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8-18-2023

## The Lawyer's Law School and the Metropolis: Two Law Schools' Missions

Carlos R. Rosende

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### Recommended Citation

Carlos R. Rosende, *The Lawyer's Law School and the Metropolis: Two Law Schools' Missions*, 54 ST. MARY'S L.J. 1125 (2023).

Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol54/iss4/7>

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## ARTICLE

# THE LAWYER'S LAW SCHOOL AND THE METROPOLIS: TWO LAW SCHOOLS' MISSIONS

CARLOS R. ROSENDE\*

I. Introduction.....	1125
II. Meaning of Mission .....	1129
III. The Evolution of the Mission of St. Mary's University School of Law .....	1131
A. The San Antonio School of Law.....	1131
B. St. Mary's University School of Law: History .....	1133
IV. The Mission of St. Mary's University School of Law Today .....	1142
V. The Evolution of the Mission of Harvard Law School .....	1147
VI. The Mission of Harvard Law School Today .....	1162
VII. Conclusion: The Lawyer's Law School and the Metropolis.....	1168

### I. INTRODUCTION

As a product of San Antonio, Texas, I grew up convinced of the quality, prestige, and influence of the St. Mary's University School of Law. The

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school's graduates include a current U.S. Senator from Texas,<sup>1</sup> several U.S. Representatives,<sup>2</sup> federal and state judges,<sup>3</sup> and local elected officials.<sup>4</sup> St. Mary's University considers itself an “anchor” of San Antonio, committed to serving the local community and fostering civic engagement.<sup>5</sup> Indeed,

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1. See Gregory Lewis McNamee, *John Cornyn: United States Senator*, ENCYC. BRITANNICA (Jan. 29, 2022), <https://www.britannica.com/biography/John-Cornyn> [<https://perma.cc/33ES-5KSG>] (elaborating on the details of Senator Cornyn's life events).

2. See *Farenthold, Blake*, U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/People/Detail/13565> [<https://perma.cc/QN8T-Q4FD>] (stating Representative Blake Farenthold is a graduate of St. Mary's University School of Law); *McCaul, Michael T.*, U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/People/Detail/18786#biography> [<https://perma.cc/6SXM-D2B1>] (stating Representative Michael McCaul is a graduate of St. Mary's University School of Law); *Gonzalez, Charles A.*, U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/People/Detail/14247> [<https://perma.cc/RL42-7K86>] (stating Representative Charlie Gonzalez is a graduate of St. Mary's University School of Law); *McInnis, Scott*, U.S. HOUSE OF REPRESENTATIVES, [https://history.house.gov/People/Listing/M/McINNIS,-Scott-\(M000477\)/](https://history.house.gov/People/Listing/M/McINNIS,-Scott-(M000477)/) [<https://perma.cc/L476-L962>] (stating Representative Scott McInnis is a graduate of St. Mary's University School of Law); *de la Garza, Eligio (Kika), II*, U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/People/Detail/12083> [<https://perma.cc/LK5F-MEPH>] (stating Representative Kika de la Garza II was a graduate of St. Mary's University School of Law); *González, Henry B.*, U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/People/Detail/13906> [<https://perma.cc/R6TQ-PENH>] (stating Representative Henry B. González was a graduate of St. Mary's University School of Law).

3. See *The Honorable David A. Ezra (Retired)*, UNIV. HAW. MANOA WILLIAM S. RICHARDSON SCH. L., <https://www.law.hawaii.edu/person/honorable-david-ezra> [<https://perma.cc/65P8-JHMK>] (stating federal judge David Ezra is a St. Mary's University School of Law graduate); *Heartfield, Thad*, FED. JUD. CTR., <https://www.fjc.gov/node/1382016> [<https://perma.cc/H499-KCHQ>] (stating federal judge Thad Heartfield is a St. Mary's University School of Law graduate); *Judge Elma T. Salinas Ender*, ST. BAR TEX, [https://www.texasbar.com/AM/Template.cfm?Section=Find\\_A\\_Lawyer&template=/Customsource/MemberDirectory/MemberDirectoryDetail.cfm&ContactID=185498](https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&template=/Customsource/MemberDirectory/MemberDirectoryDetail.cfm&ContactID=185498) [<https://perma.cc/R9SD-KQPV>] (stating Elma T. Salinas Ender, a district court judge, graduated from St. Mary's University School of Law); *Justice Paul Green Announces His Retirement*, TEX. JUD. BRANCH: SUP. CT., <https://www.txcourts.gov/supreme/news/justice-paul-green-announces-his-retirement/> [<https://perma.cc/VN57-85T3>] (stating former Texas Supreme Court Justice Green is a St. Mary's University School of Law graduate).

4. See *Texas Secretary of State, Former El Pasoan, Resigning After 2 Years in Office*, EL PASO TIMES (Dec. 6, 2018, 3:12 PM), <https://www.elpasotimes.com/story/news/2018/12/06/el-paso-native-rolando-pablos-resigning-texas-secretary-state/2231743002/> [<https://perma.cc/L8UC-6LHQ>] (stating former Texas Secretary of State, Rolando Pablos, is a graduate of St. Mary's University School of Law); *About Eddie Morales*, EDDIE MORALES FOR TEX. ST. REPRESENTATIVE, <https://moralesfortexas.com/about-me/> [<https://perma.cc/G8B2-QYQ8>] (stating Texas State Representative, Heriberto “Eddie” Morales Jr., is a graduate of St. Mary's University School of Law); *About Judge Nelson Wolff*, WOLFF: CNTY. JUDGE, <https://judgenelsonwolff.com/bio/> [<https://perma.cc/D4C7-GE6V>] (stating a Bexar County Judge and former San Antonio mayor is a graduate of St. Mary's University School of Law).

5. See *Gateway: A Vision for St. Mary's University*, ST. MARY'S UNIV., no. 3, 2020, at 4 (describing St. Mary's mission to build a community).

alumni of the law school won forty-four of the 140 races on the March 2022 Bexar County primary ballot—nearly one-third of the contests.<sup>6</sup> Measured simply by the number of its graduates who have embarked on careers of public service to the community in South Texas, St. Mary's University School of Law would appear to be a staggering success.<sup>7</sup> Yet in arguably the most publicly recognizable scoring of law schools, *U.S. News & World Report* ranks St. Mary's in the bottom quarter of all accredited U.S. law schools, somewhere between 147th and 192nd place; so low it was not given a specific number.<sup>8</sup>

Harvard Law School, on the other hand, is ranked fourth by *US News & World Report*.<sup>9</sup> It is the “oldest continuously operating law school” in the country,<sup>10</sup> and, along with its parent university, is world renowned.<sup>11</sup> Throughout its long history, Harvard Law School's graduates have served in elected offices ranging from the presidency to city mayorships.<sup>12</sup> At the time of this writing, eighteen U.S. Supreme Court justices have attended the

6. To find this data, the Author researched biographical information for the candidate winning the largest percentage of the vote in each of the contests listed on the Bexar County Summary Results Report for the Joint Primary Election held on March 1, 2022. Biographical data came from LinkedIn pages, news reports, campaign websites, and the State Bar of Texas website. The Bexar County March 1, 2022, primary election results are cited here: BEXAR CNTY., SUMMARY RESULTS REPORT (2022), <https://home.bexar.org/el45a.html> [<https://perma.cc/Q5AN-M4U7>]; see also BEXAR CNTY., PRECINCT BY PRECINCT REPORT (2022), <https://www.bexar.org/DocumentCenter/View/33016/March-1-2022-Precinct-by-Precinct-Report-PDF> [<https://perma.cc/HB2Z-ZZHQ>] (breaking down Bexar County's 2022 primary election results precinct by precinct).

7. See *By the Numbers*, ST. MARY'S UNIV. SCH. L., <https://law.stmarytx.edu/> [<https://perma.cc/WX9X-3ZC2>] (providing 500 St. Mary's Law alumni have served in elected or judicial positions and the school recorded 10,343 pro bono hours in 2020).

8. *St. Mary's University*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-law-schools/st-marys-university-03151> [<https://perma.cc/6BA9-RE8K>].

9. *Harvard University*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-law-schools/harvard-university-03074> [<https://perma.cc/5ZTX-7L6Z>].

10. *About*, HARVARD L. SCH., <https://hls.harvard.edu/about/> [<https://perma.cc/W3HQ-XX9K>].

11. E.g., Drake Bennett, *Crimson Tide*, BOSTON.COM (Oct. 19, 2008), [http://archive.boston.com/bostonglobe/ideas/articles/2008/10/19/crimson\\_tide/?page=full](http://archive.boston.com/bostonglobe/ideas/articles/2008/10/19/crimson_tide/?page=full) [<https://perma.cc/VZ6Q-XXML>] (describing Harvard Law School's prestigious reputation).

12. See BRUCE A. KIMBALL & DANIEL R. COUILLETTE, *THE INTELLECTUAL SWORD: HARVARD LAW SCHOOL, THE SECOND CENTURY 785* (2020) (stating Harvard Law School graduates have become presidents of the United States); *Boston Mayor-Elect Michelle Wu '12 Joins Long Line of Harvard Law Educated City Leaders Across the Nation*, HARVARD L. TODAY (Nov. 5, 2021), <https://today.law.harvard.edu/boston-mayor-elect-michelle-wu-12-joins-long-line-of-harvard-law-educated-city-leaders-across-the-nation/> [<https://perma.cc/CQS4-J39W>] (naming some of the Harvard Law graduates who have become mayors).

school.<sup>13</sup> The case method, the standard 1L curriculum, and the three-year course of study—now standard features of American law schools—were creations of Harvard Law School in the late nineteenth century.<sup>14</sup> In creating the mold of the modern law school, Harvard would seem to be the very picture of success.

Yet, if graduates' public service to the local community were alone the measure of a law school's success, it might be noted to Harvard's detriment that in recent years only a small percentage of the school's graduating class has remained in Massachusetts.<sup>15</sup> Harvard Law School's global stature arguably makes the institution a community apart from Massachusetts. The school could be anywhere, but it happens to be in Cambridge. Yet, this does not appear to factor heavily into how Harvard Law School measures its success as an institution.

Laying aside comparative *U.S. News & World Report* rankings and perceptions of prestige (both of which are of dubious value in assessing a program's quality), Harvard Law School and St. Mary's University School of Law are different. This difference is not a product of the schools' differing degrees of success in striving for the same goal. Rather, the difference is a result of these schools striving for different goals. Harvard Law School and St. Mary's University have different missions, and thus, their visions of success and the steps they take to achieve them are different.

These differing missions, their historical development, and the schools' perceptions of their own success in achieving them are the subject of this

13. This number was determined by adding the numbers provided in the following sources: KIMBALL & COUILLETTE, *supra* note 12, at 785; *The Senate Confirms Ketanji Brown Jackson to Serve on the U.S. Supreme Court*, WHITE HOUSE, <https://www.whitehouse.gov/kbj/> [<https://perma.cc/7GQZ-BBXX>] (stating the most recently appointed United States Supreme Court Justice, Ketanji Brown Jackson, graduated from Harvard Law School).

14. See *The Case Study Teaching Method*, HARVARD L. SCH., <https://casestudies.law.harvard.edu/the-case-study-teaching-method/> [<https://perma.cc/7SZR-ZFBT>] (stating Christopher Columbus Langdell, Dean of Harvard Law School from 1870 to 1895, developed the modern curriculum and case method used by law schools across the nation); THE CENTENNIAL HISTORY OF HARVARD LAW SCHOOL 1817–1917 61 (1918) (stating Langdell's three-year curriculum has become commonplace in law schools throughout the United States).

15. See AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, HARVARD UNIVERSITY EMPLOYMENT SUMMARY FOR 2020 GRADUATES 2 (2021) [hereinafter SUMMARY FOR 2020 HLS GRADUATES] (reporting the three largest employment locations for graduates from Harvard Law School are New York, California, and the District of Columbia); AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, HARVARD UNIVERSITY EMPLOYMENT SUMMARY FOR 2019 GRADUATES 1–2 (2020) [hereinafter SUMMARY FOR 2019 HLS GRADUATES]; AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, HARVARD UNIVERSITY 2021 ULTIMATE BAR PASSAGE 1 (2021) [hereinafter 2021 HLS ULTIMATE BAR PASSAGE].

paper. In analyzing these schools' missions and definitions of success, this Article will examine their histories and perceived communities. Institutional experience shapes institutional identity, and community membership and identity are intertwined with purpose. This Article will also analyze the schools' current missions, the ways in which the schools portray themselves to the public, and the ways in which the schools interact with what they currently perceive to be their broader constituencies. Unfortunately, this Article's examination of the schools' assessments of their own performance in achieving their missions is limited due to the confidential nature of an important source of information on this topic: the ABA Standard 204 law school self-assessments.<sup>16</sup>

## II. MEANING OF MISSION

The American Bar Association (ABA) prescribes the “objectives” for a program of legal education and minimum “learning outcomes” that law schools must achieve, but the ABA requires that law schools develop and implement their own institutional missions. Standard 301 of the ABA's Standards and Rules of Procedure for the Approval of Law Schools defines the “objective” of a program of legal education as preparing students “for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”<sup>17</sup> In support of this objective, law schools are required to develop “learning outcomes,” which are defined in Standard 302 as competency in several basic legal skills, including knowledge of the law and legal reasoning.<sup>18</sup> Standard 204 requires each law school to provide the ABA with a self-assessment that includes “a statement of the law school's mission and of its educational objectives in support of that mission.”<sup>19</sup>

The ABA does not define “mission,” but given that the requirement is listed separately from “objectives” and “learning outcomes,” it seems intended to be a distinct concept. To comply with ABA standards, a law school must not only meet the ABA's objectives and minimum learning outcomes but also identify an institutional mission and develop its own

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16. See E-mail from Genevieve Ferraro, Am. Bar Assoc., to author (Mar. 15, 2022, 14:14 EDT) (on file with author) (stating the ABA Standard 204 self-assessments are confidential).

17. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2022–2023, at 17 (2022).

18. *Id.*

19. *Id.* at 13.

educational objectives in support of that mission.<sup>20</sup> A school presumably cannot simply restate the ABA's objectives and learning outcomes as its mission.

