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## Fordham University School of Law: A Case Study of Legal Education in Twentieth-Century America

Robert J. Kaczorowski  
*Fordham University School of Law*

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# FORDHAM UNIVERSITY SCHOOL OF LAW: A CASE STUDY OF LEGAL EDUCATION IN TWENTIETH-CENTURY AMERICA

*Robert J. Kaczorowski\**

## INTRODUCTION

This paper focuses on three themes that shaped legal education in twentieth-century America and roughly organizes the topics of this conference. These themes emerged when I was researching and writing the history of Fordham University School of Law. Consequently, I will discuss Fordham's history as a case study focused on the following themes:

1. The importance of university relations and funding to enhancing the quality of a law school.
2. The importance of scholarship and the changing nature of scholarship in legal education.
3. The importance of diversity and the changing nature of diversity in legal education.

Fordham Law School was founded in 1905 to promote what we might call diversity in the legal profession—to give sons of immigrants and other white working class men an opportunity to attend law school and thereby attain upward mobility and middle class respectability.<sup>1</sup> The elite lawyers of the American Bar Association (ABA) and the American Association of Law Schools (AALS) excluded Catholic and Jewish immigrants and white ethnic minorities from the profession of law. They regarded these minorities as uneducated men who lacked an understanding of the United States's constitutional democracy and subverted the American way of life.<sup>2</sup> They blamed lawyers from these groups for the increasing disciplinary problems and ethical lapses that plagued the legal profession. Immigrant groups were excluded from elite law schools through xenophobia and ethnic and religious prejudice.<sup>3</sup>

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\* Professor of Law and Director of the Condon Institute of Legal History, Fordham University School of Law. This Article was presented at the Symposium entitled *Legal Education in Twentieth-Century America*, held at New York University's Villa La Pietra conference center in Florence, Italy, on July 2–4, 2018. For an overview, see Matthew Diller, *Foreword: Legal Education in Twentieth-Century America*, 87 FORDHAM L. REV. 859 (2018). Thank you to the Condon Institute of Legal History for sponsoring this Symposium. This Article draws on my book, *Fordham University School of Law: A History*.

1. ROBERT J. KACZOROWSKI, FORDHAM UNIVERSITY SCHOOL OF LAW: A HISTORY 61–73 (2012).

2. ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, at 101 (1983).

3. *Id.* at 101, 109 n.67.

Fordham University School of Law was established to prepare precisely these groups for the practice of law. Fordham was one of a number of Catholic universities that established law schools in this era to enable Catholic men to enter the mainstream of American public life and become public leaders. In addition, law schools were relatively inexpensive for universities to operate.<sup>4</sup>

### I. THE ELITE DESIGN OF FORDHAM LAW SCHOOL

Though they established a part-time law program, the founders of Fordham University School of Law sought to provide students an elite law-school education suffused with ethical values and a scholarly perspective on the law.<sup>5</sup> The founders' choice of the inaugural dean and faculty and their design of the curriculum, education method, and academic standards evidence their commitment to this goal.<sup>6</sup>

The Law School's "stated mission, educational objectives, course of study, method of instruction, and requirements for admission were comparable to those of the elite law schools of this era."<sup>7</sup> For example, the school's mission statement made explicit its commitment to provide students a foundation in the law that was both theoretical and practical.<sup>8</sup> Thus, the faculty taught students the theory of the law, including its "historical and philosophical development," and how to apply the law in practice.<sup>9</sup> Pedagogically, the Law School was designed to provide students with a well-rounded practical and scientific education in the principles of general jurisprudence, U.S. common law and statutory law, equity law, civil and Roman law, and ethics.<sup>10</sup>

But Fordham was different from most other law schools because its students were required to take two courses that were not required at those schools. The first was a "very comprehensive course of lectures on General Jurisprudence," which examined the genesis and historical development of the law, the ethical meaning of the law, and the proper standards that lawyers should abide by in their professional lives.<sup>11</sup> This course was taught by Father Terence J. Shealy, S.J., the only Jesuit on the faculty. Father Shealy was a philosopher and not a lawyer. He, and his successors, taught the course based on the predominant philosophy of the Roman Catholic Church, Thomistic Scholasticism, into the post-World War II era. This jurisprudence was "rooted in the doctrine of Natural Law and natural rights," which its

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4. LAWRENCE M. FRIEDMAN, *AMERICAN LAW IN THE 20TH CENTURY* 36 (2002); ROBERT I. GANNON, *UP TO THE PRESENT: THE STORY OF FORDHAM* 126 (1967); RAYMOND A. SCHROTH, *FORDHAM: A HISTORY AND MEMOIR* 123 (2002).

5. KACZOROWSKI, *supra* note 1, at 5; 37 *THE WOODSTOCK LETTERS* 371, 386–87 (1907).

6. KACZOROWSKI, *supra* note 1, at 5; 37 *THE WOODSTOCK LETTERS*, *supra* note 5, at 386–87.

7. KACZOROWSKI, *supra* note 1, at 14.

8. 2 *FORDHAM U. BULL. INFO.*, 1906–1907, at 88, 89.

9. *Id.*

10. *Id.*

11. 4 *FORDHAM U. BULL. INFO.*, 1908–1909, at 129, 131–32.

proponents asserted was “an objective, real standard of justice.”<sup>12</sup> The other distinctive required course was Legal Ethics, taught by Dean Paul Fuller, which addressed the legal ethics problems that might arise in the course of actual practice.<sup>13</sup> These courses manifested the Law School’s affiliation with a Jesuit university.<sup>14</sup>

In 1905, and into the post–World War II era, most law schools’ curriculums merely consisted of vocational preparation for the practice of law. Only a handful of law schools offered courses in jurisprudence, legal ethics, or the history of law, but it is clear that such courses were not required. Most law schools instead focused their instruction on “the relatively narrow, though exceedingly important and difficult, field of judge-made technical law.”<sup>15</sup> University administrators and faculty in various liberal arts colleges considered their school’s law curriculum to be vocational training rather than an academic program. Universities segregated their law schools from other academic departments, and law students were not permitted to take courses offered by those departments.<sup>16</sup> Law schools were considered “profit-making professional institutions; educationally, they were primarily trade schools.”<sup>17</sup> In sum, Fordham Law School was more academically oriented than even elite law schools.

## II. DIVERSITY IN LAW SCHOOLS BEFORE THE MID-TWENTIETH CENTURY

At a time when elite universities and law schools discriminated against immigrants and their offspring because they were Catholic, Jewish, Irish, or Southern or Eastern European,<sup>18</sup> Fordham Law School admitted them. Nearly all of the students admitted to Fordham Law School between 1925 and 1947 were born in the United States, but approximately half of them had immigrant parents.<sup>19</sup> Approximately 30 percent of these first-generation immigrant students were of Irish descent and another 30 percent were of

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12. FRANCIS P. LeBUFFE, *OUTLINES OF PURE JURISPRUDENCE* i (1924).

13. 4 FORDHAM U. BULL. INFO., 1908–1909, at 129, 132.

