

IGNATIUS GRAMUNT

AUTONOMY AND IDENTITY  
OF CATHOLIC UNIVERSITIES IN THE UNITED STATES

I. The Autonomy of American Universities. — II. The Church's Mission to Teach. — III. Catholic and Ecclesiastical Institutions of Higher Learning: 1) « Ecclesiastical » Universities and Faculties; 2) « Catholic » Universities. — IV. Catholic Identity, Academic Autonomy, and Ecclesial Communion: 1) Catholic Identity; 2) Academic Autonomy; 3) Ecclesial Communion and Cooperation. — V. The Particular Norms Regulating Catholic Universities. — VI. The mandate to Teach. — VII. The Ongoing Debate.

When the revised Code was promulgated, the question was raised among some American canonists concerning the applicability of canons 807-814 to the Catholic colleges and universities in the United States. The promulgation of the Apostolic Constitution *Ex corde Ecclesiae* of August 15, 1990 and the first attempts to implement it have raised the question again <sup>(1)</sup>.

In this study we propose to integrate the principles and prescriptions of canons 807-814 with the norms of the Constitution *Ex corde Ecclesiae* which states that « these general norms are based on and are a further development of the Code of Canon Law » (Art. 1, §1). Since the alleged difficulties in implementing the law center

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<sup>(1)</sup> Cfr. J.H. PROVOST, *The Canonical Aspects of Catholic Identity in the Light of « Ex corde Ecclesiae »*, *Studia Canonica* 1991-1, pp. 155-191. For the applicability debate, cfr. J. CORINDEN in *A Text and Commentary*, pp. 571-572; Congregation for Catholic Education, Proposed Schema for a Pontifical Document on Catholic Universities (April 15, 1985), in *Origins*, April 10, 1986 (Vol. 15: No. 43), pp. 706-711; Canon Law Society of America, *Reports 1986*, Task Force Critique, November 7, 1985, pp. 42-58; A. Gallin, OSU, *Catholic Colleges and University Presidents Respond to Proposed Vatican Schema*, *Origins* (April 10, 1986), Vol.15: No. 43, p. 703; A. GALLIN, OSU, *Catholic Higher Education in the 1983 Code*, Proceedings of The CLSA 1990, pp. 134-151.

around the concepts of autonomy and identity, our study seeks to understand these concepts as articulated both in the canons and in the norms of *Ex corde Ecclesiae*.

### I. *The Autonomy of American Universities* (2).

The debate concerning the identity of Catholic Colleges and Universities in the United States has emphasized the peculiar character of American higher education. A few thoughts about the characteristic autonomy of these institutions seem appropriate. In the United States, as Derek Bok observes (3), « private groups as well as public bodies have almost unlimited power to found a college or university » and once « such institutions are established, faculties can appoint new professors without government review, even in our state systems ». The latter point is connected with what is generally referred to as « academic freedom », i.e. the freedom of the academic institution to pursue its purposes of teaching and research without outside interference.

Academic freedom is in part protected by professional societies such as the National Federation of University Professors and indirectly by the private agencies accrediting the colleges and universities. The idea of « academic freedom » which originally arose to guarantee the free pursuit of truth from the State dominant ideology, in time came to be applied also to the original founding bodies of the educational institutions, thus originating certain opposition between the founding (and frequently the funding) person, family, corporation, church, etc. and the administration of the institution together with the faculty, and also between the administration and the faculty which comes to claim also its own autonomous character.

Coherent with the same spirit of freedom, the organizational system of democratic government has permeated all levels of academia to make the university a composite of self-governing and self-regulating bodies — administration, faculty, and students interacting in different ways with one another. As in any other organization, the university requires the exercise of authority in a

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(2) The ideas in this section are largely taken from the unpublished *Lectures on U.S. Themes* (1989-1990) by Rev. W.H. Stetson, J.D., J.C.D., Midwest Theological Forum, Chicago.

(3) Cfr. D. Bok, *Harvard Alumni Magazine*, Winter 1987.

hierarchical manner, but in contrast with other organizations (e.g. business), authority is exercised with a great deal of « consensus » and rarely in any manner that could be labeled as authoritarian. Although this democratic system of government is not free from conflict, injustice and error, it is not less perfect than that of other university forms of government and is universally accepted in the United States.

Another distinguishing characteristic of American Universities is competition. As Dereck Bok points out, « Institutions of higher learning compete with one another for faculty, for talented students, for funds and for successful athletic teams ».

The evolution of Catholic colleges and universities and their present predicament should be understood in the context of the general evolution of all such institutions in the United States. Like their non-Catholic predecessors, most Catholic colleges started as post-secondary liberal arts schools with a specifically Catholic perspective. Their goal was to educate young men and women in a Catholic environment: from them would come priests, religious brothers and sisters, and an educated laity who would thus be equipped to further develop the life of the Church. This was part of an over-all strategy on the part of the leaders of the Church to duplicate as many as possible of the institutions (educational, social, labor, professional, etc.) that were to be found in the surrounding secular society. In this way, it may be said that the Church became an allinclusive social community within the larger secular society which was basically Protestant Christian in its common philosophy. In addition, because of the particular ecclesiology of the time, the Catholic educational system from elementary schools to Universities was ecclesiastical in nature and governed hierarchically with a minimum of formal consensus, though the consensus indeed existed and in a most remarkable way.

From a civil point of view, the organizational structure of these Catholic institutions adopted to some extent the common pattern of their non-Catholic counterparts, first in their constitutional by-laws, then in the normal distribution of functions between administration, faculty and students. While religious superiors (the local bishop or the congregation's superiors) had a limited role within the governing bodies, the universally accepted principle of religious obedience to the hierarchical form of government provided perfect continuity among the religious superiors, the administration and the faculty

which for the most part was made up of priests or religious under obedience to the ecclesiastical superior.

The original idea of higher education in the United States was that of a broad liberal education in a residential setting aimed not only at training the mind but at developing character as well. This vision of a liberal education and character was markedly Protestant, and Catholic colleges were conceived to provide the same formation for Catholics. Later and « from nineteenth century Germany came the ideal of a faculty involved in research and dedicated to the preparation of future scholars. This was our model for graduate study » <sup>(4)</sup>. Perhaps to this should be added the professional schools which quickly became graduate (i.e., post college) studies such as law and medicine. Thus the « university » was first the liberal education received in the colleges and then the professional education started either at undergraduate level (engineering, business, etc.) or at the graduate level (law, medicine and the other specialized schools). All this was accompanied by research in all branches of knowledge (arts, sciences, professions, etc.).

Catholic colleges evolved from liberal arts colleges into universities, first to educate as many Catholics as possible in the professions and only secondly, but as natural development, to provide also for scholarship and research in a Catholic environment. Until the end of the Second World War, Catholic higher education was relatively uncomplicated. There were many Catholic colleges run by religious communities and a few universities, fundamentally professional type schools.

Following the Second World War, higher education underwent a significant transformation caused, in the first place, by rapid growth in number of students, faculty, administration, support staff and of course in facilities. The accelerated growth led to a need for increasingly larger amounts of money to finance itself and for the support of foundations, business corporations, wealthy individuals, alumni and finally the government. The administration of these institutions required a number of technical skills which contributed to the already developed sense of autonomy from encroachment by those contributing financially to the growth.

The second cause of the transformation took place in the area of growing secularization. Religious pluralism and the tradition of

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<sup>(4)</sup> Cfr. D. Bok, *ibid.*

the Enlightenment has shaped contemporary Western universities as institutions dedicated to the pursuit of truth without adherence to « dogmas », for these are regarded as harmful to the pursuit of truth. From the generally accepted norm of a culture grounded on the tenets of a vaguely Christian Western civilization, the Western World has seen (first in Europe and then in America notably during the years after the War) the progressive decline of the old world view towards an agnostic, secular humanism and a pervasive moral relativism which threatens the pursuit of truth itself — the very purpose of the university (5).

Catholic institutions of higher learning also participated in the first development of growth. In order to be competitive, they have made every effort to become first-class institutions following the model of their non-Catholic counterparts. Seeking professional competence, they have hired non-Catholics on the faculty and in the administration, recruited students beyond the Catholic community, reduced emphasis on Catholic spiritual and moral practices, and have created more elaborate governing bodies which tend to weaken their relation with religious authorities. Their declared goals have become more ecumenical and more social than religious. They also have had to turn to new sources of financing outside the Catholic community (foundations, corporations and government) and, in some cases, compromised in their Catholic ways (6).