Jerome Organ, Professor of Law at the University of St. Thomas School of Law, defines a law school's mission as "a shared commitment with both an internal and external focus."<sup>21</sup> According to Organ, the internal function of a mission is to define a purpose and values that guide a school's decision-making and resource allocation, while its external function is to provide "a brand identity that attracts various constituents."<sup>22</sup> The mission is frequently encapsulated in a simple mission statement that says not simply what a school *does*—the realm of learning outcomes and objectives—but *why*.<sup>23</sup> Without a mission, a law school risks its curriculum and its investments in time, effort, and money becoming "a collection of discrete activities without coherence."<sup>24</sup> From an administrative perspective, as Organ notes, "[r]esource questions are mission questions."<sup>25</sup>

This Article adopts Jerome Organ's definition of mission, which is paraphrased as: the guiding values and purpose of an institution, which all its activities are intended to directly or indirectly support. Viewed from another angle, an institution's mission is the purpose that all the institution's activities must invoke to prove their relevance. In defining a purpose and values, a mission provides insight into a school's identity and what it aspires to achieve. For Harvard Law School and St. Mary's University School of Law, the vision of success differs.

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20. See Marie Summerlin Hamm et al., *The Rubric Meets the Road in Law Schools: Program Assessment of Student Learning Outcomes as a Fundamental Way for Law Schools to Improve and Fulfill Their Respective Missions*, 95 U. DET. MERCY L. REV. 344, 364–66 (2018) (explaining how law schools must do more than teach curriculum); SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, *supra* note 17, at 13 (stating the requirements a law school must meet before the ABA visits their campus).

21. Jerome Organ, *Missing Missions: Further Reflections on Institutional Pluralism (or Its Absence)*, 60 J. LEGAL EDUC. 157, 159 (2010).

22. *Id.*

23. *Id.* at 160.

24. *Id.* at 164 (internal quotation marks omitted).

25. *Id.* at 166.

### III. THE EVOLUTION OF THE MISSION OF ST. MARY'S UNIVERSITY SCHOOL OF LAW

#### A. *The San Antonio School of Law*

By the late 1920s, the population of San Antonio, Texas, exceeded 161,000, and Bexar County's total population grew to over 200,000.<sup>26</sup> During this period, only fifteen to twenty individuals applied to join the local bar each year.<sup>27</sup> The local bar association felt that few applicants who met the statutory requirements for admission had received effective training.<sup>28</sup> With no university-affiliated law schools nearby and the growing sense that the local proprietary law schools were inadequate, the San Antonio Bar Association opted to address the city's shortage of well-trained attorneys by offering its own course of instruction.<sup>29</sup>

On October 1, 1927, the San Antonio Bar Association held the first class of the San Antonio School of Law at the Bexar County Courthouse.<sup>30</sup> The school was founded in response to a specific problem: the low level of training of local applicants to the bar.<sup>31</sup> The school's early mission was, therefore, a simple one: to improve the "quality and knowledge" of aspiring local lawyers who did not have the benefit of a university law education and to recruit and prepare fit candidates for admission to the local bar.<sup>32</sup> According to John H. Bickett of the San Antonio Bar Association, the new school would succeed if it consistently produced around ten qualified lawyers for the local bar each year.<sup>33</sup>

The San Antonio School of Law was administered by a board of governors appointed by the San Antonio Bar Association,<sup>34</sup> and classes were held

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26. BUREAU OF THE CENSUS, DEP'T OF COM., FOURTEENTH CENSUS OF THE UNITED STATES 85 (1923).

27. *Bar Association Operates Law School*, 16 J. AM. JUDICATURE SOC'Y 182, 182 (1933).

28. *Id.*

29. *Id.*; *Bar Association to Open School*, SAN ANTONIO EXPRESS, Sept. 21, 1927, at 7.

30. Vincent R. Johnson, *Turning Points in the History of St. Mary's University School of Law (1980–1988)*, 50 ST. MARY'S L.J. 521, 522 (2019).

31. *Bar Association Operates Law School*, *supra* note 27.

32. *Id.*; *see Bar Association to Open School*, SAN ANTONIO EXPRESS, Sept. 21, 1927, at 7 ("The course is intended to help young men who are preparing for the bar examination and are not able to attend the university."); Ernest A. Raba, *St. Mary's University—From the Bexar County Courthouse to 112 College and the Exodus to the Woodlawn Campus*, 35 TEX. BAR J. 917, 917 (1972) (stating the school was originally created for those who did not have "the privilege of attending the college law schools").

33. *Bar Association Operates Law School*, *supra* note 27.

34. Raba, *supra* note 32, at 917.



every Monday, Wednesday, and Friday in the Bexar County Courthouse from 7:00 PM to 10:00 PM.<sup>35</sup> The first faculty—unpaid volunteers<sup>36</sup>—consisted of four local attorneys who taught courses in criminal law, torts, elementary law, contracts, and personal property, while “prominent members of the bar” occasionally presented special lectures.<sup>37</sup> Each year, the school added another class of students, and course offerings were enlarged until a full three-year law school curriculum was implemented in 1929, with classes running throughout the year.<sup>38</sup> The San Antonio Bar Association’s ultimate goal was to mirror the major courses offered at the University of Texas School of Law.<sup>39</sup> The new law school was a nonprofit<sup>40</sup> and charged tuition of ten dollars per month to cover operating costs.<sup>41</sup>

Within one month of its founding, the San Antonio School of Law reported far greater enrollment than the San Antonio Bar Association had initially expected.<sup>42</sup> In response, the school set a soft cap of a dozen students per graduating class.<sup>43</sup> The San Antonio Bar Association was careful to note that this cap on annual enrollment was necessary to maintain the quality of the courses and was not intended to drive unadmitted applicants into the local proprietary schools.<sup>44</sup> In fact, the Bar Association hoped the San Antonio School of Law would succeed in out-competing the “inferior” local proprietary schools and “beat [them] at their own game.”<sup>45</sup> Indeed, by 1933, the San Antonio School of Law was such a success that John H. Bickett gave a presentation on the school to the American Judicature Society and referred to the school as a model of “innovation [that] deserves nationwide publicity.”<sup>46</sup>

As its name implied, the San Antonio School of Law was a creature of San Antonio. It was created by an association of local practicing attorneys to serve a specific need within the community. As a member of the local

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35. *Bar Association to Open School*, *supra* note 29, at 7.

36. *Bar Association Operates Law School*, *supra* note 27, at 182.

37. *Bar Association to Open School*, *supra* note 29, at 7.

38. Raba, *supra* note 32, at 917.

39. *Cf. Bar Association to Open School*, *supra* note 29, at 7 (“A law school offering the same course[s] as the University of Texas will be sponsored by [the] San Antonio Bar Association . . .”).

40. *Bar Association Operates Law School*, *supra* note 27, at 182.

41. *Bar Association to Open School*, *supra* note 29, at 7; Raba, *supra* note 32 at 917.

42. *Constitution Adopted by Bar Association*, SAN ANTONIO EXPRESS, Oct. 21, 1927, at 24.

43. *Bar Association Operates Law School*, *supra* note 27, at 182.

44. *Id.*

45. *Id.*

46. *Id.*

bar remarked, “[t]here was no intention to make this school compete outside of its own territory”—Bexar County.<sup>47</sup> It did this successfully enough that, by the early 1930s, another Bexar County institution, St. Mary's University, sought to acquire the law school.<sup>48</sup>

#### B. *St. Mary's University School of Law: History*

The Society of Mary, whose members are referred to as “Marianists,” was formed in France in 1817 by a Catholic priest named William Joseph Chaminade.<sup>49</sup> Chaminade intended the society to aid in the re-Christianization of France in the wake of the violence and societal upheaval of the French Revolution and Napoleonic Wars.<sup>50</sup> Chaminade's efforts focused on establishing educational institutions to promote Christianity across all levels of French society.<sup>51</sup> To this end, the Marianists established several schools throughout France during the early nineteenth century.<sup>52</sup> As they became increasingly involved in education, the Marianists adopted an ethos of promoting intellectual development as an end in itself in parallel with promoting Christianity.<sup>53</sup>

“The first Marianists arrived in the United States in 1849.”<sup>54</sup> Three years later, in 1852, four Marianist Brothers founded what would become St. Mary's University in San Antonio, Texas.<sup>55</sup> The institution grew over the ensuing decades and adopted the title of “University” in 1927 upon conferring its first four-year bachelor's degrees.<sup>56</sup> In 1933, St. Mary's University boasted an enrollment of over 700 students from nineteen states and two foreign countries.<sup>57</sup> The faculty was comprised primarily of members of the Society of Mary, “whose sole object in life [was] the education of youth.”<sup>58</sup>

47. *Id.*

48. Raba, *supra* note 32, at 917.

49. ASS'N OF MARIANIST UNIVS., CHARACTERISTICS OF MARIANIST UNIVERSITIES 3 (2019 ed. 2019); David A. Grenardo, *Marianist Law Schools: Demonstrating the Courage to be Catholic*, 60 J. CATH. LEGAL STUD. 1, 15 (2022).

50. Grenardo, *supra* note 49, at 22–23; ASS'N OF MARIANIST UNIVS., *supra* note 49, at 6.

51. Grenardo, *supra* note 49, at 27.

52. *Id.* at 28.

53. ASS'N OF MARIANIST UNIVS., *supra* note 49, at 9.

54. *Id.* at 3.

55. *St. Mary's Law History*, ST. MARY'S UNIV. SCH. L., <https://law.stmarytx.edu/academics/about/st-marys-law-history/> [<https://perma.cc/3A2S-4BSE>].

56. *St. Mary's University Historical Timeline*, ISSUU (June 5, 2013), [https://issuu.com/stmarysu/docs/stlouishall\\_timeline\\_issuu](https://issuu.com/stmarysu/docs/stlouishall_timeline_issuu) [<https://perma.cc/S235-AB82>].

57. *St. Mary's U. Is Historical Institution*, SAN ANTONIO LIGHT, July 30, 1933, at 8.

58. *Id.*

By the 1930s, St. Mary's University offered both a Bachelor of Arts and a Bachelor of Science, more than a dozen academic majors, and an intercollegiate athletic program.<sup>59</sup> To further expand the university's curriculum, the school's sociology department worked with the Bexar County Board of Welfare to develop a course in social work.<sup>60</sup> The university's Department of Education, meanwhile, initiated a program that permitted local teachers to obtain a state Teacher's Certificate.<sup>61</sup>

As St. Mary's rapidly expanded its academic programs and enrollment, the university began offering preparatory courses for students interested in attending professional schools, including law school.<sup>62</sup> Ultimately, St. Mary's became interested in hosting its own law program.<sup>63</sup> In early 1933, the university approached the San Antonio Bar Association with an offer to take over the San Antonio School of Law and administer it as a university law school.<sup>64</sup> The arrangement would be mutually beneficial; San Antonio would retain its law school, but it would now benefit from the greater resources of a parent university, and the San Antonio Bar Association would be absolved of running a school. The bar association agreed to transfer the San Antonio School of Law to St. Mary's University, and in October of 1934, the law school became the St. Mary's University School of Law.<sup>65</sup>

Most of the San Antonio School of Law faculty continued at the St. Mary's University School of Law, although they now received compensation for their work.<sup>66</sup> The university immediately increased the school's admission requirements to a minimum of sixty completed semester hours of college-level courses.<sup>67</sup> The tuition system also changed from \$10 per month to \$5 per semester hour, totaling \$360 for the entire three-year program.<sup>68</sup> Classes moved out of the Bexar County Courthouse to a dedicated building in downtown San Antonio, which had been constructed by St. Mary's University's founders in 1853.<sup>69</sup> When St. Mary's University School of Law held

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59. *St. Mary's University of San Antonio: San Antonio's Only Senior College for Men*, SAN ANTONIO LIGHT, July 28, 1935, at 10.

60. *St. Mary's Gives Wide Opportunity*, SAN ANTONIO EXPRESS, July 28, 1935, at A7.

61. *St. Mary's U. Is Historical Institution*, *supra* note 57, at 8.

62. *Id.*

63. *Id.*

64. *St. Mary's Law History*, *supra* note 55.

65. Raba, *supra* note 32, at 917.

66. *Id.* at 918.

67. *Id.*

68. *Id.*

69. *Id.*; *St. Mary's Law History*, *supra* note 55 (providing a construction date of 1853).

its first classes in the fall of 1934, the school had only thirty-one students across all three years, two-thirds of whom had begun their studies at the San Antonio School of Law.<sup>70</sup> The graduating class of 1937 was the first class to include students who had entered the St. Mary's University School of Law as freshmen.<sup>71</sup>

St. Mary's University School of Law continued the San Antonio School of Law's efforts to keep costs low and offer night classes to make legal education accessible to individuals for whom being a full-time student was not an option.<sup>72</sup> Some changes did occur, including the initiation of day classes in the fall semester of 1936 and the development of a law library during the second half of the 1930s.<sup>73</sup> Nevertheless, the new incarnation of the law school inherited its predecessor's focus on practical lawyering skills, and emphasized its "[f]aculty of local practicing attorneys."<sup>74</sup>

Significantly, the new law school remained committed to its predecessor's founding purpose of serving San Antonio. Like the San Antonio School of Law, St. Mary's University was a creature of the local community. In explaining a curriculum change on one occasion, a local newspaper reported that the university felt obligated to "develop step by step with the educational needs of the city of San Antonio and the State of Texas."<sup>75</sup> As late as 1972, an early graduate and later dean of St. Mary's University School of Law wrote that "St. Mary's University never lost sight of the great responsibility[,] which it assumed when the San Antonio Bar Association transferred its school to the University."<sup>76</sup>

While the core mission of the law school did not change, its transfer to St. Mary's University meant that it gained an additional, Marianist mission and identity.<sup>77</sup> A central component of St. Mary's University's Marianist mission was serving the community's educational needs by striving to provide a high-quality educational institution devoted to "the giving of secular knowledge with moral training and development."<sup>78</sup> While the character

70. Raba, *supra* note 32, at 918.

71. *Id.* at 918–19.

72. *See St. Mary's Law History*, *supra* note 55 (showing the school wants to continue its tradition of keeping costs low); *see also* Raba, *supra* note 32, at 917 (showing the original purpose of the law school was to provide a legal education to those who could not afford it).

73. Raba, *supra* note 32, at 919.

74. *St. Mary's Gives Wide Opportunity*, *supra* note 60.

75. *Id.*

76. Raba, *supra* note 32, at 922.

77. *St. Mary's Law History*, *supra* note 55.

