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A Catholic Perspective on Law School Diversity Requirements

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ARTICLE

A CATHOLIC PERSPECTIVE ON LAW SCHOOL DIVERSITY REQUIREMENTS

TERESA STANTON COLLETT*

I. INTRODUCTION

“Diversity and inclusion” is a polarizing concept in American politics. For many progressives or liberals, the phrase represents the American promise of “liberty and justice for all”—a goal to be fervently pursued through law, education, and the marketplace. For some conservatives and libertarians, the phrase represents Orwellian doublespeak. “Diversity and inclusion” is perceived as including everyone except straight white males¹ and anyone embracing traditional sexual morality, with implementation through groupthink,² reverse discrimination,³ and mandatory reeducation camps via government,⁴ professional,⁵ and corporate⁶ regulation. These radically different understandings burst into national view with the election

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1. See Ken Feagins, *Wanted—Diversity: White Heterosexual Males Need Not Apply*, 4 WIDENER J. PUB. L. 1 (1994); Michael Stokes Paulsen, *Reverse Discrimination and Law School Faculty Hiring: The Undiscovered Opinion*, 71 TEX. L. REV. 993 (1993).

2. “The left-liberal domination of elite law school faculties has had the debilitating effect on the intellect that John Stuart Mill in *On Liberty* assigned to the groupthink of his day.” Richard A. Posner, *A Note on Rumsfeld v. FAIR and the Legal Academy*, 2006 SUP. CT. REV. 47, 57 (2006) (footnotes omitted). Compare Daniel Klein & Charlotta Stern, *Groupthink in Academia, Majoritarian Departmental Politics and the Professional Pyramid*, 13 INDEP. REV. 585 (2009), with Russell Jacoby, *Academe is Overrun by Liberals, So What?*, CHRON. HIGHER EDUC. (Apr. 1, 2016), <https://www.chronicle.com/article/Academe-is-overrun-by/235898>.

3. The website of the U.S. Equal Employment Opportunity Commission reports a series of cases where reverse discrimination was alleged. *Significant EEOC Race/Color Cases*, EEOC, <https://www.eeoc.gov/eeoc/initiatives/e-race/caselist.cfm#reverse> (last visited July 27, 2018).

4. E.g., *Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012); *Neely v. Wyo. Comm’n on Judicial Conduct & Ethics*, 390 P.3d 728 (Wyo. 2017).

5. E.g., MODEL RULES OF PROF’L CONDUCT r. 8.4(g) cmt. 3–5 (AM. BAR ASS’N 2016) [hereinafter MODEL RULES]; MODEL CODE OF JUDICIAL CONDUCT, Canon 3 r. 3.6 (AM. BAR ASS’N 2010).

6. Frank Dobbin & Alexandra Kalev, *Why Diversity Programs Fail*, HARV. BUS. REV. (July–Aug. 2016), <https://hbr.org/2016/07/why-diversity-programs-fail>.

of President Donald Trump in 2016, an event producing existential angst on the left and even among some segments of the right.⁷

This article argues that many current diversity initiatives in legal education exacerbate this polarization. I contrast these initiatives with the teachings of the Catholic Church on intercultural dialogue and argue that the approach of the Church is more likely to achieve authentic progress toward a more just and peaceful society. Part II of this article explores the landscape of diversity mandates in contemporary legal education. Part III discusses the lack of viewpoint diversity in legal education and the profession. Part IV presents the Church's vision of intercultural dialogue in Catholic education and identifies direct conflicts between Church teaching and the legal academy's current understanding of diversity and speculates about various resolutions of these conflicts. Part V concludes with some concrete recommendations for advancing integration, interaction, and recognition of the beautiful varieties of experience among human beings.

II. DIVERSITY MANDATES IN LEGAL EDUCATION

Institutions of higher education routinely justify various discriminatory policies and practices inherent in many of their diversity initiatives as advancing “a robust exchange of ideas,”⁸ better preparing students for the demands of a global market,⁹ undermining racial stereotypes,¹⁰ challenging students to think critically,¹¹ advancing national security,¹² and enhancing public perceptions of national, state, and local leaders' legitimacy.¹³ Faculty and students often defend such policies on the basis of redressing past discrimination¹⁴ and promoting equality through racial or demographic balancing, sometimes described as “making the university look like America.”¹⁵

7. See Bruce Ledewitz, *The Role of Religiously Affiliated Law Schools in the Renewal of American Democracy*, 12 U. MASS. L. REV. 230 (2017), for an interesting description and analysis of the political polarization.

8. Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 313 (1978); see Meera E. Deo, *Faculty Insights on Educational Diversity*, 83 FORDHAM L. REV. 3115 (2015); Brief for Society of American Law Teachers as Amicus Curiae Supporting Respondents, *Fisher v. Univ. of Tex.* (Fisher II), 136 S. Ct. 2198 (2016) No. 14-981, 2015 WL 6754976.

9. *Grutter v. Bollinger*, 539 U.S. 306, 327–33 (2003).

10. *Id.* at 319–20 (testimony by Sverud).

11. *Fisher v. Univ. of Tex.* (Fisher I), 570 U.S. 297 (2013).

12. *Grutter*, 539 U.S. at 327–33.

13. *Fisher v. Univ. of Tex.* (Fisher II), 136 S. Ct. 2198 (2016) (Thomas, J., dissenting).

14. E.g., Richard A. Tapia, *True Diversity Doesn't Come from Abroad*, CHRON. HIGHER EDUC. (Sept. 28, 2007), <http://www.chronicle.com/article/True-Diversity-Doesnt-Comu/20812>; Professor Paul Carrington carefully explains the flaws in this rationale. Paul D. Carrington, *Diversity!*, 1992 UTAH L. REV. 1105 (1992).

15. Cf. Richard W. Riley, *Our Teachers Should be Excellent, and They Should Look Like America*, 31 EDUC. AND URB. SOC'Y 18, 185 (1998). James Lindgren's demographic study of the legal academy shows how any serious embrace of this position would result in untenable hiring restrictions. For example, because there is massive overrepresentation of Jews and Democrats on law faculties when compared to the general working populations, hiring committees would be unable to consider such candidates for decades before parity could be achieved. James Lindgren,

The Supreme Court has soundly rejected the last two rationales as constitutional justifications: the first as punishing the present generation for the sins of the past,¹⁶ and the second as directly violating the command of equal treatment contained in the Fourteenth Amendment.¹⁷ Nonetheless, “diversity” advocates persistently use both rationales to justify proposals favoring some groups based on members’ ethnicity, race, or sexual practices, preferences, or self-perceptions.

Both *Grutter v. Bollinger*¹⁸ and *Fisher v. Texas*,¹⁹ among the most recent Supreme Court cases addressing diversity initiatives, involved challenges to law school admissions practices in state universities.²⁰ In both cases the law schools ultimately prevailed because a majority of the Court accepted the schools’ claims that considerations of race in admissions were a necessary part of achieving a robust exchange of ideas and teaching students to think critically.²¹ Yet recent events in legal education, as well as research regarding faculty hiring and composition, seem to undermine these claims.²²

Measuring Diversity: Law Faculties in 1997 and 2013, 39 HARV. J.L. & PUB. POL’Y 89, 130, 137 (2016).

16. Regents of Univ. of Cal., 438 U.S. 265, 298 (1978) (“[T]here is a measure of inequity in forcing innocent persons in respondent’s position to bear the burdens of redressing grievances not of their making.”).

17. *Id.* at 307.

If petitioner’s purpose is to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose must be rejected not as insubstantial but as facially invalid. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake. This the Constitution forbids.

Id.

18. *Grutter v. Bollinger*, 539 U.S. 306, 306 (2003).

19. *Fisher I*, 570 U.S. 297 (2013); *Fisher II*, 136 S. Ct. 2198 (2016).