Catholic colleges and universities are threatened, as much as any other, by the contemporary process towards secularism which, historically at least if not logically, has been closely connected with the democratization of academic authority. The concept of « academic freedom » as understood by the secularized culture has been adopted by many Catholic institutions as part of their assimilation to the mainstream of American intellectual life. It is in this context, then that the questions of Catholic identity and institutional autonomy are raised.

## II. *The Church's Mission to Teach.*

The American experience in the field of education is in some ways a testimony to those principles of justice which based on personal liberty

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(5) Cfr. A. BLOOME, *The Closing of the American Mind*, Simon & Schuster, N.Y., 1987.

(6) Cfr. G. KELLY, *The Catholic College*, in *Crisis*, March 1987, pp. 15-21.

are principles and rights of natural law often promoted by the Church's teaching. The Church has defended, mainly in recent times, the *primary rights of parents* to educate their children, *the freedom to teach*, and *the right to receive an education*.

While all students in institutions of higher learning are adults, many undergraduates are still dependent on their parents, and a short review of this right will help us to put the entire matter under focus since parents, who are the source of a person's life, are also the natural source of education of their own their children, a right of natural law that is inviolable (7).

Parents, then, have the fundamental right to educate their children in accordance with their religious and moral convictions. This is an inviolable right that takes precedence over any other right of society over education (8). This right implies that due respect be given to the family life by means of which the child receives the most important educational influence. It further entails the right of parents to choose schools for their children and to set up and maintain those which conform to their convictions (9).

The principles of natural law concerning education as declared by the teaching of the Church are not restricted to the rights of parents. They refer also to rights of a wider range: *the freedom to teach*, a right which belongs to the person and which the state must serve and not supplant (10), and *the right to receive an education*. Since the purpose of education is the development of the human person in the pursuit of the ultimate end and for the welfare of society (civil, religious, international), education is not complete without the religious and moral dimensions of the person (11).

Since these are natural rights of the person, private initiative has a responsibility towards education, and the State, in serving this right of the person, ought to assist and supplement the duty of parents and of private initiative (12).

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(7) Cfr. LEO XIII, *Rerum novarum* (1891), n. 9; PIUS XI, *Casti Connubii* (1930), n. 12; PIUS XI, *Divini Illius Magister* (1929), nn. 25, 26, 29; VATICAN II, *Gravissimum educationis* (1965), n. 3; c. 226, § 2.

(8) Cfr. JOHN PAUL II, *Familiaris consortio* (1981), n. 46; *Divini Illius Magistri*, nn. 27 & 30.

(9) Cfr. c. 793; *Divini Illius Magistri*, n. 55; *Gravissimum educationis*, n. 6.

(10) *Divini Illius Magistri*, nn. 36-38; *Gravissimum educationis*, n. 6.

(11) *Gravissimum educationis*, n.1; *Divinum Illius Magistri*, nn. 30 & 31.

(12) *Divini Illius Magistri*, nn. 37, 38, 66; *Gravissimum educationis*, nn. 1 & 6.

These are rights of the person to be claimed not only from civil society but also from the Church, for they are natural rights. We ought to keep in mind, however, that while the authority and the law of the Church must guarantee, protect, foster and supplement the exercise of these personal right, the Church is by its very nature an educational institution of divine law and that the rights of the Christian faithful concerning every aspect of religious education are exercised under the teaching and pastoral authority of their pastors.

Besides the principles of natural law concerning education, our topic requires a brief review of the ecclesiological foundation of all Catholic teaching as found in the Code of Canon Law at the beginning of Book III on *The Teaching Function of the Church*.

The Church's right and duty to teach the revealed truth is, with the words of canon 747, a right and duty rooted in its very origin, for the Church has received the revealed truth from the Lord together with the mission to guard it, understand it more profoundly, and proclaim it through its own means of social communication<sup>(13)</sup>. As stated by this canon, this right and duty belongs to the whole Church and not exclusively to the Hierarchy, though the Hierarchy has its own role and charisma, within this total mission of the Church, of teaching the revealed truth authentically and with authority.

The truth binds all men in conscience, for all are morally obliged to seek it and, having found it, to embrace and observe it, though no one can be coerced to embrace the Catholic faith against their conscience<sup>(14)</sup>. The right and duty of the Church to proclaim the revealed truth is also a source of juridic rights and duties among the Christian faithful in what refers to their mutual and external relations.

The authentic and authoritative teaching of the revealed truth is exercised by the Roman Pontiff and the Episcopal College in the solemn acts of magisterium<sup>(15)</sup>. But the authentic and authoritative teaching of the hierarchy is exercised also by the ordinary magisterium, and so, Christ's faithful are obliged to believe all that is contained in the one deposit of faith which either the solemn or ordinary magisterium proposes as divinely revealed<sup>(16)</sup>. These moral

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(13) *Redemptor Hominis*, n. 19.

(14) Cfr. C.I.C., c. 748; *Dignitatis Humanae*, n. 1.

(15) Cfr. C.I.C., c. 749; *Pastor Aeternus*, n. 4 & *Lumen Gentium*, n. 25.

(16) Cfr. C.I.C., c. 750; *Dei Verbum*, n. 10.

and juridical obligations are further established by the definition of those acts contrary to the faith of the Church and known as heresy, apostasy and schism <sup>(17)</sup>.

All the faithful have the obligation, both moral and legal, to adhere with religious assent to the teachings of the Roman Pontiff and of the Episcopal College even when not teaching with a definitive act. The faithful also owe religious assent to the teaching of their own Bishops, for they are the authentic doctors and teachers of Catholic doctrine <sup>(18)</sup>.

The obligation to adhere to the authentic teaching of the hierarchy is not merely a matter of interior assent but also a matter of external observance of the laws and decrees in which Catholic doctrine is proposed or errors rejected. Conversely, Christ's faithful have the right to receive from their pastors the authentic faith of the Church proclaimed unambiguously <sup>(19)</sup>.

The rights and obligations of the person concerning the search for and the teaching of the natural truth cannot be in conflict with those rights and obligations concerning the knowledge and teaching of the revealed truth. The unity of natural and supernatural truth, and the harmony of the means needed to search for and to teach the truth, as well as the freedom required to attain this mission with no other limitations than the service of the person and of society are themes which the Constitution *Ex corde Ecclesiae* harmonizes with the ecclesiological principles of the *munus docendi*.

We should draw one conclusion of special relevance to the issue under study: the autonomy of a Catholic university in pursuing its participation in the *munus docendi* of the Church ought to be guided by the *authentic* teaching of the Revelation, which is always hierarchical.

### III. *Catholic and Ecclesiastical Institutions of Higher Learning.*

The Church exercises its teaching mission in diverse manners and through different institutions. Some of these institutions are included in the Code of Canon Law (Book III, Title II) which under the heading of *Catholic Education* deals with lower schools (Chapter

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<sup>(17)</sup> Cfr. C.I.C., c. 751.

<sup>(18)</sup> Cfr. *Ibid.*, cc. 752; 753 & *Lumen Gentium*, n. 25.

<sup>(19)</sup> Cfr. C.I.C., cc. 754; 213 & 217.



I), Catholic Universities and other Institutes of Higher Learning (Chapter II), and with Ecclesiastical Universities and Faculties (Chapter III). In order to understand the law as it applies to the question of autonomy and identity, it may be useful to compare the basic legal features of « Ecclesiastical » Universities and Faculties with those of « Catholic » Universities.

1. « *Ecclesiastical* » *Universities and Faculties* are those institutions dedicated to the study of ecclesiastical disciplines (Theology, Philosophy and Canon Law) and other matters related to ecclesiastical studies. The purpose of these institutions is mainly aimed at the intellectual formation of ecclesiastics called to cooperate more closely with the evangelizing work of the hierarchy at the universal or interdiocesan level. The Holy See, then, has a particular interest in these institutions shown specifically by the fact that Ecclesiastical Universities and Faculties can be established only by the Holy See or by approval of the Holy See which, through the Congregation for Catholic Education, remains the supreme moderator of these institutions. The statutes and the plan of studies of these institutions must be approved by the Holy See, and no other university or faculty of ecclesiastical studies can grant degrees if not established or approved by the Holy See <sup>(20)</sup>. The Apostolic Constitution *Sapientia Christiana* (April 15, 1979) and the corresponding Norms of Application regulate these institutions in more detail in accordance with the principle that « things that are necessary and which are foreseen as being relatively stable must be set down by (universal) law, while... freedom must be left to introduce further specifications in (their own) Statutes taking into account varying local conditions and the university customs of each region » <sup>(21)</sup>.

