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FACULTY OF GRADUATE AND
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GRADE / DEGREE

Faculty of Canon Law

FACULTÉ, ÉCOLE, DÉPARTEMENT / FACULTY, SCHOOL, DEPARTMENT

The Application of the Requirement for the Mandatum of *Ex Corde Ecclesiae* to American Catholic Universities Sponsored by Religious Institutes: A Case Study of St. Norbert College

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**THE APPLICATION OF THE REQUIREMENT FOR THE MANDATUM OF *EX
CORDE ECCLESIAE* TO AMERICAN CATHOLIC UNIVERSITIES
SPONSORED BY RELIGIOUS INSTITUTES:
A CASE STUDY OF ST. NORBERT COLLEGE**

by
James B. HERRING, O. Praem

A dissertation submitted to the Faculty of Canon Law
Saint Paul University, Ottawa, Canada, in partial
fulfillment of the requirements for the degree of
Doctor of Canon Law

Ottawa, Canada
Saint Paul University
2009

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Your file *Votre référence*
ISBN: 978-0-494-51804-5
Our file *Notre référence*
ISBN: 978-0-494-51804-5

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ABSTRACT

On 15 August 1990 the Vatican issued Pope John Paul's Apostolic constitution *Ex corde Ecclesiae* (From the Heart of the Church) concerning Catholic higher education. Promulgated as law, the document deal firstly with the Catholic identity and mission of the college or university, and secondly with the general norms for all institutes of higher studies. The document also reflects and reaffirms the *mandatum* of c. 812. This study looks at the *mandatum* and how the norms of *Ex corde Ecclesiae* are implemented at a Catholic college in the United States that is sponsored by a religious institute by attempting to place the discussion in the context of the American culture. Beginning with a canonical look at the defining moment when one becomes a Catholic and an historical examination of the university system and the Catholic Church, this study shows the intimate relation that religious institutes have had with higher education. In the United States there are over 230 Catholic colleges and universities and other such institutions of higher studies, most of which are canonically and civilly connected to a religious institute.

The question is what role does the sponsoring religious institute have in the canonical compliance of their separately incorporated apostolate in the implementation of the norms of *Ex corde Ecclesiae*?

Discussed in this work are the canonical obligations and rights of the diocesan bishop, the religious institute, the college (administrators and trustees) and the professors of theological disciplines. This study also looks at some of the issues of concern that were raised by theologians, canonists, colleges and universities, religious institutes and bishops relating to the implementation of *Ex corde Ecclesiae*. It took ten years for the bishops of the United States to receive the Vatican *recognitio* for "The Application of *Ex corde Ecclesiae* for the United States" to be used in the implementation of *Ex corde Ecclesiae* for American Catholic colleges and universities. On 3 May 2001 the *Application* became particular law for the United States. St. Norbert College, a Norbertine sponsored college in De Pere, Wisconsin, USA, is used as the case study for this work.

DEDICATION

This work is dedicated in loving memory of
my parents, James W. and Una M.
Shackleford Herring, whose encouragement
and support of Catholic schools made my
academic achievements possible.

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ACKNOWLEDGMENT

I give my deep thanks to the dedicated women and men—lay, religious, clergy—who taught and guided me throughout my years in Catholic schools. I am indebted to the local Church of Philadelphia and the faithful who so generously supported and provided Catholic educational facilities for my elementary, secondary, college, seminary and university studies.

These institutions were imbued with a truly Christian and Catholic spirit which permeated my being and helped to form me into the person who I am today.

I am grateful for the support of Abbot E. Thomas DeWane, O. Praem., Abbot Benjamin Mackin, O. Praem., Abbot Gary Neville, O. Praem., and my Norbertine community, whose American foundation is rooted in the ministry of education.

To my director and professor, Dr. Lynda Robitaille, I give my deepest gratitude. It is her encouragement and guidance that enabled me to complete this work. To the Canon Law faculty of Saint Paul University I extend my deep appreciation for their collective dedication and wisdom that gave me inspiration to further my study of canon law.

To the members of my jury, Professors Jobe Abbass, OFM Conv., Roland Jacques, OMI, Dale Schlitt, OMI, and Robert Kaslyn, SJ, I give my thanks and appreciation for their time and critiques.

Finally, to all the many friends and supporters I have come to know and cherish in Canada and at home in the United States, I am truly thankful.

James B. Herring, O. Praem.

ABBREVIATIONS

A	- Appendix
AA	- <i>Apostolicam actuositatem</i>
AS	- <i>Apostolorum successores</i>
AAS	- <i>Acta Apostolicae Sedis</i>
ACCU	- Association of Catholic Colleges and Universities (USA)
art., arts.	- article, articles
ASS	- <i>Acta Sanctae Sedis</i>
c., cc.	- canon, canons
CBTEM	- Cooperation Between Theologians and Ecclesiastical Magisterium: A Report of the Joint Committee of The Canon Law Society of America and The Catholic Theological Society of America
CCEO	- <i>Codex canonum Ecclesiarum orientalium</i> (1990)
CCC	- Catechism of the Catholic Church
CCLA	- <i>Code of Canon Law Annotated</i> , 2 nd ed.
CCLS	- Canadian Canon Law Society
CD	- <i>Christus Dominus</i>
CIC	- <i>Codex iuris canonici</i> , 1983
CIC/83	- <i>Codex iuris canonici</i> , 1983
CIC/17	- <i>Codex iuris canonici</i> , 1917
CLD	- Canon Law Digest
CLSA	- Canon Law Society of America
CLSA Comm 1	- <i>The Code of Canon Law: Text and Commentary</i>
CLSA Comm 2	- <i>New Commentary on the Code of Canon Law</i>
CLSA Proc	- <i>Proceedings of the Annual Convention Canon Law Society of America</i>
CLSGBI	- Canon Law Society of Great Britain and Ireland
CLSGBI Comm	- <i>The Canon Law: Letter & Spirit</i>
CTSA	- Catholic Theological Society of America
CP/95	- <i>Constitutiones Ordinis Canoniorum Regularium Praemonstratensium</i> , 1995
col., cols.	- column, columns
DIM	- <i>Divini illius Magistri</i>

<i>DH</i>	- <i>Dignitatis humanae</i>
DOP	- The Day of Pentecost: Constitutions and Appendices, the Constitution and Rule of the Order of Canons Regular of Prémontré
<i>DSD</i>	- <i>Deus scientiarum Dominus</i>
<i>DVer</i>	- <i>Donum veritatis</i>
<i>ECE</i>	- <i>Ex corde Ecclesiae</i>
<i>ESI</i>	- <i>Ecclesiae sanctae</i> I
FLANNERY1	- <i>Vatican Council II</i> , vol. 1
FLANNERY2	- <i>Vatican Council II</i> , vol. 2
<i>GS</i>	- <i>Gaudium et spes</i>
IFCU	- International Federation of Catholic Universities
<i>LE</i>	- <i>Leges Ecclesiae post Codicem iuris canonici editae</i>
<i>LEF</i>	- <i>Lex Ecclesiae Fundamental</i>
<i>LG</i>	- <i>Lumen gentium</i>
<i>MR</i>	- <i>Mutuae relationes</i>
n., nn.	- number, numbers
NCCB	- National Conference of Catholic Bishops (USA-prior to 1 July 2001)
NCEA	- National Catholic Educational Association (USA)
OCD	- The Official Catholic Directory (USA)
<i>ORE</i>	- <i>L'Osservatore romano</i> , weekly edition in English
<i>OSCh</i>	- Ordinationes ad constitutionem apostolicam <i>Sapientia christiana</i>
<i>PC</i>	- <i>Perfectae caritatis</i>
<i>PO</i>	- <i>Presbyterorum ordinis</i>
pt.	- part
<i>QN</i>	- <i>Quae nobis</i>
<i>RH</i>	- <i>Redemptor hominis</i>
<i>SCh</i>	- <i>Sapientia christiana</i>
sec., secs.	- section, sections
SNC	- St. Norbert College, De Pere, Wisconsin (USA)
<i>VC</i>	- <i>Vita consecrata</i>
vol., vols.	- volume, volumes
USCC	- United States Catholic Conference (prior to 1 July 2001)
USCCB	- United States Conference of Catholic Bishops (since 1 July 2001)

INTRODUCTION

Born from the heart of the Church, a Catholic University is located in that course of tradition which may be traced back to the very origin of the University as an institution. It has always been recognized as an incomparable centre of creativity and dissemination of knowledge for the good of humanity.

Pope John Paul II¹

Issued on 15 August 1990 and released by the Vatican on 25 September 1990, following a long period of consultation, Pope John Paul II's Apostolic constitution *Ex corde Ecclesiae* (From the Heart of the Church) concerning Catholic higher education was received with both praise and controversy in the United States of America. Promulgated as law, the document deals firstly with the Catholic identity and mission of the college or university, and secondly with the general norms for "all Catholic institutes of higher studies throughout the world."² The document in the treatment of the *mandatum* reflects and reaffirms the *mandatum* of c. 812.

The apostolic constitution is "addressed especially to those who conduct Catholic Universities, to the respective academic communities, to all those who have an interest in them, particularly the Bishops, Religious Congregations and ecclesial *Institutions*, and to

¹ JOHN PAUL II, Apostolic Constitution *Ex corde Ecclesiae* (=ECE), 15 August 1990, Introduction, 1, in *Acta Apostolicae Sedis* (=AAS), 82 (1990), pp. 1475-1509, here at p. 1475. English translation USCC, *On Catholic Universities, 'Ex corde Ecclesiae'*, Washington, DC, USCC, 2000, p. 3 (=USCC, ECE); *Origins*, 20 (1990), pp. 265-276, here at p. 265.

² ECE, II, Art. 1, 1, p. 1502; USCC, ECE, p. 37; *Origins*, 20 (1990), p. 274.

the numerous laity who are committed to the great mission of higher education.”³ It describes the relationship between the diocesan bishop and the university.

In his historic first visit to the United States, Pope Benedict XVI included an address at The Catholic University of America on 17 April 2008 to approximately 600 persons serving in the field of Catholic education. Speaking of the importance of Catholic education, the Holy Father said: “Education is integral to the mission of the Church to proclaim the Good News. First and foremost, every Catholic educational institution is a place to encounter the living God who in Jesus Christ reveals his transforming love and truth. This relationship elicits a desire to grow in the knowledge and understanding of Christ and his teaching. In this way those who meet him are drawn by the very power of the Gospel to lead a new life characterized by all that is beautiful, good, and true; a life of Christian witness nurtured and strengthened within the community of our Lord’s disciple, the Church.”⁴

Placed in the cultural context of the United States and the American Catholic Church, *Ex corde Ecclesiae* is relevant given the crises facing many American Catholic colleges and universities today. With the numbers of sisters, brothers and priests of the founding religious communities and diocesan clergy radically decreasing, the Catholic university and college is challenged in its mission to transmit authentic Catholic values in an authentic Catholic environment to a new generation of youth. Catholic colleges and universities rely more and more on laypersons to staff and operate them and it is their call

³ *ECE*, II, Introduction, 9 p. 1480; USCC, *ECE*, p. 9; *Origins*, 20 (1990), p. 268.

⁴ BENEDICT XVI, Address to Educators at Catholic University, 17 April 2008, in *L'Osservatore Romano*, English edition, N. 17 (2041), 23 April 2008, pp. 7-8, here p. 7; *Ad Catholicam Studiorum Universitatem Americae*, 17 April 2008, in *AAS*, 100 (2008), pp. 320-327, here p. 320.

to a religious commitment of maintaining the character and religious culture of these institutions that is possibly at the “heart” of *Ex corde Ecclesiae*.⁵

The vibrancy of identity and culture has been threatened, both internally and externally, at American Catholic colleges and universities. J. Wilcox in the preface of his book frames it this way:

Concern about linkages between Church and academe is intensified by several developments. Among these is the rapid decrease in the presence of founding religious orders and diocesan clergy in the classroom, on the campus, or in the boardroom. Furthermore, the high cost of private higher education, competition for a diverse student body, and the imperative of educational excellence, leads Catholic higher education today to be more competitive with the other private colleges and universities and the lower-costing public schools. As an unintended consequence, Catholic institutions may emulate secular standards in hiring and scholarship without regard to the religious vision intrinsic to their identity. Retention of a critical mass of administrators and faculty committed to maintenance and enhancement of Catholic identity has thus become another dimension of the problem.⁶

J. Wilcox expresses here the heart of the matter of identity and mission of Catholic institutions of higher studies. For the most part these institutions have depended upon the commitment and dedication of the communities of women and men formed in Christ and united in ecclesial communion. Their educational endeavors arose out of the explicit religious motivation of communities of consecrated life often founded for the advancement of a particular mission and undertaken as the corporate apostolate of their institute.⁷

⁵ Cf. M.M. MOREY and J.J. PIDERIT, *Catholic Higher Education: A Culture in Crisis*, New York, NY, Oxford University Press, 2006, pp. 9-12.

⁶ J. WILCOX and I. KING (eds.), *Enhancing Religious Identity: Best Practices for Catholic Campuses*, Washington, DC, Georgetown University Press, 2000, p. xvi.

⁷ See J.A. DI NOIA, “Ecclesiology of Communion and Catholic Higher Education,” in *Origins*, 29 (1999), p. 270.

In the field of Catholic education there are four arenas of concern: schools (elementary and secondary), Catholic universities and institutes of higher studies, Ecclesiastical universities and faculties, and means of social communications and especially books.

We include in our discussion those areas of responsibilities and rights that pertain to the educational apostolic activity of religious institutes at Catholic colleges and universities. We will then look at some of the American civil law implications of these canonical responsibilities and rights as applied to American Catholic colleges and universities.

This work begins in Chapter 1 with a canonical look at the defining moment when one becomes a Catholic. At the moment of baptism one is identified as *Catholic*. When does a college or university, or any institution or work, rightly call itself *Catholic*? What are the features or characteristics of being *Catholic*? The 1983 *Code of Canon Law* gives the rules of law for rendering Catholic identity. We examine the history of the university system and see how intimately connected the Catholic Church has been throughout the centuries in higher education in Europe and wherever the Church missions around the world.

In Chapter 2 we look at the founding religious community and discuss its canonical and secular obligations and rights. Here we study the founding of St. Norbert College and the college's present relationship with the Norbertines. In addition we try to arrive at a definition of a Catholic College and the Catholic identity of St. Norbert College. We also examine the role of the diocesan bishop and his relationship with the various levels of authority in the college structure.

In Chapter 3 we look at the *mandatum* of c. 812 and its reaffirmation in *Ex corde Ecclesiae*. We examine the nature of the *mandatum* itself, as a juridic act and document. We discuss the authority of the diocesan bishop and the conference of bishops relating to colleges or universities. We look at the documents themselves, *Ex corde Ecclesiae* (1990) and the “Application of ‘*Ex corde Ecclesiae*’ for the United States” (1999). We also look at the notion of collaboration in the teaching function of the Church and how the Eastern Code speaks of collaboration.

In Chapter 4 we look at the application of the *mandatum* of c.812 to St. Norbert College and those college authorities responsible for its implementation. We examine the role of the corporate member with its reserved powers in the civil corporation of the college.

The areas of concern for this study examine the American Catholic college and university regarding issues of ownership and control by a lay-religious board of trustees, and the hierarchical oversight of bishops as it pertains to the teaching of theology. As we look at each of these roles we shall see how they are interrelated and how together they arrive at the realized objective of the Catholic institution of higher studies.⁸

We are social beings and we live by laws. This study considers the Catholic identity of an educational institution of higher studies and the maintenance of that identity. Since the institution is visible and the works are carried out in the public forum, it is only fitting that ecclesial law requires official recognition and oversight when those doing the good work do so in the name of the Church or when those doing the good work desire that it be called Catholic.

St. Norbert College is the concrete example we use in this study. Founded by the Norbertine Fathers of De Pere, Wisconsin in 1898 as a school to train future Norbertines, it is a college recognized for academic excellence and its Catholic heritage. We have interviewed elders of the college and of the Norbertine community for historical information. We have gathered input from former and present students, faculty, administrators, and trustees. The Norbertine community continues to support St. Norbert College and views it as the community's principal apostolate in the diocese of Green Bay, Wisconsin, USA.

Our question is how does an American Catholic college or university implement the requirements of the *mandatum* of c. 812 and *Ex corde Ecclesiae*? What role does the sponsoring religious community have in the canonical compliance of their separately incorporated apostolate(s) as it is applied to St. Norbert College?

⁸ It is beyond the scope of this work to do an exhaustive study of all the relevant canons as there are other studies cited in this work where that is done.

CHAPTER 1

THE 'CATHOLIC' IDENTITY OF AN INSTITUTION

If the Catholic Faith is true, a University cannot exist externally to the Catholic pale, for it cannot teach Universal Knowledge if it does not teach Catholic theology, but still, though it had ever so many theological Chairs, that would not suffice to make it a Catholic University; for theology would be included in its teaching only as a branch of knowledge, only as one out of many constituent portions, hence a direct and active jurisdiction of the Church over it and in it is necessary even though the case could be so that the whole system of Catholicism was recognized and professed, without the direct presence of the Church, still this would not make a University a Catholic Institution.

John Henry Cardinal Newman¹

Introduction

This first chapter presents an analysis of Catholic identity and how that identity is applied to an academic institution of higher studies. The present day college and university owe their system of academic pursuit to the mediaeval schools of Europe, many of which were begun by communities of religious women and men. Indeed, the first Catholic colleges and universities founded in the United States of America² stand on the foundation of those early church-related academies. We will also discuss the board of trustees and the reserved powers of the sponsor and the ways that American Catholic

¹ J.H. NEWMAN, *The Idea of a University*, Discourse IX, 1, 2, London, EN, Longmans, 1891, pp. 214-215. Also in F.M. TURNER (ed.), *The Idea of a University: John Henry Newman*, New Haven, CT, Yale University Press, 1996, p. 149 (=TURNER, *The Idea of a University*).

² In this work the "United States of America" (=USA) refers to the nation and country. The nouns: *United States* (=US/U.S.) and *America*, and the adjective: *American* all refer to the United States of America. The noun: *state* is used to designate a political society whether of national or federal government or a lesser jurisdiction such as a State or Province.

colleges and universities have re-structured their institutions in light of the increased role of the laity in higher education.

St. Norbert College is an American institution of higher studies describing itself as *Catholic*. The description of *Catholic* is treated by looking at that which makes one *Catholic*. How an institution is canonically described as *Catholic* is the subject of this first chapter.

1.1 – At the Beginning

There is a clear defining moment when a person is joined in membership to the Christian faithful and recognized as *Catholic* and at least in some way is subject to ecclesiastical authority. That moment is Baptism of water and word:

Canon 96: By baptism one is incorporated into the Church of Christ and is constituted a person in it with the duties and rights which are proper to Christians in keeping with their condition insofar as they are in ecclesiastical communion and unless a legitimately issued sanction stands in the way.³

Canon 205: Those baptized are fully in the communion of the Catholic Church on this earth who are joined with Christ in its visible structure by the bonds of the profession of faith, the sacraments, and ecclesiastical governance.⁴

However, beyond this single momentary event in one's life, there are other criteria that may limit or even remove the status of *Catholic*.⁵ When we apply the term

³ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus fontium annotatione et indice analytico-alphabetico auctus (=CIC)*, Città del Vaticano, Libreria editrice Vaticana, 1983. *CIC/83* c. 96: "Baptismo homo Ecclesiae Christi incorporatur et in eadem constituitur persona, cum officiis et iuribus quae christianis, attenta quidem eorum condicione, sunt proprio, quatenus in ecclesiastica sunt communione et nisi obstet lata legitime sanctio." The canon(s) of this Code will be hereafter referred to as c. or cc. for canon or canons respectively followed by the canon number(s). All subsequent English translations from the Code of Canon Law: Latin-English edition, New English Translation, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA (=CLSA), Washington, DC, CLSA, 1999.

⁴ *CIC/83* c. 205: "Plene in communione Ecclesiae catholicae his in terris sunt illi baptizati, qui in eius compage visibili cum Christo iunguntur, vinculis nempe professionis fidei, sacramentorum et ecclesiastici regiminis."

Catholic to collective entities, such as schools and universities, or to inanimate objects, such as books and buildings, or to actions, such as rituals and devotions, or to apostolic endeavors, such as care for the sick and the poor, it is their relationship to the Catholic Church that gives them a Catholic identity.

Even though c. 205 speaks of the baptized, only those baptized joined by the bond of profession of faith, the sacraments, and submission to the authority of the Church's governance are in full communion with the visible structure of the Catholic Church.

The present *Code of Canon Law* specifically addresses the use of the term *Catholic* in the title of a university. The institution known as *Catholic* by its name or title must receive permission from the competent ecclesiastical authority before using *Catholic*:

Canon 808: Even if it is in fact Catholic, no university is to bear the title or name *Catholic university* without the consent of the competent ecclesiastical authority.⁶

⁵ Baptism makes one a member of the Christian Community. When this sacrament is administered as prescribed by the Catholic Church, the person baptized not only becomes a member of the Catholic Church but also is named and identified as *Catholic*. Anyone may claim Catholic identity by using the word *Catholic* as a descriptive. C. 205 makes the distinction between one who is in "communion" and one who is in "full communion" with the Catholic Church...between one's personal faith and the institutional Church which has the obligation to uphold and protect the integrity of the faith. Thus, a distinction between an institutionalization of *things* recognized as being supported by the Church and those *things* which are done on private initiative. For purposes of this work, *Catholic* is used to mean in "full communion" with the Roman Catholic Church unless otherwise stated.

⁶ *CIC/83* c. 808: "Nulla studiorum universitatis, etsi reapse catholica, titulum seu nomen *universitatis catholicae* gerat, nisi de consensu competentis auctoritatis ecclesiasticae." This canon applies to colleges, universities and other such institutions of higher learning. The Code does not state in each case who is the competent ecclesiastical authority to establish a Catholic university. The list of *competent ecclesiastical authorities* is found, however, in c. 312 when establishing public associations of the Christian faithful: the Holy See for universal and international associations; the conference of bishops in its own territory for national associations; and the diocesan bishop in his own territory for diocesan associations or works. To this, we would have to add certain ordinaries and major superiors in religious institutes for the establishment of associations connected with their institutes.

There is a distinction between *Catholic* in fact (*de facto*) and *Catholic* in title (*de iure*): fact or status relates to one's standing and actions in light of c. 205 and all that flows from it. Title relates to juridic recognition of name in light of c. 808. The university has some relationship to the Church that gives it its identity as *Catholic*, either *de facto* or *de iure*.⁷ In looking at the formal aspects of the external elements of Catholic identity as found in the 1983 Code (cc. 807-814), Catholic universities are those universities "which have some bonds of an indeterminate nature with a competent ecclesiastical authority and which give to said authority rights and duties including vigilance."⁸ Catholic identity goes deeper than the mere use of the word *Catholic* as a descriptive in name or title; Catholic identity goes to the very core or essence of the person, thing, or work.

CIC/83 c. 312, §1: "Ad erigendas consociationes publicas auctoritas competens est: 1° pro consociationibus universalibus atque internationalibus, Sancta Sedes; 2° pro consociationibus nationalibus...Episcoporum conferentia in suo territorio; 3° pro consociationibus dioecesanis, Episcopus dioecesanus in suo cuiusque territorio, non vero Administrator dioecesanus, iis tamen consociationibus exceptis quarum erigendarum ius ex apostolico privilegio alii reservatum est." Therefore, relying on c. 17 for "parallel places" we could say that the competent ecclesiastical authorities for the establishment of a Catholic university are: the Holy See, the Conference of Bishops, the Diocesan Bishop, and certain Ordinaries and Major Superiors of religious institutes. *CIC/83* c. 17: "Leges ecclesiasticae intellegendae sunt secundum propriam verborum significationem in textu et contextu consideratam; quae si dubia et obscura manserit, ad locos parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum."

⁷ Denoting it *de iure* refers to the mere descriptive use of *Catholic* in its name or title, while referring to it as *de facto* means that in addition to the descriptive use of *Catholic* there is the upholding of institutional Catholic principles.

⁸ R. PAGÉ, "From the University which is Really Catholic to the University which is Legally Catholic," in *Concilium*, 5 (1994), p. 92 (=PAGÉ, "From the University"). See also A. GALLIN, "Catholic Higher Education and the 1983 Code of Canon Law," in *Canon Law Society of America Proceedings (=CLSAP)*, 52 (1990), pp. 134-151 for a treatment of the evolution of cc. 807-814 and the early dialogue between the Vatican and American Catholic universities concerning the question of the Catholic identity of colleges and universities. See also P. VALDRINI, "Les universités catholiques: exercice d'un droit et contrôle de son exercice (canons 807-814)," in *Studia canonica*, 23 (1989), pp. 445-458 for a treatment of the exercise of rights and control as found in cc. 807-814.