14. KACZOROWSKI, *supra* note 1, at 15.

15. ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH SOME ACCOUNT OF CONDITIONS IN ENGLAND AND CANADA 410 (1921). Dean William Hughes Mulligan thought it probable that Fordham’s jurisprudence course was “the first ever given as a part of the regular curriculum in any law school in the United States.” William Hughes Mulligan, *Fifty Years of Fordham Law School*, 24 FORDHAM L. REV. xi, xii (1955). The Law School’s first registrar expressed this view in 1909. See Law Notes, 27 FORDHAM MONTHLY 481, 483 (1909).

16. STEVENS, *supra* note 2, at 36.

17. John H. Langbien, *Blackstone, Litchfield, and Yale: The Founding of the Yale Law School*, in HISTORY OF THE YALE LAW SCHOOL: THE TRICENTENNIAL LECTURES 17, 18 (Anthony T. Kronman ed., 2004).

18. For a discussion of discriminatory practices among elite universities and law schools, see generally JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* (1976); MARCIA GRAHAM SYNNOTT, *THE HALF-OPENED DOOR: DISCRIMINATION AND ADMISSIONS AT HARVARD, YALE, AND PRINCETON, 1900–1970* (1979).

19. KACZOROWSKI, *supra* note 1, at 62.

Italian descent, and they were almost all Catholic.<sup>20</sup> The third-largest ethnic group of students were of Russian descent, making up approximately 10 percent of the students with immigrant parents, and almost all of these Russian students were Jewish.<sup>21</sup> Austrian and Polish students were the next-largest ethnic groups, and 6 percent of each were children of immigrants.<sup>22</sup> Although Austria and Poland were predominantly Catholic countries, two-thirds of the Austrian-born parents were Jewish, and only about a quarter of Austrian-born parents were Catholic.<sup>23</sup> The parents of just over 60 percent of the Polish students' immigrant parents were Jewish, and almost 40 percent were Catholic.<sup>24</sup> Another approximately 10 percent of students, equally divided, were either German or English and followed varying faiths.<sup>25</sup>

The religious affiliation of the students in Fordham Law's entering classes between 1925 and 1947 were overwhelmingly Catholic. With the exception of four years, the proportion of Catholic students varied between 68 percent and 75 percent.<sup>26</sup> The percentage of Protestant students varied between 2.04 percent and 25 percent and that of Jewish students between 2.08 percent and 22.4 percent.<sup>27</sup> The proportion of non-Catholic students declined from 1948 to 1952 and then increased from 1953 to 1968, when the Law School stopped tracking the religious affiliation of its students.<sup>28</sup>

Fordham Law School began admitting women in 1918, almost half a century after the first woman graduated from an American law school.<sup>29</sup> Fordham admitted eight women in September 1918. The following year, the Law School announced in the *Fordham University Bulletin of Information*: "The University recognizes the growing movement in favor of equal social opportunities to both sexes, and has accordingly opened the Law School to women as fully as to men."<sup>30</sup> Nevertheless, the percentage of women in the respective classes remained in the single digits into World War II.<sup>31</sup> The double-digit representation of women in the World War II era is attributable to lower enrollments of men due to military service.

A few years after the admission of women, Fordham Law School admitted several African American students.<sup>32</sup> New York's African American

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20. *Id.* at 64–65.

21. *Id.* at 65.

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.* at 65–66.

26. *Id.* at 66–67.

27. *Id.* at 67.

28. *Id.* at 73–75.

29. *Id.* at 37–45 (discussing the early history of women in law schools and the legal profession). Ada Kepley, the first woman on record to receive a law degree, received her law degree in 1870 from Union College of Law in Chicago, Illinois, now known as Northwestern University Pritzker School of Law. STEVENS, *supra* note 2, at 82.

30. 12 FORDHAM U. BULL. INFO., March 1919, at 1, 9; *see also* KACZOROWSKI, *supra* note 1, at 38.

31. KACZOROWSKI, *supra* note 1, at 355–57.

32. *Id.* at 45.

community was relatively small at the time.<sup>33</sup> In 1924, Ruth Whitehead Whaley and Oliver D. Williams became the first two African Americans to graduate from Fordham Law School, with Whaley graduating *cum laude*.<sup>34</sup> Whaley enjoyed the distinction of being “the first African American woman to be admitted to both the North Carolina and New York Bars and the first to practice law in New York State.”<sup>35</sup> Williams had an illustrious career as a practicing attorney and jurist.<sup>36</sup> He was the third African American to be elected to the New York State Supreme Court, where he served until his retirement in 1974.<sup>37</sup> Fordham, however, did not record statistics on the number of African American students until the 1970s.<sup>38</sup>

The acceptance of African Americans and women to the Law School followed from one of Fordham University’s educational missions: to provide educational opportunities to disadvantaged minorities.

### III. FORDHAM LAW SCHOOL’S FACULTY SCHOLARSHIP IN THE EARLY TO MID-TWENTIETH CENTURY

Law faculty primarily published treatises and articles for the practicing bar. However, the Law School achieved national notoriety for its theoretical scholarship when members of the faculty published powerful scholarly critiques of the legal realists and the New Deal. In the 1930s, Catholic Thomists, relying on neoscholastic philosophy and jurisprudence, launched the “most severe and extreme attacks on legal realism and all forms of philosophical naturalism.”<sup>39</sup> Fordham Law School Professor Walter B. Kennedy, a highly respected Catholic legal scholar, wrote prolifically on the topic and acted as a leader of the Catholic opposition.<sup>40</sup>

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33. *Id.*

34. *Id.* at 46; *Negro Wins Fordham Scholarship*, N.Y. TIMES, Apr. 8, 1924, at 7; *Ruth W. Whaley, 76, Lawyer and City Aide*, N.Y. TIMES, Dec. 25, 1977, at 26.

35. KACZOROWSKI, *supra* note 1, at 46; *Ruth W. Whaley, 76, Lawyer and City Aide*, *supra* note 34, at 26; *Woman Is Named Aide to Hilliard*, N.Y. TIMES, Aug. 11, 1948, at 23. Whaley had a distinguished career as an attorney, an activist, and a public servant. She served as president of the National Council of Negro Women and was the first president of the Negro Professional and Business Club. She also served on the New York City Council during the 1940s and was the secretary of the New York City Board of Estimate from 1951 to 1973. KACZOROWSKI, *supra* note 1, at 46.

36. KACZOROWSKI, *supra* note 1, at 46 (noting that Williams “went on to a career as a practicing attorney and jurist, serving as a judge of the Municipal Court (1954–62), a judge of the Civil Court (1962–63), and a justice of the State Supreme Court from the Second District (Brooklyn and Richmond), to which he was elected in 1963 with the endorsement of the Democratic, Republican, and Liberal parties”).

37. *Id.*

38. *Id.* at 352–54.