20. At the outset, it is important to acknowledge that Catholic universities, as private entities, do not operate under the same constitutional constraints as state or public universities. That said, most Catholic law schools voluntarily acquiesce to similar restrictions via membership requirements of various powerful professional associations like the American Bar Association (ABA), the Association of American Law Schools (AALS), and the Association of American University Professors (AAUP), as well as regional accreditation organizations.

21. *Grutter*, 539 U.S. at 329; *Fisher II*, 136 S. Ct. at 2211.

22. I am not the first to criticize academic institutions’ claims that their admissions policies are directed at achieving viewpoint diversity or robust debate. See generally Carrington, *supra* note 14;

[L]aw schools that offer ‘viewpoint diversity’ as a justification for affirmative action, but are unwilling to take such steps to hire conservatives, are perhaps using a convenient and selective definition of ‘viewpoint diversity’ that may itself be ideologically driven. We also suggest that true viewpoint diversity within law school communities is advanced (at least) as much by ideological diversification as it is by ethnic diversification and that, in this respect, faculty diversity is as valuable as student diversity.

John McGinnis, Matthew A. Schwartz & Benjamin Tisdell, *The Patterns and Implications of Political Contributions by Elite Law School Faculty*, 93 GEO. L.J. 1167, 1198 (2005).

III. THE LACK OF VIEWPOINT DIVERSITY IN LEGAL EDUCATION AND THE PROFESSION

Responses to the election of President Trump provide some of the clearest examples of academic groupthink and what is known as “political correctness.”²³ The day after the 2016 presidential election, colleges and universities deployed campus counselors to comfort presumably distraught students,²⁴ and some professors even suspended classes or examinations.²⁵ The University of Michigan Law School, the defendant in the *Grutter* case, went so far as to sponsor a post-election event with “comforting food” and “stress-busting, self-care activities such as coloring, play dough, positive card-making, Legos, and bubbles with your fellow law students.”²⁶ Predictably, these actions caused conservatives to roll their eyes, followed by more than a few expressions of concern about campus leadership’s assumption of political views and fragility of adult students.²⁷

23. In a 1991 commencement ceremony for a graduating class of the University of Michigan, then U.S. President George H.W. Bush identified the dangers of “political correctness” in his speech:

Ironically, on the 200th anniversary of our Bill of Rights, we find free speech under assault throughout the United States, including on some college campuses. The notion of political correctness has ignited controversy across the land. And although the movement arises from the laudable desire to sweep away the debris of racism and sexism and hatred, it replaces old prejudice with new ones. It declares certain topics off-limits, certain expression off-limits, even certain gestures off-limits.

What began as a crusade for civility has soured into a cause of conflict and even censorship. Disputants treat sheer force—getting their foes punished or expelled, for instance—as a substitute for the power of ideas.

Throughout history, attempts to micromanage casual conversation have only incited distrust. They have invited people to look for an insult in every word, gesture, action. And in their own Orwellian way, crusades that demand correct behavior crush diversity in the name of diversity.

We all should be alarmed at the rise of intolerance in our land and by the growing tendency to use intimidation rather than reason in settling disputes. Neighbors who disagree no longer settle matters over a cup of coffee. They hire lawyers, and they go to court. And political extremists roam the land, abusing the privilege of free speech, setting citizens against one another on the basis of their class or race.

George Bush, Remarks at the University of Michigan Commencement Ceremony in Ann Arbor (May 4, 1991).

24. See, e.g., Stephany Kim, *Professors Cancel Class, Responding To ‘Shocking’ Election Results*, CORNELL DAILY SUN (Nov. 10, 2016), <http://cornellsun.com/2016/11/10/professors-cancel-class-responding-to-shocking-election-results/>; Glenn Harlan Reynolds, *Tolerant Educators Exile Trump Voters from Campus*, USA TODAY (Nov. 14, 2016, 3:18 AM), <https://www.usatoday.com/story/opinion/2016/11/14/trump-liberal-college-campus-michigan-yale-glenn-reynolds-column/93765568/>; Fox Business Network, *College Campuses React to Trump Elections Win*, YOUTUBE (Nov. 10, 2016), https://youtu.be/q_CJYMdmXjc.

25. Kim, *supra* note 24; Reynolds, *supra* note 24; Fox Business Network, *supra* note 24.

26. Staci Zaretsky, *T14 Law School Removes Post-Election Play-Doh Event From Website After Students Labeled ‘P*ssies’*, ABOVE THE LAW (Nov. 14, 2016, 1:47 PM), <https://abovethelaw.com/2016/11/t14-law-school-cancels-post-election-play-doh-event-after-students-labeled-pssies/>.

27. See Eric Owens, *Univ. Michigan Law School Tries – and Fails – to Scrub Trump Trauma Play-doh Event from Website*, DAILY CALLER (Nov. 12, 2016, 10:30 AM), <https://dailycaller.com/>

Law school faculty, as a whole, were as partisan as university administrators in their reactions.²⁸ Professors largely divided between glum silence and irresponsible predictions of America spiraling into violence and totalitarianism. Responding to a survey of faculty opinion regarding Trump's election, University of Pennsylvania Law School Professor Clair Finkelstein wrote:

As I watch the implications of last week's election unfold day by day, I ask myself whether support for the rule of law as an ideal is, for the first time in our history, truly subject to doubt. With a long list of advisors and potential appointees that spurn and indeed mock rule of law values, coupled with threats to the freedom of the press, intimidation of sitting judges and unvarnished disdain for legal authority, an insistence on bringing back banned methods of interrogation, and not-so-veiled encouragement to his supporters to engage in violence against political opponents and acts of racial and religious hatred, the Trump administration is likely to challenge the foundations of democratic governance in a way that many of us thought the U.S. would never encounter.²⁹

Some of her colleagues predicted equally ominous consequences from the election. Trump's use of presidential foreign affairs powers would be "terrifying";³⁰ Trump's election will have "potentially devastating consequences" for civil rights;³¹ and "bullying in schools and in communities across the country against Latino children and Muslim families" would become more commonplace.³² In fairness, I should note that other Penn Law professors provided much more restrained and sober assessments, although none could be characterized as supportive or enthusiastic about the new administration.

While this sample of comments is drawn from only one elite law school, national demographic studies of law faculty reflect a surprising (and discouraging) uniformity of political and social views. In a study of the relationship between excellence in teaching and excellence in research, Professor Deborah Jones Merritt surveyed all law professors "who began their

2016/11/12/university-of-michigan-law-school-tries-and-fails-to-scrub-trump-trauma-play-doh-event-from-website/ ("The event, featuring Play-Doh, bubbles and Legos, has now apparently been canceled — possibly in response to heaps of ridicule."). See also Charles Camosy, *Trump Won Because College-Educated Americans Are Out of Touch*, WASH. POST, (Nov. 9, 2016), https://www.washingtonpost.com/posteverything/wp/2016/11/09/trump-won-because-college-educated-americans-are-out-of-touch/?utm_term=.cbbdf4cf2c04.

28. Cf. Stephen B. Presser, *What American law professors forgot and what Trump knew*, CHI. TRIB. (Nov. 17, 2016, 7:42 PM), <http://www.chicagotribune.com/news/opinion/commentary/ct-law-professors-trump-scalia-supreme-court-conservative-perspec-1118-md-20161117-story.html>.

29. *Penn Law Faculty Respond to Presidential Election Result*, UNIV. PENN. L. SCH. (Nov. 9, 2016), <https://www.law.upenn.edu/live/news/6603-penn-law-faculty-respond-to-presidential-election>.

30. *Id.* (Professor Jean Galbraith).

31. *Id.* (Professor Serena Mayeri).