J.H. Provost speaks of Catholic identity as including “the transmission of values, even for a Catholic university; but it is not the same thing as transmitting values.” There still must be some recognizable way by which the university relates to the Catholic Church as a visible institution.⁹ The laws of the Church regard the transmission of values as integral to education. A general description of education is presented as a striving “for the maturity of the human person,” while seeking “to know and live the mystery of salvation.”¹⁰ It is primarily persons who transmit values: parents, educators, the community, the Church through pastors and catechists, etc. But in the Catholic understanding, the transmission of values needs institutional support and expression through parishes and religious institutes by means of schools, colleges and universities.¹¹

1.2 – Sources of Identity

There are many ways of approaching the issue of Catholic identity: an *historical* approach, examining how the notion has been applied in its common usage throughout the centuries; a purely *canonical* and “institutional” approach, using verifiable criteria and principles to determine what is called *catholicity*; a more doctrinal approach, focusing on what is called *ecclesiality*; or even proceeding from a mixture of the

⁹ See J.H. PROVOST, “The Canonical Aspects of Catholic Identity and *Ex corde Ecclesiae*”, in *Studia canonica*, 25 (1991), pp. 159-161 (=PROVOST, *ECE*). See also PAGÉ, “From the University,” pp. 92-95.

¹⁰ Cf. *CIC* c. 217: “Since Christ’s faithful are called by baptism to lead a life in harmony with the gospel teaching, they have the right to a Christian education, which genuinely teaches them to strive for the maturity of the human person and at the same time to know and live the mystery of salvation.”

¹¹ PROVOST, *ECE*, p. 158.

preceding two, as Pope John Paul II did in *Ex corde Ecclesiae*.¹² A fifth possible way to determine Catholic identity is to identify those values that are to be promoted and to observe how they are transmitted. We will consider these different approaches.

1.2.1 – Historical Criteria

The contemporary university as a center of education and academic pursuit has its roots in the university systems spawned in mediaeval Europe. Organized higher education, as we know it, emerged only in the twelfth and thirteenth centuries. That is when courses of studies with faculties and examinations first appeared, and when commencements and degrees were given. American universities are the successors and heirs of twelfth-century Paris and Bologna.¹³

Prior to the rise of the university¹⁴ of the middle ages, education and learning was centered in monasteries.¹⁵ Monks were engaged in choir duties, writing and copying

¹² JOHN PAUL II, Apostolic Constitution *Ex corde Ecclesiae* (=ECE), 15 August 1990, in *Acta Apostolicae Sedis* (=AAS), 82 (1990), pp. 1475-1509. English translation USCC, *On Catholic Universities, 'Ex corde Ecclesiae'*, Washington, DC, USCC, 2000, 49 p.; *Origins*, 20 (1990), pp. 265-276.

¹³ See C. H. HASKINS, *The Rise of Universities*, New York, NY, Peter Smith, 1940, pp. 3-6. The foundations of these universities may go back to the late ninth and early tenth centuries with ties to Popes and Emperors. In later years they succumbed to increasing state control. The university of today is the linear descendant of these two great medieval universities in that the origin and nature of these earliest universities are the legacy held by the universities of today, namely, institution, instruction, and student life.

¹⁴ The very word *university* is sometimes misunderstood, in terms of 'universality' of academic opportunities, rather than as an aggregate or plurality of people. See the detailed exposition on *university*, in H. RASHDALL, *The Universities of Europe in the Middle Ages*, new edition, vol. 1, F.M. POWICKE and A.B. EMDEN (eds.), London, UK, Oxford University Press, 1936, pp. 4-17 (=RASHDALL-1). RASHDALL explains that the medieval term *studium generale*, referring to a place with organized faculties of studies that attracts students from beyond the locale, most closely corresponds to our contemporary understanding of a university. For purposes of this work and following American custom, *university* and *college* are interchangeable and apply to the same type of institution of higher studies.

manuscripts, manual labor and in spiritual reading. Those seeking entrance into the monastic life had to be taught Latin and the skills needed to carry on common life, hence, the emergence of the monastic schools. Today, monastic education still remains a private enterprise.¹⁶ The cathedral or bishop's school was erected directly by the bishop for the training of clergy; some of these schools later became universities.¹⁷ Today they would be called diocesan seminaries, stressing philosophy and theology.¹⁸

The attitude of Church authority toward these schools and education in general is laid out by one of the decrees (canons) of Lateran Council III, called by Pope Alexander III in 1178 and convened in March 1179:

¹⁵ See RASHDALL-1, pp. 26-30. During the Benedictine Age—the period between the time of Charles the Great (742-814 AD) and the eleventh century—European education was mainly in the hands of monks. The Palace School was the center of the Carolingian educational system for non-ecclesiastics as well as the empire's future bishops and abbots. The reform legislation of Charles the Great replaced the old imperial and municipal schools with the Episcopal (Cathedral) and monastic schools primarily for the education and training of young clerks (clerics). The schools of the monasteries were the first to open their doors to non-monastic students. This in turn made the monastic schools the far more important of the two classes of Christian schools in Europe. From the ninth century onward, the monasteries had two distinct schools—one for their own *oblats* and one for outsiders. The Church was the great champion of education and there was an intimate connection between the Church and the school as characterized by much of the reform legislation of Charles the Great.

¹⁶ The following are some contemporary examples of American private schools that have groundings in the monastic tradition: the Benedictine Monks of St. Anselm Abbey in Washington, DC have St. Anselm Abbey School; the Benedictine Monks of Mary Mother of the Church Abbey in Richmond, VA have Benedictine High School; the Benedictine Sisters of St. Gertrude Convent in Richmond, VA have St. Gertrude High School; the Jesuits and the Brothers of the Christian Schools each have college preparatory high schools in Philadelphia, Chicago, Washington, DC, and throughout the USA.

¹⁷ See RASHDALL-1, pp. 43-44. When the monasteries began to close their schools to the non-monastic student, the cathedral schools, which were as ecclesiastical in their character and aim as the monastic schools, took up the educational activities of the secular students and their more independent secular teachers. The Cathedral School of Paris eventually developed into the earliest and greatest of the universities in Northern Europe—the University of Paris.

¹⁸ See L.J. DALY, *The Medieval University*, New York, NY, Sheed and Ward, 1961, pp. 5-7.

Canon 18: Since the church of God is bound to provide like a mother for those in want, with regard to both the things which concern the support of the body and those which lead to the progress of the soul, therefore, in order that the opportunity of learning to read and progress in study is not withdrawn from poor children who cannot be helped by the support of their parents, *in every cathedral church a master is to be assigned some proper benefice so that he may teach the clerics of that church and the poor scholars.* Thus the needs of the teacher are to be supplied and the way to knowledge opened for learners. In other churches and monasteries too, if anything in times past has been assigned in them for this purpose, it should be restored. Let no one demand any money for a license to teach, or under cover of some custom seek anything from teachers, or forbid anyone to teach who is suitable and has sought a license. Whoever presumes to act against this decree is to be deprived of ecclesiastical benefice. Indeed, it seems only right that in the church of God a person should not have the fruit of his labor if through self-seeking he strives to prevent the progress of the churches by selling the license to teach.¹⁹

In looking at the universities of the middle twelfth through fifteenth centuries, Rashdall shows that Papal Bulls established many of them. Indeed, many of the great universities of present day Europe owe their foundation to the mediaeval Church.²⁰ The Catholic Church, through popes, bishops, abbots and monks has been active in the formal education of clergy and laity and has established centers to carry out this mission since the monastic age.

Lateran Council IV, called by Pope Innocent III in 1215, reaffirmed this mission. These centers of learning were now transmitting knowledge and information through an expanded curriculum of theology, philosophy, art and science:

Constitution 11: Zeal for learning and the opportunity to make progress is denied to some through lack of means. The Lateran Council [III] therefore

¹⁹ N.P. TANNER (ed.), *Decrees of the Ecumenical Councils*, Latin-English edition, original text established by G. ALBERIGO et al, in consultation with H. JEDIN, London, UK, Sheed & Ward, Washington, DC, Georgetown University Press, 1990, p. 220. Also see L. THORNDIKE, *University Records and Life in the Middle Ages*, New York, NY, Columbia University Press, 1944, p. 10, as cited by DALY, *The Medieval University*, p. 7. Emphasis added.

²⁰ RASHDALL-1, p. xxiv. Of the 75 universities established in Europe between 1100 and 1500, 47 received a Papal Bull of foundation; many others were founded spontaneously or by Imperial Bull or Royal Charter. Many of these secular universities later received papal confirmation by a grant of a Faculty of Theology or Canon Law.

dutifully decreed that "in each cathedral church there should be provided a suitable benefice for a master who shall instruct without charge the clerics of the cathedral church and other poor scholars, thus at once satisfying the teacher's needs and opening up the way of knowledge to learners". This decree, however, is very little observed in many churches. We therefore confirm it and add that not only in every cathedral church but *also in other churches with sufficient resources, a suitable master elected by the chapter or by the greater and sounder part of it, shall be appointed by the prelate to teach grammar and other branches of study*, as far as is possible, to the clerics of those and other churches. The metropolitan church shall have a theologian to teach scripture to priests and others and especially to instruct them in matters which are recognized as pertaining to the care of souls. The income of one prebend shall be assigned by the chapter to each master, and as much shall be assigned by the metropolitan to the theologian. The incumbent does not by this become a canon but he receives the income of one as long as he continues to teach. If the metropolitan church finds providing for two masters a burden, let it provide for the theologian in the aforesaid way but get adequate provision made for the grammarian in another church of the city or diocese.²¹

So, in this context, "practically speaking, the Church was the only institution in Europe that showed consistent interest in the preservation and cultivation of knowledge."²² Centers of learning were erected by hierarchical or religious authorities and were closely connected to those authorities, be they pope, bishop or abbot. Those which were attached to a church or monastery of men or women were thought of as Church schools and identified as Christian, even when their curricula went beyond theology and philosophy.²³

²¹ TANNER, *Decrees of the Ecumenical Councils*, p. 240. Emphasis added.

²² DALY, *The Medieval University*, p. 4.

²³ See RASHDALL-1, pp. 28-33. See also N. SCHACHNER, *The Mediaeval Universities*, New York, NY, F.A. Stokes Publishers, 1938, pp. 1-7, 11. See also E.J. POWERS, *A History of Catholic Higher Education in the United States*, Milwaukee, WI, Bruce Publishing, 1958, p. 7 (=POWERS, *A History*). POWERS claims that not only did the monasteries of the middle ages preserve some of the classical heritage of ancient Greece and Rome but also that these Christian schools existed to serve the needs of the [Catholic] Church and of religion. Since the establishment of these Christian schools predates the Protestant Reformation and since these early schools were connected to monasteries that were *Catholic* and under Catholic Church authorities, these schools could be considered as Catholic in a contemporary understanding. See also B. O'CONNOR, "The Top Ten Reasons for Attending a Catholic College/University," in *Current Issues in Catholic Higher Education*, 20:2 (2000), p 117. The author gives as the #10 reason:

From an historical perspective, universities owe their origins to the Church and “from the 19th century onwards, after the nationalization of university education, the term *Catholic university* began to be applied to the universities founded by the Holy See and dependent on it, as opposed to State universities.”²⁴

1.2.2 – Canonical Criteria

There are four canons in the 1983 Code which state that no institution, school, undertaking or association may call itself *Catholic* without the authorization of the competent ecclesiastical authority:

Canon 216: Since they participate in the mission of the Church, all the Christian faithful have the right to promote or sustain apostolic action even by their own undertakings, according to their own state and condition. Nevertheless, no undertaking is to claim the name *Catholic* without the consent of competent ecclesiastical authority.²⁵

Canon 300: No association is to assume the name *Catholic* without the consent of the competent ecclesiastical authority according to the norm of canon 312.²⁶

“We [Catholics] have been in the education business for a long time. The first universities were connected to monasteries.”

²⁴ J.M. GONZÁLEZ DEL VALLE, “Catholic Universities and Other Institutes of Higher Studies [cc. 807-814],” in E. CAPARROS, M. THÉRIAULT, and J. THORN (eds.), *Code of Canon Law Annotated (=CCLA)*, 2nd edition revised and updated of the 6th Spanish language edition “Latin-English edition of the *Code of Canon Law* and English language translation of the 6th Spanish language edition of the commentary prepared under the responsibility of the INSTITUTO MARTÍN DE AZPILCUETA,” E. CAPARROS, H. AUBÉ et al. (eds.), Montréal, QC, Wilson & Lafleur Limitée, 2004, p. 624. The term “Catholic university” was used in opposition to “Protestant university” as a result of the Protestant Reformation. See note 93 in this chapter for an explanation of the canonical distinction between Ecclesiastical Universities and Faculties that are dependent upon the Holy See for their foundation and Catholic Universities that are not.

²⁵ *CIC/83* c. 216: “Christifideles cuncti, quippe qui Ecclesiae missionem participant, ius habent ut propriis quoque inceptis, secundum suum quisque statum et condicionem, apostolicam actionem promoveant vel sustineant; nullum tamen inceptum nomen catholicum sibi vindicet, nisi consensus accesserit competentis auctoritatis ecclesiasticae.”

²⁶ *CIC/83* c. 300: “Nulla consociatio nomen «catholica» sibi assumat, nisi de consensu competentis auctoritatis ecclesiasticae, ad normam can. 312.” See note #6 for listing of who is the competent ecclesiastical authority.

Canon 803, §3: Even if it is in fact Catholic, no school is to bear the name *Catholic school* without the consent of the competent ecclesiastical authority.²⁷

Canon 808: Even if it is in fact Catholic, no university is to bear the title or name *Catholic university* without the consent of the competent ecclesiastical authority.²⁸

These are not the only canons that touch on the notion of *catholicity*; indeed, the canons on schools provide many elements that can be used to understand what *catholicity* means. In the founding of a truly Catholic university,²⁹ there is a link to some form of ecclesiastical supervision or recognition,³⁰ especially by the diocesan bishop. The recognition by the competent hierarchical authority is explicitly required in order that an institution or other endeavor may call itself *Catholic*. This is grounded in Vatican Council II, in that “no enterprise may lay claim to the name *Catholic* if it has not the approval of

²⁷ *CIC/83* c. 803, §3: “Nulla schola, etsi reapse catholica, nomen *scholae catholicae* gerat, nisi de consensu competentis auctoritatis ecclesiasticae.”

²⁸ *CIC/83* c. 808: “Nulla studiorum universitatis, etsi reapse catholica, titulum seu nomen *universitatis catholicae* gerat, nisi de consensu competentis auctoritatis ecclesiasticae.”

²⁹ *CIC/17* c. 1379, §2 “Itemque si publicae studiorum Universitates doctrina sensuque catholico imbutae non sint, optandum ut in natione vel regione Universitas catholica condatur.” “Similarly, if public Universities are not imbued with a Catholic doctrine and spirit, it is very desirable that a Catholic University be founded in the nation or region.” This canon implies that a truly Catholic university is one that is imbued with Catholic doctrine and spirit. See above, note 7 for the distinction between a *de iure* (in name) and *de facto* (adherence to Catholic principles) Catholic university. A university while not *Catholic* in its name or title may indeed be truly Catholic if it is imbued with Catholic doctrine and spirit. A university that is Catholic in name yet lacking in its adherence and upholding of Catholic principles may not be truly Catholic. It is not in name or title alone that a university is truly Catholic.

³⁰ See *ECE*, II, Art. 3, §§1-3, p. 1504; USCC, *ECE*, p. 40; *Origins*, 20 (1990), p. 274. A Catholic university may be established by various ecclesiastical authorities or entities or by individual Catholics; it may be a self-standing public juridic person or it may be an apostolate or activity of a public juridic person. There are alternative categories that describe a Catholic university from the canonical perspectives of: a) the university as an apostolate of the Holy See; b) the university as an apostolate of the National Conference of Catholic Bishops; c) the university as an apostolate of a diocesan bishop or a group of diocesan bishops; d) the university as an apostolate of a public juridic person; e) the university as public juridic person; and f) the university as established by individuals. A public juridic person acts in the name of the Church; individuals and private associations act in their own name.

legitimate ecclesiastical authority.”³¹ The four canons discussed above that most directly deal with Catholic identity, cc. 216, 300, 803, §1, and 808, have as their common source *Apostolicam actuositatem*, n. 24.³²

The 1917 Code had no precise regulations on this matter comparable to those which are found in the 1983 Code.³³ It did, however, give encouragement for the dutiful establishment and support of Catholic schools on the elementary, intermediate, and higher levels:

Canon 1379, §1: If Catholic schools according to the norm of Canon 1373, whether elementary or middle, do not exist, care should be taken, especially by local Ordinaries, that they should be founded.

§2: Similarly, if public Universities are not imbued with a Catholic doctrine and spirit, it is very desirable that a Catholic University be founded in the nation or region.

§3: The faithful shall not fail to support to the best of their ability the founding and support of Catholic schools.³⁴

There is no doubt that an institution can call itself *Catholic* and even use the word in its title, but is it in fact *Catholic*? Does it represent to the public all that the Catholic Church encourages and espouses? Is it in communion with the Catholic Church and does

³¹ SECOND VATICAN COUNCIL, Decree on the Apostolate of the Laity *Apostolicam actuositatem*, 18 November 1965, n. 24, in *AAS*, 58 (1966), pp. 837-864, here at pp. 856-857 (=AA); English translation in A.P. FLANNERY (gen. ed.), *Vatican Council II: Constitutions, Decrees, Declarations*, new revised edition, vol. 1, Northport, NY, Costello Publishing, 1992, pp. 766-798, here at pp. 789-790 (=FLANNERY1). Also see PROVOST, *ECE*, p. 159.

³² See above, notes 25-28.

³³ See K. WALF, “Future Aspects of Catholic Identity,” in *Concilium*, 5 (1994), p. 128.

³⁴ *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (=CIC/17), Typis Polyglottis Vaticanis, 1917. CIC/17 c. 1379, §1: “Si scholae catholicae ad normam can. 1373 sive elementariae sive mediae desint, curandum, praesertim a locorum Ordinariis, ut condantur.” §2: “Itemque si publicae studiorum Universitates doctrina sensuque catholico imbutae non sint, optandum ut in natione vel regione Universitas catholica condatur.” §3 “Fideles ne omittant adiutricem operam pro viribus conferre in catholicas

it come under the authority of the competent ecclesiastical authority? If the answer is 'no' to any of these questions, how can the institution appropriately make use of the word, *Catholic*? From the canonical perspective, unless an institution or endeavor meets certain external requirements—namely, approbation from legitimate ecclesiastical authority—it is not truly identified as *Catholic* in either its title, its actions, or in its self-description.

1.2.2.1 – Canonically 'Catholic'

We turn to an examination of Catholic identity. F.G. Morrissey takes a deductive approach to the question of Catholic identity. He lists six criteria or consequences arising from a school that uses the title *Catholic* or is in fact *Catholic*:

It is under the control of the competent ecclesiastical authority, or acknowledged as *Catholic* (c. 803, §1);

The principles of Catholic doctrine are the basis for the formation and education given (c. 803, §2);

The competent ecclesiastical authority has given consent for the use of the term *Catholic* (c. 803, §3);

Religious education is subject to the authority of the Church (c. 804, §1);

Teachers of religion have certain qualifications relating to doctrine, witness of Christian life, and teaching ability (cc. 804, §2; 805);

There is a right of visitation by the ordinary (c. 806).³⁵

These criteria also apply to the college or university seeking to establish Catholic identity.

scholas condendas et sustentandas." All subsequent English translations from E.N. PETERS (ed.), *The 1917 or Pio-Benedictine Code of Canon Law*, San Francisco, CA, Ignatius Press, 2001.

³⁵ See F.G. MORRISSEY, "What Makes an Institution *Catholic*?" in *The Jurist*, 47 (1987), pp. 535-538 (=MORRISSEY, "What Makes"). The canons that he cites are all from the *CIC/83*. Cf. F. G. MORRISSEY, "Book III: The Teaching Office of the Church-Catholic Education," commentary on c. 803 in G. SHEEHY et al. (eds.), *The Code of Canon: Letter and Spirit, A Practical Guide to the Code of Canon Law*, prepared by the CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND (=CLSGBI) in association with the CANADIAN CANON LAW SOCIETY (=CCLS), Collegeville, MN, Liturgical Press, 1995, p. 440 (=CLSGBI *Comm*).

L. Örsy takes an inductive approach to understanding the use of the adjective *Catholic* to identify a university. Admitting there are different relationships that exist between the university and the believing community, Örsy speaks of six different relationships of a university with the community from the loosest to the closest of unions:

Secular universities in a Catholic environment, such as the National University in Dublin called Catholic in distinction from Trinity College which was spoken of as a Protestant institution;

Secular universities integrated with a Catholic academic unit, such as the Catholic theology faculties in state universities in Germany, Switzerland, Austria, and Canada;

Universities nourished by Catholic tradition but with no formal institutional commitment, such universities founded under Catholic auspices in the United States of America and Canada assert their fidelity to a living tradition but keep the Catholic ideal alive as a free choice on their part;

Universities with institutional commitment to Catholic ideals but without an ecclesiastical charter, such universities, mostly found in the United States of America, maintain an internal Catholic identity by their own statutes and are not "persons" in canon law;

Universities established by the Church with a canonical charter, such as the Catholic Universities of Leuven and Louvain-la-Neuve, and The Catholic University of America, hence they have canonical status and personality;

"Ecclesiastical Universities and Faculties" established by the Church and dedicated to "sacred sciences." These institutions founded by the authority of the Holy See confer ecclesiastical degrees with canonical effects and are regulated by the Apostolic Constitution *Sapientia christiana*.³⁶

Some of the examples offered by Örsy operate outside strict canonical norms. Institutions that fall under the looser category, such as the secular university with a *Catholic* character, usually have a theology department that is confessionally Catholic, and sometimes their statutes are approved "within the framework of a concordat between the civil government and the Holy See."³⁷

³⁶ See L. ÖRSY, *The Church: Learning and Teaching: Magisterium, Assent, Dissent, Academic Freedom*, Wilmington, DE, Michael Glazier, 1987, pp. 112-121 (=ÖRSY, *The Church*).

³⁷ ÖRSY, *The Church*, p. 115.

P. Valdrini offers a third approach to this issue. He speaks of three different types of Catholic universities going from the closest to the loosest of relationships:

The university that has a very close statutory link with the Church, because the Church intervened in its establishment or recognition;

While not accepting the Church as a partner, the university that is committed to the Church both by its statutes and by custom, and accepts the vigilance and control of the Church;

The university that has no statutory commitment but remains aligned (with the teachings of the Church) due to social influence and tradition.³⁸

This approach does not give a clear and precise understanding of Catholic identity in all cases. The first of his categories most closely aligns with the canonical norm. He does note that all the faithful have the right to establish schools and universities and participate in the teaching mission of the Church. While this indeed may be true, there are corresponding obligations that must also be addressed and observed. The question is how this right can be reconciled with the Church's vigilance and authority over Catholic teaching at a university.

Yet, in the diverse approaches of Morrissey, Örsy and Valdrini there is one underlying common factor, namely that the institution was established either by a competent ecclesiastical authority or was approved by it. Without such a link to ecclesiastical authority, the word *Catholic* cannot be used in the title or description. In order that the university be established or recognized as Catholic, it must have approved

³⁸ See P. VALDRINI, "Les universités catholiques: exercice d'un droit et contrôle de son exercice (cc. 807-814)," in *Studia canonica*, 23 (1989), pp. 445-458. VALDRINI speaks of these universities as: *le lien statutaire total* (the total statutory bond); *le lien statutaire partiel et l'engagement formel* (the partial statutory bond and formal engagement); and *un autre lien* (another bond).

statutes and be given the status of a juridic person, an association, or be identified with individuals acting with official recognition.³⁹

Such recognition means that all institutions and associations calling themselves Catholic are subject to the vigilance and the oversight of the diocesan bishop:

The bishops, as vicars and legates of Christ, govern the particular Churches assigned to them by their counsel, exhortations and example, but over and above that also by the authority and sacred power which indeed they exercise exclusively for the spiritual development of their flock in truth and holiness. This power, which they exercise personally in the name of Christ, is proper, ordinary and immediate. In virtue of this power bishops have a sacred right and duty before the Lord of legislating for and of passing judgment on their subjects, as well as regulating everything that concerns the good order of divine worship and of the apostolate.⁴⁰

This reflects the renewed Vatican II understanding of the bishop's role as vicar and legate of Christ in the particular Church assigned to his care by showing that the fundamental criterion of catholicity is a relationship to the diocesan bishop or to some other competent ecclesiastical authority.⁴¹

³⁹ The juridic person is distinct from a natural person. See *CIC/83* cc. 113-117 for the treatment of juridic persons and in whose name the juridic person acts. The work or apostolate undertaken by a juridic person in the name of the Church has a *catholicity* or Catholic identity that flows in some way from the juridic person.

⁴⁰ SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen gentium* (=LG), 21 November 1964, n. 27, in *AAS*, 57 (1964), pp. 5-75, here at pp. 32-33; English translation in FLANNERY1, pp. 350-432, here at pp. 382-384.

