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Lucia A. Silecchia

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2022 CONFERENCE OF RELIGIOUSLY AFFILIATED LAW SCHOOLS: REFLECTIONS ON FACULTY VOCATION AND SUPPORT

*Lucia A. Silecchia**

ABSTRACT

In the United States, numerous law schools identify themselves as “religiously affiliated.” There are many opportunities and challenges that come with such affiliation. What “religiously affiliated” may mean for a law school’s faculty is a particularly critical aspect of this question. I was grateful to have been invited to reflect on what religious affiliation might mean for faculty hiring at the “*Past, Present, and Future of Religiously Affiliated Law Schools*” conference. What follows are reflections that consider not merely that question—important as it is—but also explore what happens after the hiring decision to make the vocation to teach at a religiously affiliated school a happy and, yes, holy one. It will begin by examining what I believe to be the four primary types of religiously affiliated law schools. Then, it will briefly discuss some considerations for the hiring process. It will then explore some of the ways in which religiously affiliated law schools have the opportunity and the obligation to support faculty who seek to live a full vocation to academic life in a religiously affiliated law

* Professor of Law and Associate Dean for Faculty Research, The Catholic University of America Columbus School of Law. I am very grateful to Prof. Samuel Levine of Touro Law Center for organizing the 2022 conference, “*The Past, Present, and Future of Religiously Affiliated Law Schools*” and for his kind invitation to participate on the panel on faculty hiring. I am grateful as well for the insights of the conference participants, particularly those of my fellow panelists, Prof. John M Breen and Prof. Michael A. Helfand. I also extend my thanks to my Catholic University colleague, Prof. Kevin Walsh, for sharing his insights on an earlier draft of this paper and to my research assistants Kylee Kim and Eleni Mouskas for their help. All reflections here are made entirely in my personal capacity. All views are my own opinions, as I do not speak for The Catholic University of America or The Columbus School of Law.

school. It will conclude with some personal reflections on my three decades living that vocation at a religiously affiliated law school.

I. INTRODUCTION

In the United States, numerous law schools identify themselves as “religiously affiliated.”¹ Many are Catholic institutions,² most

¹ The exact count has been discussed by others. See Michael Herz, *The Role of One Religiously Affiliated Law School*, 59 J. LEGAL EDUC. 136, 149-50 (2009) (“On one count, slightly out of date, there are forty-eight religiously affiliated law schools in the United States, of which thirty-seven are ‘functionally secular,’ seven occupy a middle ground, and only four are truly ‘sectarian.’”); John Garvey, *AALS Symposium on Institutional Pluralism: The Role of Religiously Affiliated Law Schools*, 59 J. LEGAL EDUC. 125 (2009) (“[T]here are forty-eight religiously-affiliated law schools whose missions are defined or influenced by particular faiths.”); and Richard E. Redding, *Without a Prayer?: Spirituality and Performance in Law School—A Reply to Professor Taylor*, 47 CAL. W. L. REV. 111, 111-12 (2010) (“Forty-three law schools accredited by the American Bar Association (twenty-two percent of all accredited law schools) are religiously-affiliated. Twenty six of the forty-three religiously affiliated accredited law schools are Catholic.”).

² For discussion of particular aspects of a Catholic affiliation for law schools, see, e.g., Richard W. Garnett, *Persons and the Point of the Law*, 58 J. CATH. LEGAL STUD. 65 (2019); Kathleen M. Boozang, *A Light Unseen?*, 58 J. CATH. LEGAL STUD. 5 (2019); Nicholas P. Cafardi, *Catholic Law Schools and Ex Corde Ecclesiae, or What Makes a Law School Catholic*, 33 U. TOL. L. REV. 7 (2001); Angela C. Carmella, *Reflections on Breen & Strang’s A Light Unseen: A History of Catholic Legal Education in the United States*, 58 J. CATH. LEGAL STUD. 15 (2019); William M. Treanor, *Reflections on a More “Catholic” Catholic Legal Education*, 58 J. CATH. LEGAL STUD. 99 (2019); Vincent Rougeau, *Reflections on A Light Unseen*, 58 J. CATH. LEGAL STUD. 89 (2019); John M. Breen & Lee J. Strang, *A Light Unseen: The History of Catholic Legal Education in the United States: A Response to Our Colleagues and Critics*, 59 J. CATH. LEGAL STUD. 1 (2020) [hereinafter, *Response*]; John J. Fitzgerald, *Today’s Catholic Law Schools in Theory and Practice: Are We Preserving Our Identity?*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 245 (2001); Randy Lee, *Catholic Legal Education at the Edge of a New Millennium: Do We Still Have the Spirit to Send Forth Saints*, 31 GONZ. L. REV. 565 (1995) [hereinafter *New Millennium*]; Christopher Wolfe, *The Ideal of a (Catholic) Law School*, 78 MARQ. L. REV. 487 (1995); David K. DeWolf & Robert J. Araujo, *And God’s Justice Shall Become Ours: Reflections on Teaching Law in a Catholic University*, 11 REGENT U. L. REV. 37 (1999); Michael J. Perry, *The Idea of a Catholic University*, 78 MARQ. L. REV. 325 (1995) [hereinafter *Idea of a Catholic University*]; Amelia J. Uelmen, *An Explicit Connection Between Faith and Justice in Catholic Legal Education: Why Rock the Boat?*, 81 U. DET. MERCY L. REV. 921 (2004) [hereinafter *Why Rock the Boat?*]; Daniel J. Morrissey, *The Catholic Moment in Legal Education*, 78 MARQ. L. REV. 413 (1995); Mark A. Sargent, *An Alternative to the Sectarian Vision: The Role of the Dean in an Inclusive Catholic Law School*, 33 U. TOL. L. REV. 171 (2001); Barbara Bader Aldave, *The Reality of a Catholic Law School*, 78 MARQ. L. REV. 291 (1995); David L. Gregory, *The Bishop’s Role in the Catholic Law School*, 11 REGENT U. L. REV. 23 (1998) [hereinafter *Bishop’s Role*]; and William J. Wagner & Denise M.

typically under the sponsorship of a particular religious congregation³ or by the Catholic church more broadly. Other religiously affiliated law schools are under Jewish,⁴ Mormon,⁵ Baptist,⁶ or other religious auspices. Many have commented on various aspects of what it may mean to be a religiously affiliated law school and the opportunities⁷

Ryan, *The Catholic Sponsorship of Legal Education: A Bibliography*, 78 MARQ. L. REV. 507 (1995).

³ See, e.g., John M. Breen, *The Air in the Balloon: Further Notes on Catholic and Jesuit Identity in Legal Education*, 43 GONZ. L. REV. 41 (2007) [hereinafter *Air in the Balloon*]; David A. Grenardo, *Marianist Law Schools: Demonstrating the Courage to be Catholic*, 60 J. CATH. LEGAL STUD. 1 (2022); Peter T. King, *Legal Education at Notre Dame Law School: The Lasting Significance of its Catholic Dimension*, 69 NOTRE DAME L. REV. 995 (1994); John M. Breen, *Justice and Jesuit Legal Education: A Critique*, 36 LOY. U. CHI. L.J. 383 (2005) [hereinafter *Jesuit Legal Education*]; Bernard Dobranski, *New Lawyers for a New Century—Legal Excellence and Moral Clarity: The Founding of Ave Maria School of Law*, 36 U. TOL. L. REV. 55 (2004); Thomas M. Mengler, *What's Faith got to do with it? (With Apologies to Tina Turner)*, 35 U. TOL. L. REV. 145 (2003); Robert W. Scholla, *Fides Quaerens Iustitiam Socialem: A Jesuit Law School Perspective*, 37 LOY. L.A. L. REV. 1209 (2004); Andrew F. Moore, *Contact and Concepts: Educating Students at Jesuit Law Schools*, 41 GONZ. L. REV. 459 (2005); Pamela A. Wilkins, *Law School in a Different Voice: Legal Education as a Work of Mercy*, 63 ST. LOUIS U. L.J. 401 (2019); and Anthony Bevilacqua, *Keynote Address: Symposium on Law, Religion and the Public Good*, 75 ST. JOHN'S L. REV. 191 (2001) (discussing the Vincentian tradition in the founding of St. John's Law School).

⁴ See, e.g., Howard A. Glickstein, *A Jewish-Sponsored Law School: Its Purposes and Challenges*, 78 MARQ. L. REV. 481 (1995) [hereinafter *Purposes and Challenges*]; Howard A. Glickstein, *Academic Freedom in Religiously Affiliated Law Schools: A Jewish Perspective*, 11 REGENT U. L. REV. 17 (1998) [hereinafter *Jewish Perspective*]; and Michael Herz, *The Role of One Religiously Affiliated Law School*, 59 J. LEGAL EDUC. 136 (2009).

⁵ See, e.g., Gordon, *infra* note 7 (discussing faculty life at the J. Reuben Clark Law School at Brigham Young University).

⁶ See, e.g., Bradley J.B. Toben, *The Added Value and Prerogatives of Law Schools with a Faith Mission*, 59 J. LEGAL EDUC. 158, 163 (2009) (discussing Baylor University and Law School's Baptist heritage).

⁷ See, e.g., Bruce Ledewitz, *The Role of Religiously Affiliated Law Schools in the Renewal of American Democracy*, 12 U. MASS L. REV. 230, 230 (2017) (arguing that “religious law schools . . . could assume responsibility for the health of American democracy. . . [and] begin consideration of the spiritual sources of nihilism in this culture.”); Robert J. Araujo, *Realizing a Mission: Teaching Justice as “Right Relationship,”* 74 ST. JOHN'S L. REV. 591 (2000) [hereinafter “*Right Relationship*”]; Stephen F. Smith, *Cultural Change and “Catholic Lawyers,”* 1 AVE MARIA L. REV. 31 (2003); John H. Garvey, *AALS Symposium on Institutional Pluralism: The Role of Religiously Affiliated Law Schools*, 59 J. LEGAL EDUC. 125 (2009); James T.

and challenges⁸ that this relationship entails, both historically and in the present day.

McHugh, *The Value of the Religiously Affiliated Law School*, 74 ST. JOHN'S L. REV. 577 (2000); Thomas L. Shaffer, *Why Does the Church Have Law Schools?*, 78 MARQ. L. REV. 401 (1995) [hereinafter *Why does the Church have Law Schools?*]; Steven M. Barkan, *The First Conference of Religiously Affiliated Law Schools: An Overview*, 78 MARQ. L. REV. 247 (1995); James D. Gordon III, *Religiously Affiliated Law Schools, Values, and Professionalism*, 59 J. LEGAL EDUC. 151 (2009); Rex E. Lee, *Today's Religious Law School: Challenges and Opportunities*, 78 MARQ. L. REV. 255 (1995); Michael V. Hernandez, *In Defense of Pluralism: Religiously Affiliated Law Schools, Olympianism, and Christophobia*, 48 U. TOL. L. REV. 283 (2017); Lynn R. Buzzard, *A Christian Law School: Images and Vision*, 78 MARQ. L. REV. 267 (1995) [hereinafter *Images and Vision*]; James D. Gordon III, *The Importance of Religiously Affiliated Law Schools*, 37 CATH. LAW. 183 (1997); and Gregory A. Kalscheur, S.J., *Law School as a Culture of Conversation: Re-Imagining Legal Education as a Process of Conversion to the Demands of Authentic conversation*, 28 LOY. U. CHI. L.J. 333 (1996).