32. *Id.* (Professor Sarah Paoletti).

first tenure-track position at an accredited U.S. law school between the fall of 1986 and spring of 1991, and who remained on the tenure track at one of those schools in the fall of 1997,” asking about their political self-identification.³³

A large majority of respondents (75.4 percent) characterized themselves as ‘moderately’ or ‘strongly’ liberal or left. Another 14.6 percent chose the ‘middle-of-the-road’ designation. Only 10.0 percent of the population characterized themselves as conservative to some degree, raising the possibility that these professors might fare differently in both research and teaching.³⁴

In 2001, Professors Stewart and Tolley explored the differences in law school rankings by practitioners and legal academics and found “significant and temporally persistent bias held by the American legal academy against conservative religiously affiliated law schools, a bias resulting from the academy’s disagreement with traditional religion on the great cultural/moral issues of our day.”³⁵

In 2005, Professor John McGuinness and two colleagues published a study of political campaign contributions of law professors at the top twenty-one schools from 1992 to 2002. They found that only 15 percent of professors contributed wholly or predominantly to Republican candidates, while 81 percent of professors contributed wholly or predominantly to Democrats.³⁶ Perhaps even more disappointing is that “while the contributions of politically active male and female professors are overwhelmingly

33. Deborah Jones Merritt, *Research and Teaching on Law Faculties: An Empirical Exploration*, 73 CHI.-KENT L. REV. 765, 767 (1998).

34. *Id.* at 780 n.54. Most recently, economists at the University of Chicago found that while thirty-five percent of lawyers are conservative, only fifteen percent of all law faculty are. The economists then acknowledged that such an imbalance could lead to serious distortions in the crafting and interpretation of the law, but ultimately determined that attempts to correct this imbalance would compete with law schools’ commitment to racial and gender diversity. Adam Bonica, Adam S. Chilton, Kyle Rozema & Maya Sen, *The Legal Academy’s Ideological Uniformity*, COASE-SANDOR WORKING PAPER SERIES IN L. AND ECON., No. 806 (2017). An earlier article by Adam Chilton found that scholarly writing by law professors routinely evidenced the professors’ political views, rather than objective legal analysis. Adam S. Chilton & Eric A. Posner, *An Empirical Study of Political Bias in Legal Scholarship*, COASE-SANDOR WORKING PAPER SERIES IN L. AND ECON., No. 696 (2014).

35. Monte N. Stewart & H. Dennis Tolley, *Investigating Possible Bias: The American Legal Academy’s View of Religiously Affiliated Law Schools*, 54 J. LEGAL EDUC. 136, 137 (2004); see also Robert A. Destro, *ABA and AALS Accreditation: What’s “Religious Diversity” Got to Do with It?*, 78 MARQ. L. REV. 427, 454 (1995) (“Concerns about the intellectual diversity of law schools and their faculties should not be limited to institutions in which the students and faculty are of a predominantly orthodox religious stripe. Law schools with impeccable progressive credentials are equally capable of manipulating the learning environment ‘and have done so with great fanfare, and largely without apology.’”).

36. McGinnis et al., *supra* note 22, at 1170. This result is consistent with a 2016 finding that there are 8.6 registered Democrats for every one Republican professor among the twenty-five law faculties at the top forty research universities. Mitchell Langbert, Anthony J. Quain & Daniel B. Klein, *Faculty Voter Registration in Economics, History, Journalism, Law and Psychology*, 13 ECON. J. WATCH 422 (Sept. 2016).

Democratic, this pattern is even more pronounced for politically active female professors, with 95 percent of the latter giving either exclusively or predominantly to Democrats.³⁷

In 2011, the American Bar Foundation published a national survey of tenured law professors.³⁸ While the authors did not ask respondents about their political affiliation or views, the survey is one of the few large studies of the legal academy that inquired about sexual orientation. The authors report that four percent of the respondents identified themselves as lesbian, gay, or bisexual.³⁹ On the issue of religion, fifteen percent of those answering the survey question identified themselves as Protestant while eleven percent self-identified as Jewish. Seven percent of the respondents identified themselves as Roman Catholic, and a small number responded they were Muslim. An additional twelve percent reported that they had no religious affiliation.⁴⁰

In 2015, Professor James Lindgren published one of the most comprehensive demographic studies of the legal academy that has been produced to date.⁴¹ He found that the groups most underrepresented on law faculties are Republicans, Protestants, and Catholics.

Indeed, these three underrepresented groups (Republicans, Protestants, and Catholics) make up 91% of the U.S. population ages 30–75, but only about half of the law professor population. Put another way, people who are neither Christian nor Republican make up only 9% of the U.S. population, but account for about half of law professors (51%).⁴²

This deficit in political and religious diversity is particularly remarkable given the legal academy's success in recruiting and retaining women and racial minorities.

[A]ffirmative action has been such a success that all large ethnic and gender groups are at a minimum approaching parity with the lawyer population. Except for some very small groups of less than 2% of the population, in 2013, there is no group defined solely by ethnicity or gender that shows substantial underrepresentation in law teaching compared to lawyers, and only Hispanics (at about 54% of parity) show any substantial underrepresentation in law teaching compared to the English-fluent full-time working population. Even Hispanics — the only large ethnic group to be sub-

37. McGinnis et al., *supra* note 22, at 1171.

38. ELIZABETH MERTZ ET AL., AM. B. FOUND., AFTER TENURE: POST-TENURE LAW PROFESSORS IN THE UNITED STATES 14 (2011).

39. *Id.* This is close to an estimate of 3.5 percent for the national average reported in 2011. Gary J. Gates, *How Many People Are Lesbian, Gay, Bisexual, and Transgender?*, WILLIAMS INST. (Apr. 2011), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf>.

40. MERTZ ET AL., *supra* note 38.

41. Lindgren, *supra* note 15.

42. *Id.* at 93.

stantially below parity with the English-fluent working population — are at full parity with their percentages among lawyers and at full parity with the highly educated working population.⁴³

Interestingly, like the findings of Professor McGinnis, Professor Lindgren found the greatest disparity between the number of white Republican women in law teaching and their representation in the legal profession as well as the general working population. Add in religious commitment and Lindgren found “there were more socialists in my survey than there were white female Republican Protestants (the largest four-way group in the U.S. population). As to religion, there were also “more Buddhists and more ‘pagans,’ who believe in many gods, than white female Republican Protestants.”⁴⁴ It is also true that there were “more Buddhists and more ‘pagans’” than white female Republican Catholics.⁴⁵

Professor Lindgren provides new research regarding the religiosity of law faculty in his contribution to this symposium.⁴⁶ And it is not encouraging. Based on a survey of law faculty drawn from the AALS 2016–17 Directory of Law Teachers, Professor Lindgren concluded that law professors were almost six times more likely to agree with the statement “I don’t believe in God” than members of the general public.⁴⁷ They were also two and a half times more likely to agree with the statement “I don’t know whether there is a God.”⁴⁸ Christian law professors felt less free to express their true beliefs at work than all others combined,⁴⁹ with Catholic professors registering more discomfort than their Protestant colleagues.⁵⁰

While law faculties now exhibit substantial ethnic, racial, and gender diversity, they exhibit intellectual or political uniformity. Liberals appear to have a virtual monopoly on the legal academy, with substantial entry barri-

43. *Id.* at 142; *cf.* Merritt, *supra* note 33.

44. Lindgren, *supra* note 15, at 106 n.60. This imbalance may explain what other scholars have identified as the trivializing or suppression of religious viewpoints in the school classrooms. John J. Fitzgerald, *Today’s Catholic Law Schools in Theory and Practice: Are We Preserving Our Identity?*, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 245, 268 (2001) (citing Harold J. Berman, *The Crisis of Legal Education in America*, 26 B.C. L. REV. 347 (1985); Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247 (1978); James D. Gordon III, *The Importance of Religiously Affiliated Law Schools*, 37 CATH. LAW. 183 (1997); Michael Stokes Paulsen, *How Yale Law School Trivializes Religious Devotion*, 27 SETON HALL L. REV. 1259 (1997)).