⁴¹ See CONGREGATION FOR BISHOPS, Directory for the Pastoral Ministry of Bishops *Apostolorum successors*, 22 February 2004, n. 135, Città del Vaticano, Libreria Editrice Vaticana, 2004, pp. 149-150. See also SACRED CONGREGATION FOR BISHOPS, Directorium de pastorali ministerio episcoporum *Ecclesiae imago*, 22 February 1973, n. 68, Città del Vaticano, Typis polyglottis Vaticanis, 1973, p. 72; see also X. OCHOA, *Leges Ecclesiae post Codicem iuris canonici editae*, Roma, Commentarium pro Religiosis, 1980, vol. V, n. 4174, cols. 6462-6539, here cols. 6483-6484 (=OCHOA, *LE*). English translation by the Benedictine monks of the Seminary of Christ the King, Mission, BC, *Directory on the Pastoral Ministry of Bishops*, Ottawa, Publication Service of the Canadian Catholic Conference, 1974, p. 38.

1.2.2.2 – Canonical Development of 'Catholic' Identity

The present *Code of Canon Law* does not provide a direct answer to the question of Catholic identity of the university, but it does provide indicators that can be fleshed out and applied to contemporary situations.⁴²

The discussion surrounding Catholic identity grew out of a concern for the “very many apostolic enterprises owing their origin to the free choice of the laity and run at their discretion.”⁴³ Lay collaboration in the service of the Church has been a tradition as old as the Church itself. Popes throughout the ages have not failed in setting forth the objectives toward which the activity of Catholics are directed and the rules that must be followed.⁴⁴

Pope St. Pius X, in his Encyclical *Il fermo proposito*, expounded on the collaboration of the laity and named it “Catholic Action” in which there is submission to the hierarchy, unity of forces and the spiritual formation of those involved.⁴⁵ Pope Pius XI linked Catholic Action more closely to the hierarchy requiring that a mandate be

⁴² See MORRISEY, “What Makes,” p. 531. A work or activity done or accomplished by one who is catholic does not necessarily make the work or the activity “catholic”.

⁴³ *AA*, 24, p. 856; FLANNERY1, p. 789. An in depth look at the historical canonical development of these canons is beyond the scope of this work, for an extensive historical treatment of *CIC/83* cc. 216, 300, 803, §1, and 808 see E.A. RINERE, “Catholic Identity and the Use of the Name *Catholic*,” in *The Jurist*, 62 (2002), pp. 131-158 (=RINERE, “Catholic Identity”).

⁴⁴ THE BENEDICTINE MONKS OF SOLESMES (selector/arranger), *Papal Teachings: The Lay Apostolate* (Benedictus XIV-Pius XII), translated by a secular priest, Boston, MA, Daughters of St. Paul, 1961, p. 9.

⁴⁵ PIUS X, Encyclical *Il fermo proposito*, 11 June 1905, in *ASS*, 37 (1904-1905), pp. 741-767; see p. 757. English translation in V.A. YZERMANS, *All Things in Christ: Selected Encyclicals and Documents of Saint Pius X*, Westminster, MD, Newman Press, 1954, pp. 59-70. Pius X, in writing this letter to the bishops of Italy, was taking a broad view of “Catholic Action” not as a sharing in the spiritual affairs of the Church but extending it to any area of work that

obtained from the bishop and that the undertakings of the laity be part of the apostolate of the bishop and not solely belonging to the laity.⁴⁶ Pope Pius XII addressed the World Congress for the Lay Apostolate in 1957 and in an attempt to reconcile his predecessors he described Catholic Action as a “collaboration with” the hierarchy or a “participation in” the apostolate of the hierarchy.⁴⁷

Leading up to Vatican II there was much debate as to the theological meaning of the laity’s “collaboration” and “participation” in the apostolate of the hierarchy and “on the eve of Vatican II there was no theological agreement on the nature of Catholic Action nor on the relationship of the lay apostolate to the apostolate of the hierarchy.”⁴⁸ The bishops of the world wanted this relationship of the laity and clergy defined and the dependence of lay apostolates on the apostolate of the hierarchy affirmed.⁴⁹

pertained to the mission of the Church even to the temporal, economic, administrative and political affairs of secular society.

⁴⁶ PIUS XI, Encyclical *Quae nobis*, 13 November 1929, in *AAS*, 20 (1929), pp. 384-387. Pius XI linked further the dependence of Catholic Action to the apostolate of the hierarchy in his encyclical *Non abbiamo bisogno*, 29 June 1931, in *AAS*, 23 (1931), pp. 285-312. See also PIUS XII, *Allocutiones: Quelques aspects fondamentaux de l’apostolat des laïcs*, in *AAS* 49 (1957), pp. 924-925, l’original en français. PIUS XII speaks in terms of “collaboration” rather than in terms of “participation” in the apostolate of the hierarchy. On the nature and definition of Catholic Action, see also PIUS XI, *Ubi arcano*, 23 December 1922, in *AAS*, 14 (1922), pp. 673-700.

⁴⁷ PIUS XII, Address *Six ans se sont écoulés*, 5 October 1957, in *AAS*, 49 (1957), pp. 922-939. This seems still to leave the question unanswered as to what level of relationship exists between those initiatives of the laity that spring from the Catholic faith and the hierarchy.

⁴⁸ RINERE, “Catholic Identity,” p. 134.

⁴⁹ See *Acta et documenta Concilio oecumenico Vaticano II apparando*, in Civitate Vaticana, Typis polyglottis Vaticanis, 1960-1969. See also *Acta synodalia Sacrosancti Concilii oecumenici Vaticani II*, in Civitate Vaticana, Typis polyglottis Vaticanis, 1970-1990. Both of these works record the discussions taken on the question of the relationship of laity and hierarchy in carrying out the apostolate and the various *schemata* that led to drafts and ultimately to the present canons on Catholic identity of the new Code.

During the council there were efforts made to balance the rights of the laity to initiate apostolic works and the obligations and rights of the bishops to direct and regulate their endeavors. It was determined that Catholic Action required a mandate and that lay associations and other such works required consent from the competent authority for use of the term "Catholic." Such restriction developed in reference to associations and "the required consent could be obtained explicitly or implicitly."⁵⁰

The concern for the catholicity of the Church's educational institutions was raised as the *coetus* of the Code Commission continued its work on the Church's teaching office as it relates to the Church's competence in all areas of human learning, at all levels, since the Church's right stems from a divine authority:

Regarding that which concerns the Church, the nature of its obligation must be distinguished and just as the Church has to do with religious or Christian education or formation by right, so does it in those things which concern earthly life. The obligation and right of the Church to care for Christian education rests upon its divine mission, by the strength of which it announces the way of salvation to all people and communicates the life of Christ to believers and likewise should assist in its development. The obligation and right of the Church for formation in those things which regard earthly life rests upon a different foundation: those things which regard formation in earthly disciplines pertain to the common patrimony of all people; thus, so that the Church also may give its help to the work of that formation, and also by the special reason that the Church is held to help in this work insofar as those disciplines are intimately connected with the supernatural vocation of people.⁵¹

⁵⁰ RINERE, "Catholic Identity," pp. 139-140.

⁵¹ W. ONCLIN (Relator), COETUS CONSULTORUM "DE MAGISTERIO ECCLESIASTICO" in *Communicationes*, 7 (1975), p. 155: "Ad Ecclesiam quod spectat, distinguitur natura eius obligationis et iuris prout agitur de educatione religiosa vel christiana aut de formatione in iis quae vitam respiciunt terrenam. Obligatio et ius Ecclesiae ad curandam educationem christianam innititur eiusdem missione divina, vi cuius viam salutis omnibus hominibus annuntiare atque credentibus vitam Christi communicare atque in eadem evolvenda iis auxilio esse debet. Obligatio et ius Ecclesiae ad formationem in iis quae vitam terrenam respiciunt alio fundamento innititur: quae ad formationem in disciplinis terrenis spectant ad commune omnium patrimonium pertinent, ita ut et Ecclesia suam adiutricem operam ad eandem formationem praebere possit, immo et speciali ratione hanc operam praestare tenetur, quatenus nempe disciplinae terrenae cum hominis vocatione supernaturali intime conexas sint."

In a subsequent meeting of the *coetus* a member of the commission noted that there were juridical consequences that follow from the matter in “that Catholic schools cannot restrict education only for the teaching of Catholic doctrine.”⁵²

The *ius vigen*s does not have a retroactive effect (c. 9) in the use of *Catholic* in the title or description of those Catholic colleges and universities established before November 27, 1983.⁵³ J.A. Coriden, in his commentary on c. 808, argues that such colleges and universities are “not subject to the new provisions of this canon,” and that “it is difficult to imagine very many Catholic colleges or universities in the United States actually requesting the permission suggested in this canon.” J.A. Coriden further suggests that since most American Catholic colleges and universities were founded by religious institutes there is already a great confidence in their Catholic identity.⁵⁴ However, *Ex corde Ecclesiae* says that these norms are to be incorporated into the governing documents and statutes of all Catholic colleges and universities in operation today.⁵⁵

⁵² COETUS STUDIORUM “DE MAGISTERIO ECCLESIASTICO,” Sessio IV, 21-24 April 1969, in *Communicationes*, 20 (1988), p. 221: “Ill. mus Peritus animadvertit dari ex hac materia consecraria iuridica uti, ex. gr., scholas catholicas educationem restringere tantummodo institutioni doctrinae catholicae non posse.”

⁵³ CIC/83 c. 9: “Leges respiciunt futura, non praeterita, nisi nominatim in eis de praeteritis caveatur.” Laws regard the future, not the past, unless they expressly provide for the past. See also NATIONAL CONFERENCE OF CATHOLIC BISHOPS [USA], *The Application of ‘Ex corde Ecclesiae’ for the United States*, II, Art 1, 3, Washington, DC, United States Catholic Conference, 2000, p. 12; also in *Origins*, 30 (2000), pp. 68-75, here at p. 71 (=NCCB, *Application of ‘ECE’*) whereby those who establish or sponsor a Catholic university have an obligation to make sure they are able to carry out their canonical duties in ways that are acceptable to the relevant federal and state laws, regulations, and procedures.

⁵⁴ See J.A. CORIDEN, “The Teaching Office of the Church,” in J.A. CORIDEN, T.J. GREEN, AND D.E. HEINTSCHEL (eds.), *The Code of Canon Law: A text and Commentary*, commissioned by CLSA, New York, NY/Mahwah, NJ, Paulist Press, 1985, p. 573 (=CLSA *Comm 1*).

⁵⁵ In contrast, see also *ECE* II, Art. 1, §3, pp. 1502-1503; UCCC, *ECE*, p. 38; *Origins*, 20 (1990), p. 274, where it is stated that “a university established or approved by the Holy See, by

1.2.3 – Ecclesiastical Criteria

For an educational institution to be canonically understood as *Catholic*, it must come under the control of the competent ecclesiastical authority or under the control of a public juridical person or it must be given written recognition as such by the competent ecclesiastical authority (cc. 803, 808).

The diocesan bishop, while maintaining vigilance and oversight of the Catholic schools in his territory, does not supervise or control all of the schools. This supervision and control is exercised most often by the juridical entity that established them or sponsors them.

Schools supervised or controlled by a public ecclesiastical juridical person are also considered as *Catholic*. A juridic person is a legal construct, and therefore a fictitious person established by ecclesiastical authority for some apostolic purpose. A juridic person is constituted either by the law (*a iure*) or by special grant of the competent authority (*ab homine*) given through a decree:

Canon 114, §1: Juridic persons are constituted either by the prescript of law or by special grant of competent authority given through a decree. They are aggregates of persons (*universitates personarum*) or of things (*universitates rerum*) ordered for a purpose which is in keeping with the mission of the Church and which transcends the purpose of the individuals.

§2: The purposes mentioned in §1 are understood as those which pertain to works of piety, of the apostolates, or of charity, whether spiritual or temporal.

§3: The competent authority of the Church is not to confer juridic personality except on those aggregates of persons (*universitates personarum*) or of things (*universitates rerum*) which pursue a truly useful purpose and, all things

an episcopal conference or another assembly of Catholic hierarchy, or by a diocesan bishop is to incorporate these general norms and their local or regional applications into its governing documents and conform its existing statutes both to the general norms and to their applications and submit them for approval to the competent ecclesiastical authority.”

considered, possess the means which are foreseen to be sufficient to achieve their designated purpose.⁵⁶

Once established, such public juridic persons⁵⁷ “fulfill in the name of the Church, according to the norm of the precepts of the law, the proper function entrusted to them in view of the public good...”⁵⁸ Should a public juridic person establish a school at any level with the consent of the diocesan bishop, it would indeed be *Catholic* and be subject to the vigilance and oversight of the diocesan bishop.⁵⁹

In a similar fashion, an association of the Christian faithful⁶⁰ may be established as a public association by decree of the competent authority and recognized as receiving “a mission for the purposes, which it proposes to pursue in the name of the Church.”⁶¹ Hence, if such a public association of the Christian faithful were to establish a school in

⁵⁶ *CIC/83* c. 114, §1: “Personae iuridicae constituuntur aut ex ipso iuris praescripto aut ex speciali competentis auctoritatis concessione per decretum data, universitates sive personarum sive rerum in finem missioni Ecclesiae congruentem, qui singulorum finem transcendit, ordinatae.” §2: “Fines, de quibus in §1, intelleguntur qui ad opera pietatis, apostolates vel caritatis sive spiritualis sive temporalis attinent.” §3: “Auctoritas Ecclesiae competens personalitatem iuridicam ne conferat nisi iis personarum aut rerum universitatibus, quae finem persequuntur reapse utilem atque, omnibus perpensis, mediis gaudent quae sufficere posse praevidentur ad finem praestitutum assequendum.”

⁵⁷ Public juridic persons established by the law itself include dioceses (c. 373), parishes (c. 515, §3), religious institutes (c. 634, §1) and societies of apostolic life (c. 741, §1).

⁵⁸ *CIC/83* c. 116, §1: “...constituuntur ut intra fines sibi praestitos nomine Ecclesiae, ad normam praescriptorum iuris, munus proprium intuitu boni publici ipsis commissum expleant...”

⁵⁹ See *CIC/83* c. 801 regarding those religious institutes whose proper mission is Catholic education.

⁶⁰ See *CIC/83* cc. 300, 301, 312, 313 regarding the establishment and mission of associations.

⁶¹ *CIC/83* c. 313: “...missionem recipit...ad fines quos ipsa sibi nomine Ecclesiae persequendos proponit.”

accordance with the prescribed norm of law, that school would likewise be *Catholic* and come under the vigilance and oversight of the diocesan bishop.

It is reserved to the competent ecclesiastical authority to erect associations of the Christian faithful which have the mission to teach Christian doctrine, to promote public worship or to pursue other ends in keeping with their nature. The competent ecclesiastical authority is determined by the nature of the association and the level at which the association is to carry out its mission. Consequently, the competent authority for international associations is the Holy See, for national associations it is the conference of bishops, and for diocesan or particular associations it is the diocesan bishop or other local ordinary.⁶²

1.2.4 – Mixed Criteria

There may indeed be another set of standards operative for a different understanding of the *catholicity* of a university that has no extensive Catholic influence and is not institutionally Catholic in its thrust. Where there is less involvement of Church authorities as such, these principles may apply to colleges and universities that do not fall under complete and full canonical hierarchical authority.

Indeed, “the Catholic university should have a clear vision of what its catholicity is and, without any discrimination, should present to those who desire to join the faculty or the administration what the standards of research and behavior are in the university. The students too should know which characteristics are essential to a Catholic

⁶² See *CIC/83* c. 312 (see above, note 6).

university.”⁶³ These principles should be clear to all and should propel and guide the university in fulfilling its mission.

This approach appears to have been, at least in part, taken by John Paul II in the Apostolic Constitution *Ex corde Ecclesiae*, which recognized many types of Catholic educational institutions, even those where there is no specific link to Church authorities.⁶⁴ So, as a matter of practice, an educational institution may be *Catholic* in all things except in its title—which must have canonical approbation. Such possibilities might include:

There is a general apostolic purpose—“of service to others.” This purpose is based on the personal commitment of those involved in the work.⁶⁵

The faithful perceive the institution as *Catholic*, that is, as operating under the auspices of a Catholic group, etc., and consequently as being trustworthy.⁶⁶

There is a form of *catholicity* permeating the establishment, although such is not legislated or contractual.⁶⁷

The work of the institution is presented as being *Christian* without necessarily adding the word *Catholic* in the title.⁶⁸

The work and mission of the institution corresponds to a local need that is perceived as being in harmony with the purpose of the Church.⁶⁹

Government authorities have granted the work certain exemptions that are usually reserved to religious organizations.⁷⁰

⁶³ G. PITTAU, “Characteristics of Catholic Universities,” in *Origins*, 29 (1999), p.168.

⁶⁴ See *ECE*, II, Art. 3, §§1-3, p.1504; USCC, *ECE*, p. 40; *Origins*, 20 (1990), p. 274. Cf. *CIC/83* cc. 808 and 322.

⁶⁵ Cf. *ECE*, I, 34, p. 1494; USCC, *ECE*, p. 26; *Origins*, 20 (1990), p. 272.

⁶⁶ Cf. *ECE*, I, 25, p. 1489; USCC, *ECE*, p. 20; *Origins*, 20 (1990), p. 270.

⁶⁷ Cf. *ECE*, I, 13, p. 1483; USCC, *ECE*, p. 13; *Origins*, 20 (1990), p. 268.

⁶⁸ Cf. *ECE*, I, 49, p. 1501; USCC, *ECE*, p. 35; *Origins*, 20 (1990), p. 273.

⁶⁹ Cf. *ECE*, I, 37, §1, p. 1495; USCC, *ECE*, p. 28; *Origins*, 20 (1990), p. 272.

⁷⁰ Cf. *ECE*, I, 37, §2, p. 1496; USCC, *ECE*, p. 29; *Origins*, 20 (1990), p. 272.

It would then seem that where there is canonical ambiguity, the naming of Catholic identity may very well rest on all those who participate in the life of the educational institution at whatever level: administration, faculty, student, trustee or sponsor. These participants need to have a clear understanding of the nature of *catholicity* as it is applied to the institution. Bishop D.W. Wuerl said: "It is the institution itself and not just the individual members that manifest the Catholic identity and character of the school. A Catholic university or college recognizes itself as part of the Catholic Church and its mission."⁷¹

1.2.5 – Criteria Based on the Transmission of Values

When speaking of values "there is an expectation in the law that families, and especially parents, will be the primary instruments for transmitting values from one generation to the next."⁷² That this obligation falls principally to parents is noted in:

Canon 226, §2: Since they have given life to their children, parents have a most grave obligation and possess the right to educate them. Therefore, it is for Christian parents particularly to take care of the Christian education of their children according to the doctrine handed on by the Church.⁷³

Generally speaking, the transmission of values is the work of individuals—parent, community, pastor, educator, etc. In a Catholic understanding, it is the duty of the institutions within the Church to support those entrusted with this responsibility and to give expression in a concrete way to the work to be done. This support and expression is

⁷¹ D. WUERL, "The Institutional Identity of a Catholic University," in *Origins*, 29 (1999), p. 233.

⁷² PROVOST, *ECE*, p. 157.

certainly found in parish communities and religious institutes, namely, schools, colleges, and universities.⁷⁴

John Paul II characterizes a Catholic university as having “the honor and responsibility...to consecrate itself without reserve to the cause of truth, namely of proclaiming the meaning of truth, that fundamental value without which freedom, justice and human dignity are extinguished.”⁷⁵ Thus, “the objective of a Catholic university is to assure in an institutional manner a Christian presence in the university world confronting the great problems of society and culture.”⁷⁶

If Catholic identity includes the transmission of values, even for a Catholic university, then in some way these transmitted values must have some recognizable relationship to the visible institutional Catholic Church.⁷⁷ There is a transmission of values that are identified with the Catholic Church and its teachings. Such values include: a holistic approach to the human person with respect for the dignity of human life in all stages, as well as a responsible stewardship of temporal goods and the environment.⁷⁸

Since the transmission of Christian values is one of the marks of a Catholic university, it is incumbent upon the institution to maintain an environment that fosters the

⁷³ *CIC/83* c. 226, §2: “Parentes, cum vitam filii contulerint, gravissima obligatione tenentur et iure gaudent eos educandi; ideo parentum christianorum imprimis est christianam filiorum educationem secundum doctrinam ab Ecclesia traditam curare.”

⁷⁴ See PROVOST *ECE*, p. 158.

⁷⁵ *ECE*, Introduction, 4, p. 1477; USCC, *ECE*, p. 5; *Origins*, 20 (1990), p. 267.

⁷⁶ *ECE*, I, 13, p. 1483; USCC, *ECE*, p. 13; *Origins*, 20 (1990), p. 268.

⁷⁷ See PROVOST, *ECE*, p. 159.

⁷⁸ Cf. SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, 7 December 1965, nn. 3, 4, 27, 36, in *AAS*, 58 (1966), pp. 1025-1120,

catholicity of the institution. It is therefore the aim or goal of *catholicity* to present the Catholic past—traditions and values—as it lives in today's world.⁷⁹

In *Ex corde Ecclesiae*, John Paul II draws from a 1972 document, *L'Université Catholique dans le monde moderne: document final du 2^{ème} Congrès des Délégués des Universités Catholiques*, four characteristics that are essential for every university that is to be identified as Catholic:

A Christian inspiration not only of individuals but [also] of the university community as such.

A continuing reflection in the light of the Catholic faith upon the growing treasury of human knowledge, to which it seeks to contribute by its own research.

Fidelity to the Christian message as it comes to us through the Church.

An institutional commitment to the service of the people of God and of the human family in their pilgrimage to the transcendent goal which gives meaning to life.⁸⁰

These characteristics are centered in Catholic tradition. This body of traditions and values contributes to the identity of the Catholic university as different from other academic institutions of higher studies. These values are reflected in the mission statements and in the vision of the leadership: "Every college and university professes to

here at pp. 1026, 1027, 1047, 1053; English translation in FLANNERY1, pp. 903-1001, here at pp. 904, 905, 928, 935.

⁷⁹ See M.J. LAVALLE, "What is Meant by a 'Catholic' University?", in *America*, 170 (1994), p. 4 (=LAVALLE, "What is Meant").

⁸⁰ *ECE*, I, 13, as quoted from "The Catholic University in the Modern World," final document of the Second International Congress of Delegates of Catholic Universities, Rome, 20-29 November 1972, n. 1, in *NCEA College Newsletter*, 35 (1973), pp. 1-10, here at p. 2. Original French: "L'Université Catholique dans le monde moderne," in *Periodica*, 62 (1973), pp. 625-657, here at p. 628.

have organizational values which it expresses in its mission statement, operational goals and through the person of its leader.”⁸¹

However, “Catholic colleges use vision and values to focus on goals and to set aspirational standards”⁸² that have a biblical and faith-based foundation. Complementing this value-oriented system are the traditions and values of the college’s founders—which in many cases are religious institutes—and their boards of trustees.⁸³

1.3 – Public Recognition

Although the oldest universities of Europe may trace their history back to the middle ages, it is difficult to determine a precise beginning since sources are limited or

⁸¹ J.P. MURPHY, *Visions and Values in Catholic Higher Education*, Kansas City, MO, Sheed & Ward, 1991, p. 2 (=MURPHY, *Visions and Values*).

⁸² MURPHY, *Visions and Values*, p. 4.

⁸³ This work looks at colleges and universities founded by religious communities, referring to institutions of higher studies (learning) and the religious institutes that founded them. Institutes are the *persons* (religious communities) and institutions are the *things* (colleges, universities). A religious institute, according to CIC/83 c. 607, §2, is “a society in which members, according to proper law, pronounce public vows, either perpetual or temporary which are to be renewed, however, when the period of time has elapsed, and lead a life of brothers or sisters in common.” While the term “religious institute” has a very precise meaning in the Code, it finds expression in various recognized forms of vowed and/or common life societies in the Church. In this work the use of the term “religious institute” is to be taken in a broader understanding so as to include Secular Institutes (c. 710) and Societies of Apostolic Life (c. 731, § 1).

The public juridic personality of Secular Institutes is implicit in c. 718 in that only the goods of a public juridic person are regulated by Book V of the Code (cf. c. 1257). Societies of Apostolic Life are public juridic persons as per c. 741, §1 and their goods are regulated by Book V of the Code. Associations of the Christian faithful (c. 298, §1) are a distinct form of the People of God coming together for a specific purpose or pious work and are not included in this broader use of the term “religious institute.” The goods of private associations are regulated by their own statutes. However, this is not to diminish the fact that such associations, while not *ipso iure* juridic persons, may indeed found a Catholic college or university in keeping with the prescriptions of canon law, albeit, not in the same way that a religious institute sponsors a college or university or other institution.

non-existent. Historians trace schools back to the pre-Grecian cultures in the Middle East where selected students learned skills needed for a particular role in society.