⁸ See, e.g., Michael J. Perry, *Catholics, the Magisterium, and Moral Controversy: An Argument for Independent Judgment (With Particular Reference to Catholic Law Schools)*, 26 U. DAYTON L. REV. 293 (2001) [hereinafter *Moral Controversy*]; Daniel R. Suhr, *Lessons for Law School Deans Regarding Catholics in Political Life*, 8 GEO. J.L. & PUB. POL'Y 395 (2010); Robert K. Vischer, *How Should a Law School's Religious Affiliation Matter in a Difficult Market?*, 48 U. TOL. L. REV. 307 (2017) [hereinafter *Difficult Market*]; Thomas L. Shaffer, *Erastian and Sectarian Arguments in Religiously Affiliated American Law Schools*, 45 STAN. L. REV. 1859 (1993) [hereinafter *Erastian and Sectarian Arguments*]; Vikram Bhatia, *On Accreditation of Law Schools with Discriminatory Chastity Requirements*, 41 J. LEGAL PROF. 105 (2016); Kent Greenawalt, *Religious Law Schools: Tension Between Conscience and Academic Freedom*, 59 J. LEGAL EDUC. 131 (2009); José M. Gabilondo, *Institutional Pluralism from the Standpoint of its Victims: Calling the Question on Indiscriminate (In)Tolerance*, 21 L. & LITERATURE 387 (2009); Kristin B. Gerdy, *"The Irresistible Force Meets the Immovable Object": When Antidiscrimination Standards and Religious Belief Collide in ABA-Accredited Law Schools*, 85 OR. L. REV. 943 (2006); Monte N. Stewart & H. Dennis Tolley, *Investigating Possible Bias: The American Legal Academy's View of Religiously Affiliated Law Schools*, 54 J. LEGAL EDUC. 136 (2004); Robert A. Destro, *ABA and AALS Accreditation: What's 'Religious Diversity' got to do with it?*, 78 MARQ. L. REV. 427 (1995); Carl C. Monk, *Remarks Delivered at the Conference of Religiously Affiliated Law Schools*, 78 MARQ. L. REV. 377 (1995); Lee, *supra* note 7; John Boersma, *The Accreditation of Religious Law Schools in Canada and the United States*, 2016 BYU L. REV. 1081 (2016); Steven R. Smith, *Accreditation and Religiously Affiliated Law Schools*, 78 MARQ. L. REV. 361 (1995); Emily Fowler Hartigan, *Practicing and Professing Spirit in Law*, 27 TEX. TECH L. REV. 1165 (1996); Howard B. Eisenberg, *Mission, Marketing, and Academic Freedom in Today's Religiously Affiliated Law Schools: An Essay*, 11 REGENT U.L.REV. 1 (1999); Douglas Laycock, *The Rights of Religious Academic Communities*, 20 J.C. & U.L. 15 (1993) [hereinafter "Religious Academic Communities"] and

There are many perspectives on this central question of identity and mission. Indeed, an important question, worth a full discussion of its own, is the distinction between an institution's identity and mission. The identity of an institution focuses on what it *is* while mission reflects what it *does*. Obviously, these two are intimately intertwined since the mission is derived from identity, and identity is lived in the mission. At times, this paper will refer to both. However, even when only one of these terms is used it is important to note that it is nearly impossible to have a meaningful discussion of one without implicating the other.

What "religiously affiliated" may mean for a law school's faculty is a particularly critical aspect of this inquiry.⁹ This may affect, for example:

- How faculty are recruited to teach at a particular law school;¹⁰

Randy Lee, *Are Religiously Affiliated Law Schools Obsolete in America? The View of an Outsider Looking In*, 74 ST. JOHN'S L. REV. (2000).

⁹ Some have addressed this question explicitly. See generally Teresa Stanton Collett, *Saints, Sinners, and Scoundrels: Catholic Law Faculty and A Light Unseen: A History of Catholic Legal Education in the United States*, 58 J. CATH. LEGAL STUD. 29 (2019) [hereinafter *Saints, Sinners, and Scoundrels*]; James Lindgren, *The Religious Beliefs, Practices, and Experiences of Law Professors*, 15 U. ST. THOMAS L.J. 342 (2019); Marie A. Failing, *Pilgrimage or Exodus?: Responding to Faculty Faith Diversity at Religiously Affiliated Law Schools*, 81 U. DET. MERCY L. REV. 719 (2004); and Michael J. Mazza, *May a Catholic University Have a Catholic Faculty?*, 78 NOTRE DAME L. REV. 1329 (2003) (addressing the issue for universities as a whole, not limited to law school faculties).

¹⁰ See generally Robert J. Araujo, "The Harvest is Plentiful, but the Laborers are Few": *Hiring Practices and Religiously Affiliated Law Schools*, 30 U. RICH. L. REV. 713 (1996) [hereinafter "The Harvest"]; Richardson R. Lynn, *Mission Possible: Hiring for Mission in a Vague World*, 33 U. TOL. L. REV. 107, 107 (2001) ("Because the faculty ultimately controls both admissions and the curriculum, faculty hiring is the key element in protecting the mission from dilution and irrelevance."); *id.* at 108 ("Whatever the character of your school, it will change unless faculty hiring focuses largely on the mission. . . . When the applicant pool contains an assortment of diverse candidates with virtually fungible qualifications, law schools should choose those who best support the mission of the law school."); Carol Goforth, *Diversity in Law School Faculty Hiring: Why it is a Mistake to Make it All About Race*, 56 U. LOUISVILLE L. REV. 237 (2018); Milan Markovic, *The Law Professor Pipeline*, 92 TEMP. L. REV. 813 (2020); and Teresa Stanton Collett, *A Catholic Perspective on Law School Diversity Requirements*, 15 U. ST. THOMAS L.J. 322 (2019) [hereinafter *Law School Diversity*].

- Who chooses to apply to or accept an offer to teach at the law school;¹¹
- The nature of the work—pedagogical,¹² scholarly,¹³ and service-oriented¹⁴—that faculty undertake, or are encouraged to undertake, during their years at the law school;
- What disincentives exist for particular activities;¹⁵
- The nature of the law school that an individual faculty member leaves behind after a career—long or short—lived out at the school;¹⁶
- The experience that faculty members have interacting with their students as members of a particular law school community;¹⁷
- The difference in the experiences of faculty members who are active members of the school’s sponsoring faith community, those who are inactive members of that faith

¹¹ This question differs from the previous one as it considers who may self-select and decide whether or not to apply to a school, versus the question of who the law school itself seeks to pursue.

¹² See generally Jeffrey A. Pojanowski, *Teaching Jurisprudence in a Catholic Law School*, 58 J. CATH. LEGAL STUD. 75 (2019) and David A. Grenardo, *Improving the Law School Classroom and Experience Through Prayer: An Empirical Study*, 13 AVE MARIA L. REV. 71 (2015).

¹³ See generally Barbara Armacost, *Celebrating Robert Cochran and the Future of “Embodied” Christian Legal Scholarship*, 47 PEPP. L. REV. 397 (2020); David S. Caudill, *On the Rhetorical Invention of a Failed Project: A Critical Response to Skeel’s Assessment of Christian Legal Scholarship*, 40 SETON HALL L. REV. 971 (2010); Lee J. Strang, *The Role of the Christian Legal Scholar: The Call for a Modern St. Benedict*, 20 NOTRE DAME J.L. ETHICS & PUB. POL’Y 59 (2006) [hereinafter *Modern St. Benedict*]; and James Cleith Phillips, *Law and Religion in U.S. Legal Scholarship: An Empirical Examination, 2008 – 2012*, 2014 BYU L. REV. 635 (2014).

¹⁴ See generally Wilkins, *supra* note 3.

¹⁵ See discussion accompanying notes 28 and 71-72 *infra*.

¹⁶ This impact may change over the course of time, as either the faculty member’s own faith or the religious aspects of the institution may change.

¹⁷ See generally Redding, *supra* note 1.

community, those who are active members of a different faith community, those who do not profess religious beliefs, and those who are hostile to religious beliefs¹⁸; and

- The place in religiously affiliated law schools for those who believe religion should not play a meaningful role in law school life.¹⁹

More intangibly, the relationship between the faculty and the mission of the school can have a significant impact on whether a specific law school is a good career “fit” for a prospective faculty member and whether that faculty member will find the vocation to teach at a particular law school to be fulfilling professionally, personally, and spiritually.

I am grateful to have had the invitation to reflect on what religious affiliation might mean for faculty hiring at the *Past, Present, and Future of Religiously Affiliated Law Schools* conference. What follows are reflections that consider not merely that question—important as it is—but also explore what happens *after* the hiring decision to make the vocation to teach at a religiously affiliated school a happy and, yes, holy one. This article will begin by examining what I believe to be the four primary types of religiously affiliated law schools. Then, it will briefly discuss some considerations for the hiring process. After that, it will explore some of the ways in which religiously affiliated law schools have both the opportunity and the obligation to support faculty who seek to live a full vocation to academic life in a religiously affiliated law school.²⁰ This article will conclude with some personal

¹⁸ See discussion accompanying notes 55-56 and 58-60 *infra*.

¹⁹ This last perspective can be held by those who hold religious convictions that may, in fact, be the same as those of the law school’s sponsoring religious entity but who “draw a sharp distinction between their professional roles as teachers and scholars . . . and the role of faith and the Church in their lives.” Sargent, *supra* note 2, at 174; see also Failing, *supra* note 9, at 722 (explaining the widely held perspective that “religion is a private, irrational matter that should be relegated to the family home and religious community, serving as a valuable motivator for ethical professional behavior but not otherwise significantly influencing law or legal institutions, including law schools”).

²⁰ A fruitful discussion of these same issues as they pertain to students, staff, and alumni is also worth having. I have limited the discussion here to faculty as that was the topic for the panel discussion at RALS. However, this is not to discount the importance of the law school’s other community members.

reflections on my three decades living that vocation at a religiously affiliated law school.

II. FOUR ARCHETYPES OF “RELIGIOUSLY AFFILIATED” LAW SCHOOLS

There are various ways in which an institution’s religious identity and mission might be characterized, and many have articulated ways to approach this central question.²¹ Indeed, “the level of religious identity varies greatly between law schools claiming a religious affiliation.”²² Before a hiring process can advance with integrity, and before potential faculty members can decide whether a particular law school is a good fit for them personally, professionally, and spiritually, it is important to understand, with honesty, which model best describes the particular school and its attitude toward its religious affiliation. It has been observed that “[t]he strength of the religious identity of each of these law schools, and the extent to which the religious identity affects the life of each law school, vary greatly. Religiously affiliated law schools frequently conflict with each other on theological, moral, political and social issues.”²³ My perspective is that there are, broadly speaking, four ways in which law schools view—and, therefore, live—their religious affiliation.²⁴

²¹ See generally Veryl Victoria Miles, *Faith-based Law Schools: Making Mission Matter*, 66 CATH. U. L. REV. 795 (2017); Irene Scharf & Vanessa Merton, “*Your Mission, Should You Choose to Accept It ...*”: *Taking Law School Mission Statements Seriously*, 56 Washburn L.J. 289, 303 (2017); Jerome Organ, *Missing Missions: Further Reflections on Institutional Pluralism (Or Its Absence)*, 60 J. LEGAL EDUC. 157 (2010) [hereinafter *Missing Missions*]; Jeffrey A. Brauch, *It Sounded Great in the Glossy Brochure . . . So Where Is It? Carrying out the Mission at a Mission Driven School*, 33 U. TOL. L. REV. 1 (2001); Fitzgerald, *supra* note 2, at 251 (arguing that, with respect to classifying law school missions, “[v]isions of Catholic law schools . . . can be said to constitute a spectrum. On one end of the spectrum are those visions that have positive attributes, but no readily apparent qualities that would distinguish the schools from their non-Catholic counterparts”); and Frank S. Ravitch, *Struggling with Text and Context: A Hermeneutic Approach to Interpreting and Realizing Law School Missions*, 74 ST. JOHN’S L. REV. 731 (2000).