45. Lindgren, *supra* note 15, at 113 tbl.4.

46. James Lindgren, *The Religious Beliefs, Practices, and Experiences of Law Professors*, 15 U. ST. THOMAS L.J. 342 (2019).

47. *Id.* at 353 fig.10.

48. *Id.*

49. *Id.* at 354 tbl.2.

50. *Id.*; *cf.* James C. Phillips, *Testing a Beckerian-Arrowian Model of Political Orientation Discrimination on the U.S. Law Professor Labor Market: Measuring the ‘Rank Gap,’ 2001-2010*, SSRN (Aug. 1, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3224508&download=eyes.

ers for Christian and socially conservative candidates.⁵¹ Such imbalance is not unique to legal education,⁵² but, as others have warned, such imbalance bodes poorly for preparing our students to become members of the legal profession, representatives of clients, officers of the legal system, and public citizens having special responsibility for the quality of justice.⁵³

Professor Charles Camosy captured the problem of a liberal monopoly in higher education in his post-election op-ed discussing the reaction of college students and faculty to President Trump's election.

[G]raduates are formed by a campus culture that leaves them unable to understand people with unfamiliar or heterodox [non-liberal] views on guns, abortion, religion, marriage, gender and privilege. And that same culture leads such educated people to either label those with whom they disagree as bad people or reduce their stated views on these issues as actually being about something else.⁵⁴

He warned that continuing “to reduce all disagreement to racism, bigotry and ignorance . . . will simply make the disagreement far more personal, entrenched and vitriolic.”⁵⁵ Sadly, his prediction appears to be coming to pass, even on law school campuses.⁵⁶

51. James C. Phillips, *Why Are There So Few Conservatives and Libertarians in Legal Academia? An Empirical Exploration of Three Hypotheses*, 39 HARV. J.L. & PUB. POL'Y 153, 158 (2016) (“Zenoff and Barron complain that law school ‘faculties merely reproduce narrow versions of themselves,’ leading to a pernicious impact in legal education. Schneider et al. put forth the homogeneity of personality hypothesis, finding that hiring committees tend to hire candidates who are most similar to the members of the committee.”). This has led to several calls for increased viewpoint diversity. See also Robert Bordone, *Building Conflict Resilience: It's Not Just About Problem-Solving*, 2018 J. DISP. RESOL. 65 (2018); George W. Dent, Jr., *Toward Improved Intellectual Diversity in Law Schools*, 37 HARV. J.L. & PUB. POL'Y 165, 166 (2014); Carol Goforth, *Diversity in Law School Faculty Hiring: Why it is a Mistake to Make it all about Race*, 56 U. LOUISVILLE L. REV. 237 (2018).

52. See, e.g., Langbert et al., *supra* note 36.

53. See MODEL RULES, *supra* note 5, at Preamble ¶ 1.

54. Camosy, *supra* note 27.

55. *Id.*; see also Anna Brown, *Most Americans Say Higher Ed is Headed in the Wrong Direction, but Partisans Disagree on Why*, PEW RES. CTR. (July 26, 2018), <http://www.pewresearch.org/fact-tank/2018/07/26/most-americans-say-higher-ed-is-heading-in-wrong-direction-but-partisans-disagree-on-why/>.

56. Protests of conservative speakers at law schools are particularly concerning given the need for lawyers to understand and engage arguments that they disagree with. Examples of such protests have been reported at Georgetown, CUNY, and Lewis & Clark. See Debbie Truong, Sarah Larimer & Susan Svrluga, *Georgetown Law Students and Faculty Protest Speech by Attorney General Jeff Sessions*, WASH. POST (Sept. 26, 2017), https://www.washingtonpost.com/news/grade-point/wp/2017/09/26/georgetown-law-students-plan-to-protest-jeff-sessions-speech/?utm_term=.C636fcdf9fcb; Scott Jaschik, *Shouting Down Talk on Campus Free Speech*, INSIDE HIGHER EDUC. (Apr. 16, 2018), <https://www.insidehighered.com/news/2018/04/16/guest-lecture-free-speech-cuny-law-school-heckled>; Scott Jaschik, *Speech, Interrupted*, INSIDE HIGHER EDUC. (Mar. 6, 2018), <https://www.insidehighered.com/news/2018/03/06/students-interrupt-several-portions-speech-christina-hoff-sommers>. I also have been the subject of student protests, although protesters limited themselves to complaints to the law school administration, and replacing or covering flyers promoting my talk entitled “The Feminist Case Against Abortion” with flyers reading

IV. THE CATHOLIC VISION OF DIVERSITY AND INTERCULTURAL DIALOGUE

So what does Catholic teaching offer to the debate over diversity mandates in higher education, and law schools in particular? I would like to claim that Catholic law schools are different and more successful in their approach to integrating students and faculty from various social and demographic groups, while forming lawyers who will be prepared to “play a vital role in the preservation of society.”⁵⁷ Notwithstanding my efforts, I have not found any evidence to support (or rebut) such a claim.

In place of such direct evidence, I offer the Church’s long and rich history of providing education throughout the world. The Church is the most ethnically diverse institution in the world, as a direct result of its sacred mission to “teach ye all nations; baptizing them in the name of the Father, and of the Son, and of the Holy Ghost.”⁵⁸ It operates the largest number of non-government sponsored educational institutions in the world.⁵⁹ “Education and school and university education were always at the centre of the contribution of the Catholic Church to civic life.”⁶⁰

Domestically, the Catholic Church is the most ethnically diverse denomination in the United States.⁶¹ It also is the largest provider of private education,⁶² with schools operating since 1606 when the Franciscans opened a school in what is now St. Augustine, Florida.⁶³ Catholic legal education dates from at least 1869 when Notre Dame offered its first law

“Don’t like abortion? Get a vasectomy.” The dean introduced me noting that the law school did not endorse my views and that students were expected to conduct themselves professionally. During the question and answer period students and other members of the audience were vigorous but respectful in questioning me. My speech, including the question and answer period, can be viewed online. Teresa Collett, *The Feminist Case Against Abortion*, MEDIASITE (Feb. 15, 2018), <http://mediasite.dsl.psu.edu/mediasite/Play/7cc507349f4a4b88a5fbd57c0d9925ff1d>.

57. MODEL RULES, *supra* note 5, at Preamble ¶ 13.

58. Matthew 28:19 (Douay-Rheims).

59. See CTR FOR APPLIED RES. IN THE APOSTOLATE (CARA), GLOBAL CATHOLICISM: TRENDS AND FORECASTS (June 4, 2015), <https://cara.georgetown.edu/staff/webpages/global%20catholicism%20release.pdf>.

60. CONGREGATION FOR CATH. EDUC., EDUCATING TO FRATERNAL HUMANISM: BUILDING A “CIVILIZATION OF LOVE” 50 YEARS AFTER *POPULORUM PROGRESSIO*, ¶ 28 (Apr. 16, 2017) [hereinafter EDUCATING TO FRATERNAL HUMANISM], http://www.vatican.va/roman_curia/congregations/ccatheduc/documents/rc_con_ccatheduc_doc_20170416_educare-umanesimo-solidale_en.html.

61. ROBERT D. PUTNAM & DAVID E. CAMPBELL, AMERICAN GRACE 292 (2010).

62. *Catholic Schools in the USA*, INT’L STUDENT, <https://www.internationalstudent.com/student-news/articles/catholic-schools-usa/> (last visited Aug. 3, 2018); see also sources cited in Teresa Stanton Collett, *Government Schools, Parental Rights, and the Perversion of Catholic Morality*, 21 J. MARKETS & MORALITY (forthcoming 2018), U. ST. THOMAS (MINN.) LEGAL STUD. RES. PAPER No. 18-03, <https://ssrn.com/abstract=3112784>.