It was vital for the survival and continuation of the most primitive of societies that knowledge is passed down to the succeeding generations. Yet, formal school education came about only with the development of urban population centers with strong central authorities capable of attending to the common needs of society. The relationship between lower level school bodies and higher level bureaucracy is found in the developing urban cultures of both church and civil societies.⁸⁴

This relationship and the subsequent acts of the bureaucracy—bishop or chancellor, town government or king, emperor or pope—are what gave public recognition to the school. The powers of the different authorities and the struggles over control made diplomacy a necessary part of the life of the university. Where there was local contention between a bishop and chancellor over understanding the difference between a cathedral school and a new university, appeal was made to the papacy, which during the mediaeval period was taking on the role of guardian of the universities.⁸⁵

⁸⁴ See O. PEDERSEN, *The First Universities: 'Studium generale' and the Origins of University Education in Europe*, English translation by R. NORTH, Cambridge, UK, Cambridge University Press, 1997, pp. 1-4 (=PEDERSEN, *The First Universities*). PEDERSEN presents a concise history of the educational structures of the earliest cultures of the Middle East including those of the Hebrews through to the time of Jesus Christ, as well as the ancient Greeks and Romans, and how these systems influenced the educational structures of the first Christian societies in Europe leading to the foundations of the first universities. As civil and church structures wielded more power during the early years of the medieval universities, the universities found themselves fighting on many fronts for their very existence and their independence. For another presentation of the ancient Near and Middle Eastern cultures and their educational structures, see W.F. ALBRIGHT, *From the Stone Age to Christianity*, 2nd ed., Garden City, NY, Doubleday, 1957, pp. 25-81.

⁸⁵ See PEDERSON, *The First Universities*, pp. 189-190.

As the power struggles for local control over the universities increased, the universities turned more and more to the pope. Papal influence grew stronger as it soon “became a tradition to turn to Rome to get privileges confirmed, statutes certified, and thereby to obtain the valuable right to grant the *ius ubique docendi*, which assigned to each graduate of the university the right to teach throughout the whole of ‘Christendom’ (i.e., the territory of the western church) as a field of operation.”⁸⁶

This interaction between church and civil authorities has carried through to the present day. In the contemporary world, Catholic colleges and universities in the United States of America not only have to interact with church and civil authorities, but also have to comply with the standards of accrediting associations. These associations are voluntary regional groupings of institutions of higher learning that “establish minimum standards of academic quality as well as professional standards governing personnel policies and managerial practices.”⁸⁷

⁸⁶ PEDERSON, *The First Universities*, p. 189. See also DALY, *The Medieval University*, p.199. There were two privileges that helped to explain the close relationship between the universities and the pope. In addition to the *ius ubique docendi*, there was granted the right to keep benefices—a benefice was an ecclesiastical office carrying with it some revenue. Since most university students were of clerical status or ecclesiastical officials, these privileges were of great importance in maintaining papal control and influence over the universities and clerical students.

⁸⁷ See the Position Paper of the College and University Department, NATIONAL CATHOLIC EDUCATIONAL ASSOCIATION (=NCEA), “Relations of American Catholic Colleges and Universities with the Church”, in A. GALLIN (ed.), *American Catholic Higher Education: Essential Documents, 1967-1990* (=GALLIN, *Essential Documents*), New York, NY/Mahwah, NJ, Paulist Press, 1992, pp. 71-86, here at p. 73. These accrediting associations can place limitations on an institution’s autonomy; and without the accreditations an institution’s ability to attract students and faculty, as well as government (public) and private funding can be severely limited. See also D.J. O’BRIEN, *From the Heart of the American Church: Catholic Higher Education and American Culture*, Maryknoll, NY, Orbis Books, 1994, pp. 72-76 (=O’BRIEN, *From the Heart*) for his discussion of the ‘three publics’ as the church, the academic community, and the American people as a whole [government as representative of the people].

For each of these areas of public recognition: church, state and academic community, the Catholic university has a role of responsibility and as such “Catholic universities are participants in the life of the universal Church, the local church, the higher education community of the United States and the civic community.”⁸⁸

Neither the American government⁸⁹ nor any accrediting or other professional association has authority regarding the *catholicity* of a college or university; however,

⁸⁸ NATIONAL CONFERENCE OF CATHOLIC BISHOPS [USA], *The Application of 'Ex corde Ecclesiae' for the United States*, I, 3, Washington, DC, United States Catholic Conference, 2000, p. 5; also in *Origins*, 30 (2000), p. 69 (= NCCB, *Application of 'ECE'*). This is particular law of the United States. It received the *recognitio* of the Holy See on 3 May 2000 and went into force on 3 May 2001.

⁸⁹ The First Amendment of the Constitution of the United States of America guarantees, “Congress [the endowed legislative body of the national government] shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” as found at <<http://www.house.gov/Constitution/Constitution.html>> (16 September 2004). With these words there is established a “separation of church and state” with a constitutionally limited interference by the state in the internal affairs of an established church. This is a fundamental article of the American creed, without distinction of sect or party. The relationship of church and state secures full individual liberty of religious thought, speech and action; the freedom to worship (or not to worship) and to practice one’s faith according to one’s own conscience within the limits of the public peace, not to the dictates of those who hold governmental power. Such liberty would be impossible on the basis of a union of church and state, where the one of necessity restricts or controls the other.

The church, as such, has guaranteed freedom from political interference; the church has nothing to do with the state except to obey its laws and to strengthen the state’s moral foundations. The state is responsible to its citizens and makes governmental decisions by governmental processes; the state does not answer to ecclesiastical authority. The state has nothing to do with the church except to protect the church’s rights in matters of property and liberty. The state must likewise be equally just to all forms of belief and unbelief which do not endanger the public safety. Churches and their leaders, like all citizens, have the right to influence government, but no one church or combination of churches has legal authority over government. See R. L. SHINE, “Church and State: Some Convictions and Perplexities Coming Out of Experiences of the United States of America,” in WORLD COUNCIL OF CHURCHES (=WCC), *Church and State: Opening a New Ecumenical Discussion*, Faith and Order Paper, n. 85, Geneva, Switzerland, WCC, 1978, pp. 32-33.

The American Catholic Church enjoys the exercise of its full canonical rights in education under American secular law; the Apostolic See has concordats and other agreements with many national governments for the recognition and exercise of these rights. The Church also has to deal with governments that prohibit or limit the exercise of its rights.

these entities can and do give public recognition that the institution identifies itself as Catholic.⁹⁰

The first and predominant level of Catholic identity is found within the structures of the Catholic Church itself, for it is the Church that recognizes Catholic identity; this then finds secular recognition within the civil structures of society, and then academic recognition by accrediting and professional associations.

1.3.1 – Church Recognition

If indeed education is about preparing the human person to attain the last end and true purpose of life, then “there can be no ideally perfect education which is not Christian education.”⁹¹

Canon law guarantees that the Church and those official bodies within the Church acting for and on behalf of the Church have the obligation and the right to establish the means to educate members of the Church:

Canon 794, §1: The duty and right of educating belongs in a special way to the Church, to which has been divinely entrusted the mission of assisting persons so that they are able to reach the fullness of the Christian life.

⁹⁰ By the public incorporation of the college or university in accordance with the secular laws of the American civil jurisdiction in which the institution is found, the Articles of Incorporation and By-laws may identify the institution as “Catholic.” In this way there is public recognition by means of secular law. See A-I, A-II, and A-III. In the various American States, the secular governmental authority and accrediting associations of the region grant recognition and authority for an educational institution to confer academic degrees or certificates following recognized standards.

⁹¹ PIUS XI, Encyclical *Divini illius Magistri* (=DIM), 31 December 1929, in *AAS*, 22 (1930), pp. 49-86, here p. 51. English translation *Christian Education of Youth*, Washington, DC, NATIONAL CATHOLIC WELFARE CONFERENCE (USA), 1936, p. 5; also in T.P. McLAUGHLIN (ed.), *The Church and the Reconstruction of the Modern World*, Garden City, NY, Image Books, 1957, p. 78.

§2: Pastors of souls have the duty of arranging so that all the faithful have a Catholic education.⁹²

Canon 807: The Church has the right to erect and direct universities, which contribute to a more profound human culture, the fuller development of the human person, and the fulfillment of the teaching function of the Church.⁹³

Today, there are 236 Catholic colleges and universities in the United States,⁹⁴ most of which were founded by religious communities of women and men; only a handful are sponsored by dioceses; even fewer by the Holy See.⁹⁵ Each of these

⁹² *CIC/83* c. 794, §1: "Singulari ratione officium et ius educandi spectat ad Ecclesiam, cui divinitus missio concredita est homines adiuvandi, ut ad christianae vitae plenitudinem pervenire valeant."

§2: "Animarum pastoribus officium est omnia disponendi, ut educatione catholica omnes fideles fruantur."

⁹³ *CIC/83* c. 807: "Ius est Ecclesiae erigendi et moderandi studiorum universitates, quae quidem ad altiorem hominum culturam et pleniorum personae humanae promotionem necnon ad ipsius Ecclesiae munus docendi implendum conferant." This canon is a more specific rewriting of the broader *CIC/17* c. 1375: "Ecclesiae est ius scholas cuiusvis disciplinae non solum elementarias, sed etiam medias et superiores condendi." "The Church has the right to found schools of any type, not only at the elementary level, but at intermediate and superior levels as well." See *CIC/83* c. 800.

⁹⁴ *The Official Catholic Directory, 1817-2008*, New York, NY, P.J. Kenedy & Sons, 2008, p. 2109. See <http://www.stirenes.org/information/college_list.html> (30 August 2008) for a list of Catholic colleges and universities in US. See also <http://ncregister.com/site/print_article/4636/> (30 August 2008) for a list of colleges and universities who answered a survey on Catholic Identity given by the National Catholic Register.

⁹⁵ See NCEA, "Relations of American Catholic Colleges and Universities with the Church," in GALLIN, *Essential Documents*, p. 73. While there is a canonical distinction between a Catholic university and an Ecclesiastical university, both are Catholic in identity. Ecclesiastical universities and faculties for the most part pursue the study of the sacred sciences of philosophy, theology, and canon law and grant ecclesiastical degrees in these and other related disciplines. These are a few of the several ecclesiastical faculties throughout the United States: theology at St. Mary of the Lake in Mundelein, IL and at St. Mary's Seminary and University in Baltimore, MD; philosophy and theology conducted by the Jesuits in St. Louis, MO and in Spokane, WA; and philosophy, theology and canon law at The Catholic University of America in Washington, DC. Ecclesiastical universities and faculties can be established only through erection by the Apostolic See or with its approval; their higher direction also pertains to it. *CIC/83* c. 816, §1: "Universitates et facultates ecclesiasticae constitui tantum possunt erectione ab Apostolica Sede facta aut approbatione ab eadem concessa; eidem competit etiam earundem superius moderamen." *CIC/83* c. 818 prescribes that cc. 810, 812, and 813 also apply to ecclesiastical universities.

institutions of higher studies received its initial Catholic identity from the fact that its founding institute or its sponsor was a juridic person, and “without ceasing to be a University, has a relationship to the Church that is essential to its institutional identity.”⁹⁶

Because the Catholic identity of institutions of higher studies is dependent on this relationship to the founding/sponsoring religious institute, and since it is the people of the Church who created these institutions and continue to support them, Catholic colleges and universities have a responsibility within the Church to maintain and safeguard their Catholic identity.⁹⁷

St. Norbert College has its Catholic identity in its relationship to the founding/sponsoring Norbertine religious institute. The Norbertine community (Canons Regular of Prémontré-*Canonici Regulari Premonstratensi*) of De Pere, Wisconsin is a public juridic person *ipso iure* and St. Norbert College remains—without juridic

For more on ecclesiastical universities and faculties see JOHN PAUL II, Apostolic Constitution *Sapientia christiana*, 15 April 1979, in *AAS*, 71 (1979), pp. 469-499 (=SCH). English translation in *Origins*, 9 (1979), pp. 33-45. See also SACRED CONGREGATION FOR CATHOLIC EDUCATION, Ordinationes ad constitutionem apostolicam *Sapientia christiana*, 29 April 1979, in *AAS*, 71 (1979), pp. 500-521 (=OSCh). English translation of both SCH and OSCh in *L'Osservatore Romano*, n. 23 (584), 4 June 1979, pp. 3-8, 8-12. Cf. GALLIN, *Essential Documents*, pp. 125, 126-127 for an English translation of OSCh Appendix I: According to article 6 of the Norms of Application: Norms for drawing up statutes, and OSCh Appendix II: According to article 64 of the Norms of Application: Divisions of ecclesiastical studies as now (1979) existing in the Church.

Prior to SCH, legislation regarding ecclesiastical universities and faculties can be found in: PIUS XI, Apostolic Constitution *Deus scientiarum Dominus*, 24 May 1931, in *AAS*, 23 (1931), pp. 241-262 and SACRED CONGREGATION FOR SEMINARIES AND UNIVERSITIES, Ordinationes ad constitutionem apostolicam *Deus scientiarum Dominus*, 12 June 1931, in *AAS*, 23 (1931), pp. 263-284.

⁹⁶ ECE, I, 27, p. 1490; USCC, ECE, p. 22; *Origins*, 20 (1990), p. 271.

⁹⁷ O'BRIEN, *From the Heart*, p. 72.

personality—an apostolate of the community. Consequently, while SNC is not Catholic in its name, it is Catholic through its founding religious institute.⁹⁸

1.3.1.1 – Relationship with the Diocesan Bishop

In the 1917 *Code of Canon Law*, the ordinaries of places had a clear relationship of oversight of the Catholic university that extended to areas of religious instruction and behavior of teachers which might be contrary to faith or good morals:

Canon 1381, §1: The religious instruction of youth in any schools whatsoever is subject to the authority of and inspection by the Church.

§2: Local Ordinaries [ordinaries of places] have the right and duty of being vigilant about any schools in their territory lest in them something be found or done against faith or good morals.

§3: In a similar way they [ordinaries of places] have the right of approving teachers and books of religion; likewise, for the sake of religion or morals, they can require that either teachers or books be removed.⁹⁹

However, in the current *Code of Canon Law*, the duty of direct and immediate oversight of the teaching staff of the Catholic university falls to the appropriate authority as

⁹⁸ Cf. LAGERWEY, *Letters*, pp. 310-311: “By Decree, dated and sealed 13 July 1898, given at Rome from the Propagation of the Faith, with the approval of His Holiness Pope Leo XIII, (In [sic] behalf of) The Most Eminent Lord Cardinal Prefect A. Archbishop Lavissen, the Most Reverend Bishop of Green Bay was granted permission to transfer to the Religious in perpetuity the parish church and lands of St. Joseph Parish and to proceed to the canonical erection and the acceptance in the name of the Holy See of the monastery adjoining said property of the Norbertine community of De Pere, according to [Church] law and the *Constitutions* of the Order itself, as well as the observance of the prescriptions of the Constitution, “*Romanos Pontifices*” of Pope Leo XIII, and all other laws being observed, especially those regarding papal cloister and perfect common life.” It was here at the parish of St. Joseph that St. Norbert College was founded in 1898 as an apostolate of the Norbertine community. See also A-I, The Articles of Incorporation for St. Norbert Abbey (Premonstratensian Fathers).

⁹⁹ *CIC/17* c. 1381, §1: “Religiosa iuventutis institutio in scholis quibuslibet auctoritati et inspectioni Ecclesiae subiicitur.” §2: “Ordinariis locorum ius et officium est vigilandi ne in quibusvis scholis sui territorii quidquam contra fidem vel bonos mores tradatur aut fiat.” §3: “Eisdem similiter ius est approbandi religionis magistros et libros; itemque, religionis morumque causa, exigendi ut tum magistri tum libri removeantur.”

determined by the university's statutes.¹⁰⁰ The duty and right of informed vigilance falls to the conference of bishops and the diocesan bishops:

Canon 810, §1: The authority competent according to the statutes has the duty to make provision so that teachers are appointed in Catholic universities who besides their scientific and pedagogical qualifications are outstanding in integrity of doctrine and probity of life and that they are removed from their function when they lack these requirements; the manner of proceeding defined in the statutes is to be observed.

§2: The conferences of bishops and the diocesan bishops concerned have the duty and right of being watchful so that the principles of Catholic doctrine are observed faithfully in these same universities.¹⁰¹

It is through these hierarchical relationships that the Catholic identity of the university is guaranteed. The American bishops have said that: "Bishops want to maintain, preserve and guarantee the Catholic identity of Catholic higher education, a responsibility they share in various ways with sponsoring religious communities, boards of trustees, university administrators, faculties and staff."¹⁰²

Bishop J. Malone of Youngstown, Ohio, told the annual meeting of the Association of Catholic Colleges and Universities that: "Colleges and universities are not an instrument of the hierarchy nor do these institutions themselves exist as independent, self-defining entities."¹⁰³ He went on to say:

¹⁰⁰ Indeed, oversight of the entire university family of students, employees and volunteers should be outlined in the statutes or guidelines of the institution.

¹⁰¹ *CIC/83* c. 810, §1: "Auctoritati iuxta statuta competenti officium est providendi ut in universitatibus catholicis nominentur docentes qui, praeterquam idoneitate scientifica et paedagogica, doctrinae integritate et vitae probitate praestent utque, deficientibus his requisitis, servato modo procedendi in statutis definito, a munere removeantur." §2: "Episcoporum conferentiae et Episcopi dioecesani, quorum interest, officium habent et ius invigilandi, ut in iisdem universitatibus principia doctrinae catholicae fideliter serventur."

¹⁰² NCCB, *Application of 'ECE'*, Introduction, p.1; *Origins*, 30 (2000), p. 68.

¹⁰³ J. MALONE, "Sharing Responsibility: University and Bishop", in *Origins*, 24 (1995), p. 581 (=MALONE, "Sharing Responsibilities"). Bishop Malone, a member of the US bishops'

We bishops and Catholic higher education people will have to discuss in concrete terms how we live out our mutual participation in the life and mission of the Church. For example, how does the bishop respect the distinctive way in which a Catholic college or university fulfills its unique pastoral role; how does the institution experience its legitimate autonomy and its integral responsibilities with the larger community? And also, how does [*sic*] a college and university respect the “presiding and overseeing” role of the diocesan bishop, who is the visible source of unity of the community of faith that is a local church and, as such, is present to and participates in the life of the college or university community.¹⁰⁴

In a concrete way, Bishop J. Malone’s statement is reflected in how St. Norbert College is intimately bound to the life of the Church of Green Bay [Wisconsin, USA].

1.3.1.2 – Curriculum

The curriculum reveals what the community holds as worthy and of intellectual value that is to be transmitted to succeeding generations. It also “is indicative of the kind of person the college hoped to produce, and it reflects probably more accurately than anything else the fundamental aims which higher education attempted to achieve.”¹⁰⁵

The earliest American colleges were founded on the model of the British universities and were commissioned for the training and intellectual pursuit of an educated Christian clergy.¹⁰⁶ The curriculum was that of the Latin and Greek classics.¹⁰⁷

committee that was developing norms to implement *ECE*, spoke to presidents of colleges and universities on 1 February 1995, in Washington, DC.

¹⁰⁴ MALONE, “Sharing Responsibilities,” p. 582.

¹⁰⁵ POWERS, *A History*, p. 49.

¹⁰⁶ See J.H. ROBERTS and J. TURNER, *The Sacred and Secular University*, Princeton, NJ, Princeton University Press, 2000, pp. 19-21. Prior to 1870, the typical American college functioned under the influence of American Protestantism (=ROBERTS/TURNER).

¹⁰⁷ See POWERS, *A History*, pp. 49-51. As noted by POWERS, in addition to logic, geometry and the physics of the day, there were added Hebrew, Chaldaic, Syriac and dogmatic theology. Those early permanent colleges that preceded Georgetown University were for the most

Historically American institutions of higher education were founded out of religious and strongly Protestant circles. Even those institutions of higher studies founded by the state, while generally nonsectarian, were Christian in character.¹⁰⁸ The Catholic Church in America was challenged to develop Catholic education from the top down as a result of the sectarianism of the existing educational system.¹⁰⁹

When the first permanent American Catholic colleges were founded, not unlike the founding of St. Norbert College, they “were more often than not forced to provide the basic as well as the more advanced education for the boys who matriculated.”¹¹⁰ The Catholic lower schools developed as preparatory schools for the colleges.

As the importance of science within the curriculum increased and the desire for knowledge of the natural world became more and more a focus in higher education, the

part sectarian and established under specific denominational auspices. The domination of these churches was felt in the purpose and curriculum of the college. See also POWERS, *A History*, p. 11 for a listing of those colleges that preceded Georgetown and under what specific denomination they were founded; POWERS, p. 12, describes these “first colleges in the English colonies [as] religious institutions in fact, whatever they may have professed in name.”

¹⁰⁸ See ROBERTS/TURNER, *The Sacred and Secular University*, pp. 20-21.

¹⁰⁹ See THIRD PLENARY COUNCIL OF BALTIMORE, *Acta et decreta concilii plenarii baltimorensis tertii*, 1884, Praeside Illmo. ac Revmo. JACOBO GIBBONS, Baltimore, John Murphy & Co., 1886, nn. 208-213. The bishops of the United States gathered in three Plenary Councils of Baltimore (1852, 1866, 1884) and spoke of the necessity of Catholic education. Given the social and political climate of nineteenth century America and the strong Protestant support and influence in higher education, the bishops of the Third Plenary Council of Baltimore gave commendations and encouragement for the endowment of those Catholic colleges and universities already in existence and for those yet to be established. See also POWERS, *A History*, pp. 224-226. On 13 November 1884, when the council had been in session four days, Miss Gwendoline Caldwell of New York City presented to the bishops a proposal to fund the founding of a National Catholic School of Philosophy and Theology. The bishops accepted the offer and this was the foundation of the first Catholic institution of higher studies founded as a university, The Catholic University of America. Pope Leo XIII approved the idea for a Catholic university for the United States on 22 October 1885; The Catholic University of America was canonically instituted on 10 April 1887; and it was opened on 13 November 1889. See also J.T. ELLIS, *The Formative Years of the Catholic University of America*, Washington, DC, American Catholic Historical Association, 1946, pp. 96-97, 226.

Catholic college expanded its courses of study to include not only the classics but also the sciences...hence the Arts and Sciences. Those first American Catholic colleges while “liberally oriented...their curricula were certainly preparatory and in some aspects were clearly practical.”¹¹¹

The Jesuits played a defining role in the development of the American Catholic college curriculum. Georgetown, as the first permanent American Catholic college, became an influential model for succeeding colleges. During the latter half of the nineteenth century it became clear that changes in the curriculum were needed, these included: “reduced emphasis on the classics, the creation of an English curriculum, and the organization of the college into a four-year course of study.”¹¹²

A truly liberal education had to include more than the study of the ancient languages and the pure sciences; it had to make a clear distinction between the curricula of high school and that of college. By the time of the founding of St. Norbert College in 1898, trends had been set and new standards of organization established. The impetus for change came from the Jesuits’ St. Louis University, with a four-year college curriculum separated from the high school—it was called the St. Louis Plan.¹¹³

¹¹⁰ POWERS, *A History*, p. 51.

¹¹¹ POWERS, *A History*, p. 58.

¹¹² POWERS, *A History*, p. 81. See POWERS, *A History*, pp. 78-83. Before these reforms in curricula, the normal course of studies found in Catholic colleges was six or seven years, with emphasis on the rudiments during the first year. The classical course of study was seen as less and less useful and Latin and Greek were no longer held in high regard. More value was now being placed on applied mathematics, the physical sciences, the useful arts, and studies that contributed to the progress of society. Georgetown University separated lower departments from higher departments initiating a definite curriculum for the college student in 1835, followed at Notre Dame in 1848, Mount St. Mary’s in 1853, Spring Hill in 1859 and Villanova in 1865.

¹¹³ See POWERS, *A History*, pp. 84-87. Between 1890 and 1920, American Catholic colleges went through a period of reorganization and a reshaping of their curricula according to

American Catholic colleges were redefining themselves and their purpose, and making a more practical contribution to American society and culture. The contemporary Catholic college then reshaped its curriculum in light of the Second Vatican Council and the social and ecclesial changes in American culture in the 1960s and 1970s. This has been accomplished by instituting academic courses and programs that reflect the many cultures and traditions of a global society and the diversity of American society that protects and upholds individual human rights.

1.3.2 – Secular Recognition

The credibility and the value of the degrees that an American college grants are linked to the college's relationship with the civil authorities. The National Catholic Educational Association (NCEA) lists five characteristics common to most American Catholic institutions of higher learning:

They are chartered by the state as public trusts, a basic condition of their existence and operation, and they are granted tax-free status by the state;

They are privately supported and under independent rather than state control;

They sustain their Catholic commitment by an institutional profession of Catholic identity;

They maintain a Catholic presence through their departments of religion and theology, the many Catholic administrators and faculty associated with them, their official policies and institutional concerns, the impact of theological and philosophical reflection on the various disciplines, and their programs of pastoral ministry;

what was called the St. Louis Plan. In 1887, at the Jesuit operated St. Louis University, the four year college was separated and the classes were named Humanities, Poetry, Rhetoric and Philosophy, which corresponded to the freshman, sophomore, junior and senior classes of the non-Catholic colleges. Commercial courses, while offered in many Catholic colleges, were not given college status until about 1920. New degrees were offered in addition to the Bachelor of Arts to distinguish the expanded courses of study: Arts and Sciences, Letters, Science, Commerce, Engineering and Law.

Their "ultimate goal is to form persons who are capable of effectively undertaking their responsibilities in the Church and in the world."¹¹⁴

Without a charter from the state, a college cannot operate as a tax-free entity or benefit from public funding. American colleges and universities, whether private or public, receive some form of public financial aid either directly or through student loans. Most often this direct financial assistance comes in building loans or government-sponsored grants that help to support the institution's research programs. And even though the college might bestow degrees, without a state charter these degrees are not recognized and do not have academic value in the general or professional fora.