39. EDWARD A. PURCELL, JR., THE CRISIS OF DEMOCRATIC THEORY: SCIENTIFIC NATURALISM & THE PROBLEM OF VALUE 163–64 (1973).

40. *Id.* (describing Professor Walter B. Kennedy as “perhaps the most widely respected Catholic legal scholar in the country”). Professor Walter B. Kennedy’s articles include: *Functional Nonsense and the Transcendental Approach*, 5 FORDHAM L. REV. 272 (1936); *Men or Laws*, 2 BROOK. L. REV. 11 (1932); *More Functional Nonsense—a Reply to Felix S. Cohen*, 6 FORDHAM L. REV. 75 (1937); *The New Deal in the Law*, 68 U.S. L. REV. 533 (1934); *Pragmatism as a Philosophy of Law*, 9 MARQ. L. REV. 63 (1925); *Principles or Facts?*, 4

Kennedy claimed that legal realism, which was based on the social sciences, was not really scientific.<sup>41</sup> Kennedy recognized that extralegal data from the social sciences contributed to the legal process, but he criticized the unscientific method by which legal realists acquired these data.<sup>42</sup> He also criticized their lack of skill and proficiency in using these data to improve legal rules and principles.<sup>43</sup> He argued that they “conglomerate[d]” “so-called scientific data, statistics and theories,” often untested and unverified, from second-hand social-science sources and that they welded them into loose generalizations which they called science.<sup>44</sup> In Kennedy’s opinion, “Realism, which worships at the altar of Scientism, ha[d] departed from the basic, essential practices of true scientific research.”<sup>45</sup> In the end, however, “the Catholic Thomists and philosophical proponents of absolute principles of natural law and natural rights lost the intellectual debate to the scientific naturalists and ethical relativists.”<sup>46</sup> As I explained in my book, *Fordham University School of Law: A History*:

They lost the debate in the 1940s and 1950s for several reasons. American scholars generally accepted the epistemological assumption that the scientific method was “the most reliable method of developing human knowledge,” and, therefore, they assumed that a society that “most closely approximated the scientific method in its governing process was the most rational and desirable form of government.” Most American intellectuals also assumed that all truths, even ethical truths, were “tentative, changing, and uncertain,” and only social theories that acknowledged the tentativeness of truth “could support and justify democratic government.” They therefore came to believe that “philosophical relativism implied . . . an open and democratic political structure,” such as the United States, and that “theoretical absolutism logically implied political totalitarianism.” Most American intellectuals consequently understood the cold war as a struggle between the relativist United States and the absolutist Soviet Union. Reinhold Niebuhr, the foremost American theologian of the twentieth century, provided a theological justification for the “firm conviction in the indeterminateness of the universe and in the relativity of all human knowledge” and the dangers of absolutist philosophies. . . . Niebuhr claimed that “absolute philosophies *necessarily* led to political authoritarianism. American intellectuals accepted this relativist-absolutist dichotomy and believed that “a relativist culture was the empirical basis for democracy,” and they were convinced “that the United States represented such a relativist culture.” Political theory thus combined with intellectual

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FORDHAM L. REV. 53 (1935); *Psychologism in the Law*, 29 GEO. L.J. 139 (1940); *Realism, What Next?*, 7 FORDHAM L. REV. 203 (1938); *Realism, What Next? II*, 8 FORDHAM L. REV. 45 (1939); *A Review of Legal Realism*, 9 FORDHAM L. REV. 362 (1940) [hereinafter Kennedy, *A Review of Legal Realism*]; *The Scientific Approach in the Law*, 70 U.S. L. REV. 75 (1936); *Utility of Legal Philosophy*, 3 N.Y. L. REV. 353 (1925).

41. Kennedy, *A Review of Legal Realism*, *supra* note 40, at 366.

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. KACZOROWSKI, *supra* note 1, at 149.

criticism of philosophical absolutism and the advances of experimental science to render the philosophy of natural law and absolute principles untenable to most educated Americans.<sup>47</sup>

In short, the scholarship that affirmed Fordham Law School as one of the intellectually significant law schools prior to World War II became irrelevant in the scholarly debates of elite institutions in the era after World War II.

#### IV. LAW SCHOOL-UNIVERSITY RELATIONS THROUGH WORLD WAR II

A law school's finances can have a direct effect on the quality of its educational offerings. The ABA Council of Legal Education and Admission to the Bar began investigating member law schools' finances in July 1928<sup>48</sup> to determine how the law schools were supported. Specifically, they looked at whether the school was "dependent on fees for support," was "supported out of general funds," or was "specially endowed."<sup>49</sup> The ABA Council called for law schools to become financially independent, as did the Carnegie Foundation for the Advancement of Teaching.<sup>50</sup> Dean Wilkinson accurately predicted in 1929 that the AALS would soon require member law schools to have "some independent financial resources."<sup>51</sup>

Wilkinson recommended that Fordham University establish an endowment fund for the Law School from the Law School's surplus revenue, which he estimated could make the Law School financially independent of tuition within a relatively short period of time. "For some years past," he noted, "the school has been returning a substantial profit in its operations,"<sup>52</sup> which the university had been using to fund other departments.<sup>53</sup> Wilkinson estimated that if the Law School's past profits were added to its future earnings and if these funds were set aside and invested as a law school reserve at present levels of law student enrollments "a sufficient principal sum [would] be accumulated to make the school a financially independent unit for all time thereafter," and only "in a relatively few years."<sup>54</sup> The Fordham University administration rejected Wilkinson's plan.<sup>55</sup> The university continued to divert the Law School's surplus earnings into the university's general funds,<sup>56</sup> apparently deciding to persist in subsidizing other divisions and general operations with the Law School's profits.<sup>57</sup> Although the issue

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47. *Id.* (first alteration in original) (emphasis added).

48. *Id.* at 158.

49. *Id.* at 159.

50. *Id.*

51. Letter from Ignatius M. Wilkinson, Dean, Fordham Univ. Sch. of Law, to William J. Duane, President, Fordham Univ. 14 (Jan. 11, 1929) (on file with the Fordham Law School Library) [hereinafter Dean's Report, Jan. 11, 1929]; see also KACZOROWSKI, *supra* note 1, at 159.

52. KACZOROWSKI, *supra* note 1, at 159 (quoting Dean's Report, Jan. 11, 1929, *supra* note 51, at 15).

53. *Id.*

54. *Id.* at 160 (quoting Dean's Report, Jan. 11, 1929, *supra* note 51, at 16).

55. *Id.* at 161.

56. *Id.* at 162.