78. *St. Mary's Gives Wide Opportunity*, *supra* note 60.

development aspects of the education were rooted in Catholicism and the school itself was a Catholic institution, the university's ethical training appealed to some extent to moral universalism, and by 1935 the school advertised that it "ha[d] always welcomed and will continue to welcome men and women of all faiths."<sup>79</sup> Perhaps in an effort to underscore the university's openness to students of all religions, a depression-era newspaper advertisement for the school touted its degrees (including the newly added bachelor of laws), majors, sports, extracurricular activities, and R.O.T.C. program, but made no mention of the school's religious affiliation.<sup>80</sup> The closest the advertisement came to referencing the university's Catholic identity was the vague statement that the campus had a "[h]igh moral atmosphere."<sup>81</sup>

Another component of the school's Catholic Marianist mission was a commitment to making higher education as attainable as possible. St. Mary's was devoted to the "aid [of] deserving students in any manner within her power," which conveniently dovetailed with the San Antonio School of Law's purpose and model.<sup>82</sup> The university offered numerous scholarships and financial aid packages, including through the Knights of Columbus, the St. Monica's Guild Loan Fund, and the Federal Emergency Relief Administration.<sup>83</sup> Where such aid was not available, students in need of assistance were "taken care of . . . through odd jobs on the campus."<sup>84</sup>

Under St. Mary's University, the law school continued to grow over the subsequent decades, with one notable exception. After the United States became involved in the Second World War, the law school's enrollment fell, and the day program, only a few years old, ended.<sup>85</sup> Although the school's student body peaked at fifty-four members prior to the war, enrollment averaged between twenty-four and thirty-two during the early 1940s.<sup>86</sup> The school's faculty shrank to just three individuals who worked on an almost volunteer basis to keep the school open.<sup>87</sup> Fortunately for the school, enrollment rebounded quickly after the end of the war, and the day program

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79. *Social Work at St. Mary's 'U'*, SAN ANTONIO LIGHT, July 28, 1935, at 10.

80. *St. Mary's University of San Antonio: San Antonio's Only Senior College for Men*, *supra* note 59.

81. *Id.*

82. *St. Mary's Gives Wide Opportunity*, *supra* note 60.

83. *Id.*

84. *Id.*

85. Charles E. Cantú, *An Oral History of St. Mary's University School of Law (1961–2018)*, 50 ST. MARY'S L.J. 309, 329 n.57 (2019).

86. Raba, *supra* note 32, at 919.

87. *Id.*

was able to restart in 1946.<sup>88</sup> St. Mary's University directed the school to seek accreditation by the American Bar Association, and in 1948 the law school was approved by the ABA.<sup>89</sup> St. Mary's University School of Law became a member of the Association of American Law Schools the following year.<sup>90</sup>

In 1946, Ernest Raba, a 1937 graduate of St. Mary's University School of Law, became the law school's dean, a position he held until 1978.<sup>91</sup> Under Raba's leadership, the school doubled down on the central mission of training lawyers and cultivated a reputation as "a lawyer's law school."<sup>92</sup> The school acknowledged that not all of its graduates would become practicing lawyers, but, according to a professor who served under Raba, the goal was to teach students "from the perspective of being practicing lawyers. That was our mission, to graduate individuals who could practice law."<sup>93</sup> Dean Raba felt strongly that the school had an "obligation to the bench and bar" to generate competent practitioners, and this philosophy drove the school's focus on practical training during his tenure.<sup>94</sup> The law school also began offering continuing legal education courses on a variety of topics to practicing lawyers and opened its library to members of the local bar.<sup>95</sup>

As the school grew, so did its faculty. Here, Raba's influence was felt in the push to continue hiring professors who were practicing lawyers.<sup>96</sup> The school wanted faculty "whose talents have not been solely developed in the theoretical atmosphere of a classroom, but [who] have also come out of the crucible of experience as successful attorneys at law."<sup>97</sup> It was thought that enthusiastic and accomplished lawyers, rather than academics, were best

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88. *Id.*

89. James N. Castleberry, Jr., *St. Mary's University School of Law*, 6 CATH. LAW. 49, 49 (1960).

90. *Id.*

91. *Law School Dean Emeritus Ernest Raba Dies*, ST. MARY'S UNIV. (Dec. 6, 2007), <https://www.stmarytx.edu/2007/law-school-dean-emeritus-ernest-raba-dies/> [<https://perma.cc/MK4X-7JPT>].

92. Cantú, *supra* note 85, at 393–94; Castleberry, *supra* note 89, at 49; Robert M. Perry et al., *St. Mary's: A Lawyer's Law School*, 6 STUDENT L.J. 16, 24 (1961).

93. Cantú, *supra* note 85, at 394.

94. Raba, *supra* note 32, at 922.

95. See Perry et al., *supra* note 92, at 17, 24 (detailing the institutes available to practicing attorneys and noting the opening of the library to local bar members); Castleberry, *supra* note 89, at 50–51 ("[T]he library . . . is available for all practicing attorneys in San Antonio and South Texas.").

96. Perry et al., *supra* note 92, at 24.

97. *Id.*

sued to fulfill the school's goal of imbuing its students with a "yearning" to practice.<sup>98</sup>

Raba's vision for the school incorporated both the founding purpose of the San Antonio School of Law and the Marianist mission of St. Mary's University. In his view, the school had a "grave" responsibility to provide graduates with the "moral and intellectual capacity and stamina to serve adequately the profession, the client and the public."<sup>99</sup> This required instilling in students a sense of professional responsibility in addition to practical lawyering skills and to foster a sense that it was their "duty" to serve the community.<sup>100</sup> As several alumni later wrote, the goal of the law school during this period was to make its graduates aware of "their responsibilities to society—placed upon them by virtue of their becoming members of the legal profession."<sup>101</sup> The legacy of this mission could already be seen in 1960. Between that year and the school's founding in 1927, a total of 505 students graduated from the law school.<sup>102</sup> These alumni included federal district court judges, state judges, district and city attorneys throughout Texas, and lawyers in the Texas Attorney General's office.<sup>103</sup>

With this clarity of purpose, the school's post-war growth was rapid. In 1951, the admission requirements were increased again, this time to ninety undergraduate semester hours.<sup>104</sup> Meanwhile, the minimum required credit hours for graduation from the law school increased to eighty-four.<sup>105</sup> Enrollment in 1960 reached 199 students, a staggering increase from a low of just twenty-four during World War II.<sup>106</sup> The school offered forty-four different courses that year and required every student to participate in the school's moot court for two years.<sup>107</sup> A few years later, in 1966, a bachelor's degree became required for admission, and the bachelor of laws was replaced with the juris doctor.<sup>108</sup> Throughout this era, the majority of the

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98. *Id.*

99. Castleberry, *supra* note 89, at 51.

100. *Id.* at 86.

101. Perry et al., *supra* note 92, at 24.

102. Castleberry, *supra* note 89, at 50.

103. *Id.*

104. Raba, *supra* note 32, at 920.

105. *Id.*

106. Castleberry, *supra* note 89, at 49 ("Enrollment this year jumped to an all-time high of 199 students . . ."); Raba, *supra* note 32, at 919 (recounting how enrollment during the war years dropped to twenty-four students).

107. Castleberry, *supra* note 89, at 50.

108. Raba, *supra* note 32, at 920.

school's students hailed from South Texas; this was the market from which the school recruited students and the market to which the school supplied graduates.<sup>109</sup> Nevertheless, enrollment reached 280 full-time students and 120 night students in 1967, and the need for a larger campus became acute.<sup>110</sup>

In the late 1960s, a new law school campus was constructed on the grounds of St. Mary's University's Woodlawn campus northwest of downtown San Antonio, and the law school moved into its new quarters.<sup>111</sup> The school continued to focus on practical training at its new location. When its flagship law review, the *St. Mary's Law Journal*, was established in 1969, it was explicitly intended to be a "practitioner's journal" with an emphasis on "relevant legal scholarship."<sup>112</sup> It evidently succeeded, with the *Texas Bar Journal* endorsing the publication as "a good buy for any Texas law office."<sup>113</sup> Alongside its fifteen full-time faculty members, the school maintained a fifteen-person "special instructional staff" comprised of judges and practicing members of the local bar.<sup>114</sup> Additionally, during the 1960s, St. Mary's law students had opportunities to gain practical legal experience. The school operated a legal aid program for the poor at the Bexar County Courthouse, which allowed students to gain experience working with clients in an actual practice setting, in addition to fulfilling the school's Catholic mission of service.<sup>115</sup> Students could also work part-time for practicing attorneys or in the office of the district attorney.<sup>116</sup> These opportunities expanded in the early 1970s with the establishment of a program permitting students to work with officers in the Bexar County District Attorney's office juvenile section.<sup>117</sup>

The law school's success prompted St. Mary's University to look to the school for additional income, and in the early 1970s, the university began to pressure the law school to expand its enrollment.<sup>118</sup> At peak, 52% to 56% of the law school's tuition income was siphoned off by the university to

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109. Cantú, *supra* note 85, at 332.

110. Raba, *supra* note 32, at 920.

111. *Id.* at 922; Johnson, *supra* note 30, at 523–24.

112. Barbara Hanson Neller, *50 Years of Excellence: A History of the St. Mary's Law Journal*, 50 ST. MARY'S L.J. 1, 2 (2019).

113. *Id.* at 3.

114. Raba, *supra* note 32, at 922.

115. Cantú, *supra* note 85, at 319.

116. Sue Bentsch, *A History of the Law Clinics at St. Mary's University School of Law*, 46 ST. MARY'S L.J. 285, 286 (2015).

117. *Id.*

118. Johnson, *supra* note 30, at 532.



cover losses from the undergraduate program.<sup>119</sup> This was eventually limited to roughly 23%, but not before the student body had expanded to 500 full-time students.<sup>120</sup> The student-to-faculty ratio increased to 41:1, prompting efforts to expand the faculty to restore a more favorable ratio.<sup>121</sup> Meanwhile, the night classes were phased out.<sup>122</sup>

As the school endured these growing pains, it also endeavored to become a “national” law school. The school attempted to recruit students from beyond its traditional applicant pool in the Laredo-San Antonio-Corpus Christi triangle, and even from beyond Texas.<sup>123</sup> Many of the newly hired faculty had a stronger interest in research and publication than the practice-oriented faculty who had previously been in the majority, raising the possibility that the school’s increased academic production might boost the institution’s national profile (while also causing some tension between the newcomers and the old hands).<sup>124</sup> Dean Raba considered progress on these efforts sufficient to declare, in 1972, that the school was now “national” and not merely “municipal.”<sup>125</sup> Not everyone agreed with Raba’s assessment. One veteran faculty member later recorded that after several “bad experiences” with students recruited nationally, the school quietly shifted its focus back to recruiting Texas residents and did not attempt to go national again until 1989.<sup>126</sup>

The school’s local ties remained strong through the 1970s and 1980s, and Raba and his successor James Castleberry made a deliberate effort to establish close relationships with Texas Supreme Court justices and judges of the Texas Court of Criminal Appeals.<sup>127</sup> The law school also maintained its close relationship with the local bar, which included many of its alumni.<sup>128</sup> During the twenty years following Raba’s retirement, the school built a new law library and expanded its experiential offerings.<sup>129</sup> Once again looking

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119. Cantú, *supra* note 85, at 343 n.106.

120. *Id.* at 346 (stating figure of 23%); Raba, *supra* note 32, at 922 (recognizing there were 500 students).

121. Johnson, *supra* note 30, at 532.

122. Raba, *supra* note 32, at 922.

123. Cantú, *supra* note 85, at 332.

124. Johnson, *supra* note 30, at 581–82.

125. Raba, *supra* note 32, at 920.

126. Cantú, *supra* note 85, at 333.

127. *Id.* at 335.

128. *Id.* at 336.

129. Johnson, *supra* note 30, at 547 (describing library construction); Cantú, *supra* note 85, at 369 (illustrating experiential offerings).

beyond Texas, the school initiated international programs in Mexico and Innsbruck, Austria.<sup>130</sup> At home, the law school established several new externship opportunities that qualified for academic credit, including programs to place students with Assistant U.S. Attorneys in San Antonio, the office of the San Antonio City Attorney, state district judges, the local bankruptcy court, and several local banks.<sup>131</sup>

The law school's experiential offerings flourished under Dean Barbara Aldave in the late 1980s and early 1990s. The Poverty Law Clinic was the first to be established.<sup>132</sup> While the clinic supported the school's educational goals by giving students opportunities to gain direct experience practicing the law, Aldave emphasized the clinic's mission of providing legal aid services to impoverished clients.<sup>133</sup> In her view, the school's Catholic identity obligated the institution to serve "the underserved and the underrepresented" of San Antonio, and clinical programs were a way to fulfill this duty.<sup>134</sup> To house the new clinics and to support her interpretation of the school's mission, Aldave established the Center for Legal and Social Justice in 1996.<sup>135</sup>

Surveys completed in the late 1980s indicated that the law school's students were pleased with the school's emphasis on providing "practical insight into lawyering."<sup>136</sup> Students also preferred that the curriculum focus on Texas law, demonstrating a strong inclination towards the practical, given that most graduates would practice in Texas.<sup>137</sup> At the same time, respondents expressed a desire for the school to strive for a more prominent national reputation.<sup>138</sup> It is not clear whether this desire stemmed from a sense of pride, or from a practical interest in being more competitive for employment outside of Texas. Regardless, through the 1990s and early 2000s, the school's national reputation grew. The *St. Mary's Law Journal* achieved national recognition, as did the school's summer program in Innsbruck, which

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130. Cantú, *supra* note 85, at 335.

131. Bentch, *supra* note 116, at 286–87.

132. *Id.* at 288.

133. *Id.* at 289.

134. Cantú, *supra* note 85, at 369 n.185, 394.

135. Bentch, *supra* note 116, at 300.

136. Johnson, *supra* note 30, at 586–87.

137. *Id.* at 587.

138. *Id.*

attracted the participation of eight U.S. Supreme Court justices between 1991 and 2013.<sup>139</sup>

Even as the school's reputation grew, it remained engaged with the local community. Additional clinics addressing the legal needs of residents of South Texas were established through the 2000s, as were pro-bono programs.<sup>140</sup> These drew both local and national recognition.<sup>141</sup> In the first decade of the twenty-first century, after determining that San Antonio was the largest metropolitan area in the United States without an evening law school program, St. Mary's University School of Law once again began offering night classes.<sup>142</sup> Even as it aspired to national prominence, the school made a deliberate effort to serve the educational needs of South Texas, expanding access to legal education and providing legal services locally.