²² Stewart & Tolley, *supra* note 8, at 141.

²³ Barkan, *supra* note 7, at 247.

²⁴ Although this conversation is limited to religiously affiliated law schools, parallel questions, of course, surround the identification of the mission of religiously affiliated universities. When a law school is part of a religiously affiliated university,

A. Religious Affiliation as a “Problem to be Solved”

One possibility is to view religious affiliation as a problem to be navigated, downplayed, or rebelled against. This first perspective may become more common as both students and younger faculty applicants come from a generation widely perceived to be “nones” who eschew formal religious affiliation.²⁵

This perspective may be manifest in a faculty candidate who declares that it would *not be a problem* to work at a religious institution. This view of religious affiliation may stem from different roots. One may be a view that religious affiliation is irrelevant to the study of law and that attention to this will consume time and resources better spent on other priorities.²⁶ Some may stem from fear that emphasizing enthusiasm for a particular religious affiliation may send an unwelcoming message to those who do not share that religious commitment. It may be rooted in the fact that religious tenets may be counter-cultural or proclaim teachings that are now politically or socially unpopular.²⁷

naturally the missions of the law school and the university are intimately and unavoidably intertwined.

²⁵ See Pojanowski, *supra* note 12, at 76 (noting that “[t]he pool of candidates to staff such a law school is even smaller, what with feeble catechesis, the waning institutional strength of the Church, and the increased secularization of American society and education. With most Catholic law schools following the ambient culture in the past fifty years, most faculty would be downright hostile, rather than merely indifferent to reorientation around natural law jurisprudence and the broader Catholic intellectual tradition.”).

²⁶ See Mengler, *supra* note 3, at 146 (“Some believe that because law school is a professional school and law students are adults, legal educators should principally focus on imparting knowledge about legal doctrine and policy and introducing students to the tools of the trade, the skills of the profession.”); *see also id.* (“[S]ome are highly dubious whether faith has anything whatsoever to do with becoming or living as a successful lawyer.”) and Smith, *supra* note 8, at 369 (“The absence of a substantial body of course materials, scholarly research, and courses in law schools from a religious perspective is not due to accreditation. In large measure, it is because schools, for a variety of reasons, have not encouraged faculty and students to engage in such activities.”).

²⁷ Most obviously, the Catholic Church’s consistent teachings on the sanctity of human life from conception to natural death run counter to the overwhelming political affiliations of most law school faculty members. *See generally Saints, Sinners, and Scoundrels*, *supra* note 9, at 56 (“Catholic doctrine contradicts prevailing views of the legal academy on a variety of subjects. . . . [M]any of these differences appear to encompass foundational moral questions.”) and Goforth, *supra* note 10, at 247 (arguing that there is a “shocking lack of ideological diversity in American law

It may be a desire to be admired in the secular academic world that drives prestige and rankings. This world may not place a premium on religious affiliation or may be actively biased against it.²⁸ It also may

schools,” and that this may include positions deemed “conservative” and held by some religions).

²⁸ *Saints, Sinners, and Scoundrels*, *supra* note 9, at 58 (“[B]ias against religiously affiliated law schools in the rankings would discourage such schools from manifesting their religious identities in many ways, including the hiring and evaluating of faculty candidates and professors. Unsurprisingly there is evidence that such bias exists.”); Sargent, *supra* note 2, at 183 (“[R]eligious discourse often is devalued, discouraged, or regarded with suspicion.”); Gerdy, *supra* note 8, at 985 (“[I]f a law school becomes too religious, it can lose its academic reputation”); Douglas Laycock, *Academic Freedom, Religious Commitment, and Religious Integrity*, 78 MARQ. L. REV. 297, 303 (1995) (“[D]esire for respect makes the faculty responsive to the elite secular culture”); Phillips, *supra* note 13, at 651 (“Whether in law reviews or in specialty journals, when legal scholarship treats religion positively . . . it ends up in a less prestigious journal. Since decisions of hiring and tenure can hinge on the prestige of the journals one has published in, this appears to put pro-religion scholars at a professional disadvantage.”); Stewart & Tolley, *supra* note 8, at 153 (“On occasion, religiously affiliated law schools have voiced concerns that that the ABA and the AALS have been at least insensitive to and at worst even antagonistic to the religious schools, particularly to their distinctive values and missions.”); Lynn Buzzard, *Religiously Affiliated Law Schools: Macro-Dynamics in Contemporary Culture*, 78 MARQ. L. REV. 283, 283-84 (1995) (attributing the “crisis of identity in religiously affiliated schools” to among other things, “the tremendous need for these institutions to gain social or political acceptance, or donations from foundations or businesses that cause them to water down their unique character”); *id.* at 287 (lamenting that “[I]deas that happen to be linked with a traditional religious point of view . . . are suspect and excluded. The marginalization of religion to the fringes, to the closets, to the private arena, works clearly against any sense of a vigorous religious law school.”); Bill Piatt, *State Bar Efforts to Deny Accreditation to Faith-Based CLE Ethics Programs Sponsored by Religiously Affiliated Law Schools*, 29 REGENT U. L. REV. 293 (2017); *Air in the Balloon*, *supra* note 3, at 47 (“Today it seems, most law schools are at best apologetic about their Catholic affiliation-- ‘apologetic’ . . . in the more contemporary sense of being embarrassed. Moreover, if they manifest some pride in this identity, it is only insofar as that identity can be translated into terms that are readily understood and accepted in the secular academy, hence the emphasis on clinics.”); Lee, *supra* note 2, at 255 (“A significant number of both educators and non-educators hold the view that a religious influence only deflects from the quality of a law school program.”); and Jack Crittenden & Julia Brunette, *Do Religious Schools Take a Hit in the U.S. News Rankings*, THE NAT’L JURIST 6-7 (Spring 2023) (discussing the role that bias may play in the low “peer assessment” scores of religiously affiliated law schools in the U.S. NEWS AND WORLD REPORT law school rankings formula).

reflect broader conflicts within the sponsoring churches themselves as they grapple internally with critical issues of our times.²⁹

B. Religious Affiliation as Quaint Historical Artifact

A second possibility is to view religious affiliation as a mere artifact from history without relevance in today's world. Many of the oldest American universities—including Harvard and Yale—were founded under religious auspices, but no longer claim religious identity except as part of their long-past histories.³⁰ More recently, religious communities in the United States founded universities and law schools to educate immigrants and provide means for them to earn livelihoods in their new home.³¹ With many more educational opportunities

²⁹ See, e.g., *Moral Controversy*, *supra* note 8, at 302 (“Catholics often disagree among themselves about what morality or justice requires with respect to one or another contested issue.”).

³⁰ See James P. White, *Religiously Affiliated Law Schools: Their Role in American Legal Education*, 78 MARQ. L. REV. 371 (1995) (“Indeed, the three earliest law schools, Yale, Harvard and Transylvania, were, at the time of their creation, law schools of religiously affiliated colleges.”); Lee, *supra* note 2, at 257 (“[R]eligious law schools may be qualifying as an endangered species. So many universities, not only in the United States but also throughout the world, began their existence with a religious affiliation, only to lose their spiritual anchorage. ...as they became more mature academic institutions.”); and Eisenberg, *supra* note 8, at 2 (“Many of the great universities of this country were started by religious organizations or churches and retain some type of connection to the founding religious body. However, those that are only historically or nominally religious make no effort to advance the religious affiliation or religious mission in most of their academic units. Thus, most people would not consider the law schools at Harvard, the University of Chicago, Duke, Yale or Northwestern to be ‘religiously affiliated.’”).

³¹ See *Saints, Sinners, and Scoundrels*, *supra* note 9, at 31 (“More often than not, Catholic law schools were established to provide Catholics with entry to the profession at a time when they were discriminated against by many law schools, or to buttress Catholic liberal arts colleges’ claims that they were evolving into universities.”); *id.* at 61 (noting that many Catholic law schools had as their initial motive “educating immigrant Catholics, providing access to the middle class through professional degrees, and bolstering Catholic colleges’ claims that they were emerging as universities”); Wilkins, *supra* note 3, at 413 (“In an earlier era, one of the unspoken missions of Catholic higher education was to provide educational opportunities and a pathway to the middle class for Catholics—especially Catholic immigrants.”); White, *supra* note 30, at 371 (“[A] number of religiously affiliated law schools were created, principally in urban centers. These religiously affiliated law schools provided an opportunity for entry into the legal profession and a means of upward mobility for America’s new immigrants.”); and *Law School Diversity*, *supra* note 10, at 332 (“Early

available today, this aspect of identity and mission may be mere explanation of the institution's past rather than its current identity or a vision for its future. This certainly may be a history celebrated with pride and gratitude as schools proclaim the tradition of their founding religious communities. However, this traditional affiliation may have little significant impact on the current lived experience at the institution.

C. Religious Affiliation as Benign Similarity to Secular Institutions

This approach takes a generally positive view of religious affiliation as a part of institutional identity. It views the mission of the law school as one directed toward training ethical lawyers committed to social justice and devoted to serving disadvantaged communities. These schools may identify their religious affiliation in a positive way as the motive or inspiration for these commitments. They often, with attention and care, hope to inspire students to use their training to advance the common good and devote particular attention to development of professional ethics and identity among the students they serve. These schools may also offer courses and activities that reflect their religious heritage, and they may make clinical education a central vehicle for fulfilling a religious mission of service to those in need. However, many of these priorities are similar to those found at most American law schools, including both public and secular private institutions.³² The *motivations* underlying those priorities may be

Catholic law schools arose to provide affordable legal education to the sons (and eventually daughters) of the Church and an academic alternative to law study by apprenticeship.”).

³² See *Response*, *supra* note 2, at 8 (“[A]n explicit commitment to justice certainly is not a sufficient marker of an authentic Catholic legal education. Many non-Catholic law schools tell the world that their mission is to educate students for justice.”); *id.* at 48 (“[T]he subject areas addressed in the clinics operated at Catholic law schools—poverty and public assistance, child and family law, immigration, criminal defense, and veterans’ benefits—while deserving of attention, are the same as those at their secular counterparts. With few exceptions, Catholic law school clinics do not serve clients or causes that are counter-cultural in a Catholic sense.”); and *Air in the Balloon*, *supra* note 3, at 43 (“[C]linical education cannot be the means whereby justice is promoted throughout the student body. . . . [C]linical education cannot be the distinguishing feature of Jesuit legal education since every law school in the country offers some sort of clinical program.”).

rooted in the religious orientation of the law school. However, the outward *manifestations* may be much the same.