57. *Id.*



was not pressed in the 1930s, the amount of revenue that Fordham University diverted from the Law School to finance other departments became a point of contention between the university and the ABA in the 1970s and 1980s.<sup>58</sup>

V. THE AFTERMATH OF WORLD WAR II: FORDHAM'S FALL  
FROM THE ELITE RANKS

Fordham Law School continued to enjoy an elite status through World War II. Based on its high standards for admission and academic excellence, Acting Dean Walter Kennedy reported to Father Robert I. Gannon in November 1945 that Fordham was “the most exclusive part-time law school in the metropolitan area and certainly in competition with Columbia.”<sup>59</sup> The only other law school Kennedy expressed interest in was New York University School of Law because of its similarities to Fordham Law School.<sup>60</sup>

But Fordham Law School experienced a decline in status following the Second World War. Associate Dean William Hughes Mulligan acknowledged this on the Law School's fiftieth anniversary in 1955.<sup>61</sup> He told the Academic Vice President Edwin A. Quain, S.J. that he was convinced the Law School was “a ‘trade school.’”<sup>62</sup> In fact, Mulligan attributed the Law School's decline to Dean Wilkinson, who had “intended to run a ‘bread and butter Law School.’”<sup>63</sup>

Several factors led to the Law School's decline and its fall from being the second-best law school in New York City and among the top twenty law schools in the nation.<sup>64</sup> These included: the university's diversion of Law School surplus revenues from the Law School to subsidize other divisions of the university; the Law School's structural dependence on tuition and fees; the inadequacy of the Law School's facilities and its effects on development and growth; the practice-oriented approach to legal education implemented by Dean Wilkinson, which was quickly becoming obsolete in the postwar era; and the Law School faculty's failure to produce the kind of academic legal scholarship that was becoming the hallmark of the nation's best law schools.<sup>65</sup>

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58. *Id.* at 213–317.

59. *Id.* at 194–95 (quoting Letter from Walter B. Kennedy, Acting Dean, Fordham Univ. Sch. of Law, to Robert I. Gannon, President, Fordham Univ. 2 (Nov. 21, 1945) (on file with the Fordham Law School Library)).

60. *Id.* at 195.

61. *Id.* at 214.

62. *Id.* (quoting correspondence between Fordham University Academic Vice President Edwin A. Quain and Fordham University President Laurence J. McGinley).

63. *Id.* (quoting correspondence between Fordham University Academic Vice President Edwin A. Quain and Fordham University President Laurence J. McGinley).

64. *Id.* at 212.

65. *Id.*

VI. LAW SCHOOL-UNIVERSITY RELATIONS FROM THE 1960S  
TO THE END OF THE TWENTIETH CENTURY

Fordham Law School's faculty blamed the university's central administration for the school's decline. The administration believed that the law faculty, which it held in low regard, was responsible. By the late 1960s the Law School and the university administration were in open and bitter conflict "over the place of the Law School within the university, the mission of the Law School, and the question of who should determine the Law School's policies and priorities."<sup>66</sup> The law faculty and administration sought financial and administrative autonomy from what they viewed as a hostile and uncooperative central administration. On May 9, 1968, the "[l]aw faculty unanimously adopted resolutions which proclaimed that the 'Law School has entered a period of institutional and educational crisis'" and that the faculty were primarily responsible for making decisions pertaining to the Law School's administration.<sup>67</sup>

University President Father Michael P. Walsh and Executive Vice President Dr. Joseph Cammarosano "distrusted and disliked the members of the law school community."<sup>68</sup> They perceived the Law School as failing to appreciate "that it is an integral part of the University and does not exist apart from it."<sup>69</sup> The Law School "existed only so long as the university willed that it exist."<sup>70</sup> It had "no sovereign power."<sup>71</sup> This power was "reserved to the University."<sup>72</sup> Cammarosano believed that it was improper for an educational institution to "seek to maximize its return in every academic area" and that it was appropriate for some, presumably more profitable, activities and schools to fund others to maintain the university's balance.<sup>73</sup> He deplored the Law School's "atomistic" conception of units within a university because it would have necessitated the closure of unprofitable units, such as the Physics and Classics Departments. He asserted that the Law School's conception was "completely anathema to the idea of the University."<sup>74</sup>

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66. *Id.* at 230.

67. *Id.* (quoting a faculty resolution attached to correspondence between Fordham Law School Associate Dean William Hughes Mulligan and Fordham University President Leo P. McLaughlin).

68. *Id.* at 238 (quoting correspondence between Fordham University Executive Vice President Joseph Cammarosano and Fordham University President Michael P. Walsh).

69. *Id.* (quoting correspondence between Fordham University Executive Vice President Joseph Cammarosano and Fordham University President Michael P. Walsh).

70. *Id.*

71. *Id.* (quoting correspondence between Fordham University Executive Vice President Joseph Cammarosano and Fordham University President Michael P. Walsh).

72. *Id.* (quoting correspondence between Fordham University Executive Vice President Joseph Cammarosano and Fordham University President Michael P. Walsh).

73. *Id.* (quoting correspondence between Fordham University Executive Vice President Joseph Cammarosano and Fordham University President Michael P. Walsh).

74. *Id.* (quoting correspondence between Fordham University Executive Vice President Joseph Cammarosano and Fordham University President Michael P. Walsh).

Their understanding, that the various divisions of a university constitute an interrelated organism, predisposed Walsh and Cammarosano to use the profitable Law School to subsidize Fordham University's unprofitable departments and programs. Cammarosano expressed disdain for the Law School's desire to invest its surplus funds to reclaim its place among leading law schools when he assured the university president that the "people at the Law School are not terribly well versed in . . . [nor] understand the concept of a University."<sup>75</sup>

The Law School was up for the ABA's periodic reinspection and reaccreditation in the fall of 1973.<sup>76</sup> The contentious relationship between the Law School and the university over autonomy and finances soon became more public and infected the university's relationship with the ABA reinspection team. Fordham University had recently appointed a new president, Father James Finlay. He and the ABA visitation team got off to a bad start, and their poor relationship deteriorated further through the reinspection and for the remainder of Father Finlay's tenure as president of Fordham University.

The ABA changed its accreditation process in 1973.<sup>77</sup> It decided that a university with which a law school was affiliated could reasonably divert up to 20 percent of a law school's revenue to cover general university expenses. Anything in excess of this would require an explanation and justification by the university.<sup>78</sup> However, many universities continued to use law schools as cash cows into the twenty-first century.<sup>79</sup>

Fordham University was one of these universities. Its handling of the ABA's new reaccreditation process was particularly aggressive, but other university administrations also resisted the ABA's new process and financial policy.<sup>80</sup> Nevertheless, Fordham Law Dean Joseph McLaughlin sought the assistance of the ABA and its consultant, James P. White, to get the funding from Fordham University that Dean McLaughlin thought the Law School needed and deserved.<sup>81</sup> The dean asked the ABA visitation team to pay special attention to a recently established program that allowed for separate fundraising at the Law School.<sup>82</sup> However, Father Finlay objected to "independent agencies telling us how we should go about our fund raising."<sup>83</sup> Executive Vice President Cammarosano also objected and commented, "it is

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75. *Id.* at 239 (alterations in original) (quoting correspondence between Fordham University Executive Vice President Joseph Cammarosano and Fordham University President Michael P. Walsh).

76. *Id.* at 289.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 289–90.

81. *See id.* at 290.