The American Catholic college or university, while private and independent of state control, does not exist outside the state. The state recognizes the independent nature of the Catholic college or university, and in turn expects the institution to comply with laws that affect the common good of society.¹¹⁵ There is interdependence between the state and the American Catholic institution of higher studies.

In order for a Catholic college or university to take full advantage of the financial and protective benefits afforded it under civil law, it must structure itself according to the norm of the secular jurisdiction in which it is located and operative. By means of civil

¹¹⁴ NCEA, "Relations of American Catholic Colleges and Universities with the Church," in GALLIN, *Essential Documents*, p. 72 and as quoted from "The Catholic University in the Modern World," final document of the Second International Congress of Delegates of Catholic Universities, Rome, 20-29 November 1972, n. 39.

¹¹⁵ See J.J. MCGRATH, *Church and State in American Law: Cases and Materials*, Milwaukee, WI, Bruce Publishing, 1962, pp.70-155. MCGRATH gives a treatment of United States Supreme Court decisions on the right of private schools to exist and engage in their business as protected by the due process clause of the fourteenth amendment of the Constitution of the United States, and the limited supervisory rights of the state over all schools engaged in education.

incorporation, i.e. forming a corporation,¹¹⁶ the canonically established public juridical person engaging in apostolic work enjoys rights and obligations under secular civil law.

While there is a similarity in that the same association of individuals may have both secular law recognition and canonical recognition as fictitious persons, Morrisey states that: "Although the comparison is not entirely correct, a juridic person in canon law could be compared to a corporation in [secular] civil law. They are not the same, however, since not all separately incorporated entities have a so-called juridic personality, and not all juridically established entities have separate civil status."¹¹⁷

For the American Catholic college or university, whether subject to the ownership or sponsorship of the Holy See, a diocese, a religious institute, or other ecclesiastically recognized body, civil incorporation gives public secular recognition to its existence. Generally, as found in its Articles of Incorporation, the college named as a not-for-profit corporate entity,¹¹⁸ declares its relationship to the Catholic Church. The State—as a functionary of the public trust—gives recognition to this stated relationship.¹¹⁹

¹¹⁶ See H.C. BLACK, *Black's Law Dictionary*, 7th ed., St. Paul, MN, West Publishing Co., 1990, p. 340. A corporation is an artificial person or legal entity created by or under the authority of the laws of the state. An association of persons created by statute as a legal entity, having personality separate and distinct from its members (shareholders). The law treats the corporation itself as a person that can sue and be sued, that can purchase and sell property. The corporation survives the death of its members (shareholders), as shares can be transferred. It is vested with the capacity of continuous succession, either in perpetuity or for a limited term. The corporation acts as a unit of single individuals in matters relating to the common purpose of the association, within the scope of powers and authority conferred upon it by law. A corporation limits the personal liability of its members.

¹¹⁷ F.G. MORRISEY, "Juridic Status: Canonical Provisions, Possible Applications," in *Health Progress*, 67 (1986), p. 42.

¹¹⁸ See BLACK, *Black's Law Dictionary*, pp. 343, 1056. A not-for-profit corporation is a corporation formed for some charitable or benevolent purpose and not for profit making and generally organized under special statutes for this purpose; no part of its income is distributable to its members, directors or officers. For purposes of federal income taxation, a corporation may be exempt as an "exempt organization" if it is formed and operated exclusively for one or more of

An example of the relationship between an incorporated entity and a public juridic person is found in the Articles of Incorporation for St. Norbert College:

Article Four: Objects and Purposes:

The objects and purposes of this Corporation shall be the operation and management of the affairs, property, business and activities of St. Norbert College and as such shall be duly benevolent, beneficial, educational, charitable, religious and scientific. Its operation shall be conducted within the context of the theology, philosophy, other teachings and doctrines of the *Roman Catholic Church* and shall be in compliance with the objectives and philosophy of *The Order of Canons Regular of Prémontré, a religious order of the Roman Catholic Church*. Within these stated purposes, St. Norbert College shall be committed to the moral, personal, and intellectual development of its students; the maintenance of an environment in which such development may take place; and the presentation of a value oriented academic program and campus ministry which best utilizes the College's human and financial resources.¹²⁰

the following purposes: religious, charitable, scientific, testing for public safety, literary, educational, prevention of cruelty to children or animals, or to foster national or international sports (See Internal Revenue Code §501 [c] [3]). Any apostolate of a public juridic person should satisfy the definition of a not-for-profit corporation since it would be engaged in charitable and benevolent activity in the name of the Church. Some commentators note a technical difference between use of the terms "not-for-profit" and "nonprofit" in some state tax codes to describe corporate activities versus corporate structure, however, for our purposes in this paper these terms may be used interchangeably without noting any technical difference.

¹¹⁹ See A.J. MAIDA and N.P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations: A Canon Law Handbook*, St. Louis, MO, The Catholic Health Association of the United States, 1984, pp. 75-82, 117-126 (=MAIDA/CAFARDI, *Church Property*). The authors give a concise presentation of ecclesiastical property and how it ought to be structured under American secular law as a membership corporation. By structuring an apostolate as a two-tiered membership corporation there is a level of corporate authority above the board of trustees; this body is limited to members of the sponsoring public juridic person; and certain powers reserved exclusively to the corporate member assure that control and authority remains with the ecclesiastically established public juridic person. Thus, the secular corporation mirrors the canonical and ecclesial reality of the juridic person. In a corporation without members, it is the board of trustees who is the highest authority. Also see A.J. MAIDA, *Ownership, Control and Sponsorship of Catholic Institutions*, Harrisburg, PA, Pennsylvania Catholic Conference, 1975, pp. 26, 34-37 (=MAIDA, *Ownership*).

¹²⁰ A-II, Articles of Incorporation of St. Norbert College, State of Wisconsin, USA, 29 December 1981, Art. IV. Emphasis added. It is stated that SNC is a Catholic college. This has no canonical ramification but it does give public secular notice of the religious affiliation of the college. There is a distinct difference between canonical Catholic identity and civil (secular) recognition.

This article of incorporation clearly states the relationship of the college to the Catholic Church and its religious founders, and further identifies the College as subject to the authority of the Catholic Church. In the filing of these papers of incorporation and with the State's seal affixed, St. Norbert College, Inc. came into civil existence in 1981.¹²¹ With it came the State's recognition of St. Norbert College's relationship with the Catholic Church, hence, a secular public recognition of the Catholic identity of the college.

1.3.2.1 – Board of Trustees

In the USA, generally, the board of trustees is the highest level of authority in the day-to-day operation of the corporate structure of a university or college; this is true for St. Norbert College. Since the Second Vatican Council, there has been a shift in the structure and make up of such boards in American Catholic colleges which allows for more lay participation. As college enrollment increased and the number of clergy and religious women and men faculty decreased, colleges were faced with demands to be more open to lay faculty and lay members on their boards of trustees.¹²²

The overlapping of secular and canon law made for difficult conversation among the college administration and faculty, the founding religious community, and the

¹²¹ See LAGERWEY, *Letters*, pp. 312-315. While the Norbertine (Premonstratensian) community of DePere (The Order of Premonstratensian Fathers) was incorporated under the secular laws of the State of Wisconsin in 1898, St. Norbert College did not become a distinct separate corporate entity recognized in secular law until 1981. See also A-II.

¹²² See B.T. FROELE and M.L. GAUTIER, *Catholicism USA: A Portrait of the Catholic Church in the United States*, prepared for the Center for Applied Research in the Apostolate (CARA) at Georgetown University, Maryknoll, NY, Orbis Books, 2000, p. 83 (=FROELE/GAUTIER, *Catholicism USA*). See also GALLIN, *Negotiating Identity*, p. 73.

Church's hierarchy. Also, the question as to the extent of control exerted by the Church over a college was a real concern for government and foundations.¹²³ Issues of control became more widely discussed and a fundamental shift in governance from the founding community to the board of trustees developed.¹²⁴

Like other Catholic colleges in the United States, St. Norbert College turned the day-to-day operation of the College over to the board of trustees and the College administration; and the College expanded its board of trustees to include more lay women and men as provided in the 1989 by-laws:

Article IV: Board of Trustees

Sec. 2. Number and Tenure: The Board shall be comprised of not less than five (5), nor more than forty-five (45) members. Not less than twenty (20%) percent nor more than thirty (30%) percent shall be members of the Norbertine Order, unless such provision would result in fewer than three (3) members of the Norbertine Order. There shall always be at least three (3) trustees who are members of the Norbertine Order. Trustees shall serve for a term of five (5) years, or until a successor has been appointed. The initial membership of the Board shall be divided into five (5) equal groups which shall serve, respectively, for one (1), two (2), three (3), four (4), and five (5) years. Each year thereafter vacancies will be filled as provided in Section 3 below.¹²⁵

¹²³ See GALLIN, *Negotiating Identity*, pp. 41-42. Foundations are a source of private financial support for a college or university and the nature of Church control may influence the awarding of grants either negatively or positively.

¹²⁴ See GALLIN, *Negotiating Identity*, pp. 42-47. The American constitutional separation of church and state is a major point of discussion when it comes to taxpayer based public funding. If an institution is clearly identified as under the control of a church or religious body this could hinder or prevent financial assistance from the government. The determination as to the extent of control the church or religious body has over the college or university is important in order to benefit from various sources of funding. The shift in corporate governance to a [lay] board of trustees of the college and university reflected this concern.

¹²⁵ See A-III, Restated By-Laws of St. Norbert College, Restated by the Corporate Member (The Premonstratensian Fathers), De Pere, WI, St. Norbert Abbey, 31 January 2005, Art. IV, Sec. 2. See MAIDA/CAFARDI, *Church Property*, pp. 117-121. By-laws are the private law of a corporation by which it has agreed to be governed; they normally specify the rights and powers of members, trustees, officers and committees, and deal with the other details of normal corporate operations. The by-laws usually recount the Catholic influences that inspired the foundation of the institution and obligate the board of trustees to manage the affairs of the institution in accord with that heritage and with Catholic tradition. In a not-for-profit membership

As noted by Gallin, the “schools themselves made it clear that this ‘laicization’ was a matter of ‘declericalization’ and not ‘secularization.’”¹²⁶ Even though more direct control was vested in the trustees, the clear intent was to remain identifiably Catholic. Members of the sponsoring religious community are generally on the board of trustees, and the by-laws may require that the trustees select the chief executive officer from among the members of the sponsoring body, thus allowing for the spirit of the sponsoring body to permeate the work of all who participate in the life of the university or college.¹²⁷

As American Catholic colleges and universities moved to have a more independent board of trustees with more influence by the laity, these boards were often referred to as ‘lay boards of trustees’ since the religious community—founders and ‘owners’—were now the minority membership on the board. A number of reasons could have effected such change in governance, reflecting the various needs of the individual institutions.¹²⁸ However, there seems to have been two common reasons for the shift: “eligibility for government and foundation funding; and to encourage alumni/ae and other friends of the university to use their contacts with foundations and corporations to garner support for Catholic universities and colleges.”¹²⁹

corporation, such as a Catholic college or university, the terms of the articles of incorporation and the by-laws, especially as they structure corporate membership and its reserved powers, are very important, since they are the source of these rights and powers.

¹²⁶ GALLIN, *Negotiating Identity*, p. 43.

¹²⁷ See J.J. MCGRATH, *Catholic Institutions in the United States: Canonical and Civil Law Status*, Washington, DC, The Catholic University of America, 1968, pp. 34-35 (=MCGRATH, *Catholic Institutions*).

¹²⁸ Not to discount the fact that there was a dwindling number of vocations and qualified members of the religious institute for classroom and administrative positions.

The American Bishops have affirmed that:

Each member of the board must be committed to the practical implications of the university's Catholic identity as set forth in its mission statement or equivalent document.

To the extent possible, the majority of the board should be Catholics committed to the Church.

The board should develop effective ways of relating to and collaborating with the local bishop and diocesan agencies on matters of mutual concern.

The board should analyze ecclesiastical documents on higher education, such as *Ex corde Ecclesiae* and this Application, and develop specific ways of implementing them appropriate to the structure and life of the university.

The board should see to it that the university periodically undertakes an internal review of the congruence of its mission statement, its courses of instruction, its research program, and its service activity with the ideals, principles and norms expressed in *Ex corde Ecclesiae*.¹³⁰

The board of trustees of an American Catholic college or university remains a vital body of individuals who have a morally and a canonically binding responsibility for the maintenance of the Catholic identity of the college or university, and "in the future, trustees will play the most important role in the life of these institutions, which makes their understanding of Catholic mission and identity absolutely crucial."¹³¹

1.3.2.2 – Corporate Member

Although there is secular law recognition of the religiously sponsored university and college, the relationship of the Catholic institution to the Catholic Church is primary. *Catholicity* is verified canonically in the continuing influence which the sponsoring

¹²⁹ GALLIN, *Negotiating Identity*, p. 46.

¹³⁰ NCCB, *Application of 'ECE'*, II, Art. 4, 2, p. 14; *Origins*, 30 (2000), p. 72.

¹³¹ O'BRIEN, *From the Heart*, p. 76. See also A. GALLIN, "Sponsorship as Partnership," in *Current Issues in Higher Education*, 4:2 (1984), pp. 7-10; and T.J. SAVAGE, "The Board's Role in Maintaining Institutional Identity," in *Current Issues in Catholic Higher Education*, 4:2 (1984) pp. 3-6.

religious body exerts over the institution through provisions in the by-laws, membership on the board of trustees, and the presence of clergy and religious in administrative and staff positions.

In the two-tiered structure of the college or university as a membership corporation, the question of "highest authority" is complex. As a sectarian corporation acting in secular law, the religious institute has to determine which acts it reserves to itself, that is, which acts it reserves to the superior of the religious institute and his/her council who act on behalf of the corporation.¹³² The religious institute as a public juridic person is extending its apostolate (work) through a civilly incorporated structure. And by having reserved powers, the religious institute as corporate member is able to carry out its canonical responsibilities within the civilly incorporated structure thereby limiting its liability.¹³³

It is not the responsibility of the corporate member as such to run the day-to-day affairs of the college or university, nor does the corporate member oversee the operation of the day-to-day affairs of the college or university. This responsibility is that of the board of trustees.

The corporate member is, however, the highest level of corporate authority in this two-tiered structure. While the board of trustees runs the corporation within the framework of the corporate powers given it by the corporate member, the corporate member has the final say in some specified areas of governance. This reflects canonical

¹³² See MAIDA/CAFARDI, *Church Property*, pp. 155-156.

¹³³ See MAIDA/CAFARDI, *Church Property*, pp. 122-123. The religious institute is the corporate member in the two-tiered non-for-profit member corporation. The corporation as a legal (secular) fictitious person is separate from the corporate member and the trustees.

structures. In this way, the corporate member maintains control and the Catholic identity of the college or university continues to be assured.¹³⁴

1.3.2.3 – Differing Perspectives: McGrath, Maida, Michiels

In the United States a debate ensued over the identification and governance of ecclesiastical property. With the publication of J. J. McGrath's *Catholic Institutions in the United States: Canonical and Civil Law Status* in 1968 the debate was set.¹³⁵ Book V of the 1983 *Code of Canon Law* sets forth the guiding principles on temporal goods. "Temporal goods" are all the non-spiritual assets of the Church, tangible and intangible, which are instrumental in fulfilling the mission of the Church. In treating the relationship between the public juridic person and property, the Code uses the terms: ownership (*dominium*); stewardship (*dispensator*); administration (*administrator*); and trusteeship (*fiduciaria*).¹³⁶

The actual ownership of these goods is not the Church in general but rather the individual juridic persons in the Church, consequently, the temporal goods of a public juridic person are considered as ecclesiastical goods.¹³⁷ The ownership of goods is

¹³⁴ The reserved powers might include major personnel changes, trustee appointments, financial matters, changes in corporate philosophy. Specific reserved powers are discussed in Chapter 4.

¹³⁵ At the time of the McGrath writing, the 1917 *Code of Canon Law* was in effect.

¹³⁶ See *CIC/83* cc. 1256, 1273, 1289 and 1302.

¹³⁷ *CIC/17* c. 1497, §1 "Temporal goods, whether corporeal, both immovable and moveable, or incorporeal, that belong to the universal Church and to the Apostolic See or to another moral person in the Church are *ecclesiastical goods*;" whereas in *CIC/83* c. 1257, §1 "All temporal goods which belong to the universal Church, the Apostolic See and other *public* juridic persons in the Church are ecclesiastical goods; excluding the property of *private* juridic persons as ecclesiastical goods." The term "universal Church" as used in the *CIC/83* is referring only to

governed by both secular and canonical law, two separate and independent legal systems. In the American common law system the ownership of goods is provided for in federal and fifty-one state jurisdictions. Canonists and secular lawyers use the term “owner” in reference to property. The concept of “ownership” in canon law has a distinctively different meaning and understanding from that of secular law. For the canonical system the meaning of “ownership” is always rooted in the Church’s theological understanding of itself.¹³⁸ The Church’s inherent right to own property does not depend on secular law recognition of that right.¹³⁹

McGrath argued that a church-related institution, such as a university or hospital, that is a civilly incorporated entity in the United States, is distinct from the Catholic Church and from the religious community that founded it but under whose influence it conducts its business.¹⁴⁰

the Latin church, *sui iuris*, and not to the twenty-two Eastern Catholic churches, *sui iuris* (c. 1). See J.A. DOYLE, *Civil Incorporation of Ecclesiastical Institutions: A Canonical Perspective*, JCD diss., Ottawa, ON, Saint Paul University, 1998, pp. 114-138 for a treatment of ownership according to *CIC/17* and *CIC/83*. See also R.T. KENNEDY, “Book V: The Temporal Goods of the Church [cc. 1254-1310],” introduction commentary in J.P. BEAL, J.A. CORIDEN, AND T.J. GREEN (eds.), *New Commentary on the Code of Canon Law*, 2000, pp. 1451-1452 (=CLSA Comm 2). See also A. MCGRATH, “Religious Institutes as Subjects of Economic Capacity According to the (1983) Code of Canon Law,” in J. FOX (ed.), *Render unto Caesar: Church Property in Roman Catholic and Anglican Canon Law*, Rome, Pontifical University of St. Thomas Aquinas the *Angelicum*, 2000, pp. 128-130 (=FOX, *Render unto Caesar*).

¹³⁸ See M. DIPIETRO, “Public Juridic Persons: Owners and Trustees of Church Property,” in FOX, *Render unto Caesar*, p. 81 (=DIPIETRO, “Owners and Trustees”).

¹³⁹ See *CIC/17* c. 1495 (*CIC/83* c. 1255); *CIC/17* c. 1496 (*CIC/83* c. 1260); *CIC/17* c. 1499 (*CIC/83* cc. 1256, 1259).

¹⁴⁰ See R.T. KENNEDY, “McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil-Law Status of Church-Related Institutions in the United States,” in *The Jurist*, 50 (1990), p. 358 (=KENNEDY, “McGrath, Maida, Michiels”). KENNEDY presents a concise study of the issues of governance and property ownership as argued from these three points of view. Cf. B.K. DUNN, *Sponsorship of Catholic Institutions: Particularly Healthcare Institutions by the Sisters of Providence in the Western United States*, JCD diss., Ottawa, ON, Saint Paul University, 1995, pp. 60-66.

McGrath makes this argument:

The property, real and personal, of Catholic hospitals and educational institutions which have been incorporated as American law corporations is the property of the corporate entity and not the property of the sponsoring body or individuals who conduct the institution. All property must be used in accordance with the corporate purposes as defined in the charter, and any property acquired from a donor who has stipulated a specific use must be used for that purpose.

There is no question of dealing with ecclesiastical property when speaking of the property of Catholic hospitals and higher educational institutions in the United States. The canon law is clear that property is ecclesiastical only when it belongs to some ecclesiastical person. Since the institutions under consideration have not themselves been established as moral persons and, since no other moral person in fact holds title to the property of the institution, their assets are not ecclesiastical property.¹⁴¹

Hence, according to McGrath, the university or hospital is in no sense to be juridically identified with the sponsoring religious institute. The ownership of property is then subject only to civil law. McGrath further acknowledged that in many cases the sponsoring religious institute itself may be civilly incorporated and thereby be subject to both secular and ecclesiastical law.¹⁴² McGrath further argued:

Charitable and educational institutions chartered as corporations under American law are not *owned* by the sponsoring body. The legal title to the real and personal property is vested in the corporation. It is the corporation that cares for the sick or grants the academic degrees. It is the corporation that buys and sells and borrows money. If anyone *owns* the assets of the charitable or educational institution, it is the general public. Failure to appreciate this fact has led to the mistaken idea that the property of the institution is the property of the sponsoring body.¹⁴³

McGrath's view was that since canon law does not automatically confer moral personality (*a iure*) on a hospital or educational institution and since such American institutions had not received canonical personality by decree of a competent authority (*ab homine*), the property of these institutions was not ecclesiastical goods—the exceptions

¹⁴¹ MCGRATH, *Catholic Institutions*, pp. 8-9.

¹⁴² MCGRATH, *Catholic Institutions*, p. 11.

being The Catholic University of America and Niagara University, both of which received canonical personality by decree.¹⁴⁴

Even though McGrath viewed that once a religiously sponsored institution was civilly incorporated and answerable only to the civil law, he did acknowledge that there was a relationship to the Catholic Church, albeit not juridical. The "McGrath Thesis" met with disapproval by Church authorities in the Roman Curia.¹⁴⁵

Maida countered McGrath by arguing that "our institutions under the Canon Law of the Church are either moral persons (juridic persons) or are ecclesiastical properties

¹⁴³ MCGRATH, *Catholic Institutions*, p. 33.

¹⁴⁴ See MCGRATH, *Catholic Institutions*, p. 17. See also C.J. NUESSE, *The Catholic University of America: A Centennial History*, Washington, DC, The Catholic University of America, 1990, pp. 52, 385. See also POWERS, *A History*, p. 284. Niagara University was founded in 1856 by the Vincentian Fathers as a seminary, received its college charter in 1863 and its university charter in 1883. See also *AAS*, 48 (1956), pp. 446-447, 846. In keeping with *CIC/17* c. 1376, Niagara University's statutes were approved 12 April 1956 by Pius XII and in keeping with *CIC/17* c. 100, §1, it was canonically erected 21 June 1956 by decree of the SACRED CONGREGATION FOR SEMINARIES AND UNIVERSITIES.

¹⁴⁵ See *CLD*, 9 (1978-1981), pp. 367-371. There are two 1974 documents cited in this *CLD* article: the first privately proposed by the SACRED CONGREGATION FOR CATHOLIC EDUCATION, in which it suggests a possible joint letter with the SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES to all US bishops and Major Religious Superiors "stating that 1) all colleges and universities that are considered Catholic should not be further alienated through civil corporate structural changes without reference first to the Holy See; 2) the 'McGrath thesis' is not to be used as a pretext for any action in this regard; and 3) each bishop and Major Superior responsible for an institution of higher learning is to send us appropriate information on how the Catholic character of the institution is maintained and guaranteed and about the exact civil and canonical status of the institutions," from the SACRED CONGREGATION FOR CATHOLIC EDUCATION, letter, 2 January 1974, Prot. N. 427/70/15; original English text, *CLD*, 9 (1978-1981), pp. 368-369. The second document appears to give a clearer disapproval of the "McGrath thesis" stating in part: "We know that in the course of the study, the influence of the so-called 'McGrath thesis' will emerge as one of the principal bases for the action of some institutions in regard to alienation, etc. We wish to make it clear that this thesis has never been considered valid by our Congregations and has never been accepted," from the SACRED CONGREGATION FOR CATHOLIC EDUCATION and SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, LETTER, 7 OCTOBER 1974, Prot. NN. SCI, 427/70/23 and SCRIS, 300/74; original English text, *CLD*, 9 (1978-1981), pp. 370-371. See also D.C. CONLIN, "The McGrath Thesis and Its Implication on a Canonical Understanding of the Ownership of Ecclesiastical Goods," in *CLSAP*, 64 (2002), pp. 73-96.

belonging to or owned by moral persons (juridic persons).”¹⁴⁶ Therefore, the properties of these entities are indeed ecclesiastical goods and as such are subject to the laws of the Church and remains under the control of the bishop or religious superior (with his/her council).

The arguments of both McGrath and Maida focus on the juridic personality of civilly incorporated educational and other charitable institutions founded or sponsored by religious institutes as understood under the 1917 Code.¹⁴⁷ For McGrath, no American Catholic college or university which has been civilly incorporated enjoys juridic personality under canon law; for Maida, such an institution enjoys the canonical juridic personality of its sponsor. Maida later argued that a religious or diocesan sponsored civilly incorporated college or university is a juridic person “of itself and apart from any further action of the competent ecclesiastical authority” unless juridic personality was expressly denied.¹⁴⁸

Michiels offered yet another perspective, arguing the “absolute necessity” of a positive act of a competent authority to formally confer juridic personality.¹⁴⁹ Juridic

¹⁴⁶ A.J. MAIDA, “Canonical and Legal Fallacies of the McGrath Thesis on Reorganization of Church Entities,” in *The Catholic Lawyer*, 19 (1973), p. 277. See *CIC/17* c. 100, §1; *CIC* 114, §1. Moral persons (juridic persons) are created either by the law itself, *a iure*, or by a formal decree of a competent ecclesiastical authority. See also MAIDA, *Ownership*, p. 37.