D. Religious Affiliation as “a Filia”

A final approach is that of viewing religious affiliation through a more literal view of the term “affiliation.” “Affiliate” has its roots in the word “*a filia*” or “*to become a child of.*” Those law schools that take this view see themselves—in a variety of ways—as children of their sponsoring institutions. They view this as a central core of their identity in the intellectual, pedagogical, public service, and social arenas. They are committed to exploring how their religious traditions address the significant questions of our time, and they make the religious commitment an explicit part of their life. While not all members of the law school community are expected to be members of the sponsoring religion, schools that identify themselves as “*a filia*” often hope that there will be a “critical mass” of faculty from the sponsoring religion and that all members of the community will support and respect the mission of the law school—including its religious mission.³³

³³ See Boozang, *supra* note 2, at 8 (“While I believe it is essential to have a core group of faculty who are well educated in the Catholic intellectual tradition, one need not be Catholic to embrace or teach from this tradition. A school simply needs a critical mass to create an ethos and to influence the intellectual exchange.”); *Modern St. Benedict*, *supra* note 13, at 76 (“[T]o achieve its goal of a common understanding of the law, a sufficient percentage of faculty must attend to the common understanding such that it is the community’s understanding.”); *The Harvest*, *supra* note 10, at 771 (“[I]nstitutional recruitment of teachers, administrators, and other employees supportive of the mission of religiously affiliated universities is crucial to the ability of these schools to maintain their nature, character, and religious affiliation in a viable and healthy fashion.”); *Response*, *supra* note 2, at 34 (“[A] critical mass of the faculty at a Catholic law school should be practicing Catholics, and . . . other non-Catholic faculty should be knowledgeable about and supportive of the school’s mission. Ideally, Catholic members of the faculty would not simply be Catholic in name only, or simply in their faith and religious practice, but Catholic intellectuals—men and women whose perspective on law is drawn from the Catholic intellectual tradition.”); Morrissey, *supra* note 2, at 420 (“[A] college would need a critical mass of members committed to its outlook. . . . “[I]t would be appropriate to give special consideration in faculty recruitment to those candidates who show promise of scholarship from a Catholic perspective.”); and Sargent, *supra* note 2, at 187:

[T]he Catholic law school must include within its community, including its faculty, a critical mass of Catholics. This requirement by no means conflicts with the inclusive character of the Catholic

III. MISSION AND FACULTY HIRING AT RELIGIOUSLY AFFILIATED SCHOOLS

The question of law school mission is particularly important in faculty hiring. Out of fairness and justice to both the institution and prospective applicants, the law school's identity and mission—both in theory and in lived practice—should be clearly shared in the recruitment and hiring season. In broad strokes, this means conveying which of the four models, or which combination of them, is most descriptive of the school. On a more granular level, it means considering what the practical implications of that identity mean.

This is particularly important today. At the start of the 2022 faculty hiring “season,” faculty applications through the American Association of Law Schools (“AALS”) were lower than they have been in recent years.³⁴ This may have at least two impacts on faculty hiring at religiously affiliated law schools—impacts that will not be known for some time.

The smaller AALS applicant pool may mean that schools—responding to a dearth of candidates—will be tempted to appeal to more candidates by downplaying any part of their religious affiliation that may make them less desirable choices for candidates generally or for any specific candidate.³⁵

law school That law school invites people from all perspectives to become members of its community and to share in its commitment to unfettered inquiry, and asks only that its non-Catholic members be respectful of the institution's Catholic mission, and that they seek in good faith to find their own distinctive ways to contribute to the accomplishment of that mission. Nevertheless, there must be a core of Catholic faculty and students committed to that mission.

³⁴ See generally Karen Sloan, *Law Professor Applications Plummet as Law Schools Raise Their Sights*, REUTERS, Aug. 22, 2022 (available at <https://www.reuters.com/legal/legalindustry/law-professor-applications-plummet-law-schools-raise-their-sights-2022-08-22/>). For discussion of the law school faculty hiring process, see generally Markovic, *supra* note 11.

³⁵ See Sargent, *supra* note 2, at 183, noting that:

Catholic identity should not be downplayed or de-emphasized because some members (or potential members) of the community may find a frank expression of Catholic character uncomfortable. . . . Of course, there should never be a message that non-believers are unwelcome, that belief would be compelled, that indoctrination in Catholic faith is necessary, or that expressions of different or

On the other hand, this may mean that there are more direct applicants to law schools who reach out to specific law schools with a personal application rather than—or in addition to—engaging in the more generic, mass application process coordinated through the AALS Registry listings. Such applicants may select the institutions to which they apply based on their particular interest in what makes the school unique. Certainly, this may be a geographic preference or a subject matter strength. However, the applicant may also be intentionally seeking a specific type of religiously affiliated law school.

This is also a time in which the nature of legal education and the expectations of future law faculty may be different than they were decades ago. The COVID-19 pandemic has invited changes to legal education in ways that require rethinking the nature of law school communities.³⁶ At the same time, the state of religion in the United States is changing as fewer Americans report religious affiliation. This

dissenting views or beliefs is anything other than entirely appropriate. Similarly, the commitment to rigorous intellectual inquiry always should be defined as essential to the law school's functions. Nevertheless, the Catholic law school never should pretend that it is not an institution committed to Catholic beliefs and values, and it should proclaim its identity enthusiastically.

³⁶ See Rougeau, *supra* note 2, at 89 (noting that “the shutdown of the economy and the shift to online learning at our universities that followed . . . will transform the world as we knew it, and they require a renewed assessment of the future of Catholic law schools.”). These concerns were raised even prior to the COVID-19 pandemic—particularly in the wake of the 2008 financial crisis. See generally Scharf & Merton, *supra* note 21, at 303:

[L]aw schools are on the verge . . . of pressures for change so major they invoke terms like seismic, titanic, primordial, etc. The recent radical reduction or at least flattening in profit levels of most sectors of commercial law practice, combined with the shrinking of government and the defunding of public interest law, has made investing in legal education far riskier and less lucrative than in the past, and therefore less attractive to prospective customers. Entrepreneurs and innovators inside but mostly outside traditional law schools are carving out alternative pathways not dependent on the current model of legal education, either to a law license or to new forms of licensed, independent, professional legal work.

See also Moore, *supra* note 3, at 466-67 (“In the past thirty years, the state of American legal education has come under considerable criticism. The picture of U.S. legal education . . . is a system which reinforces a cynical, selfish, and materialistic set of values and never directly asks questions about values or justice.”).

phenomenon is particularly acute among younger Americans who constitute the primary demographic for law students and entry-level faculty.³⁷ Together, this points to an opportune time to look again at what life at a religiously affiliated law school may mean for faculty members.

In this climate, I believe that there are three critical considerations for faculty hiring at religiously affiliated law schools.

A. “Truth in Advertising” is an Essential Part of the Faculty Recruitment and Hiring Process

First, and most importantly, the school must clearly convey and express its identity and mission to all applicants during the faculty recruitment and hiring process.³⁸ Misrepresentation about these central matters is unfair to both sides.³⁹ This will require review of the law

³⁷ This is compounded by the fact that, according to reports, “[l]aw professors today are far less likely to believe in God than the general population, even compared to that segment of the population with graduate and professional degrees. Indeed, even compared to other professors, law professors are much less religious.” Lindgren, *supra* note 9, at 342-43. *See also id.* at 353 (“While one in four members of the general public report attending religious services at least once a week, only one in nine law professors report doing so.”) and *id.* (“[O]nly 4.4 percent of the general public agrees with the atheist statement: ‘I don’t believe in God,’ compared to a whopping 24 percent of law professors.”).

³⁸ *See* Fitzgerald, *supra* note 2, *passim* (describing the ways in which the websites of many Catholic law schools provide no indication of a distinct mission) and Lynn, *supra* note 11, at 108 (“The instinct to be all things to all people exists even at law schools with a distinctive mission, resulting often in mission statements that are buried in a sea of generalities and aspirations that would apply to every law school in the country. . . . [I]t should communicate the real mission to prospective faculty members in a forceful and intentional manner.”).

³⁹ *See* Failinger, *supra* note 9, at 734:

[L]aw faculty make a substantial reliance investment in their choice of law schools, and if they make a wrong choice based on bad information, it may be very difficult for them to find a new position at a place that is compatible with their understanding of their vocation. If there is indeed a religious ethos and basic set of expectations at a religiously affiliated law school, it should be conveyed to prospective faculty members so they can decide whether they are willing to ‘buy in’ according to the role that religious minorities play in that law school.

See also The Harvest, *supra* note 10, at 722 (“[T]he institution may not fully disclose its affiliation so that it attracts students and faculty who are not interested in attending

school and university's written mission statements⁴⁰ to be certain that they are current and that they accurately reflect the school's vision of its mission for the present and foreseeable future.⁴¹ A forceful critique of law school mission statements notes that there is "tension between clarity and inflexibility, candor and marketing concerns, and the specificity that fosters accountability as opposed to the generality that embraces a vague multitude of approaches to the law school endeavor."⁴²

or working at a religiously affiliated school. Far more tragic, however, are those instances where a student or faculty member or administrator applies for admission to or seeks employment at a school because this person believes that the school has a religious affiliation, only to discover however, that the religious tradition and affiliation are more myth than reality."); Laycock, *supra* note 28, at 311 ("[R]eligious institutions . . . [should] emphasize the good sense, if not the moral duty, of full and fair disclosure. This is not because religion is especially dangerous or has to be constrained with a disclosure requirement, but because disclosure is both better for the mission and fairer to those who will not value the mission. . . . You will get a larger number of malcontents and a larger number of people actively working to subvert the religious mission if you are not candid about what you are trying to accomplish."); Eisenberg, *supra* note 8, at 13 ("[I]t is essential that anyone being considered for a position at a religiously affiliated institution know the rules before accepting the job. . . . It is unfair and inappropriate for the institution to first hire someone and then, after the individual has been there for some period, inform that person that his or her work is not advancing, or is inconsistent with, the mission of the law school. The 'mission' cannot be a moving target, subject to either the whims of a given university's (or law school) administration or political vicissitudes. If the mission is clearly articulated, prospective faculty members can be expected to advance it."); and *Religious Academic Communities*, *supra* note 8, at 30 ("[D]isclosure is better than nondisclosure. If an academic institution departs from the usual norms of academic freedom, prospective faculty have a strong interest in knowing that fact before they commit a part of their life to the institution. Relocation is always costly, and especially so in an age of two-career families.").

⁴⁰ However, it has been pointed out that some law schools do not have robust, accessible mission statements. See *Missing Missions*, *supra* note 19, at 159 ("[A] significant number of law schools appear not to have a mission statement.").

⁴¹ See Brauch, *supra* note 19, at 1 ("We always want to be somewhat aspirational in the public descriptions of our schools, but those descriptions had better match reality as well.") and *Missing Missions*, *supra* note 19, at 159-60 ("[A] mission identifies a set of purposes and values that guide an organization and the members of the organization in making decisions and directing resources. Externally, a mission defines the organization for the public, providing a brand identity that attracts various constituents—faculty, staff, students, and donors.").