#### IV. THE MISSION OF ST. MARY'S UNIVERSITY SCHOOL OF LAW TODAY

The St. Mary's University School of Law's current mission statement, which it shares with its parent university, reads: "St. Mary's University, as a Catholic Marianist University, fosters the formation of people in faith and educates leaders for the common good through community, integrated liberal arts and professional education, and academic excellence."<sup>143</sup> This mission statement is followed by a list of the five "Characteristics of Marianist Universities": the duties to "[e]ducate for formation in faith," "[p]rovide an integral quality education," "[e]ducate in the family spirit," "[e]ducate for service, justice and peace, and integrity of creation," and "[e]ducate for adaptation and change."<sup>144</sup> In an informational flyer available on the law school's website, the current dean, Patricia Roberts, reiterates these values. Her short, three-sentence statement introducing the school includes the phrases "servant-leaders," "community service," and "service to others," and the flyer describes the school's students as "serious about pursuing the

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139. Nellerhoe, *supra* note 112, at 2 (illustrating the *Journal's* national profile); Lance Kimbro, *Ezra, Rebnquist, and St. Mary's University*, 52 ST. MARY'S L.J. xi, xxiii (2020) (describing participation by Justices of the U.S. Supreme Court in the program at Innsbruck).

140. Bentsch, *supra* note 116, at 295–306.

141. *Id.* at 314–16 (listing the awards and recognition earned by experiential programs).

142. Cantú, *supra* note 85, at 395.

143. *Mission and Vision*, ST. MARY'S UNIV., <https://www.stmarytx.edu/about/mission-vision/> [perma.cc/9U4B-G4MM] [hereinafter *Mission*]; *Mission and Vision*, ST. MARY'S UNIV. SCH. OF L., <https://law.stmarytx.edu/academics/about/mission-vision/> [perma.cc/E752-6U2A] [hereinafter *Vision*].

144. *Mission*, *supra* note 143; *Vision*, *supra* note 143.

mission of giving a voice to the voiceless through community service and pro bono work.”<sup>145</sup>

St. Mary's University's most recent strategic plan draws on this Catholic, Marianist mission to set the institutional objective of becoming “one of the *finest* private universities in the region, a gateway for our graduates to professional lives as *ethical leaders* in Texas, the nation[,] and the world.”<sup>146</sup> This language appears unremarkable at first glance, and as a broad vision it could be the product of almost any university. However, as a St. Mary's law school faculty member argues, although many of the school's activities mirror those of secular law schools, the motivation and purpose behind St. Mary's actions remain rooted in its religious identity.<sup>147</sup> Indeed, although four of the five goals listed in the strategic plan are generic—such as promoting “a culture of excellence” and “innovat[ion] and change”—all five of the goals are elaborated by reference to Catholic scripture and Marianist values.<sup>148</sup>

Like other Marianist universities, St. Mary's and its law school stress “education for leadership as service,” and character development is seen as integral to this mission.<sup>149</sup> The Marianist educational philosophy builds on traditional Catholic social teachings regarding service to the poor and vulnerable, and emphasizes imbuing graduates with a sense of responsibility for providing ethical public service.<sup>150</sup> In the Marianist view, “[t]he intellectual life itself is undertaken as a form of service in the interest of justice and peace” with “a special concern for those who are poor and marginalized.”<sup>151</sup> The St. Mary's University School of Law also cites its Marianist tradition as the source of its policy of welcoming students of any religion.<sup>152</sup> The school makes no effort to convert students to Catholicism but rather states that it uses Catholicism as a foundation for instilling professional ethics and a sense of social responsibility.<sup>153</sup>

The law school's Marianist mission is cited as the justification for many of its current programs. Sister Grace Walle, the law school's chaplain, states that the school's clinical programs exist to “make the law more responsive

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145. ST. MARY'S UNIV. SCH. OF L., OUR MISSION AND TRADITION OF LEGAL EXCELLENCE 1–2 (2022).

146. ST. MARY'S UNIV., *supra* note 5, at 3 (emphasis added).

147. Grenardo, *supra* note 49, at 31.

148. ST. MARY'S UNIV., *supra* note 5, at 6, 8, 10, 12.

149. ASS'N OF MARIANIST UNIV., *supra* note 49, at 10–11.

150. *Id.* at 11, 20.

151. *Id.* at 19.

152. Grenardo, *supra* note 49, at 1–2.

153. *Id.* at 32.

to the needs of the poor” and to fulfill “[t]he role of the Catholic law school” in linking “the profession of justice with the practice of justice.”<sup>154</sup> The goal of using clinics to provide practical training to law students is, at least ostensibly, secondary to their community service function and their role in instilling in students a sense of duty to the poor. The school’s law review, the *St. Mary’s Law Journal*, holds as core values “the Catholic qualities of respect for all people and traditions, social justice, [and] leadership for the common good.”<sup>155</sup> An article by a St. Mary’s University School of Law professor provides specific examples of St. Mary’s efforts to fulfill each of the five “Characteristics of Marianist Universities,” including work to expand and improve educational programming, fostering a sense of community and hospitality on campus, and providing legal services to the poor through clinics and pro-bono programs.<sup>156</sup> The law school also hosts a campus minister responsible for coordinating various activities in support of the school’s Marianist missions and providing “personal guidance, spiritual support, and hospitality.”<sup>157</sup>

The substance of some courses is directly related to and supportive of the Marianist mission, indicating that the frequent invocation of the school’s Catholic identity is more than mere lip service. The Spring 2022 syllabus for a course entitled “Foundations of Lawyering” includes among its learning objectives analyzing “how [the student] can incorporate aspects of the Marianist origin and traditions and [the student’s] own faith tradition into [the student’s] life and career,” and learning to understand and apply “Catholic and Marianist traditions” to current legal issues.<sup>158</sup> The course includes readings from Buddhism, Judaism, Christianity, Islam, Religious Naturalism, and various Catholic traditions.<sup>159</sup>

The law school’s Catholic, Marianist values permeate decisions impacting academic programming and outcomes, community service, and even employment outcomes for graduates.<sup>160</sup> According to Sister Walle, the school

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154. Nellerhoe, *supra* note 112, at 54; see Grenardo, *supra* note 49, at 31 (stating the school’s Marianist mission obligates it to maintain clinics to serve the poor).

155. Nellerhoe, *supra* note 112, at 52–53.

156. See Grenardo, *supra* note 49, at 30–44 (listing the various ways the school strives to promote these characteristics).

157. GRACE WALLE, ST. MARY’S UNIV. SCH. L., LAW MINISTRY 2019–2020 REPORT 1 (2020).

158. Course Syllabus, David A. Grenardo, St. Mary’s Univ. Sch. L., Course No. LW7613 Section A Foundations of Lawyering 1 (Spring 2022) (on file with author).

159. *Id.*

160. E-mail from Grace Walle, Law Chaplain, St. Mary’s Univ. Sch. L., to author (Mar. 25, 2022, 16:30 EDT) (on file with author).

assesses its own performance in fulfilling its mission by judging how effectively it meets its goals in these three areas.<sup>161</sup> Performance in these three areas is intertwined in what remains, for the institution, a key measure of the effectiveness of its efforts: how well the school performs in its founding purpose of providing competent attorneys to the local bar.<sup>162</sup>

The St. Mary's University School of Law continues to view San Antonio and South Texas as its primary community and constituency, and the university's strategic plan calls on the school to maintain "its historic place as an anchor for San Antonio" by, among other things, working towards a "more vital and integrated role for St. Mary's as a partner in San Antonio's and the region's bright future."<sup>163</sup> The strategic plan also calls "the ubiquitous manner in which [St. Mary's University] engages San Antonio and the Southwest" critical to the school's pursuit of excellence.<sup>164</sup> "Ubiquitous" appears to be the right word to describe the law school's alumni in South Texas. About 92% of the graduating class of 2019 for whom data was available reported being employed in Texas.<sup>165</sup> This increased to approximately 93% for the class of 2020.<sup>166</sup> Of the latter group, more than half took positions in San Antonio, with the next largest percentage finding employment in Austin.<sup>167</sup> Of the 201 St. Mary's graduates who took a bar exam for the first time in 2021, 198, or 98.5%, took the Texas bar exam.<sup>168</sup>

Employment statistics provide more evidence of the school's public service mission. Of those reporting, 22% of the class of 2019 and 25% of the

161. *Id.*

162. *See* ST. MARY'S UNIV., *supra* note 5, at 1 (explaining the school's goal of professional preparation).

163. *Id.*

164. *Id.* at 8.

165. AM. BAR ASS'N, SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, ST. MARY'S UNIVERSITY EMPLOYMENT SUMMARY FOR 2019 GRADUATES 1 (2020), <https://s18875.pcdn.co/wp-content/uploads/2021/04/Placement-Summary-for-website.pdf> [<https://perma.cc/9KAC-9Q9A>] [hereinafter ST.MU 2019 GRAD EMPLOYMENT].

166. AM. BAR ASS'N, SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, ST. MARY'S UNIVERSITY EMPLOYMENT SUMMARY FOR 2020 GRADUATES 1-2 (2021), <https://s18875.pcdn.co/wp-content/uploads/2021/04/PlacementEmployment-148-25058-04-08-2021-15-52-29.pdf> [<https://perma.cc/LV44-P5AL>] [hereinafter ST.MU 2020 GRAD EMPLOYMENT].

167. NAT'L ASS'N FOR L. PLACEMENT, ST. MARY'S UNIVERSITY SCHOOL OF LAW CLASS OF 2020 SUMMARY REPORT (2021), <https://s18875.pcdn.co/wp-content/uploads/2022/11/Class-of-2020-NALP-Report.pdf> [<https://perma.cc/AEH4-TKJ3>].

168. AM. BAR ASS'N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, ST. MARY'S UNIVERSITY 2020 ULTIMATE BAR PASSAGE 1 (2022), <https://law.stmarytx.edu/wp-content/uploads/2022/04/ConsumerBarPassage.pdf-148-46412-04-18-2022-13-15-19.pdf> [<https://perma.cc/PDK9-REFF>].

class of 2020 worked in government or public interest (not including clerkships).<sup>169</sup> To date, more than 500 of the law school's alumni have served as judges or elected officials, the majority of them in Texas.<sup>170</sup> At least four alumni have served on the Texas Supreme Court, and in 2018, three alumni served as judges on the Texas Court of Criminal Appeals.<sup>171</sup> Senator John Cornyn and Nelson Wolff, the recently retired Bexar County Judge<sup>172</sup> and former San Antonio Mayor, are also graduates of the law school.<sup>173</sup> In the first round of the 2022 Texas primary elections, the winning candidates in 44 of the 140 elections to appear on the Bexar County Ballot were St. Mary's University School of Law alumni.<sup>174</sup>

The law school appears to prioritize activities that provide practical service to the local community, echoing its earlier identity as a "lawyer's law school." St. Mary's recently began offering the first ABA-accredited fully-online J.D. program in the nation in support of its "mission of increasing access to the legal profession for those who are typically underrepresented or who need to remain closer to home."<sup>175</sup> Thus, nearly a century after the founding of the San Antonio School of Law as a low-cost night school to expand local access to legal training, St. Mary's University School of Law continues to pursue that mission. The institution continues to measure the success of the *St. Mary's Law Journal* by how useful it is to "judges on the bench and lawyers in practice."<sup>176</sup> From its founding through 2019, the publication was quoted or cited in excess of 800 times by intermediate courts of appeal and in 200 cases decided by the Texas Supreme Court.<sup>177</sup> Meanwhile, the purpose of the school's clinical and pro-bono programs,

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169. ST.MU 2019 GRAD EMPLOYMENT, *supra* note 165, at 1; ST.MU 2020 GRAD EMPLOYMENT, *supra* note 166, at 1.

170. ST. MARY'S UNIV. SCH. OF L., *supra* note 145.

171. Cantú, *supra* note 85, at 335–36.

172. Bexar County Judge is a non-judicial elected post presiding over the Commissioners Court, the county's governing body. *Commissioners Court*, BEXAR CNTY., <https://www.bexar.org/146/Commissioners-Court> [perma.cc/5QDR-NUPY].

173. Cantú, *supra* note 85, at 388–89.

174. *See supra* text accompanying note 6.

175. *Member School Highlight—St. Mary's University School of Law*, ASS'N OF AMERICAN LAW SCHOOLS, <https://www.aals.org/member-school-highlight/st-marys/> [https://www.aals.org/member-school-highlight/st-marys/].

176. Nellerhoe, *supra* note 112, at 2.

177. *Id.*

already described, remains to bolster “the legal resources available to serve the people in San Antonio and South Texas.”<sup>178</sup>

Over the 88 years of the St. Mary's University School of Law's existence, the institution has maintained the complementary missions imparted to it by its Catholic, Marianist identity and its roots in the San Antonio School of Law established by the San Antonio Bar Association. The former continues to provide moral purpose and guidance for the fulfillment of the latter, while providing impetus for the expansion of the ways in which the school interacts with and serves the local community. The law school's mission has remained remarkably consistent for nearly a century.

#### V. THE EVOLUTION OF THE MISSION OF HARVARD LAW SCHOOL

Isaac Royall, Jr, a loyalist aristocrat and slaveowner who fled the colony of Massachusetts during the American Revolutionary War, left part of his fortune to Harvard University upon his death in the late eighteenth century.<sup>179</sup> His will specified that his bequest be used to establish either a professorship of “Physick and Anatomy” or of law.<sup>180</sup> During the early years of the United States, university-affiliated law schools did not exist.<sup>181</sup> Aspiring lawyers were most commonly trained through apprenticeships to practicing attorneys, and the quality of their training varied as widely as the personalities and whims of the lawyers under whom the apprentices learned.<sup>182</sup> Those who did confront law in a classroom did so as undergraduates, and the law they experienced was taught as a humanity “inseparably bound up with politics and religion.”<sup>183</sup> It was just one of many courses in a liberal arts curriculum that included political philosophy, ethics, and theology, among other topics.<sup>184</sup> There were no professional law degrees.

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178. Bentch, *supra* note 116, at 314 (internal quotation mark omitted) (quoting *Center for Legal and Social Justice*, St. Mary's Univ., <http://law.stmarytx.edu/academics/center-legal-social-justice/> (last visited Apr. 7, 2015)).

