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Jurisprudential Aims of Church Law Schools in the United States, a Survey

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It is a commonplace that in American legal education, the nineteenth century was the era of the office trained lawyer. But education in the law, under an apprentice system, such as then prevailed, rarely went beyond the development of skills which related to the formalistic phases of practice and litigation. The great lawyers and judges of that era were self-made. Within the past half century, however, the movement to place legal education upon a university plane has gained steadily. Today the accredited non-university law school is practically non-existent. Advanced pedagogy has accepted the superiority of the university law school.

But why is training in such an institution better than that afforded by the educational facilities of a law office, or of a non-university law school? Certainly the university law school has not improved upon the law office technique, in the matter of training for the details of legal practice, or in regard to the communication of information relative to the distinctive procedure of a specific jurisdiction. A non-university law school, with a faculty of capable analytical legalists, and an adequate library, ought to be as effective educationally as a university law school, if the latter aims merely to teach the current rules and principles of the positive law, as such.

Apparently the only raison d'être for bringing legal studies into the university curriculum was the presentation of law in its jurisprudential phases, i.e., in its relation to the social and philosophical sciences, for it is only in this connection that the supremacy of the university law school, as an educating agency, is indisputable. Did not the necessity of a jurisprudential exposition of law in a university law school
follow inevitably in virtue of the act itself of transferring
the study of law from the office and the proprietary law
school to the halls of institutions of higher learning? Of
course, education in the rules of law was also intended in the
American university law school, as there was no arrange-
ment comparable to the Inns of Court, enabling the student
to devote his whole time in the university law school to the
study of the historical, philosophical, and sociological as-
pects of law, and thereafter to receive his practical and tech-
nical legal education from practitioners in an environment
which would continue all through his professional life.

All education in the western world, at one time, was the
concern of the Church solely. This was so because, among
other reasons, there was no disagreement as to the starting
points or postulates which were the determinants of purpose,
content, and method in education. But this agreement did
not exist in early American society. The result was that two
distinct educational systems sprang up in this country, one
sponsored by the Church, the other by the State. This dichot-
omy extended to the university itself. When legal educa-
tion became the province of American universities, under the
pressure of ideals which envisioned the advancement of the
common social ideal, through the training of legalists, who
would be primarily jurists, and only secondarily, technicians,
there were these two main competing authorities in the uni-
versity field. Now the aims of church universities obviously
were not meant to be identical by the founders, with the
purposes of non-church universities relative to those parts
of the curriculum which might be taught from essentially
different philosophical points of view. From this it seems
that there should be a difference between the jurisprudential
approaches to the study of law in church law schools and
non-church law schools respectively. Consistency demands
that the church law school should not only present conflict-
ing jural ideals, but should also recognize absolute truth,
avoiding a completely agnostic approach, and pointing out
those conclusions which may be philosophically adapted to the ideology of the particular religious denomination in control.

B

In order to ascertain the opinions of legal educators in church law schools on the subject of the jurisprudential aims of such institutions, a survey by means of a questionnaire was authorized by the standing committee on legal philosophy of the American Catholic Philosophical Association. Since most American church law schools are conducted by representatives of Catholic religious orders, or of the Hierarchy, and since the question was principally one of legal philosophy, it was thought that the initiative might properly be taken by this committee. But the questionnaire was not sent exclusively to church law schools which were under Catholic auspices. The matter covered by the questions was regarded as the concern of all law schools, which were conducted by religious denominations, postulating the existence of a personal Deity, Who was concerned with human conduct, and therefore accepting substantially a scholastic philosophy, with the central norm of a natural law perceivable by man.

The questionnaire contained five questions. These sought to discover whether it was the opinion of teachers in church law schools that the jurisprudential goal of this type of school should be identical with that of the non-church law school; if not, whether they were now willing to cooperate in working out scientifically a distinctive legal culture, by an examination of the positive law in relation to scholastic philosophy and the social sciences, including history, so as to produce materials which would be critical and interpretative of the common law, and which might be so introduced

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1 At the meeting held in Chicago, September 15, 1935.
2 Southern Methodist and Tulane Universities also received copies of the questionnaire.
into the undergraduate courses themselves, as not to destroy their technical value; whether any of the teachers had already made a start along this line, so that the jurisprudential material thus far evolved might be made available for the benefit of all; and whether they had any suggestions to make as to how the distinctive jurisprudential aims of church law schools might be realized in the class room. The questionnaire recognized the possibility that some might justify the continuance of church law schools even though such institutions merely utilized the materials and thought processes which were to be found in the non-church law school, and accordingly inquired what reason other than a study of the Anglo-American legal system, examined in relation to a theosophical jurisprudence, might be given for the ecclesiastically sponsored law school. General comments on the status of this kind of school were also invited.

More than three hundred questionnaires were distributed. Answers were received from only twenty-two teachers, principally deans and regents. Does this indicate a tendency toward considerable lethargy, in the church legal educational world, with respect to problems involving juridical ideals? From the answers, it seems that there is no unanimity among church law schools concerning their jurisprudential purposes.

The general reactions to the questions, which now follow, will be analyzed in the form of a critique. As most of the answers appear verbatim in the footnotes, the article actually presents an authoritative symposium of the views of the present outstanding leaders in American church law schools. While permission was granted by about half of those who replied to publish their names in connection with their an-

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3 That is, from the law schools of Tulane, Loyola (Chicago), Notre Dame, San Francisco, Loyola (New Orleans), DePaul, Gonzaga, Catholic University of America, Detroit, Marquette, Boston College, Southern Methodist and Fordham. Additional replies were received from professors of law at these and other institutions.
answers, it was deemed best, at this stage, in order not to precipitate personal controversies, to treat all answers as anonymous. Cooperation, not discord, among teachers in church law schools is essential if the movement toward a scholastic jurisprudence is to succeed. The purpose of the questionnaire was not to provoke controversy, or to belittle the splendid work of the church law school, but to survey the field, and to unearth certain necessary facts. Much credit should be given to those who demonstrated their interest in these vital and important matters by answering, and who have made possible the following appraisal, intended as a means toward a necessary end.