82. *Id.*

83. *Id.* (quoting correspondence from Fordham University President James C. Finlay to Fordham University Executive Vice President Joseph Cammarosano and Fordham University Academic Vice President Paul J. Reiss).

ironic that the University should pay for a visitation which will explore ways and means for reducing the University's income."<sup>84</sup>

Indeed, Cammarosano was indignant that the ABA demanded that the university give its financial information to the ABA Council. In his view, the ABA's demand was an intolerable intrusion into the university's internal affairs which would set a "very dangerous precedent and could, quite conceivably, be violative of our own academic freedom."<sup>85</sup> Cammarosano believed that Fordham's administrators should not give the requested information to the Council, and he urged them not to do so.<sup>86</sup>

The Fordham University administration complied with Cammarosano's urging and refused to reveal the university's financial information to the ABA. In May 1975, the ABA warned the university that it was jeopardizing the Law School's accreditation by refusing to provide the ABA Council with the requested financial figures.<sup>87</sup> R. W. Nahstoll, Chairman of the ABA's Section of Legal Education and Admission to the Bar, admonished Father Finlay that the ABA required accurate and complete university financial information to evaluate Fordham Law School's qualifications as an ABA-accredited institution.<sup>88</sup> He warned that if the ABA Council did not receive the information, it would consider withdrawing approval of the Law School at its July meeting.<sup>89</sup>

The ABA did not rescind Fordham Law School's accreditation, but neither did it reaccredit the Law School. The ABA and Fordham University refused to change their positions on the question of finances. The ABA rejected Fordham University's accounting methods and fund-allocation policies as inadequate and opaque. Fordham University refused to reveal accurate and complete financial data. The issue remained unresolved through the end of Joseph McLaughlin's tenure as dean of the Law School and Father James Finlay's tenure as president of Fordham University in 1984.<sup>90</sup>

#### VII. IMPROVED LAW SCHOOL-UNIVERSITY RELATIONS AND THE REVIVAL OF EXCELLENCE

The impasse between the University and the ABA was not resolved until after John D. Feerick became dean of the Law School in 1982 and Father Joseph A. O'Hare became Fordham University's president in 1984. Dean Feerick found Father O'Hare and Fordham University administrators "instantaneously responsive and helpful" and their dealings characterized by

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84. *Id.* (quoting correspondence between Fordham University Executive Vice President Joseph Cammarosano and Fordham University Academic Vice President Paul J. Reiss).

85. *Id.* at 300 (quoting correspondence between Fordham University Executive Vice President Joseph Cammarosano and Fordham University President James C. Finlay).

86. *Id.*

87. *Id.* at 301.

88. *Id.*

89. *Id.*

90. *Id.* at 313-17 (recounting the conflict among the Law School, the Fordham University administration, and the ABA).

“civility [and] understanding,” which led to fair fiscal outcomes.<sup>91</sup> The ABA “found a ‘cordial, mutually supportive relationship’ between the Law School and senior university officials.”<sup>92</sup> Dean Feerick was able to get the Law School more financial support and information from Father O’Hare,<sup>93</sup> and he achieved greater autonomy from the university’s central administration. All of these factors helped the Law School reclaim, to some extent, its traditional excellence.

The ABA’s 1987 reinspection report acknowledged that Fordham University had provided more accurate information and analysis on how it was allocating the Law School’s income and expenses.<sup>94</sup> But the inspectors questioned the propriety of the university taking a reported 35 percent of the Law School’s revenues.<sup>95</sup> The report observed that allocating 35 percent for the university was “a substantial overhead, higher than would be standard for most law schools,” and it again concluded that this “allocation of costs to the university need[ed] to be examined carefully.”<sup>96</sup>

It was not until the fall of 1995 that Fordham University agreed to comply with ABA guidelines that required the university to limit the overhead rate it charged the Law School to 20 percent.<sup>97</sup> But, the university did not comply with these guidelines.

The university misrepresented the percentage of Law School revenues actually allocated to it each year and continued to overcharge the Law School for overhead and indirect expenditures into the twenty-first century. Moreover, beyond normal overhead amounts, the Law School contributed “\$1 million in each of the fiscal years 1998, 1999, 2000 . . . , and 2001 to assist the University in balancing its budget.”<sup>98</sup> Negotiations between the Law School and the Fordham University administration to limit the university’s overhead charges to 20 percent remained unresolved through the first decade of the twenty-first century.<sup>99</sup>

Because the Law School lacked a large endowment, and because Fordham University also lacked a substantial endowment and continued to divert substantial amounts of the Law School’s tuition revenue to subsidize general university operations, Dean Feerick was forced to rely upon alumni donations to finance improvements to the Law School.<sup>100</sup> Contributions provided between 8 and 9.5 percent of the Law School’s annual operating budget.<sup>101</sup>

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91. *Id.* at 322.

92. *Id.* (quoting RICHARD G. HUBER ET AL., AM. BAR ASS’N, REPORT OF THE SITE INSPECTION TEAM: FORDHAM UNIVERSITY SCHOOL OF LAW NOVEMBER 2–5, 1986, at 37 (1986) (on file with the Fordham Law School Library)).

93. *Id.*

94. *Id.* at 324.

95. *Id.*

96. *Id.*

97. *Id.* at 326.

98. FORDHAM UNIV. SCH. OF LAW, SELF-STUDY 2001, at 9 (2001).

99. KACZOROWSKI, *supra* note 1, at 326.

100. *Id.* at 327.

101. *Id.*

VIII. FACULTY SCHOLARSHIP IN THE SECOND HALF  
OF THE TWENTIETH CENTURY

The nature of legal education and of legal scholarship changed substantially in the second half of the twentieth century. As early as 1942, the AALS executive committee, of which Fordham Law Dean Wilkinson was a member, urged law school deans to lead their faculties in a “comprehensive reexamination and appraisal of [their] law school programs.”<sup>102</sup> Dean Wilkinson appointed a faculty committee (known as the “Post-War Committee”) to conduct the requested reexamination and appraisal of Fordham Law School’s curriculum and programs.<sup>103</sup> Although this committee reported that the school’s curriculum badly needed to be revised, the faculty took no action to revise it.<sup>104</sup>

In 1947, the Carnegie Corporation, in conjunction with the ABA, began a seven-year study of the legal profession and legal education. The study concluded that law schools must do more than simply train students to become legal practitioners. Law schools should become “center[s] where scholars may contribute to an understanding of law and government and may participate creatively in their growth and improvement.”<sup>105</sup> The study reported the increasing interdisciplinary nature of legal education and noted that “historical, sociological, and even psychological data” were being integrated into legal education to prepare students to join the bar.<sup>106</sup>

Fordham University administrators had anticipated the interdisciplinary and academic direction that the Carnegie study had urged law schools to take. Fordham’s president, Father Gannon, urged the law faculty to broaden the Law School’s curriculum to include courses that would develop “more than pure professionalism in our students.”<sup>107</sup> Father William J. Mulcahy, director of Fordham’s City Hall Division, was more graphic in his recommendation. He observed that many medical schools of which he was aware “created excellent doctors who were ignoramuses,” and he suggested that graduates of law schools were analogous only “to a lesser degree.”<sup>108</sup> However, he warned that lawyers who were educated “only along legal lines might well be dangerous to the community at large if they were totally ignorant of economic, political [sic] and sociological fundamental principles.”<sup>109</sup> Father Gannon agreed and urged Fordham Law’s professors

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102. *Id.* at 201 (quoting a letter from the AALS Executive Committee).

