bulletin of the College of Law* (1950-51), 9-10.
13. *Ibid.* (1950-51), 19.
14. *Ibid.* (1949-50), 9.
15. *Alumnus* (March 1941), 13.
16. Manion to Moore, January 30, 1969.

17. *Bulletin of the College of Law* (1949-50), 18. Later Great Books seminars were made obligatory for all first- and second-year law students and were conducted by the students themselves under the direction of faculty members. For senior students seminars were optional but most of them attended the discussions led by Judge Kiley and Father Cavanaugh to the end of the Manion era. Cf. *Notre Dame's College of Law* (1952), 12.
18. *Ibid.* (1951-52), 18.
19. *Ibid.* (1951-52), 7-8.
20. *Ibid.* (1949-50), 9.