⁴² Scharf & Merton, *supra* note 21, at 291-92; see also *id.* at 301 ("[V]ery few law schools display their mission statements in prominent places, or at all; nor do they

Those who are involved in any stage of the hiring process—deans, provosts, hiring committee members, and faculty interviewers—should be prepared to provide honest answers to questions about both identity and mission. There may be debate about what the mission is, how it is perceived, and how diverse members of the community view it.⁴³ In addition, law school missions and identity may change over time. For example, a law school may have an historic mission but have aspirations to change it. Other schools may have strayed from an initial mission and desire to return to it in some way. If so, that ambivalence should be conveyed to the candidate. To misrepresent the institution’s understanding of mission is unfair to all parties as they make what is a high-stakes, potentially long-term decision for all.

Often, the phrase “hiring for mission” is used without a clear sense of what that may mean in any given hiring season or for any particular position.⁴⁴ It would seem obvious that, in a broad sense, all

feature them in publicity materials, make them available to prospective students/faculty/staff, or ever ascertain the extent of those groups’ familiarity with them.”).

⁴³ See Miles, *supra* note 19, at 801 (“[T]he process of creating a distinctive faith-based mission can be both challenging and uplifting. The challenge will be (1) in the diversity of opinions among faculty, students, and alumni about the relevance of the religious affiliation in the basic purpose of a law school to educate and train law students for law practice; and (2) how to distill these disparate views into a cohesive and user-friendly mission statement that harmonizes diverse voices into a consistent message of purpose.”).

⁴⁴ See Breen, *Jesuit Legal Education*, *supra* note 3, at 412 (“No matter how an institution defines its ambitions, talk of ‘mission’ inevitably leads to talk of ‘hiring for mission.’ Though awkward and potentially divisive, if a university is to have any hope of realizing its mission, such a discussion simply cannot be avoided.”); Failing, *supra* note 9, at 734 (“[L]aw faculties cannot honestly inform prospective members until they themselves actually talk about what being a religiously affiliated law school means to them. This . . . requires majority faculty members and others to be self-reflective and even self-critical about the ways in which their religious traditions might unconsciously affect their approach to law school mission and governance.”); *Air in the Balloon*, *supra* note 3, at 63-68 (discussing hiring for mission at Jesuit institutions); Eisenberg, *supra* note 8, at 10 (“‘Hiring for mission’ is frequently misunderstood . . . as code words for some kind of right wing political agenda.”); *id.* at 11 (“[H]iring for mission’ has different meanings at different religiously affiliated law schools.”); and *id.* at 12 (“[A]lthough some view ‘hiring for mission’ as discriminatory, is it really any more discriminatory than basing a hiring decision on scholarship, practice experience, area of specialization, or even law school grades? Some in legal education ‘discriminate’ against the graduates of certain law schools, refusing to even interview such people for fear that it will tarnish the reputation of the institution.”).

who spend their lives at a particular law school would support the general mission of the place to which they devote their professional lives and energies.⁴⁵ Yet, in a more specific sense, this requires a more explicit discussion about what, if anything, the religious mission will mean for a faculty member's day-to-day life at the school.

B. Candidates Should Have Ample Opportunity to Reflect on the Law School's Identity and Mission and How They Will Contribute to It

Just as law schools have an obligation to share with candidates, openly and honestly, how they perceive their identity and mission, so too should candidates consider how they might contribute to the mission. What form this reflection will take and how specific it might be will certainly depend on the law school's sense of its mission. A faculty candidate should understand what role he or she is willing and able to play in supporting the mission of the law school.

Certainly, candidates may be asked questions about mission during the interview itself. This can offer an opportunity for discussion between the candidate and the interviewers about what the mission means and how the candidate may contribute to it.⁴⁶ These conversations can be the start of a useful dialogue. They may be particularly insightful to any candidate who observes that various members of the

⁴⁵ See Mengler, *supra* note 3, at 145 (“[O]ur capacity to achieve and maintain a vibrant faith-based identity is linked to recruiting and retaining faculty and staff who are *all*, each and every one, dedicated to this mission.”) and Garnett, *supra* note 3, at 68 (“[W]hatever the Catholic mission of a Catholic law school is, it will not be realized without a clear-eyed, intentional, and proactive focus on identifying, hiring, mentoring, forming, and retaining committed faculty—of all faiths and none.”).

⁴⁶ See *The Harvest*, *supra* note 10, at 777:

Questions designed to ascertain the candidates' views on personal understanding of the history and mission are to be raised along with other questions seeking answers to how each candidate envisions his or her own personal and substantive contributions to this mission. While these questions should avoid what might appear to be some test of orthodoxy, they should also shun polite, diplomatic questions which avoid getting to the heart of the issue and the genuine beliefs of the candidate toward the institution's religious identity and mission regardless of that person's own religious affiliation.

hiring committee, faculty, or administration have differing views *vis-à-vis* those contributions.

However, it may be more productive if candidates are asked to reflect on this in writing before or after the interview. This should result in more fruitful consideration than is possible in a rapid response to a question tossed out, unexpectedly, in an interview.⁴⁷ As religion can be, for many, a deeply personal and heartfelt matter, it may be difficult to respond to mission questions “on the spot” without having had time to reflect in advance.

This can also provide an important, helpful opportunity for self-reflection on the part of the candidate himself or herself, particularly if written background information about the school’s understanding of its mission is provided to the candidate.⁴⁸ This may include the law school and university mission statements, any information prepared specifically about the religious aspects of that mission, a history of the institution, and any documents from the sponsoring religious institution that govern its universities.⁴⁹ Obviously, requiring such a

⁴⁷ See Toben, *supra* note 6, at 164, explaining that at Baylor Law School:

Before a campus interview, we request that the candidate identify his or her denominational affiliation or religious preference and describe the nature of their religious involvement including participation in a church, parish or synagogue. We also ask the candidate to explain how he or she understands the link between faith and their work in the profession and the academy. We consider it important that there be a clear understanding between our school and the potential faculty member that in our environment faith matters.

See also Lynn, *supra* note 10, at 109 (arguing that in faculty candidate interviews, “[i]t is then necessary to ask the faculty prospects about their understanding of the mission and their interest in supporting it. . . . Their responses, even if awkward or ill informed, will demonstrate whether they have thought about the mission, at least indicating that they respect it and take it seriously.”).

⁴⁸ See *Why Rock the Boat*, *supra* note 2, at 936 (“Finding law faculty who have the background, the interest, and the guts to draw out the intellectual connections—‘hiring for mission’—is perhaps the most daunting task for any school . . .”) and *Jesuit Legal Education*, *supra* note 3, at 413-14 (“[T]he school must have faculty who are willing to take up this mission, embrace it, and carry it forward. . . . [T]he faculty needed to advance the mission need not be Catholic. . . . Still, to be a true colleague requires genuine collaboration in support of the mission, not passive indifference, let alone veiled or open hostility.”).

⁴⁹ For example, in Catholic higher education, the operative document would be Pope John Paul II, *Ex Corde Ecclesiae* [Apostolic Constitution of the Supreme Pontiff John Paul II on Catholic Universities], Aug. 15, 1990 (*available at* https://www.vatican.va/content/john-paul-ii/en/apost_constitutions/documents/hf_jp-

written reflection may deter some candidates from applying as it adds an additional layer of work to the application process. However, the advantages to both candidate and law school may outweigh this cost if it brings both to a better understanding of what their relationship may be.

C. Avoid False Dichotomy Between Creed and Quality in Selecting Faculty Candidates

Third, “[a] faith-based program must realize that religious piety is no substitute for professional excellence in teaching, learning, scholarship or practice.”⁵⁰ That is, a religiously affiliated law school owes its students a faculty who provides the same quality preparation for the practice of law that any other law school can offer. To do otherwise is a disservice to students, to the legal profession, and to the clients they will serve.⁵¹

Thus, religiously affiliated schools must resist two temptations. One would be to view a candidate’s professed religious identity as a mere “credential” to be used in lieu of strong substantive qualifications

ii_apc_15081990_ex-corde-ecclesiae.html) and documents promulgated pursuant to it by the United States Conference of Catholic Bishops (“USCCB”), (*available at* <https://www.usccb.org/committees/catholic-education/application-ex-corde-ecclesiae-united-states>). For further discussion of this, see generally Rev. Andrew L. Anderson, J.C.D., *Ex Corde Ecclesiae: Obstacle or Opportunity for Catholic Affiliated Law Schools?*, 34 GONZ. L. REV. 103 (1999) and Robert J. Araujo, *Ex Corde Ecclesiae and Mission-Centered Hiring in Roman Catholic Colleges and Universities: To Boldly Go Where We Have Gone Before*, 25 J.C & U.L. 835 (1999).

⁵⁰ Toben, *supra* note 6, at 168. See also Boozang, *supra* note 2, at 6 (“In retrospect, the conversation was often warped by the false premise that a law school had to choose between being Catholic and being intellectually rigorous”).

⁵¹ See Sargent, *supra* note 2, at 187:

There should never be any desire (or need) to compromise standards of excellence in hiring faculty or admitting students in order to recruit more Catholics It does mean there should be an attempt to search out and recruit outstanding candidates whose Catholic identity will contribute to the law school’s mission” Stating that “[i]dentification as a Catholic obviously should not be a sine qua non for hiring; quality standards should never be compromised, and goals for gender, racial and ideological diversity should be pursued as vigorously as ever, but the importance of preserving a critical mass of faculty whose Catholic identity will help preserve the law school’s Catholic identity should not be forgotten.

in the traditional areas of research, teaching, and service potential.⁵² Despite a candidate's enthusiasm for the religious mission of the law school, if there are doubts about the candidate's ability to succeed in the educational mission of the school, that candidate's mission commitment alone should not be allowed to overcome that deficit.

The other temptation may be to sacrifice interest in mission to attract qualified candidates in a belief that commitments to both mission and to qualifications cannot coexist.⁵³ This may be tempting in seasons with a dearth of faculty candidates. It may also arise if commitment to mission, or the articulation of that mission is construed too narrowly, thus excluding too many qualified candidates. However, given the long-term nature of a tenure track appointment, a temporarily small candidate pool should not tempt schools to hire candidates with complete disinterest in or hostility to the school's mission.⁵⁴ Instead, this may indicate that more aggressive outreach to applicants and better articulation of mission is necessary.

⁵² In addition, "merely counting the heads of nominally Catholic faculty members misconstrues the point of hiring for mission and is discriminatory in a decidedly non-Catholic way." *Air in the Balloon*, *supra* note 3, at 72.

⁵³ See Buzzard, *supra* note 7, at 279 ("[A] Christian law school strives for excellence in every facet of its life. It will never see a conflict between its Christian commitment and its commitment to excellence in educational tasks, public relations, building financial resources, servicing the profession, placement, or in faculty selection."). See also *Saints, Sinners, and Scoundrels*, *supra* note 9, at 33-34:

[T]oday's faculty selection processes at the vast majority of Catholic law schools . . . are virtually identical to those of secular schools. Candidates are evaluated chiefly on their academic pedigree, the school's curricular needs, and, perhaps most importantly, perceived potential for scholarship that will be valued by the secular professoriate. This, in turn, has resulted in large numbers of tenured law professors at Catholic law schools who publicly dissent or are openly indifferent to Church teaching, particularly in the area of sexual morality.