¹⁴⁷ A survey finds that a vast number of higher educational institutions in the USA were founded between 1786 and 1916 as apostolates of their founding religious institutes or bishops. See POWERS, *A History*, pp. 333-353 for a list of Catholic colleges and universities founded before the 1917 code and a partial list of those founded under the 1917 code.

¹⁴⁸ MAIDA, *Ownership*, p. 11.

¹⁴⁹ G. MICHIELS, *Principia Generalia de Personis in Ecclesia: commentarius libri II Codicis Juris Canonici canones praeliminare 87-106*, 2nd ed., Tornaci, BEL, Desclée, 1955, p. 394 (=MICHIELS, *Principia Generalia*). MICHIELS argued from *CIC/17* c. 100, §1 that it had to be a positive act by decree and not mere words of praise, see pp. 400-402.

personality came about by the formal decree of erection with no explicit or implicit mention of juridic personality, unless the competent authority in erecting the entity clearly denied canonical personality.¹⁵⁰ From Michiels' perspective, juridic personality automatically comes with the formal erection of the institution.

Kennedy aptly points out that "the present canonical status of institutions established while the 1917 Code was in effect seems more complicated than either McGrath or Maida appeared to realize,"¹⁵¹ indeed, even more than offered by Michiels. It is therefore important to understand the context of the canon law at the time of erection to ascertain the canonical personality of the institution and determine its property as ecclesiastical goods.¹⁵² However, it must be again noted that many American colleges and universities were erected before the 1917 Code as apostolates of the various religious institutes of woman and men with the encouragement and approbation of American bishops and the resolutions of the Baltimore Plenary Councils.¹⁵³

St. Norbert College as a civil incorporation does not enjoy canonical juridic status but remains as an apostolate of the Norbertines, a public juridic person. The Premonstratensian Fathers (Norbertines) as a public juridic person are incorporated in the

¹⁵⁰ MICHIELS, *Principia Generalia*, pp. 407-408.

¹⁵¹ KENNEDY, "McGrath, Maida, Michiels," p. 400.

¹⁵² See KENNEDY, "McGrath, Maida, Michiels," p. 399-400. The canonical status of a Catholic institute of higher studies is determined by the circumstances and the ecclesial laws that were in effect at its founding. A Catholic college or university may have been founded as an apostolate of its sponsor, or may have been given canonical juridic personality independent of its sponsor either at the time of its founding or later, or may have been established as an approved secular institution with no canonical status (i.e. under the norms for a Catholic association of the faithful), or it may have had its subsequent canonical status removed. Each manner of founding is subject to the prescriptions of the appropriate canonical laws in effect at that time.

¹⁵³ See above, note 109.

State of Wisconsin and enjoy civil incorporation and all the benefits thereof. The college as a not-for-profit civil corporation has a two-tiered structure with the central leadership of the Premonstratensian Fathers (Norbertines) as the corporate member with reserved powers.¹⁵⁴ The college, as a separately incorporated entity, owns the land and the buildings less that which is excluded by the by-laws; thereby affording limited liability for the religious institute which is the canonical sponsor of the college. Yet, from the canonical perspective, the college with its lands and buildings might indeed be viewed as ecclesiastical goods since the College is canonically an apostolate of the Norbertines.

1.3.3 – Academic Recognition

For the American college or university, recognition by accrediting associations is of utmost importance. The voluntary grouping of colleges and universities by region and their self-regulation make for an American academic community that is beneficial to all institutions of higher studies, whether private or public.¹⁵⁵

Whether a college or university is accredited is important because:

Students who want federal (and sometimes state) grants and loans need to attend a college, university, or program that is accredited.

¹⁵⁴ St. Norbert College was founded in 1898 and separately incorporated in 1981.

¹⁵⁵ In the United States, colleges, universities and other programs are accredited by one of 19 recognized institutional accrediting organizations formed into 6 specific clusters of states: Middle States Association of Colleges and Universities, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges, and one of 60 recognized programmatic accrediting organizations. Recognition of these accrediting organizations is carried out either by the Council for Higher Education Accreditation (=CHEA), which itself is a private non-governmental body, or by the United States Department of Education (=USDE). Although accrediting is strictly a non-governmental activity, the government through USDE may evaluate and give recognition to accrediting organizations.

Employers ask if a college, university, or program is accredited before deciding to provide tuition assistance to current employees, evaluating the credentials of new employees, or making charitable contributions.

The federal government requires that a college, university, or program be accredited in order to be eligible for federal grants and loans or other federal funds.

State governments require that a college, university, or program be accredited when they make state funds available to students or institutions and when they allow students to sit for state licensure examinations in some professional fields.¹⁵⁶

The practice of accreditation arose in the United States over one hundred years ago as a means of conducting non-governmental, peer evaluation of educational institutions and programs. It is the primary means by which colleges and universities assure quality to students and the general public. In the United States of America there is no Federal Ministry of Education as in many other countries nor is there any one centralized authoritative body that has national control of higher education in the United States. Although the individual states assume varying degrees of control over education, colleges, universities and other professional schools of instruction operate with considerable independence and autonomy.¹⁵⁷

American colleges and universities comply with the criteria established by the accrediting organizations and periodically submit to close scrutiny in order to verify that they maintain these standards. CHEA recognition of the accrediting organizations confers an academic legitimacy on accrediting organizations and USDE¹⁵⁸ recognition places emphasis on whether an institution or program is of sufficient quality to qualify for

¹⁵⁶ CHEA, "Informing the Public About Accreditation," 16 September 2003, <http://www.chea.org/public_info/> (25 June 2008).

¹⁵⁷ See NCEA, "Relations of American Catholic Colleges and Universities with the Church," in GALLIN, *Essential Documents*, pp. 72-73.

¹⁵⁸ See above, note 155.

federal funds for student financial aid and other federal programs. It is therefore beneficial for an accrediting organization to have recognition from both CHEA and USDE.

In 1986, the Board of Directors of the Association of Catholic Colleges and Universities (ACCU) stated in a letter to the then Prefect of the Sacred Congregation for Catholic Education, William Cardinal Baum:

Freedom of religion and of association, guaranteed by the United States Constitution, has meant freedom to fund, support and govern our own colleges and universities. Our charters have been granted by the several states empowering us to confer degrees for various professions as well as for the usual academic degrees. The accreditation of our institutions is done by independent accrediting agencies, organized on a regional and/or professional basis and directed not by government but by the academic community. Within this structure, our 235 Catholic institutions of higher learning have flourished...¹⁵⁹

The American system of accreditation works well for Catholic colleges and universities. St. Norbert College, like other American Catholic colleges and universities, has regional accreditation from the North Central Association of Colleges and Schools, and the College's "Teacher Education Program" has received certification from the Wisconsin State Department of Public Instruction.

St. Norbert College is a member of the American Assembly of Collegiate Schools of Business, the American Association of Colleges for Teacher Education, the American Council on Education, the Association of American Colleges and Universities, the American Association of Higher Education, the Council of Independent Colleges, the Wisconsin Association of Independent Colleges and Universities, the Wisconsin Foundation of Independent Colleges, the National Association of Independent Colleges

¹⁵⁹ Response of the BOARD OF DIRECTORS OF THE ACCU on "Proposed Schema for a Pontifical Document on Catholic Universities", 14 February 1986, in GALLIN, *Essential Documents*, p. 273.

and Universities, the American Association of Catholic Colleges and Universities and the National Catholic Education Association.¹⁶⁰

The recognition that a Catholic college or university receives from its respective regional accrediting organization renders to the college or university a public acknowledgement of the quality of education it offers and its standing as a private institution. This is also true of its affiliation with other like educational institutions and professional organizations.

Conclusion

Catholic identity for the individual person comes with baptism; this is the initial and basic means of Catholic identity. A person is Catholic when the precepts of the law for baptism are carried out. The apostolic or good works of the Catholic person(s) may be considered a *Catholic* work when the work is in keeping with the mission of the Church and has received the official recognition of the Church. Otherwise, the good work is the apostolic work of a Catholic person. Whether the law itself or an official representative of the Church acknowledges or recognizes the work as beneficial to the Church, if the work is linked to the mission and ministry of the Church, even unofficially, the work has an identity—albeit imperfect—that flows from the individual(s). Catholic identity is therefore both personal and social or organizational; it relates to the individual and the

¹⁶⁰ The information on St. Norbert College was obtained from the President's Office and is available in the "St. Norbert College Self-Study for the Higher Learning Commission, North Central Association of College and Schools, 2006," submitted to the Higher Learning Commission, North Central Association of Colleges and Schools in support of the application for continued accreditation at the Master's (professional curricula) degree-granting level. The participation of St. Norbert College in varied peer and professional associations gives added testimony to its commitment to the pursuit of academic excellence and quality education.

institution. The notion of catholicity likewise relates to persons and to institutions or organizations.¹⁶¹

Bishops, particularly diocesan bishops, have a responsibility to assist in preserving and strengthening the Catholic identity of the college or university, including the protection of this identity in relations with the civil authority.¹⁶² The bishop(s) "should be seen not as external agents but as participants in the life of the Catholic University."¹⁶³ A Catholic education, by its very nature, should reinforce and maintain a Catholic identity at every level of existence.¹⁶⁴

In the spirit of the Second Vatican Council, a new ecclesiological model which reflects a world that is multicultural and multiethnic and a Church that relates to a society that has many religions and traditions, may generate a better understanding of a Catholic college or university in the American experience as well as Catholic identity in both its theological and juridical aspects.¹⁶⁵ A contemporary model of Church calls for a fuller

¹⁶¹ Cf. CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES: CANON LAW COMMITTEE, *The Search for Identity: Canonical Sponsorship of Catholic Healthcare*, St. Louis, MO, Catholic Health Association of the United States, 1993, pp. 19-25 (=CATHOLIC HEALTH ASSOCIATION, *The Search for Identity*).

¹⁶² See *ECE*, I, 28, p. 1491; USCC, *ECE*, p. 23; *Origins*, 20 (1990), p. 271.

¹⁶³ *ECE*, I, 28 quoting from JOHN PAUL II, Address to Leaders of Catholic Higher Education, Xavier University of Louisiana, USA, 12 September 1987, n. 4, in *AAS*, 80 (1988), pp. 761-768, here p. 764. English translation "Catholic Higher Education," in *Origins*, 17 (1987), pp. 267-270, here p. 269.

¹⁶⁴ R. T. O'GORMAN, *The Church that was a School: Catholic Identity and Catholic Education in the United States Since 1790*, Washington, DC, The Catholic Education Futures Project, 1987, p. 9 as noted in D.M. O'CONNELL, *An Analysis of Canon 810 of the 1983 Code of Canon Law and Its Application to Catholic Universities and Institutes of Higher Learning in the United States*, Canon Law Studies No. 536, JCD diss., Washington, DC, The Catholic University of America, 1990, p. 94.

¹⁶⁵ Cf. A. DULLES, *Models of the Church*, New York, NY, Doubleday Dell, 1987, for his discussion of five models of Church: institution, mystical communion, sacrament, herald and

participation by all the members in carrying out the mission and life of the Church in this millennium. This new era of shared responsibility came out of the Second Vatican Council and a new generation of Catholic institutions of higher studies is evolving in our hierarchical Church.¹⁶⁶

In Chapter 2 we look at the founding of St. Norbert College and the founding Norbertine community. We propose a definition of a Catholic college and look at the duties and rights of the diocesan bishop and his relationships with the various levels of authority at a Catholic college.

servant. Cf. CATHOLIC HEALTH ASSOCIATION, *The Search for Identity*, pp. 25-33 for a discussion of the models of Church offered by DULLES as related to the Catholic identity of a healthcare institution. The same principles of Catholic identity that apply to healthcare institutions can be applied to educational institutions at every level.

¹⁶⁶ The more prevalent view of Church as institution with power and control from the top may be of particular difficulty when speaking of Church and university in the American culture. Collaboration and dialogue with mutual respect and consideration for the contributions and roles that all parties have in the intellectual and spiritual advancement of women and men will make for a Catholic college or university that reflects a model of Church that is more open and receptive. Cf. O'BRIEN, *The Idea*, pp. 146-181, for his discussion of models of Church and his argument that Church as sacrament better serves the definition of a Catholic university as the conjunction of the sacramental and the scientific, hence Catholic university=sacrament + science.

CHAPTER 2

A NEW ERA OF SHARED RESPONSIBILITY

Before the [Second Vatican] Council, Catholic identity consisted in a total identification with all the statements by popes and bishops. Now it has become clear that in the face of the ambivalence of human existence and the possibility that the Church and Magisterium can err which is bound up with this and has been demonstrated in history, a total identification with the Church is not possible, but also inhuman. The result of this is that post-conciliar identity can only consist in a partial identification with the Church.

Norbert Greinacher¹

Introduction

There are many questions and anxieties that surround the issues of control and authority which are partly driven by a “lay view of the work of the Church in, and through, and indeed by means of the university, and an ecclesiastical view that arose in a culture where clerics dominated university education.”²

In the last fifty years many American Catholic colleges and universities have merged. Many of the previously single-sex colleges and universities have become coeducational so as to remain financially viable and to compete successfully in the

¹ N. GREINACHER, “Catholic Identity in the Third Epoch of Church History,” in *Concilium*, 5 (1994), p. 13.

² A. GALLIN, “On the Road Toward a Definition of a Catholic University”, in *The Jurist*, 48 (1988), p. 558.

academic arena for students and teachers.³ As a result of the fewer numbers of men and women entering the various religious communities associated with many of the colleges and universities, lay professors now hold a dominant position at most American Catholic colleges and universities and indeed lay teachers far outnumber clerics and religious who teach in the Catholic educational system.⁴

The role of bishop, sponsor, administration and faculty in the governance of the college or university is different for each, but as a unit they should work together to achieve a goal that is beneficial to students and society.⁵ In the case of a Catholic college or university the underlying influence that each plays in the life of the institution impacts the Church—the People of God. Since the Second Vatican Council, a spirit of collaboration and dialogue has permeated the ecclesial community in ways far different than the practices of the past which now result in a broader understanding of *communio*.⁶

³ B.T. FROELE and M.L. GAUTIER, *Catholicism USA: A Portrait of the Catholic Church in the United States*, prepared for the Center for Applied Research in the Apostolate (CARA) at Georgetown University, Maryknoll, NY, Orbis Books, 2000, p. 86.

⁴ See *OCD*, pp. 2049, 1449, 525. According to *OCD* statistics for 2007, there are 165,716 lay teachers, 6,026 sisters, 1,060 brothers and 1,539 priests. The numbers for the two Catholic colleges in the Diocese of Green Bay (WI) are that St. Norbert College has 177 lay teachers, 4 priests and 2 sisters, and that Silver Lake College of the Holy Family, sponsored by the Franciscan Sisters of Charity, has 30 lay teachers, 1 priest and 37 sisters. Two of America's largest Catholic universities are both located in Washington, DC: The Catholic University of America, sponsored by the US Bishops, with 310 lay teachers, 39 priests and 10 sisters; and Georgetown University, sponsored by the Jesuits, with 1,067 lay teachers, 23 Jesuits (priests and brothers) and 5 sisters.

⁵ NATIONAL CONFERENCE OF CATHOLIC BISHOPS [USA], *The Application of 'Ex corde Ecclesiae' for the United States*, II, Art. 4, 1, Washington, DC, United States Catholic Conference, 2000, p. 14; also in *Origins*, 30 (2000), p. 72. This is particular law of the United States. It received the *recognitio* of the Holy See on 3 May 2000 and was in force 3 May 2001.

⁶ J. MALONE, "Sharing Responsibility: University and Bishop", in *Origins*, 24 (1995), p. 581. Bishop Malone gives an analysis of *communio* in which he proposes that the real root is *munus* (office, function or duty) and not *unio* (union), thus, the focus is shared responsibility, shared duties, *com-munus*.

In the hierarchical structure of the Church and the university, the ultimate authority befalls the one at the top of the pyramid. However, in a dialogic society that is diverse in many aspects, the responsibilities of authority and governance are freely shared. A model of Church that is institutional and juridical with emphasis on hierarchical and authoritarian structure might not readily encourage openness and dialogue.

The Second Vatican Council offers a model of “communion” within a hierarchical framework of shared responsibility. Tension between the model of Church as institution and the model of Church as communion is found in the council documents; however, it is *communio* which links the notion of a people to the notion of mystery or sacrament.⁷

In this chapter we look at the roles and areas of responsibility for those involved directly and indirectly in the life of the Catholic university. We look at the relationship of

⁷ See SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen gentium* (=LG), 21 November 1964, n. 27, in *AAS*, 57 (1964), pp. 5-75, here at pp. 12-43; English translation in A.P. FLANNERY (gen. ed.), *Vatican Council II: Constitutions, Decrees, Declarations*, new revised edition, vol. 1, Northport, NY, Costello Publishing, 1992, pp. 766-798, here at pp. 789-790. See also DULLES, *Models of the Church*, pp. 47-55. See also CONGREGATION FOR THE DOCTRINE OF THE FAITH, Letter to the Bishops of the Catholic Church on Some Aspects of the Church Understood as Communion *Communio notio* (*κοινωνία*), 28 May 1992, nn. 3-6, in *AAS*, 85 (1993), pp. 838-850, here pp. 839-841. English translation in *ORE*, n. 24 (1245), 17 June 1992, pp. 8-9, here p. 8.

See also J.P. BOYLE, “The Rights and Responsibilities of Bishops: A Theological Perspective,” in L.J. O’DONOVAN (ed.), *Cooperation between Theologians and the Ecclesiastical Magisterium, A Report of the Joint Committee of the CANON LAW SOCIETY OF AMERICA and the CATHOLIC THEOLOGICAL SOCIETY OF AMERICA*, Washington, DC, CLSA, 1982, pp. 8-10. See also J. H. PROVOST, “Structuring the Church as a *Communio*,” in *The Jurist*, 36 (1976), pp. 191-245. This is a special issue of *The Jurist* on church as communion. See also P. GRANFIELD, “The Concept of Church as Communion,” in *Origins*, 28 (1999), pp. 753, 755-758. See also G. PHILIPS, “The Church: Mystery and Sacrament,” in J.H. MILLER (ed.), *Vatican II: An Interfaith Appraisal*, INTERNATIONAL THEOLOGICAL CONFERENCE, Notre Dame, IN, University of Notre Dame Press, 1966, pp. 187-196. See also Y. CONGAR, “The People of God,” in MILLER, *Appraisal*, pp. 197-207. Cf. J.H. PROVOST (ed.), *The Church as Communion*, Washington, DC, CLSA, 1984, v, 285 p., for a further discussion of Church as *communio*.

the diocesan bishop with the religious institute and sponsor of the Catholic college or university, the relationship with the apostolate, and the relationship with the theologian. We look at the charism of a founding religious institute and the mark that imbues their academic apostolate in their heritage and traditions.

We look at St. Norbert College from its founding to the present and see how it implements norms of *Ex corde Ecclesiae* and the particular norms for the United States. Like most American Catholic colleges and university St. Norbert College was founded as an apostolate of a religious institute.

2.1 – Charism of the Religious Institute

What is it that distinguishes one Catholic college or university from another beyond its merely academic or social life? For a college sponsored by a religious institute, it is the charism of the religious institute that somehow permeates the whole life of the college and gives it a unique approach to the ultimate ends and purposes of the institution.

A charism is a gift from God to the Church for the world. With regard to a religious institute, the term refers to the gift which God gives to an individual or group to inspire the founding of a new religious family within the Church. This gift is handed down through the centuries and enriched by all who are called to live it.⁸

⁸ See *Catechismus Ecclesiae Catholicae*, Città del Vaticano, Libreria editrice Vaticana, 1992, nn. 799-801. All subsequent English language translations from the *Catechism of the Catholic Church*, Liguori, MO, Liguori Publications, United States Catholic Conference, 1994. See also JOHN PAUL II, Post-Synodal Apostolic Exhortation *Vita consecrata*, 25 March 1996, n. 5, in *AAS*, 88 (1996), pp. 377-486, here at p. 380. English translation in *Origins*, 25 (1996), pp. 681-719, here at p. 684.

The charism of each religious community is the particular way in which its members are called to follow Christ. Since all Christians follow Christ, charisms will have many elements in common, but the way in which these elements are emphasised gives each religious institute its unique quality or mark. All religious communities have been asked by the Church to rediscover their original founding charism and make it come alive in each culture and in every age.⁹

The fact is that “many Catholic universities were founded by religious congregations and continue to depend on their support.”¹⁰ These groups of religious women and men instilled their own values into the institutions they founded. In turn, the institutions came to be identified with the particular history and nature of the founding religious community.

For example, a *Norbertine* college is a Catholic college with an ethos that is recognizable, distinctive, and unambiguously Norbertine and Catholic. The Norbertines (Premonstratensian Order) have a foundation of service to the Lord, to the local bishop and to the Roman Pontiff. Carrying the title *Norbertine* means that a college is Catholic and has a close relation to Christ and the Church. In addition, the college stresses some

⁹ See *CIC/83* c. 577. See also Decree on the Up-to-Date Renewal of Religious Life *Perfectae caritatis*, 28 October 1965, n. 2, in *AAS*, 58 (1966), pp. 702-712, here p. 703. English translation in A.P. FLANNERY (gen. ed.), *Vatican Council II: Constitutions, Decrees, Declarations*, new revised edition, vol. 1, Northport, NY, Costello Publishing, 1992, pp. 611-623, here at pp. 612-613. See also *VC*, 36-37, pp. 409-411; *Origins* 25 (1996), p. 693. It is the Rule (their way of life) and the Constitutions (their governing laws) which give definitive shape to the charism of the religious institute.

¹⁰ See JOHN PAUL II, Apostolic Constitution *Ex corde Ecclesiae*, 15 August 1990, I, 25, 28, in *Acta Apostolicae Sedis*, 82 (1990), pp. 1475-1509, here at p. 1489-1490. English translation USCC, *On Catholic Universities, 'Ex corde Ecclesiae'*, Washington, DC, USCC, 2000, p. 20-21; *Origins*, 20 (1990), pp. 270-271.

characteristics that belong to Augustinian spirituality and the Norbertine tradition.¹¹

Archbishop G. Pittau in speaking of Jesuit education states:

Academic programs, curricula, campus ministry, hiring of professors and administrators, selection of trustees, research, planning for the future and the daily running of the university cannot be considered abstractly without reference to the Jesuit Catholic identity. The Catholicity cannot remain in the private sphere of some religious people. It has to permeate the whole university.¹²

In place of *Jesuit*, one can substitute: Norbertine, Augustinian, Salesian, Dominican, Mercy, Christian Brother, Oblates of Mary Immaculate, etc.; in other words, insert any institute's religious identity and the statement should be applicable. The United States bishops reflect:

Catholic universities cherish their Catholic tradition and, in many cases, the special charisms of the religious communities that founded them. In the United States, they enjoyed the freedom to incorporate these religious values into their academic mission. The principles of *Ex corde Ecclesiae* afforded them an opportunity to re-examine their origin and renew their way of living out this precious heritage.¹³

Cardinal Pio Laghi, when Prefect of the Congregation for Catholic Education, spoke of the manifestation of Catholic identity within similar cultural and religious contexts:

One of these would be the influence of the particular charisms of the religious institute connected with the university: the way in which, for example, concern

¹¹ The Norbertine heritage places the value of radical hospitality (treating others as children of God), subsidiarity (letting those closest to the action make the decisions), collegiality (working together as equal), and community (being of one mind and heart). The Rule of St. Augustine is lived by Norbertines. See the college catalog <www.snc.edu/catalog/info_president.htm> (30 August 2008). See also PITTAU, "Characteristics of Catholic Universities," pp. 165-169. PITTAU gives a presentation from the Jesuit perspective regarding the character of Jesuit schools.

¹² PITTAU, "Characteristics of Catholic Universities," p. 168.

¹³ NATIONAL CONFERENCE OF CATHOLIC BISHOPS [USA], *The Application of 'Ex corde Ecclesiae' for the United States*, I, 7, Washington, DC, United States Catholic Conference, 2000, p. 8; also in *Origins*, 30 (2000), pp. 68-75, here at p. 70.

for the education of the poor, characteristic of a particular religious congregation, helped guide the admission of students and the awarding of burses; or the manner in which a principle of spirituality of the religious family may characterize the approach taken in campus ministry.¹⁴

P. Steinfels also speaks of an emerging consensus in the general direction of clarifying differing charisms:

It is noteworthy how many different ways the issue is described: People speak of the Catholic identity or mission or character. They speak of many Catholic institutions [and how] those variations reflect, first of all the wide variety of Catholic institutions and the corresponding differences in which their concern about Catholic identity is manifest.¹⁵

The University of Notre Dame is not of the same character as Xavier University of Louisiana nor is either of them of the same character as LaSalle University;¹⁶ in like manner none of them is of the same character as St. Norbert College. While Catholic in the full sense, each of these institutions has its own character and spirit that flows from the charism and nature of the religious institute that founded it.¹⁷

¹⁴ P. LAGHI, "Trust, Cooperation and Dialogue," in *Origins*, 25 (1995), p. 179. This was an address given at the University of St. Thomas in St. Paul, Minnesota (USA), co-sponsored by the university and the Association of Catholic Colleges and Universities.