63. *History of the Catholic Church in the United States*, U.S. CONF. CATH. BISHOPS (USCCB), <http://www.usccb.org/about/public-affairs/backgrounders/history-catholic-church-united-states.cfm> (last visited Dec. 19, 2018).

school class.⁶⁴ Currently, there are twenty-nine ABA-accredited law schools affiliated with Catholic universities, which enroll seventeen percent of all full-time law students.⁶⁵

A. Demographic Data on Diversity in Catholic Law Schools

Catholic law schools in the United States were formed partially in response to ethnic and religious bigotry in the 1800s and early 1900s.⁶⁶ Early Catholic law schools arose to provide affordable legal education to the sons (and eventually daughters) of the Church and an academic alternative to law study by apprenticeship.⁶⁷ Today, at least one law school has been formed to more faithfully integrate the Catholic intellectual tradition into professional training.⁶⁸

In 2017, the racial profile of students enrolled in Catholic law schools looked similar to the composite of students enrolled in all ABA-accredited law schools⁶⁹ and the U.S. population generally.⁷⁰ It was far more diverse than the gender and racial profile of the legal profession as a whole.⁷¹ With a total enrollment of 17,554, 48.1 percent of all students were male and 51 percent were female. Minority students comprised 30.9 percent while white

64. John M. Breen & Lee J. Strang, *The Road Not Taken: Catholic Legal Education at the Middle of the Twentieth Century*, 51 AM. J. LEGAL HIST. 553, 618–21 (2011) [hereinafter *The Road Not Taken*].

65. *Id.* at 553.

66. *Id.* at 629–33; John M. Breen & Lee J. Strang, *The Forgotten Jurisprudential Debate: Catholic Legal Thought's Response to Legal Realism*, 98 MARQ. L. REV. 1203, 1282–1309 (2015) [hereinafter *Forgotten Jurisprudential Debate*] (providing brief history of anti-Catholicism in the United States from the colonial period to today).

67. *Road Not Taken*, *supra* note 64. Legal apprenticeship is still permitted but rarely pursued in four states. *State-by-State Guide to Apprenticeships*, LIKELINCOLN.ORG, <http://likelincoln.org/state-by-state-guide-to-apprenticeships/> (last visited Aug. 3, 2018).

68. Ave Maria School of Law located in Naples, Florida is an example of this. Although among the youngest of Catholic law schools, Ave Maria School of Law was ranked first among Catholic schools in its listing of *Best Schools for the Devout* by Prelaw, a National Jurist Publication. Mike Stetz, *Best Law Schools for the Devout*, 17 PRELAW 28, 30 (Winter 2014).

69. *Statistics*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_education/resources/statistics.html (last visited Aug. 3, 2018).

70. In 2016, the U.S. Census Bureau reported the racial composition of the U.S. as: 61.3 percent Non-Hispanic white, 17.8 percent Hispanic, 13.3 percent Black/African American, 5.7 percent Asian, 1.3 percent American/Alaskan Indian, 0.2 percent Native Hawaiian/Pacific Islander, 2.6 percent two or more races. JONATHAN VESPA, DAVID M. ARMSTRONG & LAUREN MEDINA, U.S. CENSUS BUREAU, DEMOGRAPHIC TURNING POINTS FOR THE UNITED STATES: POPULATION PROJECTIONS FOR 2020 TO 2060, P25-1144, tbl.3 (2018), https://www.census.gov/content/dam/Census/library/publications/2018/demo/P25_1144.pdf

71. The 2017 ABA National Lawyer Demographic Survey reported that active attorneys were sixty-five percent male and thirty-five percent female, and eighty-five percent of the lawyers were Caucasian/White, five percent were Hispanic, five percent were African-American, two percent were Asian, two percent were Multi-Racial, and one percent were Native American. A.B.A., NATIONAL LAWYER POPULATION SURVEY: 10-YEAR TREND IN LAWYER DEMOGRAPHICS (2018); AMERICAN BAR ASSOCIATION, *National Lawyer Population Survey: 10-Year Trend in Lawyer Demographics* (2018), https://www.americanbar.org/content/dam/aba/administrative/market_research/National_Lawyer_Population_Demographics_2008-2018.authcheckdam.pdf.

students were 58.9 percent, with the remaining students being non-resident aliens (4.2 percent) or of unknown race (6 percent).⁷² One might think that both the profession and the legal academy would declare victory in their efforts to diversify law schools, and pursue other goals—things like providing students instruction on technological innovations in the profession or teaching comparative law, or if “diversity” is the prime directive, pursuing balance in viewpoints, religion, or familial status⁷³ to reflect the general population.

Instead, the American Bar Association (ABA),⁷⁴ Law School Admissions Council (LSAC),⁷⁵ and the American Association of Law Schools

72. I am grateful to my colleague Jerome Organ who provided these statistics based upon the ABA’s data reported in December 2017 as of fall 2017. Law school enrollment is comprised of:

Men	Women	Hispanic	African American	Asian American	Two or more races	Minority	White	Non-resident Alien	Race Unknown
8,452	9,102	2,509	1,129	1186	494	5,427	10,335	741	1,051
48.1%	51.9%	14.3%	6.4%	6.8%	2.8%	30.9%	58.9%	4.2%	6%

E-mail from Jerome M. Organ, Professor of Law, Univ. of St. Thomas Sch. of Law, to Professor Teresa Stanton Collett, Professor of Law, Univ. of St. Thomas Sch. of Law (June 19, 2018, 07:58 CST) (on file with author).

73. Elizabeth R. Schiltz, *Motherhood and the Mission: What Catholic Law Schools Could Learn from Harvard about Women*, 56 CATH. U. L. REV. 405 (2007).

Despite the fact that law school enrollment is approaching equality in gender composition, the percentage of women being hired by law schools seems to be holding steady for the past two decades at roughly 35% of all hires. Moreover, women are hired at lower ranks than equally credentialed men; women are more likely to enter teaching as assistant professors rather than as associate or full professors. In one study of law professors, men were more successful than women in moving up the promotion ladder; men were less likely than women to have left teaching and more likely than women to have attained the rank of full professor or to hold a chair.

There is little, if any, research on the effect of having children on the professional advancement of law professors, such as that conducted on academics in humanities and the sciences. However, since the gender ratios of law school faculties so closely replicate those of academia in general, and since the tenure-based model of career progression is the same, it is fair to assume that childbearing has a similarly negative effect on the career prospects of women in law schools.

Id. at 419–20.

74. *Diversity Plan*, AM. BAR ASS’N, (May 2011), https://www.americanbar.org/content/dam/aba/events/racial_ethnic_diversity/aba_diversity_plan_may_2011.authcheckdam.pdf; A.B.A. COMM’N ON SEXUAL ORIENTATION & GENDER IDENTITY, GOAL III REPORT FOR 2015–2016, EIGHTH ANNUAL REVIEW OF THE STATUS OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PARTICIPATION AT THE AMERICAN BAR ASSOCIATION (2016), https://www.americanbar.org/content/dam/aba/administrative/sexual_orientation/sogi_2016_goaliii.authcheckdam.pdf.

75. While the LSAC website proudly notes that “LSAC also works actively to increase diversity in the legal profession,” based on the website’s resources, the only types of diversity the organization is concerned about relate to racial and ethnic groups, and self-identified sexual minorities. There are no pages devoted to or resources identified for potential students who would contribute to diversity based on their socioeconomic status, language, nationality, religion, geography, disability, or age—all forms of diversity identified in the one paragraph introduction to both the race and sexual preference pages. *About the Law School Admission Council*, LAW SCH. ADMISSIONS COUNCIL, <https://www.lsac.org/aboutlsac/about-lsac> (last visited July 27, 2018).