I

"Should the faculty members of law schools which constitute parts of universities established by religious orders, or by clerics, obviously for the purpose of giving a specific type of education, undertake at the present time to develop and present, in some degree, a legal culture produced by relating law to the other social sciences, under the influence of a neo-scholastic philosophy?"

Although the phrase "legal culture" did not mean philosophy alone, or the courses in "pure jurisprudence" and legal ethics, which are now given in practically all church law schools, but which are hardly related in sufficient manner to the specific doctrines of the positive law taught in the under-

4 "The purpose of the Committee, as set forth in your letter to develop a philosophy of law, which would be in harmony with and which is implicit in neoscholastic philosophy, it seems to me, somewhat misses the mark. To my mind, there is no need to develop such a philosophy, because the philosophy is already there, firmly imbedded in our law. Our common law in its general metaphysics, its psychology, and largely its fundamental ethics, is thoroughly scholastic. In fact, the attacks which are being made today by lawyers, or more particularly law teachers, of the so-called realist and neo-realist schools, on many of our theories of law or the principles which lie at their root, are due to this fact, and to the consequent conflict between these principles and modern philosophies, particularly of the behaviorist school. . . . It seems to me, therefore, that if the Standing Committee on the Philosophy of Law of the American Catholic Philosophical Association seeks an objective, it should be to expound and develop the essential harmony which exists between our common law and the principles of scholasticism rather than to work out a philosophy which is already there."
graduate courses, or the occasional reference in class to the moral goodness or badness of a particular legal principle, and although it was not intended to suggest the abandonment of the vocational functions of these law schools, yet such interpretations appeared in some of the answers. It is obvious that a scholastic philosophy exists, and that some philosophers have written in general terms of the scholastic view of the nature, end, and sanction of the positive law. But surely these scanty references, and the desultory mention of the morality of legal doctrines may not correctly be called a culture. Manifestly no legal educator would advocate that the development and presentation of a scholastic legal culture should supersede and exclude from the church law school the expounding of the law as it exists in statute and case, in view of the accepted conception of the university law school.

It is generally known that there are and have been for some time courses on legal ethics and “pure jurisprudence”

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5 “Since the establishment of our School of Law, a course on the philosophy of law from a scholastic point of view has been continuously given as a compulsory course in the first year. The bearing of law upon the other social sciences has been stressed in this course. We feel that the course in jurisprudence is one of the factors which gives a Catholic tone to this school of law. The majority of the law students, moreover, come to us with a training in scholastic philosophy. We also conduct a compulsory course in legal ethics given in the senior year.”

6 “It is my opinion that the faculty members of every Catholic law school at all times and in all their courses teach . . . from the Catholic viewpoint. By that I mean when situations arise in any course, the moral background should be presented to the students.” Again: “They [church law schools] now emphasize moral principles rather than expediency; are sound in the matter of straight thinking; give no place to the teaching of ‘isms,’ or other fads of political thinking; are acquainted with the historically established fallacies of socialism, communism, and the various ego-isms, and do not tolerate in the faculties exponents of these sophistries, which the Church’s teachings have so often pointed out. . . .”

7 “Every law school must teach the law as it is written and interpreted by our supreme courts. To that extent, there are no differences in teaching law, regardless of the school.” Again: “In my opinion, it would be unwise to distort the civil law by teaching it as if it were entirely dictated by Catholic principles. We must teach it as it is. But we must find some means of suggesting the correction and development that may be hoped for in the direction of Catholic principles.” Again: “Since the civil law must be the same everywhere and at all times, and between all peoples, there can be no distinction in the teaching, in the ordinary subjects of the law. Of course, in Catholic law schools, there must and ought to be a continued recognition of God.”
in church law schools. Hence the question could not have referred to the initiation, introduction, or development of such courses. It could have related only to a jurisprudential culture which is now non-existent in these schools.

The "legal culture" mentioned in the first question did mean the literature which might be written by appraising the outstanding jural institutions and doctrines of the Anglo-American system in the light of the great generalizations which the scholastic philosopher has provided for the lawyer. It would comprehend a demonstration of the recognition of the validity of many scholastic principles by the common law. It would show just how scholasticism has influenced judge and legislator. It would point out wherein there was an essential harmony between the common law and scholasticism, yet it would also reveal where there was discord. Not only would philosophy be summoned to the writing of a scholastic jurisprudence, but also history. The appropriate conclusions of a theo-philosophic sociology would be borrowed. The scholastically desirable future of the common law would be charted. The whole mass of materials would be synthesized and reduced to scientific order, and published. This is the work which has not yet been done.

If and when such a legal culture is developed, may it not be presented as a supplementing and rationalizing factor in the various courses given by church law schools without destroying the necessary analytical techniques required for vocational skills? In this way, the student will learn that the analytical method as applied to positive law is not an end in itself. It will give him perspective and a true understanding of the relationalism between a philosophy of law and a rationale of life.

Most of the answers were favorable, either qualifiedly or unqualifiedly, to the immediate development and presentation of a distinctive legal culture in church law schools.8

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8 Fourteen of the twenty-two answers tended to answer the first question affirmatively. Examples of this type of answer are: "Unless the Catholic law
There was a difference of opinion, however, as to the extent to which this should be carried at the present time. Very likely the answers which gave a qualified approval were intended to refer only to the *presentation* of the jurisprudential materials in class, not to the evolution of the jurisprudence itself. Of course, a proper balance between positive rule and jurisprudence must be maintained in the classroom, but there seems to be no adequate reason why the *development* of a scholastic legal culture, outside the classroom by the writings of legalists, should proceed slowly as long as it is accurate.

At least one answer expressed fear that the virus of positivism, which now, it was alleged, infected church law schools, would spread if they did not immediately reorientate their *curriculum*. Assuredly in such institutions, pragmatic jurisprudences are not deliberately advocated. But is there, perhaps, danger that subconsciously students may acquire a merely positivistic way of looking at law, if too great emphasis is placed upon the logical processes? Positive law may be dialectically segregated for greater convenience in developing analytical skills, but to leave the impression that this isolation is not artificial, but actual, is to thwart one of the most fundamental purposes of the church sponsored law school.

school does establish a definite relationship between law and scholastic philosophy, it has no right to exist.” Again: “I think the law school should continue in existence and should be Catholic at once . . . Above all, there must be a new philosophy of the law. It is inevitable that there will be, and it is time we prepared to make our contribution to it.”