¹⁵ P. STEINFELS, "Catholic Identity: Emerging Consensus," in *Origins*, 25 (1995), p. 175.

¹⁶ The University of Notre Dame was founded by the men of the Congregation of the Holy Cross in 1842 and chartered by the State of Indiana in 1844; Xavier University of Louisiana (the only historically Black and Catholic college in the USA) was established by St. Katherine Drexel and her Sisters of the Blessed Sacrament in 1925; LaSalle University was founded by the Christian Brothers in 1863 and chartered by the State of Pennsylvania that same year.

¹⁷ See A.J. MAIDA and N.P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations: A Canon Law Handbook*, St. Louis, MO, The Catholic Health Association of the United States, 1984, p. 45.

2.1.1 – Sponsor’s Responsibilities and Rights

The role and relationship of the sponsor to that of the separately incorporated apostolate is one of a delicate balancing act. On the one hand, in the eyes of canon law the sponsoring public juridic person and its civilly incorporated apostolate which is not a separately constituted public juridic person are seen as a single unit. If, in the eyes of secular law, this relationship is seen as too close it could jeopardize the legal and financial benefits of separate civil incorporation.

In canon law, the apostolate is integral to the life of the religious institute. In secular law, the apostolate has been recognized as having an incorporated civil law identity which is separate from the sponsor. By this separate civil law incorporation two purposes are achieved: an ease in administration in corporate affairs, and a protection of the sponsor from civil law liability for the acts or omissions of its civilly incorporated apostolate.¹⁸ For Catholic colleges and universities, the canonical administrators of the religious institute, under the supervision of the bishop, have a shared responsibility to see that the sponsored institution does not act contrary to Catholic teaching in its corporate activity.¹⁹

¹⁸ See MAIDA/CAFARDI, *Church Property*, p. 234.

¹⁹ See *CIC/83* cc. 678; 810, §2.

2.1.2 – Canonical/Ecclesial

Canon law does not treat the apostolate of a public juridic person as separate from the juridic person. The apostolic endeavor shares in the canonical status of the sponsor.²⁰ Civil law corporations existing in the Church are not automatically public juridic persons in canon law. As discussed in Chapter 1 (referring to *CIC* c. 114), public juridic persons are established either by the law itself (*a iure*) or by specific decree (*ab homine*).²¹ While it is still rare in the United States for a Catholic college or university to be constituted as a canonically independent endeavor, canon law does provide for educational apostolates to be established as separate juridic persons.²²

The canonical responsibilities of the sponsor towards its apostolate can be discussed in terms of “faith” and “administration.” Within the hierarchical communion of the Catholic Church, supreme teaching authority on matters of faith and morals rests with

²⁰ See *CIC/83* c. 675. See also MAIDA, *Ownership*, pp. 32-37.

²¹ Cf. *CIC/83* c. 114.

²² Cf. *CIC/83* c. 114, §3. See Association of Catholic Colleges and Universities (=ACCU) at <http://www.accunet.org/search/all_catholiccolleges.asp> (02 February 2008). At the time of this work nearly a dozen of the 236 US Catholic institutions of higher studies cited by the ACCU are listed as independent Catholic colleges: Ave Maria University in FL, Hilbert College in NY, St. Leo College in FL, Thomas Aquinas College in CA, Southern Catholic College in GA, Magdalen College in NH, John Paul the Great University in CA, Christendom College in VA, and University of Dallas. There are at least three other independent Catholic colleges set as new initiatives for the 2008-2009 academic year. Independent Catholic colleges are not sponsored by a religious institute or a diocese or other ecclesiastical body. These institutions fall under the category discussed in *ECE*, II, Art. 3, §3: “A Catholic University may also be established by other ecclesiastical or lay persons; such a University may refer to itself as a Catholic University only with the consent of the competent ecclesiastical Authority, in accordance with the conditions upon which both parties shall agree” and following the prescriptions issued by the Holy See, Episcopal Conference or other Assembly of Catholic Hierarchy. As such, these independent Catholic colleges do not have juridic personality; however, they could seek canonical status as a juridic person by following the prescriptions set out in canon law. See also J.E. CORIDEN and F.R. MCMANUS in P.R. MOOTS and E.M. GAFFNEY, *Church and*

the Roman Pontiff (c. 749, §1) and all the bishops (c.749, §2). This “faith” authority structure in the Catholic Church exists on different levels and each level responds to a superior level.²³ A.J. Maida and N.P. Cafardi speak of faith authority as:

The right to teach matters of faith and morals. Faith authority is a consensual authority; only those who, by their willing assent, are members of the Church recognize the authority. Faith authority is not coercive; it has no compulsion except that which the individual gives it because he or she recognizes, as a result of faith, the teaching authority involved. Faith authority seeks not to control conduct, but to establish principles of faith that the individual is free to apply to his or her life. Faith authority functions only in matters of faith and morals.²⁴

The bishops and the superiors of religious institutes have a responsibility to be in communion with the teaching authority of the Church.²⁵ This is a responsibility that carries through to the apostolic endeavors sponsored by the public juridic person since the apostolate is canonically part of the sponsor (cc. 673, 675).

Canon law applies to all persons in the Church. Just as the individual person (physical) is obliged to follow the teaching authority of the Church, so too, the public juridic person and its apostolate. For our discussion, this obligation also falls upon the internal structure of the public juridic person and its membership as well. The administrators of the public juridic person are obliged by canon law to see to it that persons and works subject to them act in accord with the laws of the Church.²⁶

Campus: Legal Issues in Religiously Affiliated Higher Education, Notre Dame, IN, University of Notre Dame Press, 1979, pp. 144-150.

²³ See MAIDA/CAFARDI, *Church Property*, p. 53. The authors are using “faith” authority in the same understanding as “teaching authority in matters of faith and morals.”

²⁴ MAIDA/CAFARDI, *Church Property*, pp. 312; 54-55. See also *CIC/83* c. 748, §2.

²⁵ See *CIC/83* cc. 386, §1; 756, §2. See also *CIC/83* cc. 618-619.

²⁶ See *CIC/83* cc. 596, 617, 618.

Administrators are also governed by the statutes of the religious institute and its particular laws.

The “administration” authority, in this context, deals with Church property (ecclesiastical goods) and its use. The ecclesial laws set forth in the *Code of Canon Law* govern the acquisition, administration and alienation of real property held by the public juridic person and its sponsored apostolates, whether incorporated or not. All administrators of Church goods have the obligation to carry out these responsibilities in the name of the Church in keeping with the precepts of ecclesial law.²⁷

As pointed out by A.J. Maida and N.P. Cafardi:

[Canon Law] perceives public juridic persons as a totality, encompassing all of their sponsored activities, regardless of their civil law status. Because of this canonical perception, the human persons who administer the affairs of public juridic persons are thus bound to follow canon law in their administration of the public juridic person and its sponsored activities. As with the faith obligation, these duties are duties that, although executed personally by human administrators, have their source in the fact that the assets involved are canonically considered to be the assets of a public juridic person. The duties have their source in the dedication of the assets, not the human administrators.²⁸

The religious institute which sponsors a Catholic college or university, as the canonical administrator of its apostolates, has a responsibility to insure that the laws of the Church are followed and observed by its sponsored apostolate. The question remains as to how and to what extent this responsibility is carried out by the sponsor.

²⁷ See *CIC/83* c. 1282. Book II of the Code contains those general canons regarding Institutes of Consecrated Life (cc. 573-602), their temporal goods (cc. 634-640), their internal membership relations (cc. 665; 668; 670-671), their apostolates and relationship with the local bishop (cc. 673-683).

²⁸ MAIDA/CAFARDI, *Church Property*, p. 57.

2.1.3 – Secular/Civil

The power and authority of the sponsor, like all other civil corporations, is confined to those powers which are expressly or implicitly conferred upon it by the articles of incorporation. In some cases these powers are contained in the charter conferred by the State when the enterprise was established and was beginning to operate. As such, a corporation only has such powers as conferred by the charter creating it or the laws regulating it. The supreme secular law of the religious corporation is found in the laws constituting its charter or articles of incorporation and in its by-laws.²⁹

As a legal entity recognized in US civil law, the religious corporation has the right to seek participation in all the benefits that come with incorporation. Foremost in its not-for-profit corporate status is “tax exemption.” A tax is a charge levied by the government on the income of an individual, corporation or trust, as well as against the value of an estate or gift.³⁰ The purpose in the assessment of the tax is to generate revenue that can be used for the needs of the public, such as: a public school system, roads, public water system, fire and police protection, recreational facilities, street lighting, sewer and

²⁹ See C. ZOLLMANN, *American Church Law*, St. Paul, MN, West Publishing, 1933, p. 154-156, §§148-151. In this context a corporate charter is a document issued by a state agency or authority (commonly the Secretary of State in US legal systems) granting the corporation legal existence and the right to function as a corporation. In the USA each state has the sovereign power to grant charters. The Legislatures of the states also have the power to grant such charters. All corporations have the power to acquire and sell property, enter into contracts, do all that is necessary for the due administration of their affairs, and also, usually in expressed terms, the power to make by-laws (additions or modifications to the original charter or articles of incorporation).

³⁰ See H.C. BLACK, *Black's Law Dictionary*, 7th ed., St. Paul, MN, West Publishing Co., 1990, p. 1457.

drainage systems, flood control, and many other services.³¹ Yet, while the tax-exempt corporation benefits from services which are maintained by public taxes, it may enjoy immunity from property and sales taxes normally levied by the local civil jurisdiction.

The United States Supreme Court in a 1970 decision upheld the long standing American tradition of a tax preference for churches, leaving it to the states and local communities with their own laws and practices to exempt and levy such taxes.³² The religious tax-exemption status enjoyed by churches may also apply to educational facilities and consequently a religious corporation that sponsors or engages in an educational enterprise may enjoy a double tax relief. Because it is an educational institution, the American Catholic college or university might more readily receive public funding despite the religious character of its sponsor.

While the sponsor of the Catholic college or university may not have a direct role in the day-to-day operations of the institution, its influence does impact the Catholic identity of the institution having both ecclesial and secular consequences.

³¹ See M.A. LARSON and C.S. LOWELL, *The Religious Empire: the Growth and Danger of Tax-Exempt Property in the United States*, Washington, DC, R.B Luce, 1976, pp.8-9.

³² *Walz v. Tax Commission of the City of New York* 397 U.S. 664 (1970) [source citations refer to the name of the parties, the volume number of the United States Supreme Court Records followed by the case number, the location number and the year]. In the USA during the 17th and 18th centuries it was a common practice to use public funds through taxation to maintain churches and pay the salaries of ministers. Churches were public corporations like counties, towns, cities and villages. The exemption remained even after this practice ceased. A new reason was found and stated: "The fundamental ground upon which all such exemptions are based is a benefit conferred on the public by such institutions, and a consequent relief to some extent of the burden upon the state to care for and advance the interests of its citizens," (*M.E. Church, South, v. Hinton* [1893] 92 Tenn. 188, 21 S.W. 321, 19 L.R.A. 289). See also *Everson v. Board of Education* 330 U.S., at 9-11. See also LARSON/LOWELL, *The Religious Empire*, pp. 16-20. See also ZOLLMANN, *American Church Law*, pp. 60-61. This is no longer a practice in the USA. However, it is found in other countries, e.g., France and to some extent in Canada, where public funds support independent Catholic School Boards of Education in Ontario and other provinces.

2.2 – Essential Considerations in a Given Context

The Catholic college or university can be situated in three perspectives. These differing perspectives have a direct bearing on how the university is defined as *Catholic* and how, indeed, it may be *Catholic*. While there is a distinct slant and view, there is an interdependence and interrelationship of perspectives that shows that no single element stands alone:

- The relationship between the college or university and the shepherd of the particular Church in which it is located, which particular Church the college or university serves and in which it carries out its mission.³³
- How the college or university remains true to the traditions and values of the founding or sponsoring religious institute.³⁴
- What the college or university offers to society and the world is unique.³⁵

Each situation has a given set of responsibilities that often overlap. The common goal of providing an educational environment that is conducive to the “pursuit of truth and the establishment of a living synthesis of faith and reason”³⁶ is shared by all aspects

³³ Cf. JOHN PAUL II, Apostolic Constitution *Ex corde Ecclesiae*, 15 August 1990, I, 27, 28, in *Acta Apostolicae Sedis*, 82 (1990), pp. 1475-1509, here at p. 1490-1491. English translation USCC, *On Catholic Universities, 'Ex corde Ecclesiae'*, Washington, DC, USCC, 2000, p. 22-23; *Origins*, 20 (1990), p. 271. Cf. also *ECE*, II, Art. 5, §§1-2, pp. 1506-1507; USCC, *ECE*, p. 43; *Origins*, 20 (1990), pp. 274-275.

³⁴ Cf. *ECE*, I, 25, pp. 1489-1490; USCC, *ECE*, pp. 20-21; *Origins*, 20 (1990), pp. 270-271. Cf. also NCCB, *Application of 'ECE'*, I, 7, pp. 8-9; *Origins*, 30 (2000), p. 70.

³⁵ Cf. *ECE*, I, 32-37, pp. 1493-1496; USCC, *ECE*, pp. 25-29; *Origins*, 20 (1990), pp. 271-272. Cf. also *ECE*, II, Art. 7, §§1-2, pp. 1507-1508; USCC, *ECE*, pp. 44-45; *Origins*, 20 (1990), p. 275.

³⁶ JOHN PAUL II, Address to the US Bishops (Region XII) on the occasion of their *ad limina apostolorum* visit to Rome, 24 June 2004, in *ORE*, n. 26 (1850), 30 June 2004, p. 3.

of university life. We examine the roles and responsibilities of bishop, sponsor, administrator and faculty in light of their respective canon and secular law dimensions and the achievement of their common goal.

2.3 – Catholic, liberal arts, Norbertine

From the beginning or foundation of the university a tradition is set. A standard is established which motivates and propels the administration and faculty and serves as a means of attracting students. In essence, it is the tradition and history of the religious institute that gives the university or college its vitality and assures its continued growth and presence.

The *catholicity* test is determined by how the institution lives out its Catholic identity. It is the *theological* witnessing of that identity. The characteristics of a Catholic university or college address the internal spiritual dimension of the life of the campus community and give direction and meaning to the academic pursuit of truth. Without an honest and real presence of *catholicity*, Catholic identity is only partly achieved. Catholic identity has a *theological* underpinning that upholds the *juridic* Catholic reality of the institution. The lived principles, values and traditions, all of which are biblically grounded, are what guide the tenor and spirit of the community and give it *catholicity*.³⁷

Some universities would pass the test for *catholicity*, while others might not. However, there are other dimensions of the university itself that can aid in determining Catholic identity: mission, sponsorship, and the life of the community.

³⁷ See M.J. LAVELLE, "What is Meant by a 'Catholic' University?" in *America*, 170 (1994), p. 4. LAVELLE speaks of *catholicity* as the institution's doctrinal purity, its teaching of theology and philosophy, as well as its Catholic ambiance and character.

Beyond the 'naming' by the competent ecclesiastical authority, it may take a combination of all the criteria to determine Catholic identity. These themes are intertwined. Yet, *catholicity* is more than any individual theme; it presupposes them and is based on them. They flow from the institution itself.

It would be appropriate to say "the Catholic university distinguishes itself from its grand secular counterparts insofar as it opens its life and study to the realm of 'the real,' the participatory immersion within which love, commitment, and decision have lodging."³⁸ Faith and the notion of the transcendent are somewhat excluded from the culture and life of the secular university.

In understanding the *catholicity* of a college or university, its traditions are intimately connected with the traditions of the Catholic Church from which it springs. To deviate from them would be to question the college's very *catholicity* and a Catholic identity that by its very nature crosses cultures, traditions, and ethnicities.³⁹

From *theoria* of Catholic identity we turn to an illustrated example of *praxis*: St. Norbert College.

2.3.1 – Founding of St. Norbert College

St. Norbert College, a private, coeducational, primarily residential, liberal arts college with a long tradition in Catholic higher education, is located in De Pere,

³⁸ G.D. O'BRIEN, *The Idea of a 'Catholic' University*, Chicago, IL, The University of Chicago Press, 2002, p. 213. O'BRIEN argues that 'the real' encompasses the God of love, a God who is fully immersed in the world and all that is humanly experienced; therefore, *faith* supports the work of science and art, which are the high truths of the university.

³⁹ See *ECE*, I, 43-45, pp. 1498-1499; USCC, *ECE*, pp. 31-34; *Origins*, 20 (1990), p. 271-272.

Wisconsin, outside of Green Bay, Wisconsin, in a metropolitan area of approximately 245,000 residents.⁴⁰ The College enrolls about 2,000 students in traditional undergraduate courses and 100 graduate students in three master's level programs.⁴¹ The College is known for its general academic curriculum, its nationally recognized faculty development program, its faculty-student collaborative research, and its strong commitment to internationalization and a collegial environment.

In 1898, Rev. Bernard Pennings, a Norbertine (Premonstratensian)⁴² priest and educator from The Netherlands opened the doors of St. Norbert College.⁴³ Although

⁴⁰ <<http://recenter.tamu.edu/Data/popc/pc55009.htm>> (18 August 2008). Green Bay is located in Brown County, WI and according to the US Census Bureau records there were 243,132 residents in Brown County, WI in 2007.

⁴¹ *U.S. News and World Report* currently ranks St. Norbert College No. 3 out of 93 colleges in the Midwest Regional Liberal Arts Colleges and among the top 75 nationally in Tier 3. This is the 17th year for the college's ranking among the top ten liberal arts colleges in the Midwest and the 13th consecutive year that it has ranked among the top five. Its actual number of registered students was reported as 2,015 undergraduate students and 99 part-time graduate students from 29 states and 25 countries for the 2007-2008 academic year as found at <http://colleges.usnews.rankingsandreviews.com/usnews/edu/college/rankings/brief/t3libartco_brief.php> (21 June 2008).

⁴² On Christmas in the year 1120, St. Norbert [b.1080 in Gennep, The Netherlands] and his companions founded the Canons Regular of Prémontré [Northern France], also called the Premonstratensians, or more simply, the Norbertines. They swore to seek Christ by means of communal living, poverty, obedience, celibacy, and a dedication to the active priestly ministry. Norbert held before them the dream of the first Christians after Pentecost whose community life was characterized by the power of the Spirit and a desire to be of service to others. The Norbertines have a long rich history of living the "apostolic life" under the Rule of St. Augustine.

⁴³ Cf. POWERS, *A History*, for a concise look at the history of the founding of American Catholic colleges and the conditions that precipitated the development of Catholic higher education. The year of 1898 is given as the founding and the charter date of St. Norbert College. Its first curriculum was a combination of high school and college courses. A separate college department was established in the 1920s. Cf. POWERS, *A History*, pp. 25-33. POWERS discusses the distinction between the 'date of founding' and the 'date of charter'. The date of founding may be when the plans were first initiated, when the first discussions took place, or a site selected, even before there was an actual building or the first student was admitted. The date of charter is when legal status to grant degrees was given by the appropriate civil government authority. The latter has greater clarity; however, it was not unusual for a college to go for years without a charter. POWERS looks at the social climate from the colonial pre-revolutionary war period to the

founded initially to train young men for the priesthood,⁴⁴ Father Pennings realized early on that the need for higher education in the area of Northern Wisconsin was substantial and so he added a program in commerce for lay students.⁴⁵

founding of the first permanent Catholic college in the United States—Georgetown University in 1786 (date of charter: 1815). He chronicles that of the Catholic colleges founded between 1786 and 1850 eighteen were founded by bishops, eighteen by religious congregations, and five by priests, as private-venture schools; eight of the colleges founded by bishops were later turned over to religious congregations and all the private-venture colleges came under direct diocesan control. Between 1850 and 1900 ninety-eight colleges were undertaken by religious communities, thirty-five by bishops, twelve by priests and two by laymen as private-venture schools.

POWERS further points out that those American Catholic colleges were founded only when political, social, and economic conditions permitted, and when American Catholics considered higher education as something important. In pre-Revolutionary British America, Catholics were persecuted and despised. Catholicism was illegal in most of the original British colonies until the beginning of the War of Revolution in 1776. Within the present continental boundaries of the United States, it was the French and Spanish missionaries who provided for the education of Catholics. Catholics in the State of Wisconsin had benefited from the missionary work of the French Jesuits of Canada by the time of the founding of St. Norbert College. See A.M. BUTLER, M.E. ENGH, and T.W. SPALDING (eds.), *The Frontiers and Catholic Identities*, Maryknoll, MD, Orbis Books, 1999, pp. 31-40, for a description of the contributions made by French Catholics of Canada to the Catholic Church of the Great Lakes region of the upper mid-west of the United States. For more on the history of the early American Catholic church and the social and political conditions, consult two of the works of J.G. SHEA, *The Life and Times of the Most Rev. John Carroll, Bishop and First Archbishop of Baltimore, Embracing the History of the Catholic Church in the United States, 1763-1815*, New York, NY, J.G. Shea, 1888, pp. 47-130; 141-204; and *History of the Catholic Church in the United States, from the Division of the Diocese of Baltimore, 1808, and Death of Archbishop Carroll, 1815, to the Fifth Provincial Council of Baltimore, 1843*, New York, NY, J.G. Shea, 1890, pp. 25-75; 630-649; 702-707. Cf. P.K. GUILDAY, *The Life and Times of John Carroll, Archbishop of Baltimore, 1735-1815*, pp. 57-91; 134-150; 231-261.

⁴⁴ When Fr. Bernard Pennings and his companions arrived in Wisconsin, USA in 1893 from Berne Abbey in The Netherlands, at the invitation of Bishop S.G. Messmer of Green Bay, they immediately set out to do parish work. There was a need for parochial ministers who spoke the Flemish language of the immigrants who came from The Netherlands and Belgium. The apostolate was clear—parish work. Fr. Pennings also saw that there were educational needs in the local church. But Fr. Pennings was also concerned about the formation of young men as priests for the Norbertine community. The early history points out that he began by teaching Latin to two students and then a third young student in the Priory of the community. It was from this humble beginning that St. Norbert College grew and that the Norbertine community had its first three novices who later were ordained the first Norbertine priests of the American Norbertine foundation.

Education was a central focus of the Norbertine mission: from the beginning there were elementary schools, and shortly after their installation in De Pere, classes were begun that led to Abbot Pennings High School and in 1898 the founding of St. Norbert College. Since those early

The curriculum further expanded to include science courses in 1903, music courses in 1914, and teacher education courses in 1934. Enrollment grew to a level of 350 male students up until World War II, after which it grew considerably. During these formative years for the College, intellectual development was shaped by a curriculum that balanced the liberal arts with preparation for chosen careers. The College became coeducational in 1952.

The Norbertine Order held the governance and leadership of the College during its early history. Abbot Pennings served as superior of St. Norbert Abbey in De Pere while also serving as President of St. Norbert College until his death in 1955.⁴⁶

beginnings, the Norbertines have founded two high schools in the Green Bay diocese and staffed high schools in Philadelphia, Pennsylvania and Claymont, Delaware. At present, the community is active in the college and in one high school in Green Bay as well as in high schools in Philadelphia and Claymont. See W. LAGERWEY, (trans., ed.), *Letters Written in Good Faith: the Early Years of the Dutch Norbertines in Wisconsin*, prepared under the auspices of ST. NORBERT ABBEY, Green Bay, WI, Alt Publishing, 1996, pp. 12-23. W. LAGERWEY, professor of Germanic Languages at Calvin College, Grand Rapids, Michigan, translated this collection of letters from Dutch into English, under the direction of Abbot Emeritus B.T. Mackin, O. Praem., the fourth abbot of St. Norbert Abbey. The collection covers letters written from 1893-1902. Abbot Pennings became the first abbot of St. Norbert Abbey in 1926; he died in 1955.

⁴⁵ Fr. Pennings was reading the 'signs of the times' when he expanded from the specific training of men for the priesthood to the inclusion of the general educational needs of the wider community. See POWERS, *A History*, pp. 33-48 for a discussion of the purposes and motives for the founding of American Catholic colleges. POWERS shows that while there is an objective of intellectual development in the founding of any school or college, this was not the principal motive behind the founding of American Catholic colleges prior to 1850. During this period before 1850 there were three reasons that contributed directly to the formation of schools which, in some cases, later became schools of higher education: to offer preparatory education to boys aspiring to the priesthood, to create a center for missionary activity, and to provide a place to cultivate the moral virtues of boys and young men. After 1850, while forming good Catholics was still a motive, founders were now moved to educate Catholics in the best traditions of higher education.

⁴⁶ The history and background of St. Norbert College that is presented in this work has been gathered from historical documents in the archives of St. Norbert Abbey as well as materials presented in the *St. Norbert College Campus Catalog, 2007-2008* <<http://www.snc.edu/catalog>> (25 June 2008), and the *St. Norbert College-2001 Self-Study* prepared for the Higher Learning Commission, North Central Association of Colleges and Schools.