⁵⁴ See *Religious Academic Communities*, *supra* note 8, at 30 ("When a departmental faculty at a religious university is recruiting a 'hot' secular prospect, and the prospect asks if the institution's religious commitments are ever a problem for the faculty, there is great temptation to assure him that religious commitments will never affect him or make any demands on him.").

D. Seek Different Contributions to Mission from Different Members of the Faculty

Fourth, and related to all three of the questions raised above, the school should anticipate different ways in which faculty members may contribute to the mission of the law school. This will include consideration of the contributions sought from those who are not of the same religious tradition, those who profess no religious belief, those who are unsure of their faith commitments, and those whose fields vary in their degree of relationship to the religious mission of the school.⁵⁵

Perhaps an analogy to the medical model may make this point clearer. If someone were assembling a medical team to care for her physical well-being, she should demand of all an enthusiastic commitment to preserve and promote her health in all ethical and medically sound ways.⁵⁶ Any physician not committed to that core mission should not be treating her. The ability to fulfill this commitment must be reflected in both technical medical competence and in less tangible qualities such as the ability to communicate, compassion, responsiveness, bedside manner, and availability. However, the contributions of her cardiologist, dermatologist, ophthalmologist, psychiatrist, obstetrician, orthopedist, and neurologist will all be distinct. The specific qualities that she seeks from each and the likelihood that their work will raise deep moral questions will vary.

In much the same way, anyone assembling a faculty team for a law school should seek those with an enthusiastic commitment to preserve and promote the mission—or “health”—of the law school. However, the specific ways in which each contributes to and demonstrates this commitment will vary, just as the contributions of an ophthalmologist, orthopedist, and obstetrician are truly distinct.

⁵⁵ See Ledewitz, *supra* note 7, at 285 (“[A] law school is not the Church. The decision of a religious denomination to sponsor a law school, which will be open to students of all religions and no religion, implies a dimension of secular concern.”) and *Idea of a Catholic University*, *supra* note 2, at 343 (“Maintenance of a complex culture is a complex matter, and [it is] easy to imagine that a particular non-Catholic candidate/applicant, even a particular non-religious candidate/applicant, will contribute much more to maintenance of some aspect or aspects of the desired culture—perhaps an aspect that at the moment is in special need of reinforcing—than will a particular Catholic candidate/applicant.”).

⁵⁶ As part of this, the patient should be sure that her physicians know and understand her ethical values and beliefs and are willing to support them.

IV. SUPPORT FOR FACULTY DEVELOPMENT AT RELIGIOUSLY AFFILIATED LAW SCHOOLS

It would be a mistake, however, to focus a law school's attention exclusively on the hiring process. It is equally important to support faculty members as they navigate how to participate in the law school's mission once they accept an offer to teach at a religiously affiliated law school. Law schools often have initiatives to assist faculty members develop as effective teachers and scholars through such things as mentoring, pedagogy conferences, research colloquia and workshops, and research assistance provided by library staff and student research assistants, to name but a few examples of such initiatives. Similar attention should be paid to assisting them in discerning how best to participate in the mission of the law school they have joined. This can take many forms depending on the culture of the school and the needs of the community. However, there are four areas that may be worth pursuing as faculty is supported not merely in the job or profession of law professor, but also in that vocation.

A. Consider Orientation Programs that Delve Deeply into Mission and Meaning

Schools should consider how and to what extent they provide an effective faculty orientation to the religious identity and mission of the law school. This may be something undertaken by the law school alone or in conjunction with the wider university. This should be an opportunity for faculty—particularly new faculty—to learn about the sponsoring religion, its intellectual tradition, and the ways in which that tradition can be brought to bear on questions of interest to legal scholars. Certainly, new faculty members are overwhelmed with many obligations as they begin their lives as legal academics. Hopefully, the intellectual curiosity that drew them to teaching law and the interest in a mission that drew them to a religiously affiliated school will also embrace the chance to learn more and explore the rich connections between faith traditions and law.⁵⁷

⁵⁷ See *Air in the Balloon*, *supra* note 3, at 72-75 (describing the contours of a faculty colloquium that would acquaint faculty “to the Catholic intellectual tradition and explore ways in which it might be introduced into the curriculum.”).

There may be qualms about whether a robust orientation into a specifically religious intellectual life would be unwelcome as indoctrination. Concededly, this could be a danger if mismanaged. Indeed, even if unintended, “it is virtually impossible for limited and sinful human beings to participate in a ritual community without creating a divide, however modest, between insiders and outsiders, no matter how gracious and welcoming the community may strive to be.”⁵⁸ However, it is equally unfair to expect anyone to discern how to support a mission without fully understanding what that may mean. So often, misinformation, shallow commentary, and “hot takes” of dubious accuracy shape contemporary discussion of religious perspectives on important questions—especially controversial ones. A successful orientation should give faculty the chance to learn together and delve into discussions that often have no other forum.

It is highly likely that even those who are from the same faith tradition as the school are not steeped in the way their faith intersects with law.⁵⁹ For many, any formal religious education they may have had ended in their youth—not in adulthood when they face the important questions addressed in law school.⁶⁰ While unfortunate in many respects, this reality should help mitigate concerns about having

⁵⁸ Failing, *supra* note 9, at 729. See also Sargent, *supra* note 2, at 181 (“[A] Catholic university and law school can serve its religious mission by welcoming those outsiders of its faith, both as students and faculty colleagues, into its community. Dialogue with those outside the Catholic faith tradition would be fruitful. . . .”) and *Response*, *supra* note 2, at 33 (“[A]n excellent Catholic law school would also include non-Catholic, mission-fit faculty from other religious traditions, and none at all.”).

⁵⁹ See *Air in the Balloon*, *supra* note 3, at 69 (“[E]ven as educated American Catholics are committed to some general notion of the Christian faith and to the community of believers who gather in Christ’s name, they remain largely ignorant of both the content of that faith and the nature of the Church. . . . The absence of proper formation is in fact a species of malformation. Nature abhors a vacuum and so young Catholics tend to be formed by the culture that surrounds them.”).

⁶⁰ See Sargent, *supra* note 3, at 173 (“Catholic, nominally Catholic, and non-Catholic members of the community will be familiar (or unfamiliar) to varying degrees with Catholic thought and values and their possible relevance to legal education and scholarship. Workshops, seminars and open, frank discussions of Catholic thought should create an informed basis for exploring the meaning of Catholic identity for the law school.”). For an added perspective, see Failing, *supra* note 9, at 736 (“[M]ajority law faculty members need to educate themselves about other religions so they can have at least minimally informed conversations with their colleagues about how their faith traditions influence their work.”).

“insiders” and “outsiders” in the conversation since all will be learners to some degree

Orientation should also include the opportunity for faculty to learn how other faiths address critical questions and to see the similarities and differences between them. Furthermore, it should address philosophical and historical views so that the orientation is a well-rounded approach to the deep questions that religiously affiliated institutions are uniquely able to explore.

B. Develop Ways to Support Faculty Members’ Spiritual Lives

One commentator has noted that, with respect to law students, “there ought to be professional schools that assist students of faith to integrate that dimension of themselves into their professional character and identity. . . . [C]haracter formation, both personal and professional, is not ever over, that human growth in God’s image is a life-long process.”⁶¹

If this is a proper role for religiously affiliated law schools to play with respect to students, a similar support might be offered to faculty members seeking to develop their spiritual lives as they pursue their vocations to teach in religiously affiliated law schools.⁶² Again, this can take many forms, but it can include the following:

⁶¹ Mengler, *supra* note 3, at 149. *See also* Grenardo, *supra* note 12, at 83-84 (“Law students look to their professors to model how they should conduct themselves, which includes how to act professionally, how to dress, and how to communicate effectively. Law students also look to their professors to see if, and how, law professors can stay true to their religion while still being lawyers. When students witness their law professor praying, they understand that they need not abandon their religion, values, or morals when they become lawyers.”); Lucia A. Silecchia, *Integrating Spiritual Perspectives with the Law School Experience: An Essay and an Invitation*, 37 SAN DIEGO L. REV. 167 (2000); and Scholla, *supra* note 4, at 1218 (“Jesuit [legal] education has made an effort to integrate the academic and religious formation of its students—a task that has always been difficult and remains so today.”).

⁶² *See* Toben, *supra* note 6, at 159 (“[A]t least some faculty members and students are drawn to our programs because they see opportunities for personal and professional growth that are specific to the faith mission (just as others are, no doubt, ‘turned off’ by an institutional faith mission). This cohort seeks and expects their experience in the law and within the law school environment to unfold among others who not only have a similar moral and ethical world view, but who also draw on a divine power, presence, and revelation to inform that world view.”); McHugh, *supra*

- Offering the opportunity to engage in worship at the law school—both in the tradition of the law school and in ecumenical ways;
- Encouraging reading groups, discussion groups, short retreats, or other opportunities to discuss what it means to teach law as a vocation;
- Addressing the family and childcare commitments faculty members have in ways that are consistent with the values professed by the law school’s religious affiliation;⁶³
- Creating, within the law school, a dedicated space for faculty—and, indeed, the entire law school community—to pause for prayer in the midst of busy or difficult days;⁶⁴

note 7, at 577 (“The religiously affiliated law school can provide a context of respect for religious values and traditions, that is, a religious-friendly environment for the study of law.”); *Modern St. Benedict*, *supra* note 13, at 71 (“Christian legal scholars must first work to build communities of virtue. A community of virtue is a group of people who together share a common vision of the good. They have essentially similar answers to questions regarding the meaning of reality, what it means to be human, and how one attains integral human fulfillment. Central to this common vision is the role of virtue, helping the individual achieve his end: happiness in this world and Beatitude in the next.”); Aldave, *supra* note 2, at 295 (“We have the opportunity to live our religious faith openly and authentically, and to demonstrate that it not only can coexist with intellectual and professional excellence, but can inspire us to be all that we can be, and to do all that we should do.”); *Jewish Perspective*, *supra* note 4, at 18 (“The Law Center provides a service to the Jewish community by providing an atmosphere where people may observe the Jewish faith while they pursue a legal education.”); and Gordon, *supra* note 7, at 151 (“Many students and faculty members choose to study or work at religiously affiliated law schools because those schools provide an environment that is congenial to religious belief For many religious people, being at a school where they do not have to check their religious identities at the door can be a liberating experience.”).

⁶³ For a critical analysis of this question, see generally Elizabeth R. Schlitz, *Motherhood and the Mission: What Catholic Law Schools Could Learn from Harvard About Women*, 56 CATH. U. L. REV. 405, 448 (2007) (“Catholic law schools must examine how their practices compare to . . . best practices. . . . In light of the Church’s teachings on women and families, any justifications for gaps between the best practices and the practices of Catholic law schools must be examined skeptically and closely.”).

⁶⁴ For a fuller discussion of prayer space in religiously affiliated law schools and their importance, see generally David L. Gregory, *Where to Pray? A Survey Regarding Prayer Rooms in A.B.A. Accredited, Religiously Affiliated Law Schools*, 1993 BYU L. REV. 1287 (1993).