2. « *Catholic* » *Universities* are different from « Ecclesiastical » universities and are defined by the Code as « institutions of higher learning devoted to the study of the secular disciplines under the light of Catholic doctrine », with due respect for the scientific autonomy of those disciplines <sup>(22)</sup>. In accordance with these aims, a

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<sup>(20)</sup> Cfr. *Ibid.*, cc. 815, 816, 812.

<sup>(21)</sup> Cfr. *Sapientia Christiana*, Foreword, VI. Vatican Polyglot Press, 1979.

<sup>(22)</sup> Cfr. C.I.C., c. 809.

« Catholic » University should include the teaching of Catholic Theology in its programs and should count with a Faculty or Institute of Theology, or at least a chair of Theology <sup>(23)</sup>. But unlike the « Ecclesiastical » institutions, « Catholic » universities grant degrees according to the secular laws or traditions of their own territories and the ecclesiastical authority does not intervene in this right of the university unless it is a degree from an « Ecclesiastical » school within the same university.

While Ecclesiastical Universities and Faculties can be established only by the Holy See or by approval of the Holy See, « Catholic » universities can be established by any person or group of persons in the Church provided, of course, that they meet the requirements of the law. This principle is implicitly contained in c. 807 which declares the right of the Church, i.e. all Christ's faithful, to participate in the common mission to teach under the *guidance* of their pastors <sup>(24)</sup>. It is explicitly contained in Art. 3 of *Ex corde Ecclesiae* which assigns the right to establish and run these educational institutions to the hierarchy as well as to other persons.

*The Hierarchy* and the hierarchical structures have the right to establish these institutions dedicated to the study of the secular sciences by reason of their hierarchical teaching role, since the secular sciences are promoted under the light of Catholic teaching authentically declared. This is a right proclaimed not only in relation with secular society but also in relation with the ecclesial society, for the law of the Church does not exclude its pastors from the promotion of secular knowledge, as it excludes them from other secular activities <sup>(25)</sup>, because this knowledge is investigated and taught under the light of that authentic teaching of Catholic doctrine which belongs to them.

*Religious* institutes and other *public juridic person* in the Church can establish universities juridically recognized as Catholic by reason of their canonical status and particular participation in the teaching mission of the Church. The relation of these universities to the

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<sup>(23)</sup> Cfr. *Ibid.*, c. 811: § 1. *Curet auctoritas ecclesiastica competens ut in universitatibus catholicis erigatur facultas aut institutum aut saltem cathedra theologicae, in qua lectiones laicis quoque studentibus tradantur*; § 2. *In singulis universitatibus catholicis lectiones habeantur, in quibus eae praecipue tractentur quaestiones theologicae, qui cum disciplinis earundem facultatum sunt conexas.*

<sup>(24)</sup> Cfr. C.I.C., c. 216.

<sup>(25)</sup> Cfr. *Ibid.*, c. 285.

hierarchical teaching and pastoral authority results from their relation with a legally recognized canonical entity and from the *consent* of the diocesan bishop concerning the establishment of such university in his territory. As long as the attainment of the Catholic goals of the University remains legally dependent on the canonical entity, the University is « Catholic » for the effects of the law.

The Church recognizes the *natural* right of all Catholics, ecclesiastics and lay persons, to teach the secular sciences and the *divine-positive* right and duty of all Catholics to investigate and teach these sciences under the light of their Catholic faith (26). Furthermore, as it is the particular and irreplaceable mission of lay people to « illumine and organize » temporal affairs, as *Ex corde Ecclesiae* explicitly acknowledges (27), it is their particular mission and right to establish and run institutions where the secular sciences are investigated and taught under the light of faith. This right is to be always exercised under the guidance of their pastors.

#### IV. Catholic Identity, Academic Autonomy, and Ecclesial Communion.

The Constitution *Ex corde Ecclesiae*, which explains and further developments the prescriptions of the Code (28), has organized its

(26) Cfr. *Ibid.*, cc. 211, 225, 227, 229, 793.

(27) Cfr. *Ex corde Ecclesiae*, n. 25; Vatican Council II: *Lumen Gentium*, n. 31; *Apostolican Actuositatem*, *passim*; *Gaudium et Spes*, n. 43.

(28) *Ex corde Ecclesiae*, Art. 1. *Harum Normarum Generalium natura*, § 1. *Hae Normae Generales nituntur Codice Iuris Canonici, cuius ulterio explicatio sunt, et additiis Ecclesiae legibus, firmo iure Sanctae Sedis auctoritatem suam interponendi cum id necessarium sit. Eae valent in omnes Universitates Catholicas inque Instituta Catholica Studiorum Superiorum totius orbis terrarum.* § 2. *Normas Generales in singulis locis et regionibus applicare debent Conferentiae Episcopalis et caetera Consilia Hierarchiae Catholicae convenienter cum Codice Iuris Canonici cumque legibus ecclesiasticis additiis, ratione habita Statutorum cuiusque Universitatis vel Instituti et — prout fieri potest et opportunum est — etiam iuris civilis. Post inspectionem Sanctae Sedis, hae locorum aut regionum « Ordinationes » valebunt in omnes Universitatis Catholicas et in Instituta Catholica Studiorum Superiorum regionis, exceptis Universitatibus et Facultatibus Ecclesiasticis: quae quidem, pariter ac Facultates Ecclesiasticae ad Universitatem Catholicam pertinentes, normis reguntur Constitutionis Apostolicae « Sapientia Christiana »; § 3. *Universitas, constituta vel appobata a Santa Sede, a Conferentia Episcopali vel ab alio Consilio Hierarchiae Catholicae, vel ab Episcopo diocesano, has Normas Generales earumque applicationes, locales et regionales, inserere debet instrumentis ad suum regimen pertinentibus suaque vigentia Statuta tum ad**

norms around three principles: Catholic Identity, Academic Autonomy, and Ecclesial Communion and Cooperation. As these three principles inform each of the particular norms concerning Catholic universities, we should study those three principles before we comment on the norms.

### 1. *Catholic Identity:*

For a university to be Catholic and to be recognized as such by canon law, it must be distinguished by *its Catholic institutional aims* and by *its explicit link to the Church*:

a) Catholic institutional aims: After stating that a Catholic University, *qua universitas*, is « a community of scholars... »<sup>(29)</sup>, *Ex corde Ecclesiae* goes on to say that « A Catholic university, as Catholic, informs and carries out its research, teaching and all other activities with Catholic ideals, principles and attitudes »<sup>(30)</sup>.

Canon 807 describes the aims of a Catholic university as « contributing to a higher level of culture, the advancement of the human person, and the fulfillment of the Church's teaching office » and canon 809, more precisely, as « the investigation and teaching of the various » secular « disciplines with due regard for their own scientific autonomy and due consideration for Catholic doctrine ».

b) Explicit link with the Church: This public relationship with the Church is required by art. 2, § 2 of *Ex corde Ecclesiae*. The text further explains that this link can be « a formal, constitutive, and statutory bond » or « an institutional commitment made by those responsible for it ». This publicly declared link with the Church completes the *de iure* Catholic character of the

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*Normas Generales accommodare tum and earum applicationes et legitimae Auctoritate ecclesiastica, has Normas Generales, earumque locales et regionales applicationes in usum suum convertent et instrumentis inserent ad suum regimen attinentibus et — quantum fieri poterit — sua vigentia Statuta tum his Normis Generalibus, tuam earum applicationibus accomodabunt.*

<sup>(29)</sup> *Ex corde Ecclesiae*, art. 2. *Universitas Catholicae natura*: § 1. *Universitas Catholica, sicut quaelibet Universitas, est studiosorum communitas, quae variarum humanae cognitionis regionum partes agit. Pervestigationi se dedit, institutioni variisque servitiorum formis, cum eius munere culturali consentaneis.*

<sup>(30)</sup> *Ibid.*, art. 2, § 2. *Universitas Catholica, qua catholica, suam pervestigationem, institutionem ceteraque opera propositis, principiis et moribus catholicis perfundunt et exsequitur. Est Ecclesiae coniuncta aut certo vinculo constitutivo et legitimo, aut ex officio institutionalis ab eius sponsoribus sumpto.*

university<sup>(31)</sup>, and it implies a guarantee of Catholicity on the part of the Church's authentic teachers.