179. DANIEL R. COQUILLETTE & BRUCE A. KIMBALL, ON THE BATTLEFIELD OF MERIT: HARVARD LAW SCHOOL, THE FIRST CENTURY 75, 85–86 (2015).

180. *Id.* at 88; Louis D. Brandeis, *The Harvard Law School*, 1 GREEN BAG 10, 13 (1889).

181. Charles R. McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 WASH. U. L. Q. 597, 600–03 (1981).

182. Stephen R. Alton, *Roll Over Langdell, Tell Llewellyn the News: A Brief History of American Legal Education*, 35 OKLA. CITY U. L. REV. 339, 342, 344 (2010).

183. McManis, *supra* note 181, at 600.

184. *Id.* at 601.



Even aspiring lawyers who graduated from college were expected to complete a full-time apprenticeship before becoming attorneys.<sup>185</sup>

Thus, when Royall left his donation to Harvard University, it was not intended to be used for teaching law as a profession.<sup>186</sup> Nevertheless, when the Harvard Corporation voted to establish the Royall Professorship of Law in October of 1815, it stipulated that the new position would focus on teaching “the theory of Law in its most comprehensive sense,” as well as “the principles and practical operation of the Constitution and Government of the United States and this Commonwealth,” the common law, and other related subjects.<sup>187</sup> The objective of the law professorship was to train students to “become useful and distinguished supporters of our free system of government, as well as able and honorable advocates on the rights of the citizen.”<sup>188</sup> The professorship would cater to undergraduate students, practicing lawyers, and citizens; anyone was permitted to attend lectures.<sup>189</sup> Harvard’s first law professorship was founded with a purpose national in scope and was not focused on professional training for the practice of law.

Isaac Parker, chief justice of the Massachusetts Supreme Judicial Court, was selected to serve as the first Royall Professor of Law.<sup>190</sup> Parker advocated for a course of study tailored to students who intended to practice law.<sup>191</sup> At the time, the only “law schools” in the United States were private or “proprietary” schools that evolved relatively recently from the apprenticeship system, such as the school of law in Litchfield, Connecticut.<sup>192</sup> Under this model, a practicing lawyer accepted payment from aspiring lawyers in return for giving them a structured, rotating series of lectures and access to the attorney’s law library or other resources.<sup>193</sup> In 1816, Parker envisioned establishing something comparable at Harvard, which would entail a two-year course of study followed by an apprenticeship.<sup>194</sup> Such a program would, Parker hoped, “improve the character of the bar of our state.”<sup>195</sup>

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185. Alton, *supra* note 182, at 343.

186. HARVARD L. SCH., *supra* note 14.

187. Harvard Univ. Corp., Statutes of the Royall Professorship (Oct. 11, 1815), *reprinted in* COQUILLETTE & KIMBALL, *supra* note 179, at app. C, at 619.

188. *Id.* at 619–20.

189. McManis, *supra* note 181, at 610, 615.

190. *Id.* at 615.

191. *Id.*

192. *Id.* at 607–08.

193. *Id.* at 617–18.

194. *Id.* at 626 (quoting 1 C. WARREN, HISTORY OF THE HARVARD LAW SCHOOL 302 (1908)).

195. *Id.* (quoting 1 C. WARREN, HISTORY OF THE HARVARD LAW SCHOOL 302 (1908)).

Under Parker, the professorship had both a broad mission of service to the nation's civic culture and a narrower mission focused on serving the needs of the local bar.

With Parker's support, the Harvard Corporation established Harvard Law School in May of 1817 and added another professor of law.<sup>196</sup> Like the proprietary law schools, the primary purpose of the new Harvard Law School was to train individuals seeking to become lawyers.<sup>197</sup> According to the notice of the establishment of the school, the institution was intended to "afford[] the youth of our country the means of acquiring a more regular and comprehensive law education[] than is generally attainable in the office of a practi[c]ing counsellor."<sup>198</sup> Tuition was set to \$100 per year, the same price as other proprietary schools of the time, and the new school conferred bachelors of laws.<sup>199</sup> The curriculum and pedagogy were similar to that of the proprietary schools with which Harvard competed.<sup>200</sup> Students could begin their studies at any point during the cycle of lectures, and by remaining at the school long enough to hear the entire cycle, they can graduate.<sup>201</sup>

Although Parker hoped that Harvard Law would serve Massachusetts, within the school's first decade it started to achieve a national character. Its students came not only from Massachusetts but also from as far afield as North Carolina and Virginia.<sup>202</sup> Regardless of whether the school was more focused on serving the local bar or contributing to the civic virtue of the new nation, it was failing financially. Throughout its first decade, Harvard Law School's enrollment was low and, by the late 1820s, declining.<sup>203</sup> Isaac Parker left the school in 1827.<sup>204</sup> In 1829, the school awarded no degrees, counted only three students, and was broke.<sup>205</sup>

Wealthy lawyer and Massachusetts politician Nathan Dane offered funding to rescue the school but on the condition that Associate Justice of the

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196. Harvard Univ. Corp., Vote to Establish Harvard Law School (May 14, 1817), *reprinted in* COQUILLETTE & KIMBALL, *supra* note 179, at app. C, at 620.

197. *Id.*

198. Harvard Univ., Notice of the Establishment of Harvard Law School (July 11, 1817) (on file with Harvard Law School Library).

199. *Id.*

200. HARVARD L. SCH., *supra* note 14.

201. McManis, *supra* note 181, at 627.

202. COQUILLETTE & KIMBALL, *supra* note 179, at 106.

203. HARVARD L. SCH., *supra* note 14.

204. *The Organization, History, and Course of Instruction, in Harvard Law School*, 3 W. JURIST 1, 1 (1869).

205. COQUILLETTE & KIMBALL, *supra* note 179, at 113.

United States Supreme Court Joseph Story be offered a professorship of law.<sup>206</sup> Dane intended for the new professor to provide lectures on the branches of law “equally in force in all parts of our federal republic.”<sup>207</sup> Dane’s vision for the school clearly extended beyond service to Massachusetts, and appointment of a sitting Supreme Court Justice to a professorship at the school imparted a national character automatically.<sup>208</sup> The same year, John Ashmun, an instructor at a proprietary law school in Northampton, was hired as the Royall Professor of Law.<sup>209</sup> Ashmun closed the Northampton school and brought his students to Harvard, boosting the latter’s enrollment and eliminating one of its competitors.<sup>210</sup>

Joseph Story shared Dane’s national aspirations for Harvard Law School.<sup>211</sup> Story intended to create a respected institution that would train students from all over the country and produce practitioners who would serve across the nation.<sup>212</sup> To fulfill this mission, the law school started to explicitly identify itself as “national” and attempted to recruit students from across the United States.<sup>213</sup> The school’s mission was no longer to train lawyers for Massachusetts alone, if it ever truly had been. Under Story, the school began running advertisements in newspapers and distributing promotional materials all over the United States.<sup>214</sup> Story’s personal notoriety also helped elevate the school’s profile.

Apprenticeship remained the primary method of entering the legal profession during the 1830s.<sup>215</sup> A university law school thus had to offer some comparative advantage in order to draw students into what was ostensibly a less practical program. The principal advantage early law schools claimed over apprenticeships was that schools offered a structured, systematic, and comprehensive course of instruction.<sup>216</sup> This was Harvard Law School’s

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206. *The Organization, History, and Course of Instruction, in Harvard Law School*, *supra* note 204, at 1–2.

207. *Id.* at 1.

208. Brandeis, *supra* note 180, at 15 (discussing the appointment of “Simon Greenleaf, then reporter of decisions for the Supreme Court of Maine” as Royall Professor of Law).

209. *Id.* at 487, 490, 491.

210. *See id.* at 488, 490 (recounting how once Ashmun accepted the position as Royall Professor, the Northampton school was closed and Harvard prospered).

211. *The Organization, History, and Course of Instruction, in Harvard Law School*, *supra* note 204, at 4.

212. COUILLETTE & KIMBALL, *supra* note 179, at 158.

213. HARVARD L. SCH. ASS’N, *supra* note 14, at 15–16.

214. COUILLETTE & KIMBALL, *supra* note 179, at 164–65.

215. John Fiocco & Jude Wallace, *The American Contrast: A History of American Legal Education from the Australian Viewpoint*, 6 U. TAS. L. REV. 260, 261 (1980).

216. COUILLETTE & KIMBALL, *supra* note 179, at 164.

core function; Story intended for the school to offer “plain, direct, familiar instruction” on the law.<sup>217</sup> The school’s curriculum was designed to benefit future practitioners, and the course of study remained two years.<sup>218</sup>

However, Story’s view of Harvard Law School’s purpose extended beyond providing instruction to law students. Against the backdrop of Jacksonian Democracy and rising popular hostility towards the judiciary, Harvard (and other schools) offered a chance to reform the legal profession by shielding it from politics and developing the image of an attorney as a “benevolently neutral technocrat.”<sup>219</sup> Story also considered it part of Harvard’s mission to influence American law itself, given his role as a Supreme Court justice and the fact that he published his law commentaries while at the school.<sup>220</sup> He intended the school to play a role in organizing and promoting an understanding of judge-made law while also educating lawyers whose grasp of the common law would enable them to write legally coherent legislation.<sup>221</sup> Harvard under Story was national not simply in the composition of its student body or the stature of its faculty but in its three primary missions during this era: (1) producing lawyers who would practice across the United States and competently craft the nation’s laws, as either judges or legislators, (2) providing a platform for influencing legal thought and the law itself, and (3) responding to populist hostility towards the bar by shielding and “professionalizing” it. The unifying theme was the promotion of civic virtue and the strengthening of legal institutions.

Harvard Law School’s students hailed from eighteen different states by 1835.<sup>222</sup> By the time of Story’s death in 1845, Harvard Law was recognized as a national institution, and more than half of the school’s student body came from outside of the northeastern United States.<sup>223</sup> The author of a New York Daily Tribune article from that year repeatedly referred to the school’s national character and positive reputation, going so far as to predict that Harvard University would one day become “without rival, the

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217. Fiocco & Wallace, *supra* note 215, at 261–62 (quoting WILLIAM TWINING, PERICLES, AND THE PLUMBER 83 (1967)).

218. COQUILLETTE & KIMBALL, *supra* note 179, at 171.

219. McManis, *supra* note 181, at 629.

220. *Id.* at 630; see *Story on Bailments*, BOSTON MORNING POST, Feb. 16, 1832, at 4 (noting part of Harvard’s mission is to influence the law of the United States).

221. McManis, *supra* note 181, at 630.

222. COQUILLETTE & KIMBALL, *supra* note 179, at 174.

223. *The North American Review*, NEW YORK DAILY TRIBUNE, Jan. 13, 1845, at 1.

University of America” and be of “incalculable benefit to the whole country.”<sup>224</sup> The school appeared to be fulfilling its expansive mission.

Through the mid-nineteenth century, Harvard’s community remained national; the school recruited students nationally and supplied lawyers to markets across the country. The school’s curriculum was also national. Since it was intended to prepare students for “the bar of any of the United States,” matters of “mere local law and practice” were excluded.<sup>225</sup> Even the laws of the Harvard’s home state of Massachusetts were not a part of the instruction. Nevertheless, students could seek assistance from the three full-time faculty members “in the private study of the law and practice peculiar to their own state.”<sup>226</sup> By 1869, 5,000 students from across the United States and Canada received a Bachelor of Laws from Harvard Law School.<sup>227</sup> In a publication dating from that year, the institution touted the fulfillment of Story’s vision for the school, reporting that its graduates “now hold high judicial positions” and “have occupied seats in the National Legislature, while others have become eminent in their profession as lawyers” (no mention was made of alumni occupying state or local offices).<sup>228</sup> More than being national, the school developed an aura of prestige.

During Christopher Columbus Langdell’s famously transformative tenure as Dean of Harvard Law School from 1870 to 1895, the institution’s mission and community did not change. However, to the school’s core function of providing high-quality lawyers to jurisdictions across the United States, Langdell added new academic missions. Historians have described Langdell’s changes to the Harvard Law School curriculum and pedagogy as “the most significant event in the history of American legal education.”<sup>229</sup> Even while criticizing the narrative that modern legal education “sprang whole cloth, Athena-like, from the head of Christopher Columbus Langdell,” Professor Stephen R. Alton concedes that “it is no exaggeration to say that the case method of study, which [Langdell] created, has fostered the system of legal education that has become predominant today in American

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224. *Id.*

225. *The Organization, History, and Course of Instruction, in Harvard Law School*, *supra* note 204, at 10–11.

226. *Id.* at 11.

227. *Id.* at 14.

228. *Id.* at 14.

229. McManis, *supra* note 181, at 598, 631 (quoting A. HARNO, LEGAL EDUCATION IN THE UNITED STATES 16 (1953)).

law schools.”<sup>230</sup> Langdell famously believed that law was a science and that legal truth could be discovered from close observation and analysis, and then applied in a scientific manner.<sup>231</sup> He believed legal principles and doctrines evolved slowly through countless cases over the years and should therefore be derived inductively from studying past cases.<sup>232</sup> Referred to as the “case method” of studying law, this technique was aided by the use of casebooks—another Langdell invention—which contained chronologically-organized judicial opinions for study, and the Socratic method.<sup>233</sup> This is now the standard method of teaching law at American law schools.<sup>234</sup>

Several other Harvard innovations would also pervade the American legal landscape. Langdell's first decade as dean saw the extension of Harvard Law School's course of study to three years—now the standard.<sup>235</sup> By 1874, Langdell had implemented the core of the modern first year law school curriculum: property, torts, contracts, criminal law, and civil procedure.<sup>236</sup>

Langdell's assertion that law was a science provided a new justification for law schools: an apprentice simply could not hope to attain the same specialized knowledge of the “science” of law purely by working in a law office.<sup>237</sup> More importantly, in Langdell's view, the American legal system's legitimacy was dependent on the effectiveness and professionalism of lawyers. The best way to ensure lawyers' effectiveness and professionalism was, according to him, to put them through an academically demanding university-affiliated professional school.<sup>238</sup> The motivation behind Langdell's changes, and by extension one of the missions of Harvard Law School during his tenure, was to serve the American legal system by providing attorneys with rigorous academic training, thus bolstering the legal system's legitimacy. In its national scope and focus on the practitioner, this mission constituted a variation or refinement of the mission the law school had pursued

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230. Alton, *supra* note 182, at 341.

231. *Id.* at 347.