- Encouraging faculty to participate in religious activities sponsored by the university's campus ministry office or exploring whether a chaplain may be available to work with the law school community—including faculty members;⁶⁵
- Identifying faculty members willing to speak with new faculty about the ways in which they integrate their faith into their vocation as law teachers; and
- Welcoming new suggestions for the ways in which faculty members might be supported in their spiritual lives as well as their academic lives.

Many faculty members may not seek such spiritual support within the law school. Those who are teaching in a city where they or their families are already members of a vibrant religious congregation could already have the spiritual support that they need. Those who are not of the same tradition as the sponsoring school may seek spiritual care from their own congregations, while others may want to keep the personal aspects of their faith more private. Yet, even they may seek opportunities to consider specific ways in which their faith and their professional lives are connected. This will be especially true for faculty who believe “faith must constantly inform and enrich our professional activities”⁶⁶ and who seek the strength of spiritual support in their workplace. This expectation seems reasonable at a religiously affiliated law school.

C. Develop Ways to Support the Faculty’s Intellectual Life That Are Unique to Religiously Affiliated Law Schools

As members of academic communities, faculty at religiously affiliated law schools will, naturally, seek to develop intellectually with respect to both research and teaching. Law schools with a religious affiliation should do all that their counterparts do to support faculty in

⁶⁵ See Morrissey, *supra* note 2, at 421 (“Campus liturgies and first-rate programs of psychological and spiritual counseling can also make Catholic law schools special places from which the faith community’s support can prepare students and faculty for their difficult work.”).

⁶⁶ Smith, *supra* note 7, at 54.

these critical areas, particularly in their early years. However, there are some additional opportunities that religiously affiliated law schools have to encourage those who want to link faith and reason in the research, scholarship, and teaching that are the core of the law school enterprise.⁶⁷

1. *Research and Scholarship*

At its heart, law schools are academic institutions with an intellectual mission—to probe the most intricate legal dilemmas, propose solutions, evaluate the merits of various approaches, and shape legal developments. Successful faculty members contribute to this rich discussion when they produce quality scholarship in their fields of expertise. Faculty at religiously affiliated law schools should be no different in their commitment to high-quality scholarly inquiry. Most of them will, like their counterparts at any law school, choose to write in their substantive areas of interest.

However, religiously affiliated law schools should also support scholars interested in faith perspectives on law and the intellectual traditions from which those perspectives spring. There are inquiries that faculty members can freely undertake in unique ways at religiously affiliated law schools.⁶⁸ Whether it is through funding speaking

⁶⁷ See *Air in the Balloon*, *supra* note 3, at 44 (“[T]he school’s Jesuit and Catholic identity must be located at the heart of the academic enterprise itself: in the classroom, in the law school’s curriculum, and in the research and other intellectual work supported by the school. To banish this identity to the periphery, to the non-academic activities of the law school, would ultimately render that identity meaningless—Catholic window dressing on an otherwise secular institution.”).

⁶⁸ Others have made a similar observation. See, e.g., Ledewitz, *supra* note 7, at 233 (“[A] religious law school retains the capacity for full normative engagement.”); *Jesuit Legal Education*, *supra* note 3, at 407 (“[E]xposure to the Catholic intellectual tradition means an encounter with ideas—ideas that often challenge the dominant conception of justice embodied in American law.”); *Modern St. Benedict*, *supra* note 13, at 82 (“Ideas matter, and it is through scholarship that the Christian vision of the law can best be articulated, refined, and offered to the legal and broader publics.”); Sargent, *supra* note 3, at 184 (“[E]ncouragement should include full support for faculty whose scholarship expresses a religious perspective.”); Buzzard, *supra* note 7, at 272 (“A Christian law school should provide the locus and stimulus for legal scholars within the Christian tradition to seek and develop through research and collegial exchange an understanding of the relationship between Christian faith and law. . . . Such an understanding will serve the church, professionals, and society in its quest

engagements at conferences, or offering summer research grants, or advising faculty members preparing for promotion or tenure, the law school should do all that it can to encourage and support scholarship on matters of faith and law. Certainly, scholars can, and do, engage in this research at secular law schools. But, if religiously affiliated law schools are to accomplish their intellectual mission and make unique religious contributions, faculty interested in such matters should be encouraged and supported. This is particularly true in the contemporary climate of skepticism about the value of religious inquiry.⁶⁹

There may be some constraints⁷⁰ that pose deep-seated challenges—particularly for faculty members writing in controversial areas and in opposition to the tenets of the faith sponsoring their school.⁷¹ However, if religiously affiliated law schools do not take the lead in

for a just society.”); and Eisenberg, *supra* note 8, at 14-15 (“[A] religiously affiliated institution can offer academic freedom greater than at a public institution because we are free to discuss the religious, moral, and spiritual aspects of what we teach, without fear or violating the rights or sensitivities of our students.”).

⁶⁹ See *Idea of a Catholic University*, *supra* note 2, at 327 (“There are, after all, too many institutions of higher learning that, as a fundamental part of their basic culture, dismiss religious questions peremptorily and even contemptuously and repress the pursuit of intellectual projects from religious perspectives or for religious reasons.”).

⁷⁰ See, e.g., Fitzgerald, *supra* note 2, at 275 (“Law professors can still search for truth and exercise academic freedom within a very large area; the only requirements are that they stop short of obvious disrespect of Church teaching and that they exercise this freedom within the confines of the truth and the common good.”).

⁷¹ See Carmella, *supra* note 3, at 20 (“A law school is not the Church, just as a university is not the Church. They are of course related, but distinct. . . . Navigating the line between the Church and law school has been a challenge from the beginning of Catholic legal education. . . . Law faculty scholarship does not need a theologian’s *nihil obstat* or a bishop’s imprimatur”); *id.* at 21 (“[T]he specter of censorship (overt or subtle) could shut down various avenues of scholarly exploration that are fully consonant with the intellectual tradition.”); *Why Rock the Boat*, *supra* note 2, at 927 (“Some law faculty members are fearful, or at least uncomfortable, with an explicit discussion of how religious values might be integrated into the substantive legal curriculum. Some perceive that such discussions will result in one’s school being associated with an aura of religious indoctrination.”); Toben, *supra* note 6, at 165 (“Each faculty member’s comfort level in dealing with faith perspectives differs”); and *Jewish Perspective*, *supra* note 4, at 19 (“If questions are raised, and the debate involves rational argument in pursuit of the truth, dissension should be tolerated. It seems perfectly appropriate for a faculty member to raise contrary views in a law review article or at a faculty symposium. Leading a demonstration of one sort or another might be a different matter.”).

supporting this type of scholarly inquiry, the public discussion will be much poorer.⁷²

2. *Teaching and Pedagogy*

The second aspect of the faculty member's intellectual life is teaching. Here again there are opportunities unique to religiously affiliated law schools. Many religiously affiliated law schools were founded to educate working class and immigrant students.⁷³ The mission of teaching as service is still a powerful motivation for many who teach in religiously affiliated schools.

However, at religiously affiliated law schools, faculty members have additional opportunities as teachers that may not exist elsewhere. They might explicitly integrate faith perspectives in their classes to the extent it is appropriate and the faculty member is competent to do so.⁷⁴

⁷² It is also true that similar limitations may exist at other institutions. See Eisenberg, *supra* note 8, at 14, acknowledging both that “the religious affiliation of a sponsoring institution may indeed limit ‘academic freedom’ in its broadest sense,” and that “[p]olitical pressures in a public institution can have an enormous chilling effect on the academic or personal freedom of a faculty member.” For fuller treatment of academic freedom in Catholic higher education generally—and not merely in the law school context—see generally John M. Breen & Lee J. Strang, *Academic Freedom and the Catholic University: An Historical Review, a Conceptual Analysis, and a Prescriptive Proposal*, 15 U. ST. THOMAS L. J. 253 (2019).

⁷³ See Rougeau, *supra* note 2, at 91-92:

Catholic colleges and universities in the United States were for the most part created to support the needs and aspirations of the marginalized immigrant Catholic newcomers to American society. . . . These schools pursued a Catholic project of aggressive engagement with the world through the education and assimilation of the faithful into a burgeoning new nation. . . . It strikes me as very ‘Catholic’ to take on the task of educating marginalized members of society, offering them a means to seek a more fully human existence in a new country, and sending them into the mainstream with the hope that they will be agents of social and cultural transformation.

⁷⁴ See Mary C. Scarlato & Lynne Marie Kohm, *Integrating Religion, Faith, and Morality in Traditional Law School Courses*, 11 REGENT U. L. REV. 49 (1999). But see Brauch, *supra* note 19, at 3:

Some have theological training; others have, through their own reading and study, given a great deal of thought to the integration of faith and law. . . . But others of us are fairly new to the endeavor.

Many of law's most intractable problems and deepest questions about justice, mercy, duty, the common good, virtue and evil are not unique to our day. Rather, they are modern variations on problems that have plagued humanity through the centuries. The intellectual traditions of many faiths have grappled with these questions and will provide insights to enrich discussion of these issues when they arise.⁷⁵ Indeed, "[l]egal education in . . . search for truth . . . goes beyond the ordinary law school objective of developing competent and ethical practitioners. A law school in this tradition studies the laws and regulations, but also the deeper values of the society that become reflected in the particular laws at a particular time."⁷⁶

Faculty may also welcome conversations with students about using the law to build a better society and the chance to approach these conversations with an explicitly religious perspective.⁷⁷ Not every

This poses at least two major dangers. The first is that we do very little real integration. We might simply provide traditional legal training with a shallow religious veneer so we can say we have followed through on our promise. The second is that we integrate faith and learning badly. We might look at scripture in a superficial way, find some seemingly relevant verse, and apply it with little relevance or understanding.

⁷⁵ See Moore, *supra* note 4, at 470 ("I recommend that . . . jurisprudential issues be woven into the fabric of the legal curriculum. There [may be] many ways to integrate a philosophical or even a theological component of justice, depending on the course subject, the professor's comfort level and expertise, and the number of students in the class."); *Jewish Perspective*, *supra* note 4, at 18 ("In a religiously-affiliated law school, it seems appropriate to expect teachers to raise issues of faith and morality, particularly teachers who are of the same religious affiliation as the sponsors of the law school."); and *id.* at 18-19:

At more diverse religiously affiliated law schools, a discussion of issues of faith and morality might be considered a form of proselytizing. Of course, it all depends on how these issues are raised. Even in a more diverse school, students who enroll and faculty members who are hired, know the mission of the law school in advance. It should not come as a surprise or inhibit free and open discussion if issues of faith and morality are discussed in traditional law school courses.

⁷⁶ Moore, *supra* note 4, at 460.

⁷⁷ See, e.g., *Right Relationship*, *supra* note 7, at 593-94 ("As God's disciples, we are asked to cooperate with others so that we can influence in a positive and faithful way, the structures of society where decisions are made and values are shaped. Most of our personal work in this regard is indirect: we are teachers. Yet, as teachers, we spend much of our time working with those who will be shaping the future."); *id.* at

student will seek this perspective—or welcome it—but the chance to do so should be an ordinary part of life at a religiously affiliated law school.