A university which « informs its research and teaching, as well as all its other activities, with Catholic ideals, principles, and attitudes »<sup>(32)</sup> is *de facto* Catholic (*reapse Catholica*<sup>(33)</sup>), but for this university to be publicly recognized as *de iure* Catholic, a *public relationship* with the Church is required. In its turn, for the « link with the Church » to produce a public recognition of Catholicity, the magisterial and pastoral authority in the Church, i.e. the hierarchy, have to establish, approve of, or consent to such publicly declared link. The juridical guarantee of Catholicity is, then, ultimately given by the hierarchical authority in the Church whose special office and charisma is to teach the faith of the Church authentically and to govern the faithful accordingly. *A Catholic University, then, is defined by its Catholic goals juridically guaranteed by the ecclesiastical authority.*

An institution of higher learning which is Catholic in fact but not *de iure* is neither subject to the prescriptions of the law nor does it enjoy the public guarantee from the hierarchy concerning its Catholicity. This is implicitly foreseen by c. 808 which regulates the possibility that such institution may seek to be identified as « Catholic university », and by art. 3, § 3 of *Ex corde Ecclesiae* which foresees that a non-hierarchical and non-public (i.e. private) Catholic university may wish to refer to itself as « Catholic university »<sup>(34)</sup>.

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(31) *Ibid.*, art. 2, § 3. *Quaelibet Universitas Catholica debet suam catholicam indolem significare vel sui muneris enuntiatione, vel alio apto instrumento publico, nisi aliter concessum sit a competenti Auctoritate ecclesiastica. Quaerere sibi debet, praesertim per suam structuram suasque leges, instrumenta ad illam naturam exprimendam atque servandam iuxta § 2.; § 4. Institutio catholica et disciplina catholica debent vim habere ad omnes actiones Universitatis, cum tamen cuiusque personae libertas conscientiae sit omnino reverenda. Omnis actus publicus Universitatis consentaneus esse debet eius naturae catholicae; § 5. Universitas Catholica autonomiam possident necessariam ad propriam sui naturam excolendam suumque munus persequendum. Pervestigationis et institutionis libertas agnoscenda et observanda est pro principiis et methodis cuiusque disciplinae propriis, dummodo personarum et Communitatis iura protegantur, intra postulata veritatis et boni communis.*

(32) Cfr. *Ibid.*, art. 2, § 2.

(33) Cfr. C.I.C., c. 808.

(34) *Ex corde Ecclesiae*. Art 3. *Universitatis Catholicae erectio. § 1. Universitas Catholica erigi aut approbari potest a Sancta Sede, a Conferentia Episcopali, aut ab alio Hierarchiae Catholicae Consilio, ab Episcopo diocesano. § 2. Episcopo diocesano consentiente Universitas Catholica erigi potest etiam ab Instituto Religioso aut ab alia*

But a university or an institution of higher learning that is *de facto* Catholic may not seek to describe itself as a « Catholic university » nor have any formal relation with the law of the Church, in which case, the university is in no way prevented from cooperating informally with the hierarchy (and viceversa) in what refers to the teaching of secular matters under the light of Catholic principles and of Catholic theology, or in the pastoral care of the persons involved in these institutions which, in any case, is under the responsibility of the local ordinary<sup>(35)</sup>. The only legal intervention of the ecclesiastical authority would take place if the university were to depart from its *de facto* catholicity and the Ordinary had to legally denounce it for the sake of the common good of the Catholic community.

A *de facto* Catholic university is not a mere theoretical possibility, for in some countries the civil law forbids educational institutions to be confessionally Catholic. The legal non-confessionality of these universities is not a device to evade an unjust civil law but a tacit recognition by the Church of a right that belongs to all Christ's faithful. If they had no such right in relation with the law of the Church, their legal non-confessionality would be illegitimate and not morally permissible even to avoid the unjust civil law. Or it can happen that in a Catholic country where other educational institutions emphasize their public « Catholic » identity, the persons responsible for a particular university which is *de facto* Catholic wish to emphasize the teaching and research of secular disciplines rather than their upholding of Catholic ideals, principles and attitudes.

## 2. *Academic Autonomy.*

The principle of Academic autonomy is made up of two different but related notions:

a) Scientific autonomy whereby a particular branch of knowledge is said to be autonomous when it pursues its own goal

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*persona iuridica publica*; § 3. *Universitas Catholica ab aliis personis ecclesiasticis aut a laicis erigi potest. Eiusmodi Universitas poterit Universitas Catholica haberi solummodo competenti Auctoritate ecclesiastica probante, secundum condiciones, quas partes pactae erunt*; § 4. *In casibus, quorum mentio fit in § 1 et 2, Statuta competenti ecclesiasticae Auctoritati probanda erunt.*

<sup>(35)</sup> C.I.C., c. 813.

according to its own method. In this sense, canon 809 enjoins due respect for the « scientific autonomy » of every branch of knowledge to be cultivated in a Catholic University, and *Ex corde Ecclesiae*, art. 2, § 5 states that « freedom of research and teaching is recognized and respected » with no other limitations than « the confines of the truth and the common good ».

b) Institutional autonomy whereby the institutionalized investigation and teaching of the different branches of knowledge is endowed with *self-government* in order to remain free from other non-germane goals or interests. In this institutionalized meaning of « autonomy » as self-government, the Constitution *Ex Corde Ecclesiae* is indeed the *Magna carta* of Catholic Universities<sup>(36)</sup>. Art. 2, § 5 states that, by virtue of its own character now recognized by law, « a Catholic university possesses the institutional autonomy needed to cultivate its own identity and pursue its proper role.

### 3. Ecclesial Communion and Cooperation.

Ecclesial Communion, which characterizes the ecclesiology of the 2nd Vatican Council and the canonical law inspired by the Council, applies to Catholic universities which are, by definition, communities of persons<sup>(37)</sup> committed to values that are truly

<sup>(36)</sup> Cfr. *Ibid.*, n. 8.

<sup>(37)</sup> Cfr. *Ibid.*, n. 1: *universitas magistrorum et scholarium*; *Ibid.* Art. 4. *Universitas Communitas*. § 1. *Onus tuendi et confirmandi Universitatis indolem catholicam spectat in primis ad ipsam Universitatem. Quamvis hoc onus impositum sit imprimis Universitatis Auctoritatibus (additis, ubi sint, Magno Cancellario et/aut Consilio rebus administrandis praepositu vel Corpore alio idem valente), participatur diverso gradu etiam ab omnibus Communitatis sodalibus, ideoque postulat ut conquirantur aptae ad Universitatem personae, praecipue professores et administratores, quae propte sint et idoneae ad hanc indolem fovendam. Universitatis Catholicae indoles intime coniuncta est cum professorum qualitate et doctrinae catholicae observatia. Legitimae Auctoritatis est duabus his principalibus condicionibus invigilare, iuxta prescripta Codicis Iuris Canonici; § 2. Omnes docentes et administratores, id temporis cum nominantur, monendi sunt de Instituti indole catholica deque eius consecrariis, itemque de suo officio hanc indolem provehendi aut, saltem, observandi; § 3. Modis diversis academicis disciplinis congruentibus, omnibus catholicis docentibus fideliter accipiendae sunt, ceterisque omnibus docentibus observandae, doctrina et de morum disciplina catholica, tum in pervestigando tum in instituendo. In primis theologi catholici, conscii se Ecclesiae persequi mandatum, fideles sint erga Ecclesiae Magisterium, uti Sacrarum Litterarum et Sacrae Traditionis interpretem authenticum; § 4. Docentes et adimistratores ad alias Ecclesias, Communitates ecclesiales vel religiones*

universal. In *Ex corde Ecclesiae*, the principle of ecclesial communion has the following dimensions:

a) Communion with the universal, national and local ecclesiastical hierarchy, as specified by art. 5 of the Constitution <sup>(38)</sup>.

b) Pastoral care of all members of the University community and especially those who are Catholic. While the pastoral care of the persons forming the university is not an academic activity and the right and responsibility of such care falls ultimately on the local bishop, a Catholic university, *as Catholic*, ought to actively cooperate with the local Church in providing and furthering it. In fact, art. 6 of the Constitution prescribes that such pastoral care ought to be a special concern of a Catholic university <sup>(39)</sup>.