232. Fiocco & Wallace, *supra* note 215, at 263.

233. COUILLETTE & KIMBALL, *supra* note 179, at 313–15.

234. See Deborah J. Merritt, *The Strange Case of the Case Method*, L. SCH. CAFE (June 29, 2018), <https://www.lawschoolcafe.org/2018/06/29/the-strange-case-of-the-case-method/> [<https://perma.cc/XGB2-FPGP>] (“The case method is legal education's signature pedagogy.”).

235. HARVARD L. SCH. ASS'N, *supra* note 14, at 32.

236. COUILLETTE & KIMBALL, *supra* note 179, at 405.

237. See *id.* at 319 (“Leading lawyers must acquire strong legal science through rigorous legal education in a professional law school at a university. Given this, Langdell regarded the formal logic in legal decisions as the foundation of legal science.”).

238. See *id.* at 319, 384, 403 (believing the implementation of challenging legal education would elevate the practice of law as a whole).

since Joseph Story: serving the nation by providing graduates who would strengthen its legal system and other institutions.

In implementing his new methods, however, Langdell, perhaps inadvertently, gave Harvard Law School a new purpose indirectly related to the practice of law. James Barr Ames was hired as an assistant professor in 1873.<sup>239</sup> Ames was himself a Harvard Law graduate but had never practiced law. Langdell did not consider this a problem; in his view, the practice of law was not relevant to a professor's ability to teach it.<sup>240</sup> Thus was born the professional legal academic. Harvard President Charles Eliot later remarked that Langdell's hiring of Ames would eventually create "a body of men learned in the law who have never been on the bench or at the bar, but who nevertheless hold positions of great weight and influence as teachers of law, expounders, systematizers, and historians."<sup>241</sup> Since these academics could influence the development of the law, Harvard Law School's mission now implicitly included training such individuals. The national law school would now aim to bolster the American legal system by producing not only well-trained lawyers but also well-trained "expounders."

Langdell's focus on the law as a science resulted in a shift away from the practical and towards the theoretical and academic. The result was tension between supporters of Langdell's methods, who were criticized as treating the law as a scientific ideal detached from practical reality, and their opponents, who argued that other factors that influenced the development of the law—such as politics—should also be studied.<sup>242</sup> Modern defenses of Langdell's methods focus on their effectiveness in teaching students to "think[] like lawyers."<sup>243</sup> Regardless of their flaws or merits, Langdell's innovations ultimately gained ground at other law schools. By the 1890s, Harvard was increasingly influential among law schools, and the case method, casebooks, and Socratic method were being adopted by law schools around the country.<sup>244</sup> During the early twentieth century, as the number of law schools increased, most modeled themselves on the Harvard that Langdell helped create.<sup>245</sup>

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239. HARVARD L. SCH. ASS'N, *supra* note 14, at 26, 30.

240. *Id.* at 26.

241. *Id.* at 26, 31.

242. See Fiocco & Wallace, *supra* note 215, at 266 (comparing and contrasting the respective educational philosophies of Christopher Columbus Langdell and Oliver Wendell Holmes).

243. Alton, *supra* note 182, at 351.

244. McManis, *supra* note 181, at 633–34, 646–48.

245. Alton, *supra* note 182, at 349–50.

As early as 1889 Louis Brandeis could boast that the school's alumni included justices of the U.S. Supreme Court, a Secretary of War, Secretaries of the Treasury, Secretaries of the Navy, members of the U.S. Senate and House of Representatives, and members of ten states' highest courts.<sup>246</sup> Massachusetts was not entirely neglected; five of the seven members of the Massachusetts Supreme Judicial Court in 1889 were Harvard Law alumni.<sup>247</sup> Through the early 1900s, Harvard's influence, enrollment, faculty, and library grew further.<sup>248</sup> Measured by the number of its graduates serving in the judiciary or in consequential positions in the federal government, Harvard Law School was succeeding in its mission of bolstering national institutions.

According to a history prepared for Harvard Law School in celebration of the school's centennial, the school of 1917 was no longer merely national but international. Foreign professors visited to give lectures at the law school, while one of the school's permanent professors left to become General Advisor to the King of Siam.<sup>249</sup> Harvard Law was recognized internationally as one of the greatest law schools.<sup>250</sup> According to the Centennial History, Harvard had become a "true" graduate school of law, offering the S.J.D. degree and restructuring to accomplish more than training "youth for service at the bar."<sup>251</sup> In the wake of Langdell, the school also provided "broad and theoretical training of teachers in the science of the law."<sup>252</sup> The establishment of the Harvard Legal Aid bureau in the early 1900s offered an opportunity for practical training, while also serving the needy in the Boston area.<sup>253</sup> Nevertheless, practical training was no longer the school's primary purpose. As the Centennial History remarked, echoing the visions of Joseph Story and Christopher Langdell, Harvard Law was no longer "merely a law school, but the repository of a distinctive legal science; it has created its own

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246. Brandeis, *supra* note 180, at 24 (admiring the elections and appointments of Harvard Law alumni to prestigious government roles).

247. *Id.*

248. See CENTENNIAL HISTORY, *supra* note 14, at 46, 48 ("He found a school with 136 students; he left one of 413. He found a library of less than ten thousand books; he left one of thirty-four thousand. He found a Faculty of three professors; at the end of his term of office there were eight members of the Faculty and two instructors. . . . The example of Harvard was soon followed by many more of the better schools.").

249. *Id.* at 53–54.

250. See KIMBALL & COUILLETTE, *supra* note 12, at 345 (stating Harvard Law School had achieved world fame by the end of the nineteenth century).

251. CENTENNIAL HISTORY, *supra* note 14, at 47, 57–59.

252. *Id.* at 59.

253. *Id.* at 56.



standards of common law.”<sup>254</sup> Law school faculty—the “expounders” Langdell created—had attained the position Eliot predicted they would, exerting influence on the development of the common law.<sup>255</sup>

Harvard Law School was a national and increasingly international institution, and its missions expanded. Erwin Griswold, a faculty member from 1934 and dean from 1946 to 1967, commented that the school could “never yield in maintaining the highest intellectual standards” and described the attributes he felt the school should try to instill in its students, almost all of which were academic or intellectual.<sup>256</sup> In Griswold’s view, the school’s purpose was to “function as a great center of legal education and knowledge, and a moral force in a constantly expanding community.”<sup>257</sup> Griswold’s invocation of “moral force” added a new dimension to Harvard’s traditional mission of influencing the development of the law. He envisioned Harvard as a “global law school” playing a critical “international role” by shaping new norms in the wake of World War II.<sup>258</sup>

In 1958, the Boston Bar Journal reported that the “primary purpose” of Harvard Law School was to “prepare its students for the practice of the legal profession wherever the common law prevails.”<sup>259</sup> The school’s secondary purpose was “to train teachers of law, and to investigate problems which arise in the legal adjustment of human relations, including problems in the international field.”<sup>260</sup> Harvard’s traditional two functions, educating future lawyers and influencing the development of the law by training “expounders,” were joined by a third: shaping international law. But in reporting on the school’s purposes, the Boston Bar Journal did not describe the school’s mission. What institutional goal was being served by training lawyers and shaping national and international law? Griswold’s reference to the school becoming a “moral force” suggested that the “why” behind the school’s purpose was no longer simply providing a professional legal elite for national service, but the pursuit of an abstract conception of justice that transcended borders.

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254. *Id.* at 63.

255. KIMBALL & COQUILLETTE, *supra* note 12, at 165.

256. Albert M. Sacks, *Dean Erwin N. Griswold*, 86 HARV. L. REV. 1369, 1371 (1973) (quoting Speech of Erwin N. Griswold, at Meeting of Visiting Committee of the Harvard Law School (Apr. 18, 1979)).

257. KIMBALL & COQUILLETTE, *supra* note 12, at 387.

258. Harry A. Blackmun et al., *In Memoriam: Erwin Nathaniel Griswold*, 108 HARV. L. REV. 979, 986, 988 (1995).

259. *Harvard Law School*, 2 BOS. BAR J. 7, 7 (1958).

260. *Id.*

Even with these lofty ambitions, Griswold still understood the school's need to fulfill arguably its most basic purpose: enabling students to obtain employment in the legal field upon graduation. To this end, Griswold established a placement office at Harvard in 1947.<sup>261</sup> Additionally, although rigorous academic and intellectual training would continue to be the school's priority, the Harvard Voluntary Defenders were established in 1949 and provided another opportunity for practical experience while serving low-income defendants in the Boston area.<sup>262</sup>

The social turmoil of the late 1960s and economic shocks of the 1970s prompted internal debate regarding Harvard Law School's mission and methods. The civil rights movement, anti-Vietnam war protests, and other events of the era impacted the school, and as political divisions developed among students and faculty, the notion of strengthening national institutions through training legal professionals seemed hypocritical to some and simply wrong to others.<sup>263</sup> With professions themselves viewed as oppressive power structures to be questioned or opposed (including by members of the Harvard Law faculty), the school's purpose came under ideological scrutiny.<sup>264</sup> At the same time, rising tuition increasingly constrained students' career choices, and only four percent of the class of 1977 entered government or public interest work upon graduation.<sup>265</sup> These statistics suggested the school was no longer committed to its old mission of generating lawyers for national service.

To reexamine the school's purpose and methods, Dean Albert Sacks created the Committee on Educational Planning and Development in 1979 and tasked it with writing a report on the "future direction of the School's activities."<sup>266</sup> The ideological division among the school's faculty ensured that no report was ever completed.<sup>267</sup> The committee did generate "Chapter 1"

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261. KIMBALL & COQUILLETTE, *supra* note 12, at 387.

262. *Id.* at 390.

263. See Bruce A. Kimball & Daniel R. Coquillette, *History and Harvard Law School*, 87 *FORDHAM L. REV.* 883, 889, 901, 909 (2018) (addressing the negative sentiment shown towards professors and scholars in the wake of mass political, social, and economic movements).

264. See *id.* at 900–01 ("Critical scholars also began to 'unmask' law, the legal profession, and Harvard Law School as the agents of elite interests. But it is important to see that such attacks were occurring across the entire professional complex, including university professional schools.").

265. KIMBALL & COQUILLETTE, *supra* note 12, at 685.

266. *Id.* at 727.

267. *Id.* at 728.

of a “Tentative Final Draft” in 1982.<sup>268</sup> It examined whether the school’s stated goals were “correct ones for [the] institution” and whether the school was meeting its goals.<sup>269</sup>

The committee concluded that the school’s “institutional purpose” was “education, legal scholarship, [and] service.”<sup>270</sup> Harvard Law was to “serve as an independent center of legal learning and thereby contribute toward the general good” through “professional education, legal scholarship, and, in conjunction with its teaching and learning activities, community service.”<sup>271</sup> There was no definition of “the general good.”<sup>272</sup> The committee proposed a new mission statement: “The school seeks to make substantial contributions to the solution of law-related problems in a complex society.”<sup>273</sup> This the school would do by providing an “understanding of how legal doctrines, institutions, and practices affect interests in society.”<sup>274</sup> Students and faculty would work to “[clarify] and [fulfill] their own social obligations,” whatever those were.<sup>275</sup> The proposed mission was carefully value-neutral (beyond placing value on education and scholarship for its own sake, and service insofar as it supported education and scholarship), no doubt a reflection of the committee’s inability to agree on shared institutional values. If, as Jerome Organ argues, a school’s mission is defined as its reason for engaging in the activities it pursues—the “why” behind the “how” and “what”—the committee’s recommendation was less a mission than a description of the school’s functions.<sup>276</sup>

The committee asserted that legal education in general existed (1) for the sake of clients, (2) for the sake of society at large, and (3) for the sake of the student.<sup>277</sup> Values are implicit here—that legal education is *positive* for clients, society at large, and students. Legal education’s goal, according to the committee, was to teach students to “give competent and responsible

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268. HARVARD L. SCH., REPORT OF THE COMMITTEE ON EDUCATIONAL PLANNING AND DEVELOPMENT: TENTATIVE FINAL DRAFT 1 (1982) [hereinafter REPORT OF THE CEPD].

269. *Id.* at 2.

270. *Id.* at 3.

271. *Id.*

272. *See id.* at 4 (“Our view is not just that service to the general good is implicit in this academic enterprise, but that such service should be consciously recognized as an aim and obligation of the School and its members, to be consulted—and its meaning, as necessary . . .”).

273. *Id.* at 6.

274. *Id.*

275. *Id.*

276. Organ, *supra* note 21, at 160–61.

277. REPORT OF THE CEPD, *supra* note 268, at 6.

services to those who will rely on them for assistance,” to “contribute positively to the quality and utility of legal institutions and of the profession,” and to be circumspect regarding the “purposes, consequences, and values of the work they will do . . . .”<sup>278</sup> Thus, the objective of Harvard Law School, in the committee’s view, had to extend beyond practical legal training.<sup>279</sup> This elaboration came closer to explaining the “why” behind the school’s existence but still stopped short. Given the radically different ideologies among the faculty of the era and the school’s sheer size and cultural pluralism, it was improbable that Harvard Law would adopt a more clearly defined or value-laden mission. The committee even suggested that doing so was inadvisable, arguing that the school would lose its place of preeminence if it ever steered students “towards any particular form of legal life.”<sup>280</sup> Instead, the committee concluded that the school’s mission could never be any narrower than simply preparing students to be lawyers.<sup>281</sup>

The committee’s proposed mission statement was not adopted. The 1982–1983 Harvard Law School Catalog echoed the school’s mission as it appeared in the Boston Bar Journal twenty-five years earlier: to teach students to tackle “legal problems as they arise wherever the common law prevails” and to “accomplish this purpose by providing comprehensive training for practice of the legal profession” and for “those interested in public service at the local, state, federal, and international levels, in and out of public office, and for law teachers and legal scholars.”<sup>282</sup> This mission statement encompassed much of Story’s and Langdell’s visions for the school, including bolstering national institutions and the legal system by training lawyers for service across the nation, judges and legislators who could competently craft legislation, and professional academics who could shape the law through their scholarship. The catalog even declared “the school attempts to teach law as an instrument of social control and progress,” a view that was hotly contested by many faculty members.<sup>283</sup> Such was the public mission of the law school, even if there was no internal consensus.

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278. *Id.* at 6–7.

279. *Id.* at 7.

280. *Id.* at 38.