More intentionally, the curriculum at a religiously affiliated law school should include courses that explicitly focus on the law school's religious identity and mission. This will not only satisfy the intellectual curiosity of students who may be seeking this at a religiously affiliated law school. It will also afford interested faculty members the opportunity to delve more deeply into their religious interests by teaching courses in religious intellectual traditions.⁷⁸ This may be a

596 (“Teachers of law students, who will enter a powerful and influential profession after they graduate, prepare tomorrow’s thinkers, business leaders, lawmakers, power brokers, and other teachers.”); Toben, *supra* note 6, at 161-62 (“[W]e are not merely preparing our students for careers or professions but are instead seeking to guide them in developing a sense of vocation—a passion for whatever we are led to do in life and in our work.”); Mary C. Scarlato & Lynne Marie Kohm, *Integrating Religion, Faith and Morality in Traditional Law School Courses*, 11 REGENT U. L. REV. 49, 49 (1998-99). (“[I]f religious law schools . . . integrate faith in traditional law school courses, law schools may need to prepare for a revolution – a revolution of virtue in the legal profession. Teaching at a religiously affiliated law school means preparing students for their spiritual calling to serve in the legal profession.”); Silecchia, *supra* note 61, at 192 (“In law schools, much is done – and rightly so – to train would-be lawyers to be knowledgeable, competent and ethical. Yet, there is more to sound practice than this trio of virtues. A fourth intangible element is none other than the spirit that should animate the work that lawyers do.”); *id.* (“[S]uccessful integration of spiritual perspectives in law school requires a willingness on the part of law school faculty to discuss these matters with students in formal or informal settings.”); Gordon, *supra* note 7, at 152 (“[T]o the extent that the professors are known to be persons of religious conviction, they provide examples to the students of the proposition that intellectual achievement and rigorous analysis are not incompatible with religious faith, and how they can complement each other.”); Armacost, *supra* note 13, at 408 (“Many Christian students over the years have emphasized how important it is for them to have role models who are first rate scholars and teachers, and who have identified themselves publicly as serious Christians.”); and Kalscheur, *supra* note 7, at 3 (“[T]here is a very real desire among law students for an experience of law school and the practice of law which speak to them as whole persons: a desire that is frustrated by their experience of law school and the practice of law as activities which are disconnected from the rest of their lives.”).

⁷⁸ See, e.g., Wilkins, *supra* note 3, at 434 (“[A]t least one of the required first-year courses each semester could incorporate some form of course-related service learning and guided reflection on the service-learning experience. . . . Placing these experiences within required courses, with faculty working side-by-side with students, models for students the virtue and care we wish to cultivate in them and ourselves.”) and Sargent, *supra* note 3, at 184 (“[A] serious effort should be made to develop an

particularly welcome opportunity for faculty steeped in a religious tradition that is different than that of their law school to offer students an academic introduction to the ways in which that tradition approaches legal questions. Religiously affiliated law schools have been critiqued as institutions that “have, for the most part, given little thought to the integration of faculty members who are from faith commitments other than their own.”⁷⁹ Offering a robust ecumenical curriculum may be one valuable way of welcoming those with varied faith commitments.

For most students, law school will be their last chance to have the luxury of formal study on issues that are meaningful to them. Very few will study theology, philosophy, or the theoretical foundations of law once they graduate law school. By supporting faculty members interested in teaching courses such as these, law schools will not only support faculty but will also provide a valuable opportunity to their students.

D. Consider How Best to Serve Faculty Who Serve

For many religiously affiliated law schools, the commitment to serve others is both a core manifestation of their mission and a critical priority.⁸⁰ This service commitment can take many forms including clinical education, support for student *pro bono* work, partnerships with local organizations to meet local needs, and preparation of students to pursue careers in public interest work of all kinds. In many of these respects, the outward activities of the schools may mirror those of their secular counterparts. However, the motivations for these

array of courses that reflect Catholic and other religious perspectives on topics that are especially relevant to religious concern.”).

⁷⁹ Failinger, *supra* note 9, at 719.

⁸⁰ See Rougeau, *supra* note 2, at 92 (“[T]he mission of Catholic law schools has always been oriented toward social justice, which springs from a unique history and different priorities than would be the case at secular law schools.”); Sargent, *supra* note 3, at 187 (“Clinical and pro bono programs are tangible expressions of the quest for human solidarity and the hunger and thirst for justice grounded in the Catholic conception of human dignity.”); and Sister Grace M. Walle F.M.I., *Doing Justice: A Challenge for Catholic Law Schools*, 28 ST. MARY’S L.J. 1,3 (1997) (“Catholic law schools can nurture and influence students in their commitment to justice by preparing future lawyers to have a Christian attitude of service, both in the community and in the practice of law.”).

activities and the ability to discuss those motivations openly is a unique opportunity for religiously affiliated schools.⁸¹

What is true of the institution may also be true of individual faculty members who are drawn to a vocation at a religiously affiliated law school. If they view law teaching as a vocation, scholarship and teaching will only be part of that vocation. Many may be motivated by their religious convictions to place their talents at the service of others. Thus, again, law schools should do what they can to support faculty members who seek to serve.

This may include adjustments to the tenure schedule for those who are serving their families through caregiving.⁸² It may include incentives for those who are doing high-quality scholarship as a form of service, even if that scholarship does not have the same trappings of prestige that more traditional scholarship may have.⁸³ It may include releasing faculty from other obligations for particularly time-intensive service initiatives, or seeking ways in which faculty and students may work together to meet a pressing need. It may mean finding ways to partner with local congregations to offer service or allowing faculty to hire students to assist with service in the same ways they can hire students as research or teaching assistants.

The ways in which schools can support faculty who serve will be unique for each school and it will be shaped by the charism of the sponsoring religious institution, available resources, faculty interest, and local needs. However, opportunities to put religious convictions

⁸¹ See *Jesuit Legal Education*, *supra* note 3, at 398 (“[T]he clinical experience leaves students with the mistaken impression that the injustice of a given situation will be obvious, even self-evident. Indeed, on a certain level, it promotes the notion that justice is something that one feels and intuits rather than something that one thinks and reasons and argues about.”); Scholla, *supra* note 4, at 1230 (“[I]f the promotion of justice were the exclusive goal of Jesuit law schools, their character would be virtually indistinguishable from many other schools.”); and Peter Margulies, *Commitment, Craft, and the Golden Calf: Lessons in the book of Exodus for Legal Education*, 74 ST. JOHN’S L. REV. 667, 689 (2000) (“Faith-linked law schools can honor the lessons of Exodus by questioning legal doctrine in the name of concern for persons and public purposes, and by adding a community service dimension to their curricula through clinics and other programs that offer students an opportunity to develop reflective commitments.”).

⁸² See Schlitz, *supra* note 55, *passim*.

⁸³ See Boozang, *supra* note 2, at 11 (“Catholic law school faculty are uniquely positioned to engage in service scholarship.”) and *Difficult Market*, *supra* note 8, at 313 (“As people of faith, the production of scholarship is part of our obligation to utilize our gifts in ways that advance the common good.”).

into concrete action should be plentiful for faculty at religiously affiliated law schools.

V. CONCLUDING REFLECTIONS

After more than three decades teaching at a religiously affiliated law school, reflections on faculty vocation and support are not theoretical for me. I have observed first-hand what it means to live a vocation to teach in a religiously affiliated law school and to be well supported in that vocation. Thus, I end with some personal reflections.⁸⁴

If, as some would say, faith has no place in the intellectual life (or conversely, if intellectual inquiry is perceived as incompatible with faith), my life in an academic community would be very difficult. To separate faith from that life, or to try to grow in faith without putting intellect at its service would be both extremely difficult and, thankfully, unnecessary.

I continue to be impressed by the depth of the intellectual tradition of my faith and the ways in which intelligent and faithful thinkers have grappled for millennia with the same issues I write about and think about today. Contrary to what may appear in the headlines, I do not believe that the world has many new problems. Instead, it continually faces new manifestations of and symptoms of age-old problems. As a law student and in my early years as a teacher and researcher, the primary focus of my interest was finding that which was new, relevant, and timely—all good things in and of themselves. However, as time went on, I was exposed to the ways in which great thinkers have explored these questions through the lens of ancient faiths. In this, I found roots for much of the work I do, and a framework in which to examine important questions.

Exposure to this tradition and the encouragement to incorporate it in my research has been one of the greatest—and unexpected—benefits I have had teaching in a religiously affiliated law school. Once exposed to my faith's rich teaching on social questions, it has become much more difficult to work without that backdrop.

⁸⁴ These reflections come directly from an unpublished speech I delivered at The Catholic University of America on Jan. 18, 2011. The title of the panel was "*What Faith has to do with the Intellectual Life*," The original comments are available in full at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1746911.

My faith—and others—also speaks eloquently to the value of human work and its importance as the way in which each of us makes our unique contribution to the world. The vocation of each of us is to use the gifts, talents, and opportunities that we have at the service of the world in which we find ourselves. I see students preparing to grapple with the difficult choices that they will have to make in achieving a balance between the work for which they will be paid and the other aspects of their lives—beginning with responsibilities to their families, but expanding to include obligations to community, church, service, and friends. I struggle with the same questions. I take great comfort from all that my faith says about the dignity of the work with which each of us is entrusted and the importance of doing even the smallest parts of our work with great care and respect.

My faith also teaches important lessons about how to be a member of a community. At its core, faith is a relationship with God himself and an invitation to know Him better and more deeply in this life—in anticipation of the joy of the next. It is also, however, a source of guidance on how to love neighbor as self. In an academic community, one has many “neighbors”: colleagues from the staff and faculty, alumni, administrators, visitors, benefactors, literal neighbors in the local community, and many others. But our reason for existing as a university is for a particular type of neighbor—the students who spend part of their lives with us. Some are neighbors for only a short time while they are here; others remain friends and neighbors far longer than that.

Law school years can be a difficult time in students’ lives personally and professionally. At times, the competitive nature of the law school enterprise and worries about debt and employment can be overwhelming. Important and difficult decisions have to be made about what professional path to pursue. The steady emphasis on methodically examining all sides of an issue can steal students’ convictions about what is right or true or just. Added to this is the reality that the years during which most students go to law school can also be years of increasing familial and personal obligations. Thus, in the years that my students are my “neighbors,” my faith has much to say about the ways in which I am to care for them and for their needs. Theoretical discussion of what love of neighbor means is no substitute for taking that obligation seriously in dealings with all, but most especially with respect to the students entrusted to us. This obligation is certainly not

exclusive to law schools with a religious identity. But, if we were to fail at meeting this obligation here, it would be particularly sad.

My faith has been deepened by being part of an intellectual community with such a strong connection to its spiritual roots. In this community, I have been able to explore my faith in an academic way as an adult. The work of my colleagues and the speakers, discussions, and programs that they present prevent me from retaining a faith that is, intellectually, that of an adolescent while I have grown in my field of secular study. Thus, while much attention is paid to considering how faith might influence intellectual life, that is a two-way street in which an intellectual presentation of ideas, values, and truths can help deepen and reinforce faith.

The gatherings of the Conference on Religiously Affiliated Law Schools has, since the beginning, offered a chance to reflect on the unique nature of religiously affiliated law schools. Over the years, important questions have been explored and I hope that these conversations will continue as we and our schools navigate the challenges ahead. One of the biggest challenges and most rewarding opportunities is the chance to support faculty members who see the unique value in religiously affiliated legal education and strive to advance the mission of those schools in the best ways they know.