(AALS),⁷⁶ have expanded the definition of “diversity”⁷⁷ to include groups defined by their sexual practices, preferences, orientations, and self-perceptions. While the acronyms for these groups change regularly, the LSAC website currently uses “LGBT” and “LGBTQ” as its designations.⁷⁸

Neither LSAC nor the ABA currently track law school applicants or students by sexual preference, orientation, or identity, but LSAC annually surveys law schools regarding their policies to provide “information of importance to LGBT students.”⁷⁹ In the most recent survey results there were few noticeable differences between Catholic law schools and other respondents.⁸⁰ All of the 142 U.S. respondents indicated that their school had a non-discrimination policy related to sexual orientation or gender identity.⁸¹ Only two law schools, Catholic University of America (CUA) and Faulkner University, reported not having a lesbian, gay, bisexual, or transgender student organization.⁸² Twenty-three U.S. law schools reported not having any openly lesbian, gay, bisexual, or transgender faculty members.⁸³ Of the twenty-three, five were Catholic—CUA, Loyola Chicago, Loyola New Orleans, Marquette, and Notre Dame.⁸⁴ Forty-two U.S. law schools, six of which are Catholic (University of Dayton, Loyola Chicago, Loyola New Orleans, Marquette, University of St. Louis, and the University of St. Thomas (MN)), have no openly lesbian, gay, bisexual, or transgender administrators.⁸⁵ Benefits for domestic-partner or same-sex marriage are offered to faculty, staff, or students at all but seventeen U.S. law schools, four of which are Catholic—CUA, Detroit Mercy, Loyola New Orleans, and St. Thomas University (FL).⁸⁶

76. *AALS Handbook of Good Practices, Gender Identity and Gender Expression*, AM. ASS'N OF LAW SCHOOLS, <https://www.aals.org/about/handbook/good-practices/gender-identity-and-gender-expression/> (last visited Dec. 19, 2018).

77. Like Justices Thomas and Kennedy, I find it hard to identify a clear consistent definition of diversity in the context of faculty hiring or student admissions. “[D]iversity,’ for all of its devotees, is more a fashionable catchphrase than it is a useful term, especially when something as serious as racial discrimination is at issue.” *Grutter v. Bollinger*, 539 U.S. 306, 353 (2003) (Thomas, J., concurring in part and dissenting in part).

78. *Diversity in Law School: LGBTQ Applicants*, LAW SCH. ADMISSIONS COUNCIL, <https://lsac.org/jd/diversity-in-law-school/lgbt-overview> (last visited Aug. 3, 2018) (“This is an exciting and opportune time for LGBT individuals to consider obtaining a legal education.”).

79. *Law School LGBT Survey Results*, LAW SCH. ADMISSIONS COUNCIL (2016), <https://lsac.org/jd/diversity-in-law-school/lgbt-overview/survey>.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* This absence of LGBT faculty and administrators is unsurprising given the U.S. population of people identifying as LGBT is approximately 3.5 percent. Gates, *supra* note 39. Compare MERTZ ET AL., *supra* note 38 (finding that 4 percent of American law faculty self-identified as LGBT).

84. LAW SCH. ADMISSIONS COUNCIL, *supra* note 78.

85. *Id.*

86. *Id.*

Based on these statistics, it is clear that Catholic law schools are almost indistinguishable from their secular counterparts in their admission practices and policies related to gender balance, racial diversity, and policies supportive of various sexual practices and orientations. That Catholic law schools would embrace issues of racial justice and equality is unsurprising. The Church has long denounced race discrimination,⁸⁷ going so far as to threaten political leaders and others with excommunication if they sought to continue de jure segregation.⁸⁸ The Church's view of sexual equality and women's role in society is more nuanced, both historically⁸⁹ and today,⁹⁰ but it is clear that the Church supports women's participation in the professions. That support translates easily into admission and acceptance of women in the law school classroom, both as students and faculty. Only on matters related to sexual practice, orientation, and self-perception are there direct conflicts between professional standards and Church teaching. The ABA, LSAC, and AALS expansion of the definition of diversity to categories beyond race and gender requires Catholic law schools to carefully con-

87. "In particular, any theory or form whatsoever of racism and racial discrimination is morally unacceptable." PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH ¶ 433 (2004), http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20060526_compendio-dott-soc_en.html; see also USCCB, Pastoral Letter, *Brothers and Sisters to Us* (1979), <http://www.usccb.org/issues-and-action/cultural-diversity/african-american/brothers-and-sisters-to-us.cfm>; cf. PONTIFICAL COUNCIL FOR JUSTICE & PEACE, CONTRIBUTION TO WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (2001), http://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_20010829_comunicato-razzis-mo_en.html; Pope John XXIII, Encyclical Letter, *Pacem in Terris* (Apr. 11, 1963), http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html; Pope Paul VI, Apostolic Letter, *Octogesima Adveniens* (May 14, 1971), http://w2.vatican.va/content/paul-vi/en/apost_letters/documents/hf_p-vi_apl_19710514_octogesima-adveniens.html; Pope Paul VI, Encyclical Letter, *Populorum Progressio* (Mar. 26, 1967), http://w2.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_26031967_populorum.html; Pope Paul VI, *Nostra Aetate* (Oct. 28, 1965), http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651028_nostra-aetate_en.html.

88. See, e.g., Tim Townsend, *Bishops Have Denied Communion Before*, ST. LOUIS POST-DISPATCH (July 10, 2004), reprinted at <https://www.catholiceducation.org/en/faith-and-character/bishops-have-denied-communion-before.htm>.

89. Sr. Prudence Allen provides a masterful review of the "concept of woman" in her three volume work. SR. PRUDENCE ALLEN, R.S.M., THE CONCEPT OF WOMAN, VOLUME I: THE ARISTOTELIAN REVOLUTION, 750 B.C. – A.D. 1250 (1997); SR. PRUDENCE ALLEN, R.S.M., THE CONCEPT OF WOMAN, VOLUME II: THE EARLY HUMANIST REFORMATION, 1250–1500 (2006); SR. PRUDENCE ALLEN, R.S.M., THE CONCEPT OF WOMAN, VOLUME III: THE SEARCH FOR COMMUNION OF PERSONS, 1500–2015 (2017).

90. Pope John Paul II, Apostolic Letter, *Mulieris Dignitatem* (Aug. 15, 1988), http://w2.vatican.va/content/john-paul-ii/en/apost_letters/1988/documents/hf_jp-ii_apl_19880815_mulieris-dignitatem.html; Pope John Paul II, *Letter to Women* (June 29, 1995) ("Thank you, women who work! You are present and active in every area of life-social, economic, cultural, artistic and political. In this way you make an indispensable contribution to the growth of a culture which unites reason and feeling, to a model of life ever open to the sense of 'mystery', to the establishment of economic and political structures ever more worthy of humanity."), https://w2.vatican.va/content/john-paul-ii/en/letters/1995/documents/hf_jp-ii LET_29061995_women.html; see also WOMEN IN CHRIST: TOWARD A NEW FEMINISM (Michele M. Schumacher ed., 2004).

sider Church teaching and professional requirements.⁹¹ While this issue is important and worthy of serious study, it is not the focus of this article.⁹² Instead, my focus is on what insights Church teaching on intercultural dialogue can provide in crafting and implementing successful diversity programs.

B. *Diversity versus Intercultural Dialogue*

In 2013, the Congregation for Catholic Education, the pontifical congregation of the Roman Curia responsible for universities, faculties, institutes, and higher schools of study, published *Educating to Intercultural Dialogue in Catholic Schools Living in Harmony for a Civilization of Love*.⁹³ It is worth noting the difference in language between the Congregation for Catholic Education and mandates of the ABA, LSAC, and AALS. In place of “diversity” the Congregation considers “intercultural” dialogue. This distinction signals the value in a locational givenness of human experience—every person’s cultural background matters and establishes a starting point for human interaction. “Diversity” signals a multitude of human ex-

91. Church teachings directly conflict with the underlying assumptions or anthropology of the ABA, LSAC, and AALS expansion of diversity initiatives to include students, faculty, and staff that self-identify as gay, lesbian, bisexual, transgendered, or queer.