9 “It all depends upon the interpretation of the words ‘some degree.’ I think the teaching of the law might be flavored with Catholic Philosophy and Catholic culture, but I am opposed to further extension.” And: “. . . [A neo-scholastic legal culture should be attempted] at the present time, to some degree, namely, to the degree which is practicable now, with the fixed determination and constant effort to bring the said coordination of law to Catholic Philosophy to perfection as soon as possible. Perfection is not practicable now, but something should be done toward it now.”

10 “The influence of the Positivist School of Jurisprudence and the relation already established between law and questionable principles of sociology and economics have infected the ideals of Catholic law schools. Reorientation can be brought about principally through the influence of neo-scholastic philosophy.”
It was stated in one reply that busy legal practitioners, even though part time lecturers in church law schools, should not be asked to waste time on an indefinite and aimless jurisprudence. Of course, the legal culture mentioned in the first question is amorphous, because it is non-existent. But should not practitioners, who purport to be devotees of higher learning and erudition, in virtue of their being on faculties of church universities, be expected to sacrifice some of their time in the upbuilding of a scholastic jurisprudence, in which their contributions might possibly be more enduring and meritorious than the exercise of their legal acumen as a means of financial rewards in the often petty and mundane practice of the law?

II

"Should the courses in the undergraduate legal curriculum, such as contracts, torts, and the like, be taught in church law schools, in exactly the same manner in which they are presented in non-church law schools?"

Several of the answers construed “course” to mean simply the presentation of the rules of the strict law, stating that it did not seem possible to teach courses in church law schools, except in the same manner in which they were offered in non-church schools, particularly because of the casebook system. As legal educators agree that the “pure fact of law” must be taught in all law schools, regardless of their jurisprudential aims, however, the question would have been without point, unless it referred to “course” in the sense of an exposition of something more than rules of law. First, should only the strict law be taught? Secondly, if something more is to be infused into the courses, should the church or non-church character of the law school affect the teacher’s

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11 "There was no sufficient reason for busy men to devote time to develop an indefinite philosophy which had no specific objective nor any claimed superiority over present legal reasoning."

12 "[Yes.] I do not see how the courses could be taught in a materially different manner." And: "Yes, because law is a positive thing." Again: "Generally speaking, yes. The case system of law makes this necessary."
choice as to what this additional element should be? That was the import of the question.

But most of the answers distinguished between the letter of the law and the jurisprudential phases of the courses, and held that there should not be an identity of method of presentation, in church law schools and non-church law schools respectively. Various attitudes were taken as to the means by which the method of the church law school might be made distinctive. A majority approved an explanation of the moral background of underlying principles, or a warning against positivism, or the suggestion of the connection between positive law and the favored scholastic development, in every course in the church law school. Again, it was stated that the emphasis upon these elements should be somewhat greater in a non-church law school than in a church law school, and that the teaching in all law schools should aim at the presentation of a sound philosophy of law rather than a conglomeration of case law. It was also held there should

13 “A professor in a Catholic law school, however, should go beyond the strict letter of the law, and call the students’ attention to the moral background involved in every principle of law. This viewpoint should underlie the teaching of every course.” And: “Regardless of the course . . . situations often arise where the instructor must go beyond the strict letter of the law and explain fully the moral question involved.” Finally: “A scholastic distinction is in order. The formal presentation of Contracts, Torts, and the like must of course give the law as actually existing, but in the criticism of the law, and in the explanation of the underlying principles, of course, the Catholic law school will differ.”

14 “It would be too great a task to recast the traditional methodology in a manner that would infuse the ethical principles of scholastic philosophy. But the instructor should be active in an endeavor to point out the dangers that lurk in a ‘positivist’ attitude toward the law, as that attitude is reflected in many phases of under-graduate studies.”

15 “Law should be taught with a consideration for scholastic philosophy and more especially for ethics.”

16 “Personally, my teaching would be the same in all law schools; as truth should not be suppressed, it seems to me there should be no distinction made. If the teacher is teaching non-Catholics, it will be up to him to develop his point a little more than if his students are Catholics. . . . If a case involved a point which calls for the injection of Catholic philosophy, the teacher should proceed to expand the point in the case. For example, a case in trusts says that a trust for masses is a superstitious use. Now the teacher will be under a duty to explain the true doctrine.”

17 “In teaching law in any law school, the aim should be to have the graduate leave school with a sound philosophy of law, rather than with a knowledge of a lot of case law, much of which rests upon a false philosophy.”
be an integration of law and the social sciences in all law schools.\textsuperscript{18}

There was a minority holding, however, that a jurisprudential critique should be given in certain courses only, such as Domestic Relations, Legal Ethics, and Equity, but not in others, for example, Contracts and Torts.\textsuperscript{19} Another minority view contended for the introduction of separate jurisprudential courses into the undergraduate \textit{curriculum}, which would inter-relate all courses on the positive law.\textsuperscript{20} Another suggestion was that all courses might be prefaced by introductory lectures on scholasticism.\textsuperscript{21} But in one reply, the present was stated not to be an auspicious time in which to initiate a difference between the church law school and the non-church law school.\textsuperscript{22}

The opinion of those who held that a scholastic critique should be confined to certain courses might have been due to the greater obviousness of the impact of history, philosophy, and sociology upon the law taught in these courses. Doubtless there are greater opportunities for a jurisprudential leverage, for example, in Domestic Relations, Legal Ethics, and Equity, than in procedural courses. But is it not true that every course on law, necessarily because of the very nature of the positive law itself, offers some possibilities for such a critique? Is there any fundamental reason why the new pedagogy should be delayed?

\textsuperscript{18} "Certainly, law should be closely integrated with other social sciences, but that should be done in state supported schools, as well as in church-supported schools."