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*pertinentes, iique qui nullam profitentur fidem religiosam omnesque studentes, Universitatis indolem catholicam agnoscere et reversi obstringuntur. Ne haec Universitatis vel Instituti Superioris catholica indoles in periculum discrimenque vocetur, caveatur ne docentes non catholici pars fiant maior in Universitate vel Instituto, quae catholica sunt et manere debent; § 5. Studentium educatio debet perfectionem academicam et professionalem componere cum formatione ad principia moralia et religiosa adque cum doctrinae socialis Ecclesiae cognitione. Ratio studiorum pro unaquaque professione comprehendere debet convenientem ethicam formationem et professionem, ad quam illa praeparat. Efficiatur praeterea ut omnes studentes possint doctrinae catholicae scholas audire.*

<sup>(38)</sup> *Ibid.*, art. 5. *Universitas Catholica in Ecclesia.* § 1. *Quaevis Catholica Universitas communionem retinere debet cum Ecclesia universa cumque Sancta Sede; arcte debet esse coniuncta cum Ecclesia particulari, praesertim cum Episcopis diocesanis regionis vel nationis, ubi existit. Pro sua Universitatis indole, Universitas Catholica ad operam Ecclesiae evangelizationis conferet.* § 2. *Cuiusque Episcopi munus est bonae administrationi favere Catholicarum Universitatum diocesis suae, eique ius et officium est invigilandi earum indoli catholicae servandae et firmandae. Si quad hanc necessariam condicionem quaestiones oriantur, Episcopus loci consilia capiat, quae opus sint ad eas solvendas, concorditer cum legitimis Auctoritatibus academicis et congruenter statutis procedendi rationibus ac — si necesse sit — cum Sanctae Sedis auxilio.* § 3. *Certis temporibus quaelibet Universitas Catholica, de qua in art. 3, §§ 1 et 2, ad competentem ecclesiasticam Auctoritatem referre debet de universitate deque eius operibus. Ceterae Universitates Catholicae de his rebus certiozem facere debent Episcopum dioecesis, in qua posita est Instituti sedes praecipua.*

<sup>(39)</sup> *Ibid.*, art. 6. *Actio pastoralis ad Universitatem pertinens.* § 1. *Universitas Catholica povere debet curam pastorem sodalium Communitatis Universitatis et, praesertim, incremento spirituale eorum, qui fidem catholica profitentur. Eae viae preferendae sunt, quae prosint formationi humanae et professionali harmonice sociandae, in luce catholicae doctrinae, cum valoris religiosi, eo fine ut cognitiones per intellectum acquisitae cum religioso vitae momento iungantur;* § 2. *Personarum idonearum sufficiens numerus — sacerdotum, religiosorum, religiosarum et laicorum — nominetur, qui actioni proprie pastorali prospiciat pro Communitate Universitatis, quae explicanda erit*



c) Cooperation with other Catholic universities and other educational institutions ought to be a characteristic of any Catholic university, both as university and as Catholic, as prescribed in Art. 7 of the Norms <sup>(40)</sup>. Its cultural and evangelizing commitment ought to be carried out not in isolation but in cooperation <sup>(41)</sup>.

## V. *The Particular Norms Regulating Catholic Universities.*

Having defined the principles which should animate the particular norms, we can now examine briefly each particular requirement.

1. The first canonical requirement concerning a Catholic university is its identification by means of « *a mission statement or some other appropriate public document* ». This requirement is not mentioned in the Code because it is assumed that the goals of a University *de iure* Catholic should be publicly declared, but the Constitution *Ex corde Ecclesiae*, art. 2, § 3, is explicit about it and it further requires that means be provided by the university's internal law to « guarantee the expression and preservation of this identity » <sup>(42)</sup>.

In the same art. 2, § 3, *Ex corde Ecclesiae* foresees the situation whereby a Catholic university may be allowed not to declare its Catholic identity in a public document. In such case, the university

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*convenienter actioni pastorali Ecclesiae particularis cumque eius auxilio, Episcopo diocesano moderante vel approbante. Omnes Communitatis Universitatis sodales invitandi sunt ut actioni pastoralari ad Universitatem pertineti operam dent eiusque incepta participent. Cfr. Ibid. Part I, nn. 38-42.*

<sup>(40)</sup> *Ibid.*, art. 7. *Cooperatio*. § 1. *Quo implicatae hodiernae societatis quaestiones melius oppetantur, et Universitatum vel Institutorum indoles catholica confirmetur, oportet cooperatio provebatur regionalis, nationalis et internationalis in pervestigatione, in institutione inque ceteris Universitatis operibus, omnium Universitatum Catholicarum, etiam Universitatum et Facultatum Ecclesiasticarum. Hae cooperatio, ut par est, provebenda est etiam inter Universitates Catholicas et alias Universitates atque Instituta rebus investigandis et docendis, tum publica, tum privata.* § 2. *Universitates Catholicae, cum id fieri poterit congruenterque doctrinae catholicae propositis intersint, quae pro iustitia, incremento et progressui capessuntur.*

<sup>(41)</sup> *Ibid.*, nn. 43-49.

<sup>(42)</sup> Cfr. corresponding text of *Ex corde Ecclesiae*, art. 2, § 3 in a previous footnote.

remains *de iure* Catholic if its « link with the Church » is otherwise evident and its Catholicity is sufficiently guaranteed.

2. As a logical sequence of the first requirement, art. 2, § 4 of the Constitution states that « *any official action or commitment is to be in accord with its Catholic identity* ». This requirement is formulated in a general but precise language because adherence to its Catholic identity through « Catholic teaching and discipline are to influence all university activities ». Some of the most fundamental « official actions and commitments » will be specified in the requirements which follow.

3. A Catholic university « erected or approved by the Holy See, an episcopal conference or another assembly of Catholic hierarchy, or by a diocesan bishop » must have its *statutes approved* by the competent ecclesiastical authority which erects or approves. Art. 3, § 4 and art. 1, § 3 of *Ex corde Ecclesiae* further specify that those universities so erected or approved are to incorporate into their law the norms of the Constitution and those concerning their application, and submit that internal law, or statutes, to the erecting or approving authority.

A University which is Catholic by the fact of having been established by a religious institute or other public juridic person with the consent of the diocesan bishop, as required by art 3, § 2 of *Ex corde Ecclesiae*, should incorporate the general norms of the Constitution and its local and regional applications into their internal law and submit them for approval of the diocesan bishop.

Since *Ex corde Ecclesiae* in art 9 gives to the Congregation for Catholic Education the authority « to promulgate the necessary directives » to apply the Constitution <sup>(43)</sup>, an episcopal conference or another assembly of Catholic hierarchy, or a diocesan bishop competent to approve the statutes or other internal laws should consult with the Congregation concerning the appropriate application of the law.

Universities established by « private » persons which seek to be *de iure* Catholic should have the consent of the competent

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<sup>(43)</sup> Cfr. *Ex Code Ecclesiae*, Normae temporariae: art. 8. *Hae Constitutio valere coeperit die 1 anni academici 1991*. Art 9. *Constitutinis exsecutio demandata est Congregationi de Institutione Catholica, cuius erit prospicere et necessarias ad id normas prodere.*

ecclesiastical authority which guarantees the university's Catholicity. It is only reasonable that, in order to give this consent, this authority should make sure that the university is *de facto* Catholic and has the means to remain so. In other words, the competent ecclesiastical authority should at least implicitly approve those statutes and other legal instruments which assure the university's Catholicity. Since, as already explained, the Congregation for Catholic Education has the authority « to promulgate the necessary directives » to apply the Constitution *Ex corde Ecclesiae*, the local ecclesiastical authority would be wise to consult with the Congregation before giving its consent <sup>(44)</sup>.

4. As « the identity of a Catholic university is essentially linked to the quality of its teachers and to respect for Catholic doctrine » <sup>(45)</sup>, the law requires that the academic authorities appoint teachers of « integrity of doctrine and probity of life » <sup>(46)</sup>. This requirement is made more specific by art. 4, § 2-4 of the Constitution as follows: *a)* The university should be very explicit to teachers and administrators, at the time of their appointment, about « the Catholic identity of the institution and its implications and about their responsibility to promote, or at least respect, that identity »; *b)* « All Catholic teachers are to be faithful to, and all other teachers are to respect, Catholic doctrine and morals in their research and teaching ». This applies particularly to « Catholic theologians » who teach with a « mandate » received from the Church; *c)* « The number of non-Catholic teachers should not be allowed to constitute a majority » <sup>(47)</sup>.

In the application of the particular norms which regulate the activity of a Catholic university, the principle of autonomy should be harmonized, as we explained, with the principles of Catholic identity and of ecclesial communion. This harmonization is specially relevant to the prescriptions of canon 810 and of art. 4 of *Ex corde*

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<sup>(44)</sup> Cfr. *Ibid.*, footnote (§ 48) to art. 3, § 3 which explains: *Sive erectio huiusce Universitatis sive condiciones iuxta quas potest haberi Universitas Catholica debent respondere normis directoriis praestitutis ab Apostolica Sede, a Conferentia Episcoporum vel ab alio Catholicae Hierarchiae Coetu.*

<sup>(45)</sup> Cfr. *Ibid.*, art. 4, § 1. For the corresponding text of this and other references to the norms of *Ex corde Ecclesiae*, cfr. previous footnotes.