The human person, made in the image and likeness of God, can hardly be adequately described by a reductionist reference to his or her sexual orientation. Everyone living on the face of the earth has personal problems and difficulties, but challenges to growth, strengths, talents and gifts as well. Today, the Church provides a badly needed context for the care of the human person when she refuses to consider the person as a “heterosexual” or a “homosexual” and insists that every person has a fundamental Identity: the creature of God, and by grace, his child and heir to eternal life.

Congregation for the Doctrine of the Faith, *Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons* at ¶ 16 (Oct. 1, 1986), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html. This view contrasts sharply with ABA and AALS directives to privilege individuals with particular sexual desires, practices, or self-perceptions. Notwithstanding Church teaching, it appears from the LSAC LGBT Law School Survey results that most Catholic law schools have accepted and adapted to the ABA’s promotion of a different anthropology of sex. Promulgating a non-discrimination policy that limits its terms to prohibiting discrimination, while hiring chaste law professors or administrators regardless of their sexual desires or orientation is consistent with Church teaching. CATECHISM OF THE CATHOLIC CHURCH, PART THREE: LIFE IN CHRIST, ¶¶ 2358–59, http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a6.htm. Church teaching, however, does not condone creation of lesbian, gay, bisexual, or transgender student organizations for socialization nor does it permit treating domestic-partner or same-sex marriages as equivalent to marriage. Whether these last two policies are due to concerns about accreditation, agreement with ABA, LSAC, and AALS policy, or political pressure is impossible to discern merely from these survey results and is a question better left to a separate article exploring this question specifically.

92. E.g., Destro, *supra* note 35, at 467; Charles Russo, *Can Academic Freedom in Faith-Based Colleges and Universities Survive During the Era of Obergefell?* 14 AVE MARIA L. REV. 71 (2016); Matthew D. Staver & Anita L. Staver, *Lifting the Veil: An Exposé on the American Bar Association’s Arbitrary and Capricious Accreditation Process*, 49 WAYNE L. REV. 1, 71 (2003).

93. CONGREGATION FOR CATH. EDUC., *EDUCATING TO INTERCULTURAL DIALOGUE IN CATHOLIC SCHOOLS LIVING IN HARMONY FOR A CIVILIZATION OF LOVE* (Vatican City, 2013) [hereinafter *EDUCATING TO INTERCULTURAL DIALOGUE*], http://www.vatican.va/roman_curia/congregations/catheduc/documents/rc_con_ccatheduc_doc_20131028_dialogo-interculturale_en.html.

periences that are functionally equivalent with the primary experience of each person being communal rather than personal—characteristics of the person (e.g. race, gender, sexual propensities) are relevant and controlling insofar as they contribute to the mosaic of “diversity,” but are disconnected from his or her personal experience. Individuals burdened with the label of “diversity” are expected to comply with the relevant stereotypes of their “diverse” community. Within the diversity framework, it is unsurprising that minority students feel the burden of “tokenism” where their views are accepted as representative of all members of the group they “represent” in the view of an admission committee. This approach is repudiated by the Congregation on Catholic Education.

In *Educating to Intercultural Dialogue*, the Congregation notes the increasingly multicultural makeup of societies, and identifies one of the most pressing challenges of education as creating an environment in which various cultural expressions peacefully coexist.⁹⁴ As if predicting some of the tensions motivating voters in the 2016 U.S. presidential election, the Congregation observed that “significant problems can arise if multicultural society is seen as a threat to social cohesion, or as a threat to the protection and exercise of rights pertaining to individuals or groups.”⁹⁵ Overcoming these problems requires: “(1) discovering the multicultural nature of one’s own situation; (2) overcoming prejudices by living and working in harmony; and (3) educating oneself ‘by means of the other’ to a global vision and a sense of citizenship.”⁹⁶ Of critical importance, however, as the Congregation notes, “[f]ostering encounters between different people helps to create mutual understanding, although it ought not to mean a loss of one’s own identity.”⁹⁷

To successfully engage in multicultural dialogue, participants must begin with “a deep-seated knowledge of the specific identity of the various dialogue partners.”⁹⁸ This knowledge must begin with a profound appreciation of one’s own culture and proceed to developing an understanding of other cultures.⁹⁹ Appreciation of one’s own culture necessarily requires an understanding of history, environment, and society.¹⁰⁰ Yet Americans are

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. Pope Benedict XVI, Encyclical Letter, *Caritas in veritate*, at ¶ 26 (June 29, 2009), http://w2.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html.

99. “[A]n awareness of one’s own tradition and culture is the starting-point from which one can dialogue and recognize the equal dignity of the other person.” *EDUCATING TO INTERCULTURAL DIALOGUE*, *supra* note 93, at ¶ 63.

100. “[T]here is no such thing as a ‘pure’ culture. Different conditions of environment, history and society have introduced wide diversity within the one human community, in which, however, ‘each individual man is truly a person.’” *Id.* at ¶ 3.

increasingly ignorant of our national environment and society, as well as our national history:

[A] student group at Texas Tech University went around campus and asked three questions: “Who won the Civil War?”, “Who is our vice president?” and “Who did we gain our independence from?” Students’ answers ranged from “the South?” for the first question to “I have no idea” for all three of them. However, when asked about the show *Snookie* starred in (“*Jersey Shore*”) or Brad Pitt’s marriage history, they answered correctly.¹⁰¹

While this campus survey may be easily dismissed as an aberration, less easily dismissed are the 2014 National Assessment of Educational Progress (NAEP) results showing only 18 percent of eighth graders were proficient or above in their understanding of U.S. History.¹⁰²

In 2016 the American Council of Trustees and Alumni, a national organization that works with alumni, donors, trustees, and education leaders supporting liberal arts education, issued its report “A Crisis in Civic Education.”¹⁰³ Based on a survey of one thousand respondents, including recent American college graduates and the public at large, it is clear that American civic education is deteriorating. Respondents, who were sixty-five years of age or older, displayed a more accurate understanding of the Constitution and the powers of the federal government than younger respondents. Almost 10 percent of respondents mistakenly identified Judge Judy as a member of the U.S. Supreme Court, and almost half did not recognize that senators are elected to six-year terms and representatives are elected to two-year terms.¹⁰⁴ The report identifies the failure of the American educational system to provide rigorous content-based education as one source of the problem.

Instead of demanding content-based coursework, our institutions have, in too many places, supplanted the rigorous study of

101. Saba Naseem, *How Much U.S. History Do Americans Actually Know? Less than You Think.*, SMITHSONIAN (May 28, 2015), <https://www.smithsonianmag.com/history/how-much-us-history-do-americans-actually-know-less-you-think-180955431/#x3J17vM5V6zYoucf.99>. For a video collage of the interviews, see PoliTech, *Politically-Challenged: Texas Tech Edition*, YOUTUBE (Oct. 28, 2014), https://youtu.be/yRZZpk_9k8E. Students at George Mason University did not fare much better in their attempts to identify pictures of then Vice President Joe Biden, and former President Ronald Reagan. Most students confessed to having no idea who Joe Biden was. More recognized Reagan’s picture as an American President, although more guessed it was a picture of Richard Nixon than correctly identified it as Reagan. PoliTech, *Politically-Challenged: George Mason Edition*, YOUTUBE (Feb. 10, 2016), <https://youtu.be/I-t2TwLRdjk>.