\textsuperscript{19} "As regards torts, contracts, and many other subjects of the curriculum, yes, because in my judgment those courses contain nothing that is contrary to Catholic Ethics. As regards certain other subjects, notably Domestic Relations, Legal Ethics, and others, no, because some of these courses, unless corrected by some other adjustment, give positively wrong conclusions."

\textsuperscript{20} "There should be special undergraduate courses in jurisprudence."

\textsuperscript{21} "By prefacing courses with introductory lectures of neo-scholastic tone, the influence of positivism in text books and even in case books can be guarded against."

\textsuperscript{22} "[The teaching in church and non-church law schools should be the same] at least for the present."
III

"If your answer is affirmative in the second question, why should church law schools continue to exist?"

While some held that there was no adequate justification for church law schools unless they interpreted the positive law in terms of a socialized scholasticism, or stated that it was doubtful whether there was any church law school in which the teaching did not vary from that in non-church law schools, still many of the answers to this question appeared to claim that the religious atmosphere of the church law school, apparently some intangible element over and above classroom influences, was, in itself, a sufficient reason for church law schools. That religious atmosphere which is induced by a scholasticized viewpoint in the classroom was evidently not meant in the answers to the third question, because this question was not for those who favored a distinction between church and non-church law schools relative to the content and method of presentation of courses, i. e., a scholastic jurisprudence. If a student must select a church law school because it is impossible for him to attend one of the other type, then the church law school justifies its existence forthwith, as to that particular student, without any necessity of reference to the religious atmosphere argument.

While the utmost credit is due those who have given students in church law schools every opportunity for the practice of their religion, and while the taking advantage of these opportunities will undoubtedly build moral character, which

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23 "There is no need to create a distinction between the training in Catholic law schools and that given in non-Catholic, for the reason that it already exists in every truly Catholic law school." And: "They [church law schools] do, [i. e., present their courses from a scholasticized viewpoint], at least in the schools with which I am acquainted, and this not only in the various classes, but to some extent also in published articles."

24 "... personally, I think there is a distinct gain to the future lawyer to be derived from the religious atmosphere at such [namely, a church law school] a school." Further: "Catholic law schools should continue to exist because of the 'atmosphere' with which a Catholic institution is permeated. This 'atmosphere' can not but influence the student who is exposed to it, and influence him along the way of right conduct."
will be reflected in everything the students undertake, still it is well to weigh the facts in order to avoid illusory presumptions. The argument that there is a religious atmosphere in church law schools, and that this alone would be sufficient justification for these institutions is most effectively employed in the instance of the campus school. But how many church law schools make campus residence compulsory?

What is the weight of the non-classroom religious atmosphere argument when applied to non-campus church law schools? Most church law schools are of this kind. In these institutions, just when does the religious atmosphere make its influence felt outside of the classroom? In the instance of the night student, the time spent at the school is exceedingly short, if the class periods are deducted. Non-campus church schools do not undertake to supervise the students’ environment or mode of life off the campus.

How may the argument that there is adequate justification for a church law school, if it satisfies social needs, for example, by exclusively serving a large geographical area, or by relieving congestion in nearby law schools, so that it affords greater opportunity for students to recite more often, and to have closer association with the faculty, or if it enables graduates of church colleges to retain their past personal associations a few years longer, be appraised? If a church law school fills an especial community need, or if it has a prestige, a faculty, a scholarship, a library and general

25 “Our school exists because it fills a community need. There is but one other law school within . . . miles in any direction. We are at the center of a population of perhaps . . . We should continue to exist because a school is needed in the territory, and it offers an opportunity to build a stronger Catholic educational center, hold the field, and mould as far as reasonably practical the minds of young men along sound and moral lines. The inclusion of this question in the list put a damper on the movement.”

26 “Then, too, there is much to be said in favor of the small law school, such as close personal contact with the professors, small classes, frequent opportunities to recite and the like.”

27 “As a convenience to students who have received their earlier education in Catholic schools and colleges, and who desire to retain their associations and connections thereby created.”
facilities, which are equal or superior to those of the non-
church law schools in the same vicinity, it indeed has a right
to exist as a law school, but not necessarily as a church law
school. Socially utilitarian reasons, and a fortiori sentimental
ones relative to the preserving of past college friendships, are
hardly sufficient in themselves to justify ecclesiastical par-
ticipation in the matter of legal education.28

If the purpose of a law school which thus satisfies a com-
munity need is simply to turn out legal technicians, should
ecclesiastical educators be concerned with its foundation or
administration? Should it not be turned over to proprietary
agencies, directed by legal technicians? The filling of a com-
munity need, such as described above, is after all only an
accidental attribute, not substantial, as the situation may
change.

Several other justifying reasons were alleged in the an-
swers. Thus it was stated that at least no false principles
were taught in church law schools.28 While there may be no
erroneous jurisprudential doctrines directly encouraged in
a church law school, yet non-feasance may be almost as cul-
pable as malfeasance. Failure to present the relationalism
between the positive law and the philosophical and social
sciences may, by a resulting distortion of perspective, lead
to the subconscious communication of false postulates.

But is not a law school an integral part of a church uni-
versity?29 Has not the Church as much right to conduct law

28 But it was stated in one questionnaire that: "They [church law schools] should not exist as church law schools; they should, if they are good law schools, and they should not if they are bad ones. Their Catholicism or non-Catholicism can have nothing to do with this question."
29 "If there be any such Catholic law schools, which I doubt (namely, schools which do not teach scholastic principles) yet the fact that no false principles are taught or suggested would excuse their continuance. . . ." And: "[Church law schools] furnish class rooms where Catholics can acquire a legal education without subjection to assaults upon their religious beliefs, which might weaken their faith and result in the loss of some to the Church."
30 "When a Catholic university aspires to be a 'university,' it is necessary that it include legal education." And: "I believe that Catholic law schools should continue to exist, because a law school is one division of a completely rounded university."
schools as it has to sponsor departments of medicine, engineering, and mathematics? Certainly the Church has an innate authority over education, including the teaching of all the natural, philosophical, and social sciences. Hence all the sciences should be taught from a scholastic viewpoint in church universities. This was the basic conception of the medieval university. Today law is rightly an integral part of the curriculum of a church university, only if it recognizes the scholastic starting points, which affect the content and method of instruction. A law school which does not realize this ideal should not be part of a church university.