103. *Id.*

104. *Id.*

105. *Id.* at 203 (quoting ALBERT P. BLAUSTEIN, CHARLES O. PORTER & CHARLES T. DUNCAN, *THE AMERICAN LAWYER: A SUMMARY OF THE SURVEY OF THE LEGAL PROFESSION* 162 (1954)).

106. *Id.* at 201 (quoting ALBERT P. BLAUSTEIN, CHARLES O. PORTER & CHARLES T. DUNCAN, *THE AMERICAN LAWYER: A SUMMARY OF THE SURVEY OF THE LEGAL PROFESSION* 170 (1954)).

107. *Id.* at 202.

108. *Id.*

109. *Id.* (alteration in original) (quoting from the minutes of a faculty meeting on September 27, 1945).

to incorporate principles of sociology, economics, and political science into their established law subjects.<sup>110</sup>

Many law school faculties developed their courses and their scholarship along the interdisciplinary and academic lines recommended by the Carnegie report. Most did not. The Fordham Law faculty was among the latter. Nonetheless, the ABA inspectors who conducted the 1986 site evaluation of Fordham Law School concluded that Fordham was “a quality institution, providing a generally high level of legal education.”<sup>111</sup> They also concluded that the students were “well qualified for the study of law” and the faculty were “in general, good to excellent teachers.”<sup>112</sup>

Despite the inspectors’ conclusion that the faculty’s teaching was excellent, they concluded that the nature and quality of the faculty’s scholarship was poor. The inspectors found that, although the faculty “appears to do a fine job of disseminating legal knowledge,” they “*d[id] not advance legal knowledge* through scholarly inquiry.”<sup>113</sup> One reason is that much of the faculty scholarship “seem[ed] to address the questions of ‘What?’ and ‘How?’ more than it *d[id]* the question of ‘Why?’” A second reason was that most of the faculty scholarship was published by the school’s review and focused “on New York law or law of direct importance to the New York bar.”<sup>114</sup> The ABA inspectors’ report concluded with a damaging observation: “to the extent that change and advancement comes to the law through scholarly articles” published in outside law reviews, the Fordham Law faculty “appears to have consigned itself to the sidelines of scholarly debate and commentary on the law.”<sup>115</sup>

In their next on-site inspection in 1994, ABA inspectors approvingly stated that Fordham Law School “should be proud of the strides it has made” since 1987.<sup>116</sup> The quality and nature of the law faculty and their legal scholarship had improved dramatically between 1986 and 1994.<sup>117</sup> More than one-third of the forty-nine full-time faculty in 1994 had been appointed during this period. While the faculty in 1986 had “a definite home-grown flavor,” the Fordham faculty in 1994 had diverse educational backgrounds and professional experiences.<sup>118</sup> The faculty represented a wide range of

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110. *Id.*

111. *Id.* at 330 (quoting RICHARD G. HUBER ET AL., AM. BAR ASS’N REPORT OF THE SITE INSPECTION TEAM: FORDHAM UNIVERSITY SCHOOL OF LAW NOVEMBER 2–5, 1986, at 37 (1986) (on file with the Fordham Law School Library)).

112. *Id.*

113. *Id.* at 331 (quoting RICHARD G. HUBER ET AL., AM. BAR ASS’N REPORT OF THE SITE INSPECTION TEAM: FORDHAM UNIVERSITY SCHOOL OF LAW NOVEMBER 2–5, 1986, at 8 (1986) (on file with the Fordham Law School Library)).

114. *Id.*

115. *Id.* at 332 (quoting RICHARD G. HUBER ET AL., AM. BAR ASS’N REPORT OF THE SITE INSPECTION TEAM: FORDHAM UNIVERSITY SCHOOL OF LAW NOVEMBER 2–5, 1986, at 8 (1986) (on file with the Fordham Law School Library)).

116. PAULINE A. SCHNEIDER ET AL., AM. BAR ASS’N, REPORT ON FORDHAM UNIVERSITY SCHOOL OF LAW MARCH 6–9, 1994, at 64 (1994) (on file with the Fordham Law School Library).

117. KACZOROWSKI, *supra* note 1, at 335–36.

118. *Id.* at 336 (quoting SCHNEIDER ET AL., *supra* note 116, at 15).

scholarly perspectives and were “committed to extensive academic and professional research and publication about the law, legal institutions, and the role of law in society.”<sup>119</sup> Their commitment was evidenced by “impressive growth in overall scholarly productivity” and publication “in some of the nation’s most prestigious journals,” which the inspectors characterized as an “impressive record of publication.”<sup>120</sup> By 2000, in fact, the Fordham Law faculty was ranked twentieth among the nation’s law faculties in publications in leading law journals.<sup>121</sup> The faculty also increased its publication of books and treatises by more than 70 percent between 1986 and 1994.<sup>122</sup>

The dean provided the law faculty with financial incentives for excellence in scholarship, which led to an impressive publication record among the faculty.<sup>123</sup> Dean Feerick, assisted by Associate Dean Georgene Vairo, inaugurated summer research grants and emphasized scholarly publications in awarding annual faculty salary increases. Dean Feerick and Associate Dean Vairo also emphasized scholarship in reappointment, tenure, and promotion decisions. In addition, they supported the recruitment of new faculty with demonstrated research and writing interests and accomplishments. In addition, the 1994 ABA inspectors learned in interviewing the faculty that the faculty attributed “more subtle influences” to “Fordham’s scholarly surge.”<sup>124</sup> These influences included “a supportive ‘atmosphere’ or an intellectual ‘excitement’ that was not previously evident,” created by “the Dean’s personal interest in their work” and “the inspiration provided by their colleagues.”<sup>125</sup>

Fordham Law School is distinguished from most other law schools for the speed and relatively turmoil-free transition from the traditional vocational-oriented approach to legal scholarship and instruction to the more academic and theoretical approaches that became the hallmark of the best law schools by the end of the twentieth century. The Law School’s 1994 self-study concluded that the school’s “‘distinctive characteristic is a shared commitment to being a community’ with students, faculty, administrators, and alumni having ‘diverse perspectives and diverse individual goals,’ yet ‘acting with civility, courtesy, and mutual respect’ and offering mutual support” to one another in the pursuit of excellence.<sup>126</sup>

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119. *Id.* at 334.

120. *Id.* at 336 (quoting SCHNEIDER ET AL., *supra* note 116, at 18–19).

121. *Id.* at 337 (quoting Brian Leiter, *Measuring the Academic Distinction of Law Faculties*, 29 J. LEGAL STUD. 451, 467, 482 (2000)).

122. *Id.* at 336.

123. *Id.*

124. *Id.* at 337 (quoting SCHNEIDER ET AL., *supra* note 116, at 19).