281. *Id.*

282. HARVARD L. SCH., HARVARD LAW SCHOOL CATALOG 1982-1983, at 16 (1982) [hereinafter 1982–1983 HLS CATALOG].

283. KIMBALL & COQUILLETTE, *supra* note 12, at 772–74.

The rise of the critical legal theorists during the 1980s ensured that the faculty would remain incapable of agreeing on the school's purpose.<sup>284</sup> Critical legal theorists distrusted the institution of the law, the concept of professions, and professional schools.<sup>285</sup> As such, they directly opposed the traditional mission of Harvard Law, and instead sought to use the school as a platform for propagating their vision of social justice in society at large.<sup>286</sup> For the critical theorists, the law school was merely a tool in their ideological crusade. The faculty who opposed the critical theorists ultimately fought back using similar methods.<sup>287</sup> As a result, whatever the school advertised in its catalog, many of the faculty were no longer focused on training competent lawyers but on ideological combat.<sup>288</sup> One wonders whether the extreme cynicism and legal nihilism expressed by the "crits" and their opponents during this era—and the notion that "who decided" mattered more than "what the law said"—contributed to the bitter partisanship and political polarization that afflicts the United States today. The faculty of the 1980s seems not only to have lost sight of "the best interests of the students," as Molly Burke later said—it also lost sight of the best interests of the nation.<sup>289</sup>

Despite the acrimony of the 1980s, Harvard Law School was able to project a clearer purpose over the following two decades. Invoking a century-old aspect of the school's identity, Dean Robert Clark wrote in 1995 that Harvard Law School was and should continue to be a "global law school."<sup>290</sup> Clark called for updates to the law school's course offerings to respond to "a new Europe, the pervasive legacy of Islamic law, the explosion of international trade and investment, seismic shifts in international arrangements exemplified by NAFTA, and the growth of environmentalism."<sup>291</sup> These vast and complex issues, with their global reach and implications, illustrated the legal realm Harvard Law sought to inhabit. Clark referred to Harvard Law School as "the city, the metropolis" of legal education, a reference to its diverse faculty and student body, broad curriculum, and numerous and

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284. *See id.* (describing policy challenges faced during the 1980s).

285. *See id.* at 773 (explaining the distrust in academia of Harvard generally).

286. *Id.*

287. *Id.* at 774.

288. *See id.* ("The Crits and their enemies waged aerial dogfights over legal philosophy, while grim trench warfare went on below over admissions, appointments, and curriculum.").

289. *See id.* ("[A]s Molly Burke (J.D. 1982) observed, the faculty lost sight of the 'best interests of the students,' who hunkered down and just tried to complete their degrees.").

290. Blackmun et al., *supra* note 258, at 986.

291. *Id.*

varied areas of scholarship.<sup>292</sup> In his view, the law school's core purpose was “producing education and scholarship and ideas about law.”<sup>293</sup> Like the Committee on Educational Planning and Development, Clark did not articulate a mission so much as an objective, although he did remark that simply by being a better law school, Harvard would “contribute to the common good of humanity.”<sup>294</sup> At base, Clark felt that Harvard's mission was to serve the common good by providing legal education and scholarship, even if the causal link between its work and the “common good” was not clearly stated.

The 2005–2006 Harvard Law School Catalog (the final printed edition) contained no mission statement. Instead, echoing the Committee on Educational Planning and Development, it simply said “[t]he central functions of an academic community are learning, teaching, research, and scholarship.”<sup>295</sup> Nevertheless, Clark's successor, Elena Kagan, rearticulated the school's mission in 2008. According to Kagan, Harvard Law School's mission was “not simply to train lawyers” but “to train leaders—visionary thinkers and practitioners capable of designing new institutions to meet individual and societal needs.”<sup>296</sup> This succinct statement included both a “what”—training lawyers and leaders—and a “why”—to meet the needs of individuals and societies. Kagan also articulated objectives that would support this mission, such as the goal of imbuing students “with a global perspective” and of teaching them to “locate American law in the larger map of law, politics, and histories across the world.”<sup>297</sup>

In evaluating the institution's performance with respect to its mission, Kagan called for methods and programs to be judged by how effectively they prepared students for their future roles, whatever those roles might be.<sup>298</sup> Practical training was critical, and to that end Kagan was supportive of clinics.<sup>299</sup> At the same time, a current of public policy-consciousness ran through Kagan's vision, and she affirmed the school's commitment to

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292. Todd D. Rakoff, Daniel J. Meltzer & Elizabeth Warren, *The Law School Looks Ahead*, HARVARD MAGAZINE, (Sept.–Oct. 2001), <https://www.harvardmagazine.com/2001/09/the-law-school-looks-ahe.html> [<https://perma.cc/C7HH-2Y93>].

293. *Id.*

294. *Id.*

295. HARVARD L. SCH., HARVARD LAW SCHOOL CATALOG 2005–2006 161 (2005).

296. Elena Kagan, *The Harvard Law School Revisited*, 11 GREEN BAG 475, 477 (2008).

297. *Id.* at 478.

298. *Id.* at 477.

299. *Id.* at 480.

public service.<sup>300</sup> The law school thus appeared to return to what had long been its mission: graduating lawyers and leaders who would work in the interests of their national or global communities. By 2016, Harvard Law School's mission statement was even more concise and aligned with the school's 200-year-old purpose: "To educate leaders who contribute to the advancement of justice and the well-being of society."<sup>301</sup> However, "justice" was not defined.

## VI. THE MISSION OF HARVARD LAW SCHOOL TODAY

I was unable to locate an official public mission statement for Harvard Law School.<sup>302</sup> A thorough search of the school's promotional materials and website, as well as inquiries at the Dean of Students Office and the Office of Communications yielded no mission statement. The latter two offices suggested reviewing the "Dean's Welcome" on the Harvard Law School website as a stand-in. The Dean's Welcome opens: "HLS combines genuine excellence and wonderful diversity on a scale that is unmatched anywhere. No law school has done more to shape law or legal education."<sup>303</sup> Though not quite a mission, as a description of the school, this indicates that the institution values and pursues influence and diversity. To paraphrase Jerome Organ, this is what Harvard Law *does*, but *why*?<sup>304</sup>

The Dean's Welcome goes on to note that the school's community is comprised of students and faculty "from around the world" who have many different "ambitions, approaches, methodologies, and perspectives."<sup>305</sup> This, the Dean implies, is critical for providing an environment where students can be trained to "take opposing arguments seriously," "listen generously," and "approach others with empathy and respect."<sup>306</sup> The school's constituency is global. Pluralism appears to be both an end in itself and a means of providing a fruitful educational environment for students.

But, again, to what purpose? Training lawyers is of course an objective, but it is far from the only goal. As the Dean's Welcome states, graduates

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300. *Id.* at 481.

301. Irene Scharf & Vanessa Merton, *Table of Law School Mission Statements*, SCHOLARSHIP REPOSITORY @ UNIV. MASS SCH. L. 1, 31 (2016).

302. *See* TABLE OF U.S. LAW SCHOOL MISSION STATEMENTS, 2019 & 2021 48 (Francis Tung & Elizabeth Mertz, eds., 2021).

303. John F. Manning, *Dean's Welcome*, HARVARD L. SCH., <https://hls.harvard.edu/about/deans-welcome/> [<https://perma.cc/MCH3-YBTW>].

304. Organ, *supra* note 21, at 157.

305. Manning, *supra* note 303.

306. *Id.*

and faculty have engaged in “pathbreaking work . . . across countless fields of endeavor.”<sup>307</sup> Providing education and scholarship about the law, but not only for the purpose of producing lawyers, is an objective. The school appears largely agnostic regarding its students’ professional choices, making no official effort to instill any values beyond the civility and integrity necessary to maintain the educational environment Harvard seeks to create. To quote the Dean, “[w]hoever you are, whatever you do, however you do it, Harvard Law School is a place where you can thrive.”<sup>308</sup> The institution quite literally attempts to be all things to all people. In view of this objective, Harvard likely considers a mission that incorporates values beyond scholarship and influence for their own sakes to cut against the school’s devotion to pluralism. Adopting some values may exclude other values.

The most recent available mission statement, from 2016, took a firmer stance than the current Dean’s Welcome, declaring that the school’s mission was “[t]o educate leaders who contribute to the advancement of justice and the well being of society.”<sup>309</sup> At the time, the school also published list of “core values” (though they appeared to apply only to employees). Among them were “[r]espect for the rights, differences, and dignity of others,” “honesty and integrity,” the “pursuit of excellence,” and “accountability for actions and conduct in the workplace.”<sup>310</sup> As of 2022, these “core values” no longer appear on the school’s public-facing website.

Interestingly, “HARV*ie*,” an informational website for Harvard employees, currently provides a mission statement that echoes the school’s former 2016 public mission: “Harvard Law School advances the cause of justice all over the world through excellence and leadership in legal education and scholarship.”<sup>311</sup> Advancing the “cause of justice” is certainly a mission, but, given the ideological acrimony among Harvard’s faculty over the definition of “justice,” one wonders whether this statement is an example of strategic ambiguity.<sup>312</sup>

In the Winter 2022 Harvard Law Bulletin, the Dean called on the school to focus on how to contribute “to a world that badly needs great lawyers to

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307. *Id.*

308. *Id.*

309. Scharf & Merton, *supra* note 301, at 31.

310. *Id.*

311. *Our Mission and Culture*, HARVARD UNIV., <https://hr.harvard.edu/our-mission-and-culture> [<https://perma.cc/VLK5-MGMK>].

312. See KIMBALL & COUILLETTE, *supra* note 12, at 728–37, 772–74 (discussing ideological divisions among the faculty).



advance truth, law, and justice—the ideals that emblazon on our new shield and inspire our work together.”<sup>313</sup> This statement differs from the Dean’s Welcome in suggesting both a narrower purpose and values. Producing great lawyers is the goal of the institution.<sup>314</sup> Why? “[T]o advance truth, law, and justice.”<sup>315</sup> Ambiguous definitions aside, merely advocating the advancement of law is a statement of values that excludes alternatives, such as the view among critical legal theorists that the law is an instrument of social and political domination to be opposed.<sup>316</sup>

Harvard’s mission of legal education and objective of generating competent lawyers provides the justification for its clinical programs. The school maintains a number of opportunities for students to gain practical legal experience, including internships, externships, clinics, and pro-bono programs.<sup>317</sup> The creation of these programs was not without controversy among faculty, many of whom initially felt that experiential programs would degrade the quality of the institution by luring students out of the classroom and shifting focus from the school’s scholarship.<sup>318</sup> Nevertheless, 88% of the class of 2022 participated in a clinical program.<sup>319</sup>

Harvard Law School continues to be—and aspires to remain—a global institution. As the Dean’s Welcome suggests, the school recruits internationally, sends its graduates around the world, and seeks global influence. The class of 2025 includes students from forty-nine U.S. states and territories, eighteen foreign nations, and 9% of the class were foreign nationals.<sup>320</sup> The school’s alumni carried the school’s influence abroad, serving as the “presidents of India, Taiwan, Ireland, and Peru.”<sup>321</sup> Within the United States, the school has maintained the national stature Joseph Story sought

313. John F. Manning, *From the Dean*, 73 HARVARD L. BULLETIN 1, 2 (2022).

314. *See id.* (“A central value that ties our alma mater’s past to the future is a commitment to innovation—to seeking, always, new and better ways of educating great lawyers and leaders.”).

315. *Id.*

316. *See* KIMBALL & COQUILLETTE, *supra* note 12, at 772 (stating critical legal theorists see law as “an instrument of social, economic, and political domination both in . . . furthering the concrete interests of the dominators and in . . . legitimating the existing order.”).

317. *Clinical and Pro Bono Programs*, HARVARD L. SCH., <https://hls.harvard.edu/dept/clinical/> [<https://perma.cc/LCS2-Y7CE>].

318. *Id.*; *see* REPORT OF THE CEPD, *supra* note 268, at 21–22, 33–35 (accusing the school of not taking clinical programs seriously and noting faculty opposition to experiential programs).

319. *In-House Clinics*, HARVARD L. SCH., <https://hls.harvard.edu/dept/clinical/clinics/in-house-clinics/> [<https://perma.cc/GJC5-C9FW>].

320. *HLS Profile and Facts*, HARVARD L. SCH., <https://hls.harvard.edu/dept/jdadmissions/apply-to-harvard-law-school/hls-profile-and-facts/> [<https://perma.cc/XA5R-VSGS>].

321. KIMBALL & COQUILLETTE, *supra* note 12, at 785.

for it, producing by 2022, three presidents, eleven attorneys general, thirty-seven senators, and eighteen justices of the U.S. Supreme Court, among other national leaders.<sup>322</sup> Harvard Law School's community and constituency are global, and its influence is pervasive nationally and globally. This influence begets prestige, which in turn reinforces the school's influence.

This global institution is located in Massachusetts. Materials produced by Harvard Law School's parent university declare the institution "is proud to be a part of the state's cultural and economic life."<sup>323</sup> In its promotional materials, Harvard University notes 34% of its students during the 2019–2020 year were from Massachusetts, although it is not clear whether this includes students who became Massachusetts residents for the purpose of attending the university.<sup>324</sup> The university also touts the "hundreds of million dollars in research funding" it has brought into the state, as well as its partnerships with nineteen state agencies on various research projects.<sup>325</sup> The direct economic impact the university has had on Massachusetts is substantial, with billions of dollars spent annually on construction projects, supplies, and services.<sup>326</sup> The university also employs over 18,000 people, making it the fifth largest employer of Massachusetts residents.<sup>327</sup> It has taken on projects in the service of the local community, including financing 7,000 units of affordable housing in the Boston area and contributing to efforts to address local food inequality.<sup>328</sup> However, this vast local impact is incidental to the university's operation—it is not a part of the institution's mission.<sup>329</sup>

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322. The number of graduates in these roles was derived by combining the numbers listed in the following sources: KIMBALL & COQUILLETTE, *supra* note 12, at 785 (listing graduation numbers through year 2020); *The Senate Confirms Ketanji Brown Jackson to Serve on the U.S. Supreme Court*, *supra* note 13 (stating Ketanji Brown Jackson graduated from Harvard Law School); *Meet the Attorney General*, U.S. DEPT. OF JUSTICE, <https://www.justice.gov/ag/staff-profile/meet-attorney-general> [<https://perma.cc/3L2X-ULNR>] (stating Merrick Garland graduated from Harvard Law School).