Considerable emphasis was placed upon the advantages which accrue to the Church in virtue of having under its control a number of American law schools. Various opinions were given to show the nature of these benefits. But is it true that the church law school has advanced the prestige of the Church, by inculcating in its graduates a deep sense of allegiance and loyalty to the particular Church, and by turning out graduates who have reached influential positions in government and in legislatures? Have law schools under

31 "I can not see any good reason why a Catholic university should not maintain a department for the teaching of law. Catholic philosophy should be part of a pre-legal education. A Catholic law school may be justified on the same ground that a department of mathematics may be justified."

32 "Our law school is certainly against the mala in se of human conduct, and gives the Catholic and general reason therefor, but in matters mala prohibita, which concern the greater part of our activity, we present the authorities, and try to reconcile them, if possible, on the ground of what is reasonable, rather than on the mere weight of authority. In the field of medicine, a course in anatomy, or physiology is not conducted either in a Catholic or non-Catholic manner. Where, however, problems of ethics arise, Catholic teaching is used to explain them in Catholic medical schools."

33 "Even if the answer were purely affirmative, there would still be a strongly public reason for the existence of 'Catholic law schools,' namely, to train Catholic professional men, without subjecting them to two great dangers, which they would incur by getting their professional training exclusively in secular schools. These two dangers are: (1) Loss of Catholic loyalty and sense of allegiance; and (2) Greater danger of loss of Catholic principles."

34 "Since lawyers naturally gravitate into legislative chambers, to positions of public trust, and to leading stations in their communities, it is a boon to Catholic universities to have such outstanding leaders numbered among their alumni."
the authority of a specific denomination actually increased the percentage of lawyers who belong to that denomination? Accurate answers will depend upon a statistical survey. But certainly, it does not appear to be correct to conclude that a lawyer of a specific religious faith, who has achieved political prominence, will be less responsive to the rights of his Church, or less loyal, or even less fit to teach in a church law school, because he is a graduate of a non-church law school. Nor does there seem to be any reason why church law schools which merely copy the secular teaching techniques of the non-church law school must of necessity materially affect the character of the bar in the matter of religious faith. Manifestly the graduates of such law schools are not equipped to take part in the present day battle of legal philosophies, or to understand adequately the scholastic conception of the function and aim of government, in case they become governmental agents. Such law schools can not be a first line of defense against the seepage of wrong principles into contemporary law, or afford any special opportunities to ethically minded young men to become members of the Bar.

35 “The existence of Catholic law schools, either nominal or otherwise, has contributed to the increase of Catholic membership in the Bar. No hope of reform in the Philosophy of Law can disregard such a necessary connecting link between neo-scholastic philosophy and the Bar.”

36 But it was stated in one reply: “A Catholic law school should continue to exist to prepare Catholic lawyers so that they can go out into the world and administer to the clients’ legal diseases in accordance with the philosophy of Peter and combat the philosophy of Pan. Graduates of Catholic law schools are the only ones really capable of leading the fight in the present day battle of legal philosophies. Now take the modern views on matters of Sterilization, Birth Control, Euthanasia, Divorce, Religious trusts, corporate personality, as a few specific examples of why a Catholic law school should continue to exist. Need one say more?”

37 “Lawyers as a profession constitute the vast majority of governmental agents. It is essential, therefore, that these men have a true and an adequate concept of the function and purpose, and the aims of government. Only in the principles enunciated in scholastic philosophy can there be found a well-rounded and consistent exposition of the criteria of governmental action.”

38 “[Church law schools] should continue to exist as a first line of defense against the seepage into the law of social objectives which may be contrary to Catholic philosophy.”

39 “[Church law schools exist] for the opportunities afforded by Catholic legal education to enable persevering and ethically minded young men to become useful members of the Bar after a course of legal training.”
Yet all the justifications, found in the answers to the questionnaire in reference to the continuance of the church law school, particularly when taken in the ensemble, had merit. They must not be given undue importance, however, and made an excuse for identifying the jurisprudential aims of the church law school and the non-church law school. The true mission of the church law school will not be fulfilled until there is an adequate *juris ratio studiorum*, which will convince the modern mind of the eternal sufficiency of thirteenth century Thomism to solve ever changing problems, created by man’s enlarging powers over his physical environment, and by the necessarily resulting need of social, political, and economic adjustments.

IV

“If your answer is negative in the second question, what would you suggest by way of creating a distinction between the training given in a church law school, as distinguished from a non-church law school?”

This question was intended for those who favored a difference between the courses of the church law school and non-church law school in the matter of jurisprudence. It was to afford an opportunity for them to give their advice as to the best means of creating this difference. Only one answer proposed extra-curricular means, namely, the supervision of all instructions in a church law school by a legally trained cleric. All the other answers dealt with a curricular plan. But these differed as to whether a scholastic jurisprudence should be taught in the positive law courses themselves, or in separate courses. Among those who advocated distinctive elements in the positive law courses, there was a variation of approach. There was favored the teaching of such general concepts in church law schools as belief in God, or a Catholic viewpoint, or a scholastic philosophy, or moral principles, or

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40 Namely, “supervision of all instruction by a clerical, religious adviser, with legal training.”
law as a means of social control, in practically all, or at least in certain specific courses. There was a tendency towards complacency in some of the answers, which alleged that much was already being done, or had been done, in church law schools in regard to scholasticism. Instead of interpreting the question in the sense of what improvement might be achieved in the future with respect to making theosophical ideals effective in church law schools, some of the answers simply stated that certain schools were giving courses in legal ethics, legal philosophy, or jurisprudence, or had given obligatory courses in Religion for Catholic students, and obligatory courses in ethics (not legal ethics, but fundamental Catholic ethics) for all seniors. Commendation is due those through whose efforts

41 "I believe that almost every course, even including the pleading courses ought to have a distinction between the viewpoints of scholastic philosophy and other philosophies which can be pointed out, and the Catholic viewpoint stressed."