<sup>(46)</sup> Cfr. C.I.C., c. 810, § 1.

<sup>(47)</sup> Cfr. *Ex corde Ecclesiae*, art. 4, § 2-4.

*Ecclesiae* which, acknowledging the university's autonomy in furthering and preserving its Catholic identity, order the establishment of procedures for the appointment and dismissal of teachers with explicit reference to the duty and right of vigilance on the part of the conference of bishops and of the diocesan bishop <sup>(48)</sup>.

This requirement calls for nothing more than a code of professional ethics, drawn with a view to the Catholic goals of the University, and the corresponding procedures protecting the rights of all. Presumably these procedures should be approved by the ecclesiastical authority granting the decree of erection or approval or of recognition of the university as Catholic. While the vigilance of the hierarchy refers to all aspects of Catholic life, it applies mainly, in what concerns a Catholic university, to the teaching of the « principles of Catholic doctrine » <sup>(49)</sup> imparted by « Catholic theologians » with a « mandate received from the Church » <sup>(50)</sup>.

5. As explicitly mentioned in canon 811, §1 and reiterated in art. 4, § 5 of *Ex corde Ecclesiae* <sup>(51)</sup>, *Theological studies* should be offered by means of a Theology department, chair or courses. This is another one of the means which a Catholic University should use to achieve its proper goal, for it is especially appropriate in an university setting that the Catholic faith be taught systematically. It is quite obvious that the Code is speaking here about « Catholic Theology », the systematic study of the faith of the Church under the guidance of its pastors, for no other « theology » would be conducive to the « fulfillment of the teaching function of the Church itself » <sup>(52)</sup> nor to the « investigation and teaching (of the secular disciplines) in accordance with Catholic doctrine » <sup>(53)</sup>. Since we are dealing here with a discipline that is typically under the direct competence of the hierarchical teaching, the « competent ecclesiastical authority » is asked to assist the academic authorities in this requirement <sup>(54)</sup>.

The second paragraph of c. 811 further specifies that lectures should be held « which principally treat of those theological questions

<sup>(48)</sup> Cfr. C.I.C., c. 810; *Ex corde Ecclesiae*, art. 4, § 3.

<sup>(49)</sup> Cfr. C.I.C., c. 810, § 2.

<sup>(50)</sup> Cfr. *Ex corde Ecclesiae*, art. 4, § 3.

<sup>(51)</sup> Cfr. C.I.C., c. 811, §1 and *Ex corde Ecclesiae*, Art. 4, § 5.

<sup>(52)</sup> Cfr. *Ibid.*, c. 807.

<sup>(53)</sup> Cfr. *Ibid.*, c. 809.

<sup>(54)</sup> Cfr. *Ibid.*, c. 811.

connected with the studies of each department » or school within the university. The Constitution specifies that « the education of students is to combine academic and professional development with formation in moral, religious principles and the social teachings of the Church »<sup>(55)</sup>. It would seem then that the minimal program required in a Catholic university would include: *a*) instruction in professional ethics, since « the program of studies for each of the various professions is to include an appropriate ethical formation in that profession »; *b*) courses in Catholic doctrine which « are to be made available to all students ».

Those who teach the different disciplines of Catholic theology must have the *mandate* of the competent ecclesiastical authority<sup>(56)</sup>. Here we have a concrete legal device designed to assure the catholicity of theological teaching in accordance with the goal proper to a Catholic university. Since this is a matter under the direct responsibility of the hierarchical teaching, the ecclesiastical authority is the one ultimately competent to grant or withdraw the mandate, without excluding the academic authority in this process. We will give special attention to the study of the « teaching mandate » in another section of this paper.

6. Concerning the implementation of these requirements, canon 810, § 2 reminds the Episcopal Conference and the diocesan Bishops of their duty and right to exercise vigilance that « the principles of Catholic doctrine be faithfully observed ». The responsibility and the legitimate autonomy of the academic authorities does not exempt the local hierarchy from exercising the rights and duties of their office. This vigilance is exercised by demanding that all the legal requirements which we are now studying be faithfully implemented.

The Constitution *Ex corde Ecclesiae* in art. 5, § 2 reiterates the right and duty of the diocesan bishop to « watch over the preservation and strengthening of their Catholic character », and it establishes that « if problems should arise concerning this Catholic character, the local bishop is to take the initiatives necessary to resolve the matter working with the competent university

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<sup>(55)</sup> Cfr. *Ex corde Ecclesiae*, art. 4, § 5.

<sup>(56)</sup> Cfr. C.I.C., c. 812; *Ex corde Ecclesiae*, Art. 4, § 3.

authorities in accordance with established procedures »<sup>(57)</sup>. As explained in a foot-note (§ 52) to art. 5, § 2 of *Ex corde Ecclesiae*, in Catholic universities which are « public » in character because they are established by the hierarchy, a religious institute or other public juridic person, *those* procedures are to be established in the university statutes approved by the competent ecclesiastical authority, and in Catholic universities which are « private » in character the procedures are to be determined by episcopal conferences or other such hierarchical assemblies for the benefit of both the local bishop and the Catholic university in his territory<sup>(58)</sup>. The Constitution offers also the help of the Holy See in the resolution of those problems<sup>(59)</sup>. Without excluding the help of other dicasteries, it would seem that the Congregation for Catholic Education would be the first responsible in offering and providing such help<sup>(60)</sup>.

7. Periodic information. If the hierarchy is to exercise the « responsibility of promoting the welfare of the Catholic universities » and « watch over the preservation and strengthening of their Catholic character »<sup>(61)</sup>, it should be periodically informed about the welfare and the Catholic identity of the institution. If the university is « public » (i. e. universities hierarchically established or sponsored by a public juridic person), the report should be sent to the university's ecclesiastical superior. If the university is « private », in the sense already explained, the report is to be sent to the local bishop.

8. Provisions are to be made between the university and the local ordinary for the pastoral care of the University community<sup>(62)</sup>.

<sup>(57)</sup> Cfr. *Ex corde Ecclesiae*, art. 4, § 1.

<sup>(58)</sup> Cfr. *Ibid.*, footnote (§ 52) to art. 5, § 2 which reads as follows: *Quod attinet ad Universitates de quibus in art. 3, §§ 1 et 2, hae rationes definiendae sunt in Statutis ab auctoritate ecclesiastica probatis. Quod autem ad reliquas Catholicas Universitates pertinet, eadem sunt decernendae a Conferentiis Episcoporum vel a ceteris Coetibus Catholicae Hierarchiae.*

<sup>(59)</sup> Cfr. *Ibid.*, art. 5, § 2:... *ac — si necesse sit — cum Sanctae Sedis auxilio.*

<sup>(60)</sup> Cfr. *Ibid.* art. 9; *Ibid.*, art. 10. *Congregationis de Institutione Catholica officium erit, cum procedente tempore id adiunsta requirent, mutationes proponere in hanc Constitutionem inducendas, ut haec continenter ad novas necessitates apta sit Universitatum Catholicarum.*

<sup>(61)</sup> Cfr. *Ibid.*, art. 5, § 2.

<sup>(62)</sup> Cfr. C.I.C., c. 813.

While the pastoral care is not a direct objective of a university as such, it is however the direct concern of the local ordinary by virtue of his office and consequently a common concern with the university as Catholic, for this is also one of the means which the University must employ for the attainment of its Catholic goal. This is another example of that *communio* of a Catholic institution with the mission of the hierarchy for which canon 813 requires no other specific juridic means than those prescribed by general law for the governance of the dioceses by its ordinary. This requirement is probably sufficiently fulfilled through the institutionalized forms of campus ministry which already exist in all Catholic campuses.

The Constitution describes, in general ways, the elements of such pastoral ministry in art. 6: *a*) priority is to be given to those means which facilitate the integration of professional values with Catholic teachings and values; *b*) a sufficient number of pastoral ministers are to be appointed; *c*) their pastoral work is to be carried out in harmony and cooperation with the diocesan bishop; *d*) all members of the university community are to be invited to cooperate.

9. Finally, art. 7 of *Ex corde Ecclesiae* requires that, in order to fulfill its own mission as university and as Catholic, a Catholic university is to cooperate with other Catholic universities and Catholic educational institutions. As explained before, the Catholic university's cultural and evangelizing commitment ought to be carried out not in isolation but in cooperation<sup>(63)</sup> with other universities and educational institutions and it ought to include programs on behalf of justice, development and progress.