323. HARVARD UNIV., HARVARD IN MASSACHUSETTS: FACTS & IMPACT 1 (2020) [hereinafter HARVARD IN MASSACHUSETTS].

324. *Id.* at 2.

325. *Id.* at 4.

326. *Id.* at 10–11; *Serving Our Neighbors*, HARVARD UNIV., <https://www.harvard.edu/about/harvard-in-the-community/> [<https://perma.cc/AX7N-WY5M>].

327. See HARVARD IN MASSACHUSETTS, *supra* note 323, at 8 (stating the university employs over 18,000 people); see also *Serving Our Neighbors*, *supra* note 326 (observing the university is the state's fifth largest employer).

328. *Housing Initiatives*, HARVARD IN THE COMMUNITY, <https://community.harvard.edu/housing> [<https://perma.cc/4D6H-C5R4>]; *Community Partnerships*, HARVARD IN THE COMMUNITY, <https://community.harvard.edu/community-partnerships> [<https://perma.cc/BF2K-2J6F>].

329. See *Our Mission and Culture*, *supra* note 311 ("Harvard's mission is to advance new ideas and promote enduring knowledge."); see also HARVARD UNIV., HARVARD UNIVERSITY'S COMMUNITY

Harvard Law School's principal mission-related contributions come in the form of "free legal services and referrals" related to the wide range of legal issues encompassed by the school's clinical and pro-bono programs.<sup>330</sup> University literature entitled "Harvard in Massachusetts" notes the law school contributes over 211,525 public service hours to the state annually through student participation in 1,668 public service placements (summer positions, student practice organizations, clinical work, ).<sup>331</sup> During 2020, 1,200 low-income Boston residents received pro-bono legal aid from the law school.<sup>332</sup> Like the university's economic impact within Massachusetts, these legal services are incidental to the institution's mission. The school maintains the experiential programs at least in part, if not entirely, because they support its primary mission of providing legal education, although the university's literature does suggest at least some sense of obligation to the institution's "closest neighbors" in the region.<sup>333</sup>

Nevertheless, local contribution is not a part of the law school's mission, and the local community is not the law school's main constituency. The majority of the members of recent graduating classes from Harvard Law School were not employed in Massachusetts. Approximately 60% of the graduating classes of 2019 and 2020 found employment in either New York, California, or Washington, D.C.<sup>334</sup> Of the 530 Harvard Law graduates who took a bar exam in 2021, only sixty of them, roughly 11%, took the Massachusetts bar.<sup>335</sup>

The school's focus on national influence is evident in its alumni's relatively light contribution to contemporary Massachusetts politics. Of the sixty-six public officials elected by residents of Middlesex County in 2020 (where Harvard Law School is located), two public officials—one state senator and one state representative—were graduates of Harvard Law

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ENGAGEMENT IN THE CITY OF BOSTON 1 (2020) [hereinafter COMMUNITY ENGAGEMENT] (declaring Harvard's mission is "teaching, learning, and research . . . and . . . the pursuit of ideas, innovations, access, and knowledge that enhance the wellbeing of communities and how we live").

330. *Public Service and Nonprofits*, HARVARD IN THE COMMUNITY, <https://community.harvard.edu/nonprofits> [<https://perma.cc/UG6Y-USRA>].

331. HARVARD IN MASSACHUSETTS, *supra* note 323, at 13.

332. COMMUNITY ENGAGEMENT, *supra* note 329, at 6.

333. *See id.* at 1 (stating the university must serve its closest neighbors); REPORT OF THE CEPD, *supra* note 268, at 17–19 (describing the value of clinical education purely in terms of the educational value it provides to students).

334. *See* SUMMARY FOR 2020 HLS GRADUATES, *supra* note 15, at 2; SUMMARY FOR 2019 HSL GRADUATES, *supra* note 15, at 1–2.

335. 2021 HLS ULTIMATE BAR PASSAGE, *supra* note 15, at 1.

School.<sup>336</sup> Outside of Middlesex County, Harvard Law alumni in state or local office in Massachusetts includes: a state senator, the mayor of Boston, and the Chief Justice of the Massachusetts Supreme Judicial Court.<sup>337</sup> In comparison, twenty-two members of the 117th U.S. Congress were Harvard Law School graduates.<sup>338</sup> Although the school generates local public leaders, they are few; the school's focus remains national and international.

Notwithstanding the substantial number of alumni who enter public office, rates of public interest employment among recent graduates are somewhat low compared with those of St. Mary's University School of Law. Of graduates reporting from the Harvard Law class of 2019, 13.1% held government or public interest employment, not including judicial clerkships.<sup>339</sup> The number was slightly higher for the class of 2020 at 15.2%.<sup>340</sup> Tuition expenses, and the cost of higher education generally, may be to blame, as it was when Harvard first recognized a decline in public interest employment during the 1970s.<sup>341</sup>

The primary mission of Harvard Law School remains legal education and scholarship for the sake of legal education and scholarship. National and international influence is the measure by which the institution judges its success in pursuing its mission. As such, the school's community is avowedly global. Its brand identity is built upon the prestige that flows from the school's global influence. The school's objective is to maintain its position of prestige and influence within a global academic community through its

336. To obtain this data, the Author reviewed the winning candidates in races that appeared on ballots issued in Middlesex County in 2020 and researched biographical information on each candidate using LinkedIn, campaign websites, or news reports. The 2020 General Election results for Middlesex County candidates can be found here: *2020 General Election Results for the Commonwealth of Massachusetts*, SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS, [https://electionstats.state.ma.us/elections/search/year\\_from:2020/year\\_to:2020/stage:General](https://electionstats.state.ma.us/elections/search/year_from:2020/year_to:2020/stage:General) [<https://perma.cc/3YG7-A6FT>] (enter "2020" in years field, "All Offices" in office field, and "All General Elections" in stage field).

337. *Boston Mayor-Elect Michelle Wu '12 Joins Long Line of Harvard Law Educated City Leaders Across the Nation*, *supra* note 12; *Supreme Judicial Court Justices*, COMMONWEALTH OF MASSACHUSETTS, <https://www.mass.gov/info-details/supreme-judicial-court-justices#chief-justice-kimberly-s.-budd> [<https://perma.cc/3YG7-A6FT>]; *Senator Eric P. Lesser*, THE 193RD GENERAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS, <https://malegislature.gov/legislators/profile/epl0> [<https://perma.cc/NY8Q-PPYX>].

338. *Crimson on Capitol Hill: 117th*, HARVARD MAGAZINE (January–February 2021), <https://www.harvardmagazine.com/2021/01/jhj-capitol-hill-117th> [<https://perma.cc/4Z34-VXD2>].

339. SUMMARY FOR 2019 HLS GRADUATES, *supra* note 15, at 1.

340. SUMMARY FOR 2020 HLS GRADUATES, *supra* note 15, at 1.

341. See KIMBALL & COQUILLETTE, *supra* note 12, at 685 (stating the decline in public interest employment during the 1970s resulted from an increase in tuition which forced students to seek more lucrative careers).

scholarship and production of influential graduates. The mission is arguably to achieve global influence through legal education and scholarship for the purpose of being globally influential. As such, its mission, constituency, and brand identity are radically different from those of St. Mary's University School of Law, a small, deliberately regional, and practice-focused school driven by religious values and local service.

#### VII. CONCLUSION: THE LAWYER'S LAW SCHOOL AND THE METROPOLIS

According to Jerome Organ, the mission of a law school is comprised of the institution's purpose and guiding values and is expressed in the school's brand identity.<sup>342</sup> A mission is not what the law school *does* but *why*.<sup>343</sup> What Harvard Law School and St. Mary's University School of Law *do* and, importantly, *why* are quite different.

The mission of St. Mary's University School of Law is derived from the school's Catholic, Marianist identity and its founding purpose as the San Antonio School of Law. The school is fundamentally focused on service. The school pursues this service-oriented mission through legal education and character development designed to enable graduates to serve others through their work as lawyers, through scholarship, and through clinical and legal aid programs. The primary recipient of this service, by design, is South Texas. The school's brand identity is derived from both its mission and its constituency—it considers itself an “anchor” for San Antonio and aspires to be a “partner” in the region's development.<sup>344</sup> In providing lawyers to the region, the school seeks to provide practical legal training, as it has since its founding as a “lawyer's law school.”<sup>345</sup> Most St. Mary's Law graduates work in Texas, and, as the school itself proudly acknowledges, their influence is “ubiquitous” in San Antonio.<sup>346</sup>

Harvard Law School, in contrast, provides legal education and pursues scholarship as aims in themselves. These activities are viewed as “intrinsically valuable.”<sup>347</sup> Success in these endeavors is measured by the school's global influence, and thus global influence is itself an aim. Critical to achieving it, in the school's view, is maintaining a pluralistic environment as “the

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342. Organ, *supra* note 21, at 159–60.

343. *Id.* at 160–61.

344. ST. MARY'S UNIV., *supra* note 5, at 1, 4.

345. Cantú, *supra* note 85, at 332 (2019); Castleberry, *supra* note 89, at 49; Perry et al., *supra* note 92, at 24.

346. See ST. MARY'S UNIV., *supra* note 5, at 8 (describing the school's prevalence within Texas).

347. REPORT OF THE CEPD, *supra* note 268, at 4.

city, the metropolis” of legal education.<sup>348</sup> The school's community is global; it draws students and faculty from all over the world, sends its graduates all over the world, and pursues international influence. The personal and professional values represented at the school are many, and thus the school eschews selecting institutional values that risk conflict with the values of the school's broad constituency.

St. Mary's University School of Law and Harvard Law School pursue different ends for different reasons. They have different missions, brand identities, and constituencies. It is thus reasonable that their models and outcomes will be different. A direct comparison of these schools, such as the notorious annual ranking by *U.S. News and World Report*, which purports to order law schools from “best” to worst, is predicated on the assumption that these schools are striving for the same goal and are made in the same mold.<sup>349</sup> They are not.

Given their differences, why are these schools compared in the first place? One possible explanation lies with Harvard Law School's “isomorphic influence.”<sup>350</sup> As the authors of a recent history of Harvard Law School note, isomorphism is a sociological phenomenon “by which institutions in a social domain tend to replicate . . . the dominant or preeminent institutions” in that field.<sup>351</sup> As the oldest continuously operating law school in the United States, the first university-affiliated professional law school, and the birthplace of the curriculum and pedagogy that has since come to define American legal education, Harvard Law School's influence is pervasive.<sup>352</sup> It is the dominant institution in the field, a field it arguably created. Even a school with a distinct mission and constituency, such as St. Mary's University School of Law, finds itself operating in a world of norms and expectations created by Harvard Law School. Perhaps some comparison to the progenitor of modern American law schools is inevitable. But is it useful?

This of course depends on the type of comparison and the reason it is being made. Given Harvard Law School's isomorphic influence, a direct comparison between the schools, such as the *U.S. News and World Report* rankings, is essentially a measure of how well other schools are conforming

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348. Rakoff et al., *supra* note 292.

349. See *2023 Best Law Schools*, U.S. NEWS & WORLD REP., <https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings> [<https://perma.cc/3VP9-WGH7>].

350. See KIMBALL & COQUILLETTE, *supra* note 12, at 786 (stating Harvard Law School exerted isomorphic influence over other law schools).

351. *Id.* at 5.

352. *Id.* at 5, 786.

to the mold of Harvard Law School. A school that is intentionally not conforming to aspects of the Harvard model, like St. Mary's University School of Law, will therefore receive a low ranking.

Does a prospective law student find it useful to know how successfully a school is replicating Harvard? Probably not. If that student is from South Texas, prefers to attend school locally, and has ambitions to work as a public defender in San Antonio or to become a state judge, few schools will suit that student's needs as well as St. Mary's. Harvard would likely be a poor choice, even ignoring its geographical distance—its tuition alone might deter that student from ever pursuing his or her initial career ambitions. On the other hand, if a prospective student desires a place on the federal bench, a career in legal academia, or employment in a “big law” firm, few schools will suit that student's needs as well as Harvard Law. In choosing between these two schools, neither of these two hypothetical prospective students benefits from a direct comparison between St. Mary's and Harvard, especially one that presumes Harvard is “right.”

Instead, prospective students (and prospective employers) would likely benefit more from an understanding of how well a school accomplishes its own goals. For example, if St. Mary's University School of Law's mission was to generate ethical, well-trained lawyers for the local bar, then the best assessment of the school's performance would be derived from metrics indicating whether it is, in fact, graduating such individuals. Likewise, if Harvard Law School's mission was to influence the development of American law, then an assessment of the school's performance would be based on measures of its influence on American law. The determination of a school's quality would be a function of its success relative to its mission, not of its structural resemblance to another school. Such a comparison would allow prospective students to analyze their options based on which institutions appear most likely to help them reach their professional and personal goals. Similarly, employers would be able to determine which institutions were most likely to generate graduates with the skills and training sought in new hires. This information is not conveyed by the knowledge of how well a school is copying Harvard.

Where missions differ considerably, a direct comparison is, to use a cliché, like comparing “apples to oranges.” St. Mary's University School of Law and Harvard Law School have very different missions. One derives its purpose and values from religion and is steadfastly focused on serving its region. The other's purpose is justified by a belief in the innate value of academia. One measures its success by its service to and influence within

the local community, while the other measures its success by its impact on the course of global affairs. One proudly advertises practical training for future lawyers and publishes a journal designed to serve practitioners, while the other proudly advertises its achievements in academia and publishes a review focused on “legal scholarship.”<sup>353</sup> One was founded as a “lawyers’ law school”<sup>354</sup> and the other aspires to remain the “metropolis” of law.<sup>355</sup> Put simply, one is an apple, and one is an orange. An assessment of their quality and value should be based on their success relative to their own institutional missions—not in comparison to one another.

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353. *Compare St. Mary's Law Journal: About This Journal*, ST. MARY'S UNIV., <https://commons.stmarytx.edu/thestmaryslawjournal/about.html> [<https://perma.cc/E3E9-2EAZ>] (recognizing St. Mary's Law Journal is focused on serving practitioners), *with, About*, HARVARD L. REV., <https://harvardlawreview.org/about/> [<https://perma.cc/P5RG-D3SH>] (acknowledging Harvard Law Review is focused on legal scholarship).

354. *See* Cantú, *supra* note 85, at 393–94; Castleberry, *supra* note 89, at 49; Perry et al., *supra* note 92, at 24.

355. Rakoff et al., *supra* note 292.