42 "The traditional course, since it is aimed to qualify the student for admission for the Bar, should in a large measure be retained. It should, however, be supplemented with a required course [or courses] in Philosophy of Law. This course should examine the various schools, so-called, in order to prepare a foundation for a well-rounded examination into the principles of neo-scholastic thought." Again: "We are doing all we can to develop character and a keen appreciation of legal ethics, and especially to inculcate the doctrine that law is a means of social control, and the lawyer a minister of social betterment. But in all that there is absolutely nothing sectarian."

43 "We teach jurisprudence and legal ethics as part of our curriculum. Every member of the faculty whenever the opportunity presents itself, regardless of the course, endeavors to give a distinctive moral tone to his teaching." And: "So far as the inquiry of your Committee as to what, if anything, Catholic teachers are doing in their respective classes to call attention to the relation of their courses in law to scholastic philosophy is concerned, I can only speak for the situation in this school. . . . In the second year of law, we give a two-hour course during the year in jurisprudence, which is Catholic philosophical background of law. In the first year of law, we give two hours of [Ethics] during the year. In the treatment of Divorce, Statute of Limitations, etc., the morals and Catholic position are given, but law is taught as it is, with suggestions for improvement." And: "In addition to the Catholic viewpoint insisted on by the professors in the various classes, courses in Jurisprudence and Legal Ethics stressing the real true philosophy of law would perpetuate rather than 'create' the distinction already existing."

44 "This is a very difficult, practical question and must be committed to the judgment of zealous men, who are actually engaged in that work [i.e., teaching law]. Some years ago, while I was connected with the law school of the University of . . . we used the following means: (1) An obligatory course in ethics (not legal ethics, but fundamental Catholic ethics) for all seniors, and, (2) An obligatory course in Religion for Catholic students."
some concepts of scholastic philosophy have already been introduced into the church law school. But should the church law school world be longer satisfied to rely merely on these pioneering contributions? Is there any bibliography on scholastic jurisprudence, which, in the light of modern social and legal problems, displays originality of thought in the application or adaptation of old philosophies to new jural environments? A forward looking way of regarding the situation was disclosed, however, in the answer which argued for the development of a theophilosophical jurisprudence, which would form some part of every law course, and in the reply which called for the putting of the necessary informative material into the hands of law teachers, thus educating them as to the specific relation between legal rule and jurisprudential background.

V

"What, if anything, are you doing in the particular courses which you teach to give them a distinctive tone with reference to church scholarship?"

This question was asked with the idea of making available, for the benefit of all legal educators, the activities of those who were infusing a scholasticized jurisprudence into their law courses. But the replies did not reveal much that was concrete. A few answers stated that the writers did nothing in their classes to bring out the distinctively scholas-
tic aspects of the subjects taught, because they did not favor this methodology,\textsuperscript{48} or because their church law school was said not to be sectarian, thus confusing theology and philosophy.\textsuperscript{49} The purpose of government was discussed in certain general or specific character.

In the first type of answer, it was stated that the teacher expounded scholastic ethics in his course on legal ethics,\textsuperscript{50} or integrated law and scholastic philosophy,\textsuperscript{51} or occasionally emphasized the importance of the Church in legal history,\textsuperscript{52} or unfolded the doctrine of natural rights,\textsuperscript{53} or taught that

\textsuperscript{48} "I do nothing to create a distinctive and outstanding difference between my school and other schools . . . I feel to do so would be inadvisable. The school's success depends more on its ability to qualify properly its graduates to practice in the competitive field of law, as it prevails in the best accepted reasoning of the times. This occupies most of the school's effort. The training of men to this standard is the first essential. The elimination from their minds of the errors of thought and of human weaknesses is done incidentally . . . . It is more effective thus than if the school were branded as a different school which insists on teaching dogmas known to be in conflict with the views of the non-Catholic and sometimes irreligious patrons."

\textsuperscript{49} "The law is what it is. In civil courts, there is not and can not be 'Catholic Law,' 'Protestant Law,' or 'non-Catholic Law.'" And: "I do not think there is any 'Protestant Law' or 'Catholic Law.'" And: "[Blank] is in no sense a sectarian institution . . . No attempt is made to give any course a sectarian philosophical flavor."

\textsuperscript{50} "I am teaching jurisprudence and legal ethics. In jurisprudence, I am able to refute the positivists and teach the natural foundation of law and its implications. Through 'Legal Ethics,' I am able to teach neo-scholastic ethics, general and special." And: "The texts used in my course in Jurisprudence . . . will show what is being done in this line. These works are 'Outlines of Pure Jurisprudence' by F. LeBuffe, of America Staff, formerly of the Fordham Law School; 'Natural Law and Legal Practice' by Holaind, S.J., and Judge Morris' 'History of the Development of Law.' The 'Revival of Natural Law Concepts' by Haines is also used to show what good use our courts have made of Natural law, the 'Higher Law,' in actual decisions."

\textsuperscript{51} "I am endeavoring in my undergraduate course in ethics to make this integration [namely, law and scholastic philosophy]."

\textsuperscript{52} "Occasionally remind them [students] that the first Christian scholarship was born and nursed by the Catholic Church. Allude to Church law for the foundation of our present day public law when feasible. Indicate where law and ethics meet in some problems in order to keep that side of life before them. A Catholic tradition is a powerful influence in retaining the loyalty of men who are left largely to their own devices after graduation."

\textsuperscript{53} "We believe very strongly in the doctrine of natural rights, by which we understand certain rights inhere in the individual because of his nature and dignity. We try to unfold this view wherever possible. Dean Pound speaks of this as the 'ideal element in the law.' This element there has always been and always will be in every system of jurisprudence."
the lawyer was a minister of social betterment, or insisted that the aim of the positive law was to attain to an ideal outside of itself, or brought out the sound philosophy which was at the root of the common law. The second type of answer referred to specific courses in the legal curriculum. Thus, in a course on Business Units, the papal encyclical Quadragesimo Anno and such cases as Blakeslee v. Board were utilized. In Constitutional Law, the morality of child labor was incidentally discussed from a scholastic viewpoint. The question was raised in one Contracts course “is it ethical for a promissor who has made a promise with an intention to be bound to withdraw his promise after it had been accepted, simply because there was no consideration to support it”? Another teacher of contracts stated that he applied logic in the light of human nature and ethics, al-

54 “Without being oratorical, our concern and the concern of our students is to augment law as one of the means of social control, and thus establish the reign of the theological virtue of justice.”