125. *Id.* (quoting SCHNEIDER ET AL., *supra* note 116, at 19).

126. *Id.* at 335 (quoting FORDHAM UNIV. SCH. OF LAW, SELF-STUDY 1994, at 5 (1994) (on file with the Fordham Law School Library)).



## IX. DIVERSITY AT THE END OF THE TWENTIETH CENTURY

Dean Feerick charged the faculty recruitment committee each year to increase the faculty's diversity, and the faculty recognized the need to intensify its efforts to more successfully achieve this goal. The four African American faculty members hired in the 2000–2001 academic year reflected these intensified efforts.<sup>127</sup>

Before John Feerick became dean, the Law School did not actively recruit, admit, or retain minority students, and its laissez-faire attitude was reflected in the relatively low numbers of minority students. Under Dean Feerick, the Law School substantially increased racial and gender diversity in its faculty and student body. Shortly after he became dean in 1982, Feerick began to implement policies and programs to reverse the rather laissez-faire attitude of the past, and the Law School substantially improved its record in this regard.<sup>128</sup> “The ABA inspectors concluded in 1994 that the Law School ‘c[ould] be proud of its progress’ in recruiting ‘an ethnically diverse student body.’”<sup>129</sup> “The percent of minority students in each entering class from 1988 to 1993 more than doubled,” from 11 percent to 26 percent.<sup>130</sup>

The percent of minority students increased as the Law School also increased the quality of the student body generally.<sup>131</sup> Although it did not have a formal affirmative-action admissions policy, the school considered race and many other factors in its admission decisions.<sup>132</sup> Its recruitment of minority students compared favorably to national averages in the last years of the twentieth century,<sup>133</sup> as Table 1, below, shows.

Table 1: *Minority Enrollment, Fordham vs. National, 1998–99*<sup>134</sup>

	1998		1999	
	<i>Fordham</i>	<i>Nationally</i>	<i>Fordham</i>	<i>Nationally</i>
African American	8.80%	7.4%	7.93%	7.4%
Hispanic American	7.58%	5.7%	7.51%	5.71%
Asian American	7.99%	6.3%	8.76%	6.3%

By the end of Dean Feerick's tenure as dean, the Law School ranked among the top 5 percent of law schools with the most diverse student bodies. It increased racial diversity as it also recruited entering classes with the highest GPA and LSAT median scores in its history.<sup>135</sup>

The Law School was even more successful in closing the gender gap among students by the close of the twentieth century. As noted earlier in this

127. *Id.* at 339.

128. *Id.* at 350.

129. *Id.* (quoting SCHNEIDER ET AL., *supra* note 116, at 53).

130. *Id.* at 348.

131. *Id.*

132. *Id.* at 350.

133. *Id.* at 351.

134. *Id.* tbl.8-2.

135. *Id.* at 366.

Article, the proportion of women in each graduating class for most of the twentieth century was in the single digits.<sup>136</sup> The sharp increase in female enrollment began in 1975, when it almost doubled to 13.3 percent from 7.6 percent in the year before.<sup>137</sup> The percentage of female law students steadily increased during the rest of the century, averaging between 38 percent and 45 percent of each graduating class after 1983.<sup>138</sup> The percentage of female law students was nearly equal to that of men in 2002.<sup>139</sup> The increased percentage of women at Fordham Law School is attributable to more female applicants and to more women accepting offers of admission to Fordham.<sup>140</sup>

#### CONCLUSION

As the twenty-first century began, Fordham Law School was well on its way to regaining the stature it had enjoyed at its founding a century earlier. The ABA site inspection in 2001 confirmed that Dean Feerick and the law faculty were offering an excellent legal education.<sup>141</sup> The faculty was nationally recognized for its scholarly achievements and was ranked among the top twenty law school faculties for scholarly publications. Indeed, the faculty had published “in all of the top reviews and in many of the leading peer-reviewed journals.”<sup>142</sup> The Law School was among the top 5 percent of the nation’s law schools with the most diverse student bodies as it achieved the highest GPA and LSAT median scores among entering students in its history. At the same time, the Law School provided financial scholarships and loans to 1100 students who could not afford to attend law school without financial assistance.<sup>143</sup>

When William M. Treanor succeeded John Feerick as dean of the Law School in 2001, two issues that contributed to the Law School’s decline were not yet resolved. That year, the ABA site inspection report noted that lack of space was the school’s biggest issue.<sup>144</sup> The report observed that “nearly every aspect of the School’s operation is confined in cramped quarters,” and the current facility was “minimally adequate to meet the School’s needs and poses a potential problem.”<sup>145</sup> The ABA inspectors advised the Law School dean and Fordham University administration to carefully consider the need for improved facilities.<sup>146</sup> The other, related problem, which had also contributed to the Law School’s decline, was the Law School’s tenuous relationship with the Fordham University administration. The ABA

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136. *See supra* note 31 and accompanying text; *see also* KACZOROWSKI, *supra* note 1, at 355–57.

137. KACZOROWSKI, *supra* note 1, at 356.

138. *Id.* at 356–57.

139. *Id.* at 357.

140. *Id.* at 358.

141. *Id.* at 363.

142. *Id.* at 366.

143. *Id.* at 366.

144. *Id.* at 367.

145. *Id.*

146. *Id.*

inspectors concluded that the financial arrangement with the university was an issue that still needed to be sorted out.<sup>147</sup> The Law School's space problem was resolved by constructing a spacious new building, which opened in 2014. The school's relationship to the university, however, is still evolving.

APPENDIX: TRANSCRIPT\*

JUDGE GUIDO CALABRESI: I have various things to say by way of comparison of Fordham and Yale.

One thinks of Yale as being a top law school, but during most of this period it was not. It had its name but was very small, very much to the side, and didn't matter. But unlike other now-elite schools, it was open to immigrants and their children, in faculty and amongst students. A Catholic was the senior member of the faculty in the 1880s. The first woman admitted to the Law School in 1886 was Alice Jordan. The university sent a note to the faculty that she had to be stricken from the list of students and given her money back. The faculty struck her name and gave her her money back, but voted to keep her in school. Two years later the dean went to the corporation to say she had to graduate, and she did graduate. The same people gave the first affirmative action scholarship. A young black student was holding down three jobs because he was so poor. The dean wrote to Mark Twain asking him to give some money. Twain wrote back: I will give money because he is black and the way we have treated blacks means we should. This is the least we can do. I would not do this if he were white.<sup>148</sup>

The student held down only one job, graduated well, and moved to Baltimore, and here's the kicker, Thurgood Marshall started out at his shop. A third student from this era was a nice Irish lad named O'Rourke who played major league baseball, is in the Hall of Fame, and is known as "Orator Jim" because he went to Yale Law School.<sup>149</sup>

The attitude of diversity remained. When as dean I invited the class of 1918 to reunion, a founder of the NAACP and the first black judge in Missouri wrote back, said there's no one left in my class, and asked can I come to graduation instead of reunion. When he came, I asked him what it was like to be black at Yale in 1918. He responded that there were three of us out of a small wartime class of twenty-one. Seven or eight women in the class. When I looked back at other names, it looked like the Yale Law School

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147. *Id.*

\* This discussion followed the author's presentation of this Article at the Symposium. The transcript has been lightly edited. For a list of the Symposium participants, see Matthew Diller, *Foreword: Legal Education in Twentieth-Century America*, 87 FORDHAM L. REV. 859 (2018).