## VI. *The mandate to Teach.*

Since the implementation of this requirement has taken an important place in the current debate and has been considered by many as the central issue of a Catholic university's autonomy and identity<sup>(64)</sup>, a more detailed commentary may serve as illustration of our topic.

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<sup>(63)</sup> *Ex corde Ecclesiae*, nn. 43-49.

<sup>(64)</sup> Cfr. A. GALLIN, OSU, *Catholic Colleges and University Presidents Respond to Proposed Vatican Schema*, Origins (April 10, 1986), Vol. 15: No. 43, p. 703 (comments on Norms, Chap. IV); E.F. DAILY, *The Needed Mandate to Teach*, *Proceedings of the CLSA, 1984*, Washington, D.C., pp. 114-129; R.P. DEELY, *Canon 812: The Mandate for Those who Teach Theology*, *Proceedings of The CLSA, 1988*, pp. 70-85.

Canon 812 states that « for the teaching of theological disciplines, the mandate from the competent ecclesiastical authority is required ». In the legal language of the Code, the term « mandate » is used to refer to a legal instrument or document or to a juridic act contained in its documented form. In the latter sense, a « mandate » is an « authorization » given to a person to exercise certain rights or duties in behalf of the titular of such rights and duties.

However, even a summary review of the use of the term « mandate » <sup>(65)</sup> shows that the legal nature of this act can be very diverse, depending on the specific rights and duties which are authorized: an ecclesiastical act of administration, which involves the public authority of the Church, is not the same as an authorization to execute a pious will; or the mandate given to a procurator to plead in court is not the same as that given and exercised in a marriage by proxy. While all of these are different juridic acts, they are however analogous, for in all of them there is: (a) the *mandator* or holder of the rights and obligations which are to be exercised; (b) the holder of the mandate who exercises those rights and obligations; and (c) the terms of the mandate defining the rights and duties to be exercised.

In the mandate to teach prescribed by c. 812, the mandator is « the competent ecclesiastical authority », that is to say, a hierarchical authority with the mission to impart authentic teaching to an ecclesial community. In the case of « Ecclesiastical » institutions, the authority empowered to give the mandate is the Chancellor of the Ecclesiastical University or Faculty. The Chancellor represents the Holy See to the University or Faculty and viceversa. He is the prelate ordinary and the authority explicitly empowered to give the teaching mandate. (Cf. *Sapientia Christiana*, art. 12 & 13; Norms, art.8, § 5).

In the case of Catholic universities erected or approved by the Holy See, the Chancellor, who has responsibilities similar to his

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<sup>(65)</sup> A mandate from the competent authority is required to execute an ecclesiastical act of administration (c. 42); the episcopal vicar needs mandate from the Bishop to carry out acts which belong to the Bishop (c. 134); the Bishop needs pontifical mandate to consecrate a Bishop (c. 1013); a mandate is necessary to contract marriage by proxy (c. 1105); the mandate is also required in procedural acts done through a « procurator » (cc. 1484-1486; 1572).



counterpart in the « Ecclesiastical » institutions, <sup>(66)</sup> grants the mandate to teach the theological disciplines. In the case of other « Catholic » universities and unless a prelate ordinary of the university different from the local ordinary is designated, the local ordinary is the proper ecclesiastical authority to grant the mandate. He need not exercise the granting of the mandate by himself: this power can be delegated. In any case, the competent ecclesiastical authority to give the mandate to teach is the person who, according to general law or particular delegation, holds hierarchical power of authentic teaching over the particular university community.

Can the mandate to teach be given implicitly? Article 27 of *Sapientia Christiana* seems to require that the mandate from the Chancellor be extended to each teacher individually. This and the fact that the juridical notion of « mandate » requires a clear identification of the mandatee would seem to indicate that the mandate to teach should always be explicit. Who is the holder of the mandate? The person appointed to teach theological disciplines. This person could be man or woman, lay or cleric. Obviously, this person should also have all the academic requirements that are needed to teach that particular discipline <sup>(67)</sup>.

Concerning the nature of the rights and obligations invested in the mandate, it seems quite clear that such mandate does not involve a delegation of hierarchical powers, but simply an authorization to teach theological matters as *authentic* Catholic teaching. The term « canonical mission », used in *Sapientia Christiana* but not found anywhere in the Code, was dropped from the draft of this canon and replaced with the term « mandate », which is more concrete and more coherent with the language of the Code. This is, then, an authorization of the competent ecclesiastical authority guaranteeing the Catholic integrity of that teaching <sup>(68)</sup>.

The question on who can withdraw the mandate to teach can easily be answered from what has been previously stated: the

<sup>(66)</sup> While it may still be the practice of the Holy See when erecting or approving a Catholic university, the appointment of a Chancellor is not required by the Code or by the Constitution for Catholic universities.

<sup>(67)</sup> For « Ecclesiastical » Universities, all teachers must receive *a nihil obstat* from the Holy See before given tenure or promoted to the highest rank and before they can receive the mandate from the Chancellor (Cf. *Sapientia Christiana*, art. 27, § 2). This is not required in « Catholic » Universities.

<sup>(68)</sup> Cfr. J.P. BOYLE, *The Jurist*, 45 (1985), pp. 163-170.

ecclesiastical authority empowered to give the mandate, his successors and his superiors may also withdraw the mandate, and no one else.

The matter of « due process » can be raised in this context. In the case of « Ecclesiastical » Universities, Article 22 of *Sapientia Christiana* prescribes that the statutes should establish procedures in regard to the suspension or dismissal of a teacher, especially in matters concerning doctrine. In these procedures, there should be ways of settling the matter between teacher and the individual academic authority (Rector, President, Dean), of allowing for the intervention of a committee of experts, before raising the matter to the Chancellor. And from the decision of the Chancellor, a teacher can appeal to the Holy See. In the matter of « due process » however, one must remember the ecclesiological principle of the *munus docendi* that authentic teaching is hierarchical thus precluding or severely restricting any « trial by one's peers ».

No specific procedures are prescribed for the withdrawal of the mandate from a theology teacher of a « Catholic » university, but the prescriptions of *Sapientia Christiana* can serve as an outline of the procedures to be worked out by the University with the competent ecclesiastical authority empowered to grant the mandate.

There is indeed no question that for an educational institution to be « Catholic » there must exist a real *communio* with the teaching authority of the hierarchy and that for a university that is *de iure* Catholic, *communio* is to be assured by juridical means. The right to require the mandate to teach derives from the hierarchy's teaching function and from the right of Christ's faithful to have a guarantee of authentic teaching. This guarantee need not take the particular form of c. 812, but given the historical circumstances, the requirement of the mandate is the particular historical way chosen by the Supreme Legislator to assure the Bishops' right and duty to be authentic teachers and doctors.

Although the teaching mandate is prescribed by c.812 for Catholic universities and other Catholic institutes of higher learning, it is explicitly extended by c. 818 to Ecclesiastical Universities and Faculties. But this requirement does not affect other schools, namely those below the so-called « higher learning » level. This is not to say, as it seems obvious, that the lower schools are not subject to the vigilance of the hierarchy in the teaching of religious or theological matters; it means only that the canonical concept of

« mandate » does not apply. The local Bishop has the power to legislate other juridical means which may assure the integrity of teaching in these schools and other means of communication <sup>(69)</sup>. The Code limits itself to provide a tool to ecclesiastical authorities to assure the integrity of that teaching at the higher educational level which often are supra-diocesan in their scope.

### VII. *The Ongoing Debate.*

The introductory remarks to canons 807-814 of the American commentary on the Code of Canon Law <sup>(70)</sup> argue that the canons under study are not applicable to Catholic universities and colleges in the United States because of three main reasons: (1) The peculiarly American character of these institutions: (a) Catholic colleges and universities in the United States are publicly chartered as autonomous civil law corporations and are governed by their own Board of Trustees while retaining their private, (non-governmental) juridic nature; (b) The degrees they grant are accredited by private agencies. (2) The inapplicability of the letter and spirit of the « mandate to teach » to the American scene. (3) The lack of formal ties between these institutions and Church authorities.

During the debate which took place before the promulgation of the Constitution, the main argument for « autonomy » from hierarchical rule stressed that the financial viability of American Catholic colleges and universities depends on the concept of autonomy which, as defined by two court decisions, consists of (a) the existence of a truly autonomous Board of Trustees, (b) academic freedom on which accreditation depends, (c) non-discriminatory and non-proselytic policies <sup>(71)</sup>.