55 “I make a conscious effort to develop a critical as distinguished from a receptive attitude with respect to the materials found in judicial opinions. It is my endeavor to reconcile ethical principles with legal principles, insofar as they come into contact one with the other. Furthermore, I insist that the ultimate aim of law is to attain to a norm or standard outside of itself and above it. [Law as used in the last sentence connotes positive law.] I admit considerable difficulty in the last mentioned endeavor in the fact of ‘learned’ opinion which often announces a different objective.”

56 “Wherever the problem arises, and naturally it arises to a greater extent in some courses than in others, we make it a practice to bring out the sound philosophy which lies at the root of our Common law.”

57 “Quadragesimo Anno” is part of assigned reading, in the course in Business Units. Every course contains cases (admittedly limited in number) in which the influence of the moral factors on the decision can be emphasized; for example, Blakeslee v. Board, 106 Conn. 642 (Williston’s Cases, 3d ed.).”

58 “In Constitutional law, the question of the morality of child labor is not directly involved, but whether authority has been delegated by the several states to the federal government. The use of child labor to the extent that it impairs them physically or mentally or both is contra bonos mores and should be prohibited by the states.”

59 “In my own course in contracts, I raised the question: ‘Is it ethical for a promissor who has made a promise with an intention to be bound to withdraw his promise after it had been accepted simply because there was no consideration to support it?’”

60 “The courses in Contracts . . . are nothing but the application of fundamental logic to the practical problems of business, with the constant recognition of human nature and the standards of ethics as gradually developed by the courts toward an ideal or perfect ethical system. The courts are now much in advance of
though this statement is hardly specific. In one course on Criminal Law, there was an examination of the social and philosophical background of the eras in which theories of penology were formulated.\textsuperscript{61} Two teachers of Equity mentioned the influence of the great ecclesiastics.\textsuperscript{62} Some philosophy was taught in one course on Evidence.\textsuperscript{63} One who taught International Law made the conception of a natural law basic.\textsuperscript{64} In some courses on Property and Wills, the debt to the Church was mentioned.\textsuperscript{65} In a course on Torts,\textsuperscript{66} the scholastic ethics in reference to sterilization was explained during the discussion of such cases as \textit{Buck v. Bell} (1927). A teacher of Trusts and Equity, upon the canonization of St. Thomas More, showed the great jural contributions of that famous Chancellor, whose work reflected a scholastic philosophy.\textsuperscript{67} The purpose of government was discussed in certain courses.\textsuperscript{68}
From these answers, it appears that the success of the scholastic jurisprudence movement depends upon replacing the general with the specific. Some of the replies demonstrate that this can be done, and that there is a capacity, coupled with a willingness, on the part of at least some of the educators in church law schools to evolve a masterful jurisprudence, molded by scholasticism. Should not the next step be a collaboration by such teachers?

Other Comments

At the end of the questionnaire, an opportunity to add comments, which might not properly be included under any one of the answers to the five questions, was given. Some of these additional observations were critical, in the sense of being laudatory or condemnatory; others were constructive, that is, gave suggestions which were meant to aid the plan of a scholastic jurisprudence. The sending out of the questionnaire was both praised as a constructive step in the right direction, and adversely criticized.

The two chief reasons for disapproval of this survey of opinion in church law schools, relative to the development of a scholastic legal culture, were, first, that the questions indicated a lack of acquaintance with the present usefulness of the church law school, and secondly, that they were ac-

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69 "I wish to command every effort which the American Catholic Philosophical Association has made and is making in relating philosophy to law."

70 "This question [namely, the third] is silly in that it suggests that Catholic law schools should close unless they teach something different from other honest teachers of law. Such supposition suggests an unsound character to the movement, a desire to be different without reason."

71 "... I would say that... your communication regarding the proposed neo-scholastic philosophy of law... was not impressive, for several reasons, principal among them being that they do not define the so-called neo-scholastic philosophy of law which we are asked to support, and do not distinguish between the present currently accepted underlying principles of law and those which the proposers seemed to wish to launch as a movement. In addition, the communications did not, to me, indicate any very definite idea of what direction the so-called philosophy should take. Still further, they seemed to indicate a lack of acquaintance with the purpose of usefulness of the present law schools conducted under Catholic auspices. These things lacking, there was not much incentive to join in the movement as it did not seem to have the fundamental basis that would justify the time spent on it."
accompanied by a mimeographed abstract of an article by Rev. Dr. Edward Lodge Curran, which expressed doubt if there was actually anywhere in the United States a truly Catholic law school.\textsuperscript{72} The purpose of distributing the resumé of Rev. Dr. Curran's charge that church law schools were, generally speaking, merely imitations of non-church law schools was to afford an opportunity, for those who were educators in church law schools, to answer the attack, if they believed his statements were inaccurate. The questionnaire passed no judgment as to the usefulness or non-usefulness of American church law schools with respect to education in the technical phases of the positive law. It in no way referred to the organization of Catholic lawyers' associations, though one answer included a condemnation of such associations.\textsuperscript{73}

Numerous suggestions were made for the advancement of the cause of scholastic jurisprudence. Thus, it was urged that the cooperation of all interested legal and philosophical scholars and of members of the Bench and Bar should be enlisted, as well as the aid of all church law schools in America.\textsuperscript{74} It was brought out that there might be, for example, from time to time, sectional meetings of the deans of church

\textsuperscript{72} Rev. Dr. Curran's article, namely, "Catholic Law Schools" appeared in "Truth" (March, 1933), at p. 3. Thus it was stated: "I was sorry to see you spread the lucubration of the edition of 'Truth,' surely not truth this time. Why not rather call attention to 'The Catholic Law School,' in America of April 12, 1930 instead?"