148. Edwin McDowell, *From Twain, a Letter on Debt to Blacks*, N.Y. TIMES, Mar. 14, 1985, at 1 ("I do not believe I would very cheerfully help a white student who would ask a benevolence of a stranger . . . but I do not feel so about the other color. We have ground the manhood out of them, & the shame is ours, not theirs; & we should pay for it.")

149. *Jim O'Rourke*, NAT'L BASEBALL HALL OF FAME, <https://baseballhall.org/hall-of-famers/orourke-jim> [<https://perma.cc/35EX-5CRB>] (last visited Nov. 15, 2018).

of today in terms of Goldbergs, Mahoneys, and so on. Yale had Catholics and Jews on the faculty and amongst students.

At my first faculty meeting, Elsa Wolfe, the registrar, tiny little Jewish woman, comes in and says, in reporting on admissions, if you keep admitting so many Jews, nice Jewish boys will not want to come to Yale. This is 1960, Charles Black gets up, picks her up, literally, and says Elsa get the hell out of here. So the need to do what Fordham did in terms of immigrants was absolutely essential, and most of the other schools that did that, the Catholic schools and the Jewish schools, became total trade schools. Notre Dame tried not to, but didn't quite succeed. Fordham did.

As to finances, I will have more to say later when we talk about Harvard because again the Yale story was totally different. We were so small that we couldn't rely on tuition, so we had to go out and build endowment, and the university has tried to cheat us ever since. One of the reasons I made the university give the Law School financial independence when I became dean was because I knew the graduates of Yale Law School would give money if they knew it didn't go to the university. Because, when they had gone to Yale, the university was bigoted in every way and they had gone to Yale Law School because it was not. And by making it independent all of a sudden people who wouldn't give started to give.

PROFESSOR ROBERT KACZOROWSKI: That's the same thing with Fordham alumni. They would donate money to the Law School, but the university would take it for general university purposes unless the donor specifically earmarked it for a particular program.<sup>150</sup>

JUDGE CALABRESI: During Harry Wellington's term, he had to try to get money for specific things to protect it from the university.

PRESIDENT EMERITUS JOHN SEXTON: We'll talk about this issue much more; I'm sure the question of allocation is a deep one. I want to keep on the theme that Guido introduced in response to your wonderful book. I have read the book and I would go beyond even the encomiums in Bill Nelson's blurb on the back of the book in my praise of it. Fordham Law School played an enormous role in my life—first by giving my father his degree but then rejecting my application in 1972, which caused me to attend the only school that accepted me of the five to which I applied.

I want to say a word that complements what Guido just said. It is about NYU, a very different school both from Fordham and Yale. When I became dean in 1988, the Law School was characterized by two Latin words, "in absentia." The faculty was spending its time away from the school being of counsel to New York City's leading law firms. My first task was to build community.

Seeking something on which to create community, I had to make a choice between the 150th anniversary of the founding of the Law School or the 100th anniversary of the graduation of the first women. We decided to celebrate the anniversary of the graduation of the first women, which

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150. KACZOROWSKI, *supra* note 1, at 327.

coincided with the appointment to teach Roman law of Emily Kempin, an immigrant from Germany and probably the first tenured female professor in an American law school. The class of 1892, which had the first three women to graduate, evolved out of what began as the Women's Law Program, which was a program for women in New York who were interested in working with immigrants; it trained them in the basics of law. NYU was not an elite school; it was not a school with a vocational mission like Fordham; but I think it evolved into a school on a mission because we were New York City, an immigrant city, and an openness that came more from economic necessity than anything else.

JUDGE CALABRESI: This is the point that each of these schools, Fordham, NYU, Yale, Georgetown in different ways had an opportunity because of certain things that were both down things and up things. At Yale, it was desperately poor. They were too poor to do anything but hire local New Haven lawyers. So how did they do otherwise. Because the president of Yale in the 1880s was a theologian, he barely tolerated the sciences, could not stand the social sciences, and didn't want them taught in Yale College. So William Graham Sumner, the founder of sociology, comes over and teaches economics in the Law School in the 1880s, along with others. And so the Yale approach develops because we're taking in the only scholars we can pay, who are paid by Yale College but are being kicked off.

PROFESSOR ROBIN WEST: Your book and your talk are terrific and so fascinating. I think the theme of your talk was about Fordham Law School's struggle for institutional independence against three powerful institutional forces—the church, the bar, and the larger academy. It seems to me that law schools are still in search of their own independent institutional mission and their own institutional identity.

PROFESSOR WILLIAM NELSON: I want to raise two issues. One, I think if we had someone from Columbia here they would report on Columbia in the 1960s, early 1970s the same way Bob reported on the vocational nature of Fordham and John reported on the practice orientation of NYU. I have always thought this has something to do with being in New York. Two, I'm on the side of Cammarosano. Every time I go to a history department function, I am embarrassed by how much wealth and support I have compared to the wealth and support they have.

JUDGE CALABRESI: That's something worth talking about. It's not all a one-way street.

PROFESSOR NELSON: It's not all a one-way street, but it's an important issue.

PROFESSOR KENNETH MACK: Hasn't the question now been reversed? With the difficulties of law schools all across the United States, the real question is: How much do universities subsidize them? NYU is a big school with a lot of wealthy graduates. Georgetown has the same thing. Fordham will be okay. But for 75 percent of law schools, it's just the opposite.

PROFESSOR KACZOROWSKI: What Fordham was experiencing is something I believe all universities were experiencing—what is the nature of a university. And what is the role of each division within the greater whole. Law schools were thought of as independent vocational, not academic, institutions. They were the phys ed departments of the early twentieth century; Georgetown's athletic teams used to go to the Law School. Hugo Black was rejected from the University of Alabama College of Arts and Sciences, so he went to the Law School. Something else: the third dean of Fordham Law School was very wealthy—he donated the organ for St. Patrick's. Around 1920 he offered Fordham University one million dollars to move the Law School to Yale, where he had been an undergraduate, but the Jesuits rejected the offer. So he founded the Yale Museum of American Art instead.

JUDGE CALABRESI: There is a difference between law schools as possible supporters of universities because you can teach law on the cheap and have thousands of students with a few lecturers and so on. And law graduates make a lot of money and therefore we can get money in and morph into the music school. We are willing to pay our share because we are richer in some ways, but don't make us teach law in a way you wouldn't think of teaching economics—because you want to teach economics, you the provost, an economist, in a small seminar—and say you can teach law students in classes of 250. And it's that difference which is crucial to a proper understanding of the relationship of the university to the law school.