A serene study of the canonical requirements, as formulated in the Code and in *Ex corde Ecclesiae* shows no threat to the legitimate autonomy of American Catholic colleges and universities. In fact, the canons and the norms of the Constitution regulate the rights of the ecclesiastical authorities limiting their intervention to their own peculiar role as teachers of the faith and pastors and acknowledge

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<sup>(69)</sup> Cfr. c. 805.

<sup>(70)</sup> Cfr. J. CORINDEN in *The Code of Canon Law, Text and Commentary*, p. 576.

<sup>(71)</sup> Cfr. A. GALLIN, OSU, *Ibid.* p. 700.

the principle of scientific autonomy and self-government of the academic community. One ought to conclude, therefore, that there are no grounds to fear any conflict between the canonical definition of autonomy and that of the American courts of justice. Rather, upholding the principle of religious freedom, American courts have supported the right of the Church to define the Catholicity and autonomy of its own institutions without loss of rights granted also to other private, non-confessional institutions <sup>(72)</sup>.

Concerning the alleged « inapplicability » of the teaching mandate, we may add that regardless of its historical origin, it is rather obvious that the legislator has fashioned this canonical institution into a new form, which is far removed from its German origin in the 19th century, in order to make it applicable to present circumstances, including those found in the United States <sup>(73)</sup>. Even though a moral, non-canonical authority might be sufficiently adequate to assure the integrity of Catholic teaching, the fact is that the legislator has judged this canonical norm necessary and has made it mandatory, giving no indications that he wishes to exempt American institutions <sup>(74)</sup>.

Concerning the alleged lack of formal ties between the institutions and the Church authority, it may be necessary to note that this was not the case of Catholic institutions at the moment of their foundation and for many subsequent years nor, we may add, is it the case now in the greatest majority of these institutions: these institutions have been legally confessional, their relation to the sponsoring religious organization legally established, and their relations with the local ordinaries regulated by general law. That some of those formal ties may have been too general or may have taken a different form in recent times, does not mean that the formal relation did not or does not exist.

Behind the argumentation of the dissenting side of the debate, one can detect a lack of appreciation for the role of the hierarchy in defining Catholic teaching and in providing the public guarantee of Catholicity. This necessarily leads to a deficient understanding of

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<sup>(72)</sup> Cfr. K.D. WHITEHEAD, *Catholic Colleges and Federal Funding*, Ignatius Press, San Francisco 1988; *Catholicism in Crisis* (presently, *Crisis*): Maguire vs. Marquette University, May 1986, Vol. 6. No. 5, pp. 38-43.

<sup>(73)</sup> Cfr. J.P. BOYLE, *Ibid.*

<sup>(74)</sup> Cfr. J. CORINDEN, *The Code of Canon Law, Text and Commentary*, p. 576.

some very basic canonical concepts, namely, the difference between *de facto* and *de iure* Catholic, the public guarantee of Catholic identity implied in the latter, and the scope of a Catholic university's autonomy « in developing its distinctive identity and pursuing its proper mission »<sup>(75)</sup>.

A great deal was made during the debate of the fact that American Catholic colleges and universities, as publicly chartered autonomous civil law corporations, should be somehow exempted from the requirements of canon law. In fact, the rather curious opinion was advanced<sup>(76)</sup> that a Catholic university that is civilly constituted and has no canonical juridical personality is exempted from the prescriptions of canon law. While this is certainly true in the case of any university which is not *de iure* Catholic, it cannot be true of one that seeks public recognition as Catholic, for then the civil corporation enters into a juridical relation with the authority of the Church and must abide by the prescriptions of canon law. The fact that an institution may not be a canonical juridic person does not mean that it cannot be the subject of canonical rights and obligations: canon law regards this corporation as a civil juridic entity with the canonical rights and obligations that stem from the particular canonical relation it has agreed to establish with the ecclesiastical authority<sup>(77)</sup>.

Even when the law of the Church recognizes the Catholic character of those institutions, it does not require them to be canonical juridic persons because those universities exist for the study of secular subjects and the law of the Church assumes that they can be constituted as civil corporations. This may even be the case in those countries where, by reason of a Concordat, a University constituted solely by the authority of Canon law is granted civil recognition. In any case, even when the University is constituted as a civil corporation, canon law may also grant it juridic personality, whether public or private<sup>(78)</sup>, or may deal with it as a civil law corporation with a special relation with the law of the Church.

In what refers to Catholic identity, we disagree with those who would limit the application of canon 808 and Art. 3, § 3 of *Ex corde*

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(75) Cfr. *Ex corde Ecclesiae*, art. 2, § 5.

(76) Cfr. J.P. BOYLE, *Ibid.*

(77) Cf. *Ex corde Ecclesiae*, art. 2, § 2.

(78) Cfr. C.I.C., cc. 113-123.

*Ecclesiae* to the bearing of the title « Catholic university » in the name of the university <sup>(79)</sup>. As we have explained in previous pages, the term « Catholic university » is a precise canonical concept describing the *de iure* Catholic identity of a university <sup>(80)</sup>. The public and explicit identification of Catholic character implied in the term requires, therefore, the approval of the competent ecclesiastical authority. If the permission is granted, « in accordance with the conditions upon which both parties shall agree » <sup>(81)</sup>, the University becomes Catholic both *de facto* and *de iure* and subject to the other prescriptions of the law.

The most recent argument for non-applicability of the canons and of the norms of the Constitution comes from the rather peculiar opinion that since the law issued in both the '83 Code and the Constitution *Ex corde Ecclesiae* is not retroactive, its prescriptions apply only to Catholic universities which shall be established in the future <sup>(82)</sup>. In reply it is enough to say that this law, as any other law, applies to those institutions to which it is explicitly directed, namely, those colleges and universities generally described up until now as Catholic <sup>(83)</sup>. In fact the Constitution *Ex corde Ecclesiae* <sup>(84)</sup> seeks to give a more clear canonical status to those institutions while allowing that some Catholic colleges and universities may not need or seek such status and may remain, therefore, as *de facto* Catholic but not *de iure*.

Such would be the case, for instance, of those Catholic colleges and universities which, having been founded and for many years operated by a religious congregation, are no longer under the effective control of the religious institute. As the sponsoring religious institute is no longer able or willing to guarantee the Catholicity of the college, and while the college may still retain

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<sup>(79)</sup> Cfr. J.H. PROVOST, *The Canonical Aspects of Catholic Identity in the Light of « Ex corde Ecclesiae »*, *Studia Canonica* 1991-1, pp. 155-191.

<sup>(80)</sup> Cfr. J.M. Gonzalez del Valle's commentary to cc. 807 and 808 in *Codigo de Derecho Canonico Anotado*, Pamplona, Spain, 1983, pp. 501-502.

<sup>(81)</sup> Cfr. *Ex corde Ecclesiae*, art. 3, § 3.

<sup>(82)</sup> Cfr. J.H. PROVOST, *Ibid.*

<sup>(83)</sup> Cfr. *Ex corde Ecclesiae*, art. 1, §§ 2 & 3; *Ibid.*, art. 11: *Leges particulares vel consuetudines, quae nunc vigent et huic Constitutioni contrariae sunt, abrogantur. Item abrogantur privilegia ad hoc usque tempus a Sancta Sede personis physicis et moralibus concessa, quae eidem huic Constitutioni contraria sunt.*

<sup>(84)</sup> Cfr. *Ex corde Ecclesiae*, art. 3, § 1-3.

important elements of its *de facto* Catholicity, art. 3 of *Ex corde Ecclesiae* gives to such college or university the choice of seeking the consent of the competent ecclesiastical authority in order to be recognized as *de iure* Catholic or remain Catholic *de facto* only <sup>(85)</sup>.

In the latter case, the law on Catholic universities, as contained in the Code and in the Constitution, will not demand enforcement of the canonical requirements which we have studied, but that does not mean that the law does not apply. Rather, by force of this law a diocesan bishop may have to declare that some particular institution no longer enjoys a public guarantee of Catholicity, or he may have to denounce, for the sake of the common good, that a particular school has ceased to be the *facto* Catholic. In other words, the law on Catholic universities does apply to Catholic colleges and universities in the United States according to those principles of autonomy, identity and communion which we have discussed in these pages.

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<sup>(85)</sup> The January 21, 1991 « Directives » from the Congregation for Catholic Education, issued to assist Episcopal Conferences in drawing up the concrete applications of the General Norms, make no mention of those privately established Catholic universities contemplated in art 3, § 3 of the General Norms because, unless they seek to be publicly identified as « Catholic universities », they are not *de iure* Catholic and are not subject to the regulations of the Congregation for Catholic Education.