\textsuperscript{73} "Recently there has been a movement to organize Catholic lawyers associations. To this movement, I am definitely opposed, believing that it would be provocative of dissension and would operate to the disadvantage of the Church. . . . If this movement materialized, which I hope never will, we might look for 'Protestant Lawyers Associations' and 'non-Catholic Societies,' etc. We as Catholics cannot take the position that the civil law is different from a Catholic or non-Catholic point of view. It would be absurd. Besides all this, in all the Bar Associations of which I have been a member, no discrimination has been made against Catholics. Why not let well enough alone?"

\textsuperscript{74} "I am of opinion that apart from all practical helps which might come to be furnished to law teachers who can and will relate philosophy to law . . . success in the matter of establishing an influential relationship of philosophy to law depends on reactions in the following order: (1) An articulate interest on the part of well-known scholars of the law and well-known scholars of philosophy; (2) Unified action, response, and cooperation on the part of not a few but all Catholic law schools; (3) At least a reading interest on the part of law professors and law students; and (4) Contact with Catholic lawyers in the Bar."
law schools and leaders of the Bench and Bar in sympathy with the movement. The formation of a new section, designated by a name which would appeal as much to the lawyer as to the philosopher, within the American Catholic Philosophical Association, because of the magnitude of the tasks involved, was proposed. The establishment of a law review by this Association, or some other appropriate agency, which would specialize in the publication of articles developing a scholastic jurisprudence, was suggested. The wisdom of requiring all teachers and students in church schools to have an adequate knowledge of scholastic philosophy was emphasized.

It was also urged that in so far as the Anglo-American common law has been molded in the past along scholastic lines, the burden of showing the necessity for change was upon the shoulders of the newly risen group of juristic innovators, and that the builders of a scholastic jurisprudence

75 “I am of the opinion that your efforts would be considerably rewarded by the results of a meeting in the near future of the Deans and heads of Catholic law schools. It would not be necessary to have one big meeting in one place. Several places of meetings could be chosen for local convenience, and although meeting separately, unity of purpose, discussion and report could be insured by the previous preparation for the members of a topic outline of purpose, discussion and report.”

76 “The scope of relating philosophy to law is so large that, while a standing committee may well serve to give directions through outlines, papers, and so forth, it demands the interest of what properly be called a unit section of the American Catholic Philosophical Association.”

77 “Good legal minds are as necessary in this work as good philosophers. The mere name ‘Philosophical Association’ does not sufficiently appeal to lawyers, law professors, and law students.”

78 “Journals and Reviews published by Catholic law schools are usually a financial burden, if not otherwise burdensome. What could be done toward a combined Catholic Law School Review or Journal? Could such make this new effort of the Philosophical Association more articulate? Would it be an incentive to student membership?”

79 “The training of the professors should be Catholic, and there should be a scholastic background required of every student in the law.”

80 “Notwithstanding this separation (i. e., from the Papacy) at the time of Henry VIII, Catholic morals continued to control judicial decisions because for nine hundred years theretofore England had been nearly one hundred per cent Catholic, and the separation did not change this. In moral concepts, as applied to judicial decisions, England remained Catholic with the result that, aside from questions relating to the marital status; there is no difference between Catholic and non-Catholic morals in judicial decisions.”
should stress this fact. There was a warning that neo-scholastic jurists should not educate too completely the exponents of the opposing schools of jurisprudence. One answer contained a plea for the development of a school of neo-scholastic juristic thought. The necessity of immediate action was stressed.

There were contradictory opinions as to whether church law school catalogues, which described courses and methods, indicated that these institutions were justified in continuing to exist as church educational agencies. Several called attention to the announcements of their respective schools, to show that a Catholic viewpoint was there maintained. But another stated that there did not seem to be much justification for the continued existence of church law schools, as such, to judge from their announcements.

It is to be hoped that this symposium and critique will tend to enlist the support of all jurists who are in favor of a school of jurisprudence, consistent with the premises of an

81 “The point never should be lost sight of, however, that we Catholics are defending a position and that the burden of proof at all times is with the other side. We can easily forget this if we start with the thought that we have to build up a philosophy of law which is scholastic, and then mold our law to meet this philosophy. To my mind, there is no such need.”

82 “There is one danger which perhaps is implicit in any work such as that undertaken by your committee. . . . Lawyers and law teachers as well as some jurists who are attacking our common law, and seeking to mold it to their own philosophical notions, usually are largely ignorant of the nature or object of their attack. To the extent that we develop and publicize the fact that our law is thoroughly scholastic in its philosophy and educate not only ourselves but also our opponents, I am inclined to think that we may furnish perhaps unwittingly a spear-head for this very attack. If the realization ever comes completely home to them that our law is so thoroughly scholastic, I am sure that their determination to tear it all down and mold it to their bizarre philosophical notions will be intensified and hardened.”

83 “Let our Catholic law schools which have law reviews develop a school of Catholic Thought, and let us give it publicity.”

84 “I shall summarize my comments in two propositions: (1) The problem presents many practical difficulties, and hence we can not do everything at once; [and] (2) The problem is urgent and hence we must do something at once.”

85 “I can not give any opinion, but if one can judge by the catalogs, it does not seem that there is much justification for such [i.e., church] law schools.”
immutable oughtness, a personal Diety, a free will, and a discernible, fixed ideal of human conduct, however much the manner of realizing this standard may vary from time to time. It is important that the plea for cooperation among theosophical jurists be addressed to all jurists who agree upon these philosophical postulates regardless of theology or religious persuasion. There was evidence among the replies to indicate that there is some doubt as to the essentially philosophical character of the suggested project.

In conclusion, what does the Standing Committee on Legal Philosophy of the American Catholic Philosophical Association now propose to do toward the upbuilding of a scholastic jurisprudence? It hopes to organize teachers in church law schools into groups, according to subjects taught, and undertake to encourage collaboration in the different fields of the positive law. The Committee has endorsed many of the proposals advanced by those who replied to the questionnaire, and will seek to effectuate them. It sees its duty primarily as a clearing house for the exchange of ideas and methods. It visualizes a project which measures progress in terms of years, not weeks, and realizes that success depends upon the spirit and the will of the personnel of American church law schools, under the inspiration of our great intellectual predecessors. They no doubt expected us to adapt what they wrote to the needs of our age. May we be worthy of their expectations.

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