102. Paul L. Williams et al., NAEP 1994 History A First Look: Findings from the National Assessment of Educational Progress, tbl. 7 (rev. ed. Oct. 1995). Even at 18 percent this shows progress from the results in 1994, when only 14 percent of 8th graders were proficient or above. *2014 U.S. History Assessment: Achievement Levels*, NATION’S REP. CARD, https://www.nationsreportcard.gov/hgc_2014/#history/achievement (last visited Aug. 3, 2018).

103. AMERICAN COUNCIL OF TRUSTEES & ALUMNI, A CRISIS IN CIVIC EDUCATION (2016), https://www.goacta.org/images/download/A_Crisis_in_Civic_Education.pdf.

104. *Id.* at 5.

history and government—the building blocks of civic engagement—with community-service activities. These programs may be wholesome, but they give students little insight into how our system of government works and what roles they must fill as citizens of a democratic republic.¹⁰⁵

This lack of basic civic knowledge impedes law students' ability to comprehend various facets of American law, particularly constitutional law, just as deficient understanding of American history impedes student understanding of a multitude of courses, including property and labor law. This historical amnesia compounds American students' lack of appreciation for environmental and social factors that shape our culture and thus necessarily hinders their ability to fully engage in intercultural dialogue.

Pope Benedict XVI notes that a lack of cultural understanding is often a product of “increased commercialization of cultural exchange today.”¹⁰⁶ He warns that this can lead to either “a cultural eclecticism,” where “cultures are simply placed alongside one another and viewed as substantially equivalent and interchangeable,”¹⁰⁷ or to “cultural levelling,” where the dominant culture absorbs other cultures without regard to the values imposed (or abandoned) on the non-dominant culture.¹⁰⁸ “In this way, one loses sight of the profound significance of the culture of different nations, of the traditions of the various peoples, by which the individual defines himself in relation to life's fundamental questions.”¹⁰⁹

[T]his inexorable tendency to cultural uniformity . . . often provoke[s] reactions of fundamentalism and self-referential closing in on oneself. Thus, pluralism and the variety of traditions, customs and languages – which of their nature produce mutual enrichment and development – can lead to an exaggeration of individual identity, flaring up in clashes and conflicts.¹¹⁰

Educating to Intercultural Dialogue seems prescient in its prediction of two adverse reactions arising from the increasing multicultural nature of society: first, a multiculturalism that results in an assortment of siloed communities that are treated as separate and impenetrable, or second, a drive to assimilate immigrant communities in a way that makes no distinction between their values, assuming that all must morph into a modest variation of the values of the receiving community.

105. *Id.* at 1.

106. Pope Benedict XVI, *supra* note 98, at ¶ 26.

107. *Id.*

108. EDUCATING TO INTERCULTURAL DIALOGUE, *supra* note 93, at ¶ 25 (“More generally, the assimilation approach is advanced by a culture with universal pretensions, which seeks to impose its own cultural values by means of its economic, commercial, military and cultural influence.”).

109. Pope Benedict XVI, *supra* note 98.

110. EDUCATING TO INTERCULTURAL DIALOGUE, *supra* note 93, at ¶ 4.

Both approaches—the first a form of cultural relativism¹¹¹ and the second a form of assimilation¹¹²—can be found in U.S. legal education, and both have failed to foster mutual understanding and a shared sense that a more just society is emerging.

In place of both, the Congregation proposes the approach of intercultural dialogue. “Opting for the logic of intercultural dialogue means not limiting oneself to strategies for the functional insertion of immigrants into the majority culture, nor to compensatory measures of a special nature.”¹¹³ This last point is particularly important in that it is both consistent with U.S. Supreme Court precedent repudiating the rationale of redress for historical wrongs, and avoids creating resentment by those burdened by redressing a historical wrong they did not participate in.

Intercultural dialogue first requires a sound understanding of one’s own culture, and second, requires repudiating vengeance or retribution as the motivation for the interaction. When those preconditions are met, intercultural dialogue requires a welcoming attitude to the stranger, followed by interaction based upon mutual curiosity about the other and a desire for friendship with him, her, or them; and finally, recognition of the values and perspective of the other.¹¹⁴ When these conditions are met it is likely that a

111. *Id.* at ¶ 22.

The relativistic model is founded on the value of tolerance, but limits itself to accepting the other person, excluding the possibility of dialogue and recognition of each other in mutual transformation. Such an idea of tolerance, in fact, leads to a substantially passive meaning of relationship with whoever has a different culture. It does not demand that one take an interest in the needs and sufferings of others, nor that their reasons may be heard; there is no self-comparison with their values, and even less sense of developing love for them.

Id.

112. *Id.* at ¶ 24.

What is called the assimilation approach is certainly no more satisfying. Rather than indifference towards the other culture, this approach is characterized by the demand for the other person to adapt. An example would be when, in a country with mass immigration, the presence of the *foreigner* is accepted only on the condition that he renounce his identity and cultural roots so as to embrace those of the receiving country. In educational models based on assimilation, *the other person* must abandon his cultural references, to take on those of another group or of the receiving country. Exchange is reduced to the mere insertion of minority cultures in the majority one, with little or no attention to the other person’s culture of origin.

Id. (emphasis added).

113. *Id.* at ¶ 26.

114. EDUCATING TO INTERCULTURAL DIALOGUE, *supra* note 93, at ¶ 78.

Formation that is particularly dedicated to promoting sensitivity, awareness and competence in the intercultural field can be advanced by paying attention to the following three essential markers: a) *integration*: this has to do with the school’s ability to be adequately prepared for receiving students of different cultural backgrounds, responding to their needs regarding scholastic achievement and personal enhancement; b) *interaction*: this has to do with knowing how to facilitate good relationships among peers and among adults. There is an awareness that simply being in the same physical environment is not enough. Encouragement must be given to curiosity about other people, openness and friendship, both in class and in places and times outside the school. Thus, situations of distancing between people, discrimination and conflict can be avoided and repaired. c) *recognizing the other person*: one must avoid falling into the trap of imposing one’s own views on the other person, asserting one’s own lifestyle and one’s own

culture of dialogue, interaction, and mutual recognition will develop between different cultures. This, in turn, will advance the goal of a more peaceful society.

V. CONCLUSION

Last year, the Congregation on Catholic Education elaborated on its vision of multicultural dialogue in *Educating to Fraternal Humanism: Building a “Civilization of Love” 50 Years After Populorum Progressio*.

A culture of dialogue does not simply suggest an exchange of views, to know one another so as to mitigate the alienating effect of the encounter between citizens of different cultures. . . . The ethical requirements for dialogue are freedom and equality; the participants in the dialogue must be free from their contingent interest and must be prepared to recognize the dignity of all parties. . . . It is a “grammar of dialogue,” as pointed out by Pope Francis, able to “build bridges and . . . to find answers to the challenges of our time.”¹¹⁵

Lawyers and law schools are uniquely situated to promote this culture of dialogue, instead of a culture of division and resentment or uniformity and suppression.

Currently, the legal academy lacks diversity of political views among its faculties and routinely exhibits a bias against traditional Christian views. Its claims of supporting “robust debate” and challenging students to think critically ring hollow in the shadow of recent experiences. Yet, unlike their secular counterparts, Catholic law schools have a rich store of ideas from which they could, and should, reformulate their approach to the increasing multicultural nature of their campuses. Catholic teaching requires rejection of cultural eclecticism and cultural leveling, as well as demands that innocent parties provide redress for historical grievances. In its place, Catholic law schools are called to provide solid grounding for students in their native culture, while embracing curiosity, hospitality, and empathy toward others. In this way, we can hope to both welcome the stranger among us, and bring a gradual close to the culture war raging around us.

way of thinking without taking into account the other person’s culture and particular emotional situation.

Id. (emphasis added).

115. EDUCATING TO FRATERNAL HUMANISM, *supra* note 60, at ¶ 12.