2.3.2 – Mission of St. Norbert College

The first mission of a Catholic college or university is that of the Church itself. It is a mission that is a work of the Church in the broadest sense: “The ultimate purpose of the mission is none other than to make men [and women] share in the communion between the Father and the Son in their Spirit of Love.”⁴⁷

If the mission of the Church is to demonstrate God’s love and saving presence in the world, then it is clear that those who attach themselves to the Church in their work are to carry out this fundamental mission in that work. The meaning of life becomes expanded to include one’s relationship with God and others in the hope of the life to come.

This mission is alive and dynamic. It “is a continuous quest for truth through its research, and the preservation and communication of knowledge for the good of society.”⁴⁸ The mission is not set in one period of time or in a single set of circumstances. Rather, it finds unique expression in all times and through a variety of people and institutional structures. It is a benchmark by which decisions are made and by which structure and systems are developed.

A Catholic college or university should be able to answer clearly the question: “What purposes should we serve in today’s educational environment?” It should also be able to determine the values that shape its corporate culture, using ones that are consistent with the Gospel. These must also become evident both in policies and in practices.

⁴⁷ CCC, n. 850.

⁴⁸ *ECE*, I, 30, p. 1493; USCC, *ECE*, p. 25; *Origins*, 20 (1990), p. 271.

The mission and purpose of St. Norbert College and the Norbertine community of De Pere, Wisconsin are so intertwined that the emphasis placed on holistic quality education is fully grounded in Catholic teaching. The broadening of this mission, being mindful of persons of other faith traditions, is reflected in the College's current mission statement:

St. Norbert College, a Catholic liberal arts college embracing the Norbertine ideal of *communio*, provides an educational environment that fosters intellectual, spiritual and personal development⁴⁹

This statement reflects the core traditions dating from the earliest years of the institution. Although not formally expressed in a written text until the mid-eighties, the mission and early development of the College shaped these core values. As a result of a long-range planning process begun in 1985, the College's Board of Trustees adopted a formal mission statement in 1986. It reaffirmed the historic mission of the College by recognizing its Catholic, liberal arts and Norbertine traditions:

-The **Catholic** intellectual tradition, which calls us to:

Seek truth through an ongoing dialogue between faith and reason,
Recognize the sacred dignity of all persons,
Utilize knowledge in working toward a Gospel vision of justice,
Affirm the goodness encountered in creation and culture,
Scrutinize reality in an effort to add to the treasury of human wisdom.

-The **liberal arts** tradition, which calls us to:

Cultivate a love of lifelong learning through excellence in teaching,
Understand diverse cultures, perspectives and beliefs,
Collaborate with others to gain knowledge, solve problems and seek truth,
Share our intellect and abilities to create a compassionate world community.

⁴⁹ See A-IV, Mission Statement of St. Norbert College. See also *The Mission Statement*, <<http://www.snc.edu/mission/statement.html>> (25 June 2008).

-The **Norbertine** tradition, which calls us to:
Fulfill our vocation by embodying Christ's example of loving service,
Seek peace and reconciliation in the spirit of St. Norbert,
Pray and reflect communally and individually welcoming all to participate,
Practice hospitality in the spirit of the Gospel and the Rule of St. Augustine,
Respond to the needs of our local community.⁵⁰

The College has shown its commitment to the future as well as its Catholic heritage by establishing a vice-presidency for Mission and Heritage, and choosing a Norbertine to fill that first-time position. Through the College's Peace and Justice Center and related curriculum there is an expression of renewed determination to bring to the students and faculty a fuller awareness of the Gospel message of dignity for all humanity and the Church's social justice teachings. Innovative and creative ways have been found to celebrate cultural and social diversity on an otherwise mostly homogeneous campus.

In reaffirming the traditional mission of the College, a major effort has been made to reestablish the central importance of the academic nature of the College with renewed emphasis on the College's religious character. Now may be the time for St. Norbert College to revisit this mission statement in light of the most recent Church documents on Catholic colleges and universities.

⁵⁰ As an academic institution, our [college] community is rooted in the Norbertine ideal of *communio*, which is characterized by mutual esteem, trust sincerity, faith and responsibility. *Communio* is lived through open dialogue, communication, consultation and collaboration. *Communio* encourages us [college community] to respond individually and collectively to the needs of our local and global communities. See IV, Mission Statement of St. Norbert College. See also *The Mission Statement*, <<http://www.snc.edu/mission/statement.html>> (25 June 2008).

2.3.3 – Founder’s Vision

Almost from the beginning of St. Norbert’s founding of the Order, the Norbertines became involved in parochial assignments. The need for this apostolate was directly connected to the common life of the brothers so that the activity flowed from the community to the parish and back to the community. In the context of community the spirit of fervor was replenished after the demands of active life had been fulfilled.⁵¹

In the present Constitutions of the Order of Canons Regular of Prémontré there is an understanding of giving service to and fulfilling the needs of the local church:

Art. 19: In deciding upon the types of apostolate the procedure should be circular so that with the abbey, priory or house as a center, the apostolate is developed in such a way that we [Norbertines] may the more vigorously dedicate ourselves to the service of humanity. We should do this in the manner or life style of those nearby with appropriate regard for the needs of the locality and region. The concrete forms which “communio” adopts to manifest itself outside the community depends on what needs to be done.⁵²

⁵¹ See E. HAYES, *Rightful Autonomy of Life and Charism in the Proper Law of the Norbertine Order*, Canon Law Studies No. 532, JCD diss., Washington, DC, The Catholic University of America, 1990, pp. 365-409. HAYES gives a concise presentation of the Norbertine Statutes of 1630 under which Fr. Pennings was living. In the 1630 Norbertine constitutions there was legal recognition of the status of members of the Order who were living in parishes and exercising the care of souls. The revision of Norbertine Statutes of 1630 was approved and promulgated in 1947. A revision of the 1947 Statutes was approved and promulgated in 1970. Changes were made to the 1970 Statutes and these were approved and promulgated in 1994. The present Constitutions of the Order became effective 28 August 1995, the Solemnity of St. Augustine.

⁵² *Constitutiones Ordinis Canoniorum Regularium Praemonstratensium*, Prague, Czech Republic, Strahov Abbey, 1995, p. 6 (=CP/95). CP/95 art.19: “In formis apostolatus seligendis procedendum est per circulos, ab abbatiae, prioratus vel domus centro sese expandentes, ita ut servitio hominum nobis habitu vel actu proprium intensius nos dedicemus, ratione habita necessitatum loci et regionis. Formae concretae quas communio ad extra expandenda induit, natura sua variis gradibus discernuntur.” All subsequent English translations from *The Day of Pentecost: Constitutions and Appendices*, Latin-English Edition, 3rd Edition of the English-language translation, THE ORDER OF CANONS REGULAR OF PRÉMONTRÉ, De Pere, WI, St. Norbert Abbey, 1997, p. 6.

The Constitutions also speak of addressing the needs of the universal Church. In this way, the missionary spirit of St. Norbert would also mark the apostolates of the members:

Art. 71: In choosing forms of the apostolate for the Canonry, the more pressing needs of the Church and the contemporary world should be kept in mind. Our communities, although they carry out their work chiefly in the diocese in which they are situated, nevertheless, should be prepared to be at the service of the universal Church. The missionary spirit of St. Norbert has been a mark of our Order from the beginning.⁵³

The apostolate of Norbertines "...embraces the essential needs of the people of God rather than an individual action"⁵⁴ and reaches to many areas of need for the local church. Education and parish life remain the predominant apostolates of the Norbertine community of Green Bay, Wisconsin.

While the founding of St. Norbert College was precipitated by the need to prepare young men for the priesthood, it was the vision of the Norbertine community's local founder, Fr. Bernard Pennings, to establish a facility for the higher education of Catholics in Green Bay. This same commitment to education in fulfilling its mission of service to the local church remains a focus of the present Norbertine community. And since "the Church has always recognized that education is an essential dimension of her mission,"⁵⁵

⁵³ CP/95 art. 71: "In apostolatus formis seligendis canonice rationem habeant urgentiorum Ecclesiae et mundi hodierni necessitatum. Communitates enim nostrae, quamvis praeprimis in dioecibus in quibus sitae sunt, suam praestent operam, servitio tamen Ecclesiae quoque universalis praesto sint. Beati Norberti spiritus missionarius Ordinem nostrum ab incunabulis notavit."

⁵⁴ CP/95 art. 22: "Apostolatus noster in radiosa actione ordinata totius communitatis localis populi Deo consistit priusquam actio individualis fiat."

⁵⁵ JOHN PAUL II, Post-Synodal Apostolic Exhortation *Vita consecrata*, 25 March 1996, n. 96, in *AAS*, 88 (1996), pp. 377-486, here at p. 471. English translation in *Origins*, 25 (1996), pp. 681-719, here at p. 713.

it is faithfully carried out as a work of the community in the same spirit as it was at its inception in 1898.

While the college has changed significantly since its beginnings and grown to a student population of some two thousand young men and women, it does not forget its heritage. Pope John Paul II called for “consecrated persons to take up again, wherever possible, the mission of education in schools of every kind and level and in universities and institutions of higher learning.”⁵⁶ The Norbertine community of De Pere, Wisconsin keeps alive the vision of its local founder in the apostolate of education and that of St. Norbert in its service to the local church.

For this vision to be a dynamic reality that grows beyond an initial idea and continues to have meaning and purpose, it must have integrity and generate acceptance. It must be a magnet for students and teachers. In other words, it must have public recognition of what it is.

2.4 – *Quid est...?*

Much attention has been given to the question: “What is a Catholic University?” From letters of Pope John Paul II on the subject, to the admissions offices in small liberal arts colleges throughout the United States, there is much heated debate giving rise to questions that have international religious, political and social dimensions.

In the introduction to his book on John Henry Cardinal Newman’s *Idea of a University*, Frank Turner summarizes the four main points made by J.H. Newman regarding his vision of a Catholic University:

⁵⁶ *VC*, 97, p. 472; *Origins*, 25 (1996), p. 713.

A university that does not teach theology as a science is not fully a university because by this omission it does not teach universal knowledge;

A university should provide liberal learning rather than vocational or professional instruction, for its purpose is to achieve a particular expansion of outlook, turn of mind, habit of thought, and capacity for social and civic interaction;

A university is a human institution that may and should produce a person of broad knowledge, critical intelligence, moral decency, and social sensitivity;

A university ought to produce persons capable of active contributions to society.⁵⁷

J.H. Newman pursues these themes throughout his discussions. For J.H. Newman, a distinctive feature of a Catholic university, “which includes the teaching of Roman Catholic dogma, is that by its very nature it will prevent students from confusing the excellent ends of liberal education and the still higher ends of true religious faith.”⁵⁸ J.H. Newman first describes a university then later brings in the Catholic element that gives legitimacy to a university.

Looking at American Catholic universities, M.J. Buckley notes that sometimes the definition of a Catholic university is made descriptively in that one finds an example of a Catholic university and then one describes its operations. In other instances it may be defined prescriptively in that one looks through the documents and then deduces what is a Catholic university. He states that “the descriptive model can excite vision and challenge; and the prescriptive model may describe a university that never was and never will be.”⁵⁹

⁵⁷ F.M. TURNER (ed.), *The Idea of a University: John Henry Newman*, New Haven, CT, Yale University Press, 1996, pp. xiv-xvi.

⁵⁸ TURNER, *The Idea of a University*, p. xvi.

⁵⁹ See M.J. BUCKLEY, “The Catholic University and the Promise Inherent in its Identity,” in J.P. LANGAN (ed.), *Catholic Universities in Church and Society: Dialogue on ‘Ex corde Ecclesiae’*, Washington, DC, Georgetown University Press, 1993, pp. 74-89, here p. 85 (=BUCKLEY, “The Catholic University”).

M.J. Buckley's discussion of the dynamism of a Catholic university where there is an integration of faith and academics may be a good fit for the American experience of a Catholic college or university. He argues that "faith tends organically and inherently toward the academic and the academic in the same intrinsic manner tends toward an ultimacy through which knowledge reaches its completion, i.e., the self-disclosure of God."⁶⁰

There is no contradiction between faith and science but rather a complementarity that permits both the religious and the academic to thrive, to reach to the same finality, and to become what they truly are. As Buckley puts it, "this is what constitutes the major challenge for the contemporary Catholic universities: to become gradually what they are, to realize their identity, to allow what is prescriptive discourse to become valid description—in this identity is their promise; in this promise is their identity."⁶¹

The Catholic college or university must be an institution in which Catholicism is perceptibly present and effectively operative. There exists a tension that is present in all efforts to define a Catholic college or university. Can an institution give effective witness to a commitment to Catholic traditions and, at the same time, protect its own autonomy as an institution of higher studies and the academic freedom of its faculty and students?⁶²

⁶⁰ BUCKLEY, "The Catholic University," p. 85.

⁶¹ BUCKLEY, "The Catholic University," p. 85.

⁶² Cf. *ECE*, I, 12 and notes on institutional autonomy and academic freedom, pp. 1482-1483; USCC, *ECE*, pp. 12-13; *Origins*, 20 (1990), p. 268, 275-276. Cf. also NCCB, *Application of 'ECE'*, II, Art. 2, 1-2, pp. 12-13; *Origins*, 30 (2000), p. 71.

2.4.1 – Definition of a Catholic College/University

The 1983 *Code of Canon Law* does not define a Catholic institution of higher studies as such. Instead, it sets parameters for the use of *Catholic* in the title or name of a college or university or other institution of higher studies. Being *Catholic* is not simply a matter of definition or meeting some set of standards or receiving a document from a hierarchical authority. It is probably all of the above and more—*external* by what is seen and heard, *internal* by what is believed and felt—transmitting a *truth* that goes beyond scientific exploration and evidence.

Gallin offers an observation:

On this long journey toward a definition of a Catholic university, the questions from the Vatican side always seem to deal with the “Catholicity” of the institution without sufficient previous discussion of the nature of a university which is trying to be Catholic. From the side of the universities, the focus is generally on how to be better universities, comparable with other universities in our particular culture in terms of teaching and research.⁶³

Whatever terms are used to define the Catholic university, it seems that faith and culture⁶⁴ remain at the heart of the discussions. The Catholic college or university has two aspects to its existence: it exists as an institution of higher studies and it exists as Catholic. It cannot exist as one or the other but exists, as it is—a Catholic college/Catholic university.

⁶³ A. GALLIN, “On the Road Toward a Definition of a Catholic University”, in *The Jurist*, 48 (1988), p. 558 (=GALLIN, “Definition”).

⁶⁴ Cf. SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, 7 December 1965, n. 53, in *AAS*, 58 (1966), pp. 1025-1120, here at pp. 1075. English translation in A.P. FLANNERY (gen. ed.), *Vatican Council II: Constitutions, Decrees, Declarations*, new revised edition, vol. 1, Northport, NY, Costello Publishing, 1992, pp. 903-1001, here at p. 958. The word “culture” in the general sense refers to all those things which go to the refining and developing of man’s diverse mental and physical endowments and...carries with it sociological and ethnological connotations.

Lavelle states that “the union of these two aims—the effort to be a true university and the effort to be a university that fosters Catholic development—can sometimes be a tenuous union and beset by difficulties.”⁶⁵ And for the American Catholic college or university, which exists not only as an institution of higher studies and as Catholic, but also as a Catholic college or university immersed in the ecclesial and civil societies of an American culture of the twenty-first century, the union may even be more tenuous.

There is an underlying theological dimension to answering the question, “What is a Catholic University?”⁶⁶ But juridically the answer is quite clear. Since the Church has the right to establish schools at any level,⁶⁷ a Catholic college or university may only be established as such when it meets certain canonical criteria:

Canon 803, §1: A Catholic school is understood as one which a competent ecclesiastical authority or a public ecclesiastical juridic person directs or which ecclesiastical authority recognizes as such through a written document.⁶⁸

Canon 808: Even if it is in fact Catholic, no university is to bear the title or name ‘Catholic university’ without the consent of the competent ecclesiastical authority.⁶⁹

⁶⁵ M.J. LAVELLE, “What is Meant by a ‘Catholic’ University?” in *America*, 170 (1994), p. 6.

⁶⁶ Cf. *ECE*, I, 12-18, pp. 1482-1486; USCC, *ECE*, pp. 12-17; *Origins*, 20 (1990), p. 268-269. Cf. also *ECE*, II, Arts. 2 & 6, pp. 1503-1504, 1507; USCC, *ECE*, pp. 38-40, 44; *Origins*, 20 (1990), p. 274, 275. The nature and internal characteristics of the institution foster how it lives out its *catholicity* in witness to the mission of the Church and the underlying theological principles of its Catholic identity.

⁶⁷ Cf. *CIC/83* cc. 800-§1, 807; *CIC/17* c. 1375.

⁶⁸ *CIC/83* c. 803, §1: “Schola catholica ea intellegitur quam auctoritas ecclesiastica competens persona iuridica ecclesiastica publica moderatur, aut auctoritas ecclesiastica documento scripto uti talem agnoscit.” Therefore, only a competent ecclesiastical authority, a public juridic person, or individuals with the consent of a competent ecclesiastical authority may establish a Catholic college, university or other institution of higher studies.

⁶⁹ *CIC/83* c. 808: “Nulla studiorum universitatis, etsi reapse catholica, titulum seu nomen *universitatis catholicae* gerat, nisi de consensu competentis auctoritatis ecclesiasticae.”

However, the mere establishment and control by the proper ecclesiastical authority is not a sufficient definition of a Catholic college or university. The institution must be imbued with the living Catholic spirit to complete the definition and give the institution its full identity. It can be Catholic in name and in fact, but without a vigorous *catholicity* that reflects the time, the place and the culture in which the college or university operates it lacks in identity and purpose.

In his address to the presidents of Catholic colleges and universities and other members of the academic community at The Catholic University of America in Washington, DC, on 6 October 1979, Pope John Paul II focused on the Catholic identity of non-judicial institutions by drawing attention to the meaning of the Catholic character of these institutions:

This is your identity. This is your vocation. Every university or college is qualified by a specific mode of being. Yours is the qualification of being Catholic, of affirming God, his revelation and the Catholic Church as the guardian and interpreter of that revelation. The term “Catholic” will never be a mere label, either added or dropped according to the pressures of varying factors.⁷⁰

In his address to educators of Catholic universities on 17 April 2008, Pope Benedict XVI said that “Catholic identity is not dependent upon statistics. Neither can it be equated simply with orthodoxy of course content.”⁷¹ The Catholic identity of the college or university goes beyond concrete numbers and teaching materials. The Pope went on to say that “each and every aspect of your learning communities reverberates

⁷⁰ JOHN PAUL II, Address to Presidents of Catholic Universities and other Members of the Academic Community, The Catholic University of America, USA, 6 October 1979, in *AAS*, 71 (1979), pp. 1260-1264, here p. 1262. English original: “Excellence, Truth, and Freedom in Catholic Universities,” in *Origins*, 9 (1979), pp. 306-308, here p. 307.

⁷¹ BENEDICT XVI, Address to Educators at Catholic Univeristy, 17 April 2008, in *L'Osservatore Romano*, English edition, N. 17 (2041), 23 April 2008, pp. 7-8, here p.7; *Ad Catholicam Studiorum Universitatem Americae*, 17 April 2008, in *AAS*, 100 (2008), p. 323.

within the ecclesial life of faith.”⁷² The institution itself is imbued with the faith and mission of the Church.

The journey toward defining a Catholic college or university in clear concrete universal terms will continue throughout this century. We propose that a Catholic university is *an institution of higher studies, established by one who professes the Catholic faith and remains subject to the authority of the Church with the aim of presenting the Catholic tradition as it is lived in the contemporary world by affording students and faculty the opportunity to explore fully all aspects of the human condition, while seeking to know and understand the truth as it relates to humankind’s ultimate end.*

2.4.2 – St. Norbert, a Catholic College

How then is our practical example, St. Norbert College, a Catholic college? Is it one in name and in substance, *de iure* and *de facto*? Does it meet the canonical standards for a Catholic college in a secular society? Does it satisfy our above proposed definition?

Founded in 1898 as an apostolate of the Premonstratensian Fathers (Norbertines), the college’s first classes were held in the Priory of St. Norbert, which in 1926 was elevated to an abbey. The college was established under the direct control of the religious congregation that founded it⁷³, with its founder, Fr. (Abbot) Bernard Pennings, serving as the college’s first and longest serving president.

⁷² BENEDICT XVI, Address to Educators at Catholic University, p. 7; p. 323.

⁷³ The religious congregation (institute) being The Premonstratensian Fathers (Norbertines) is a public juridic person in canon law.

On 18 October 1898, the Norbertine community in De Pere was incorporated under the laws of the State of Wisconsin as contained in part in the articles of incorporation:

Article II

The name of this corporation shall be “the Order of Premonstratensian Fathers” and the location of this corporation shall be in the city of De Pere in Brown County in the State of Wisconsin.

Article IV

This corporation is owned and connected for ever with the Roman Catholic Church and is and shall be for ever under the supervision and control of said church and all the officers and members of this corporation shall be regular communicants of said church.

Article VI

The Prior [Abbot] shall be ex officio one of the directors and the President of this corporation; he shall preside at all meetings, he shall have the general supervision of this corporation, and shall be the general officer, he shall fill all vacancies in any office, he shall sign all orders and sign all documents and papers requiring his signature and perform such other duties incumbent upon him as by the laws, rules and regulations of the Order of the Premonstratensian Fathers as now existing in said Roman Catholic Church prescribed.⁷⁴

In a letter dated 13 September 1899, Fr. Pennings wrote in part to his superior, Abbot A. Bazelman of the Berne Abbey in The Netherlands:

You have very likely already read in the *De Volksstem* (The Voice of the People) or *De Standaard* (The Standard) that our new building has been blessed by the Bishop,⁷⁵ and that the College was opened last Monday. We have 12 students; one already went home yesterday, because he was ill.... We

⁷⁴ See A-I, Articles of Incorporation of the Premonstratensian Fathers (Norbertines). See also W. LAGERWEY, (trans., ed.), *Letters Written in Good Faith: the Early Years of the Dutch Norbertines in Wisconsin*, prepared under the auspices of ST. NORBERT ABBEY, Green Bay, WI, Alt Publishing, 1996, p. 313.

⁷⁵ The Most Reverend S.G. Messmer: Bishop of Green Bay 1891-1903; Archbishop of Milwaukee 1903-1930.

all share in teaching, so that we suddenly have 5 professors, including McDonald who teaches English and Mathematics.⁷⁶

From the canonical perspective, St. Norbert College in its foundation satisfies the externally verifiable conditions of a Catholic college: an apostolate of a public juridic person and under the sponsorship of that juridic person; conforming to civil law and acknowledging itself as a *work* of the Roman Catholic Church; and under the authority of the Roman Catholic Church with the local Bishop accepting and approving the work undertaken as Catholic. St. Norbert College still fulfills the goals and purposes for which it was established over one-hundred years ago.⁷⁷

In the statement of the College's strategic plan, the first goal stated under the first heading of *Identity and Community* is: "St. Norbert College will affirm its identity as a Catholic liberal arts college in the Norbertine tradition" with the following objectives:

Deepen awareness of the College's Catholic Norbertine heritage and seek to enhance commitment to the religious ideals of the College.

Maintain and strengthen curricular and co-curricular programs central to the religious character of the College.

Continue to enhance our commitment to the liberal arts tradition, which provides all the students with the broad knowledge, skills and experiences to live in a complex world.

Nurture a community based on Norbertine principles and open dialogue, trust, and respect for self and others.⁷⁸

The Board of Trustees and the President of St. Norbert College remain committed to the Catholic identity of the College. As presented in the College Catalog and Mission

⁷⁶ LAGERWEY, *Letters*, p. 359.

⁷⁷ The College was separately incorporated in 1981. See A-II, Articles of Incorporation for St. Norbert College: Article Four- Objects and Purposes. See also A-III, Restated By-laws of St. Norbert College: Article I- Objectives and Purposes.

Statement, St. Norbert College is a private, Catholic school with a community that is representative of all faiths, evident of a deep concern for moral and social values, which strives to provide a superior education that is personally, intellectually and spiritually challenging.⁷⁹ St. Norbert College is a Catholic college in both the canonical and theological understanding of what is a Catholic college or university.

2.5 – Communion with the Diocesan Bishop

The bishop leads the community in a threefold service of teaching, sanctifying and ruling.⁸⁰ It follows that “the bishop in the local church possesses a unique and exclusive primacy of ministry in such wise that all other ministry is derived from his and wholly depends upon his.”⁸¹

In reading the canons on the external criteria that identify a school or university as *Catholic*, “it can be safely stated that the first criterion is some form of relationship or

⁷⁸ BOARD OF TRUSTEES, *Blueprint for the New Century: Grounded in the Past; Planning for the Future*, The Strategic Plan for St. Norbert College 2007-2010: Goals and Objectives, De Pere, WI, St. College, 22 January 2007, p. 1.

⁷⁹ See: St. Norbert College Catalog, 2007-2008, <<http://www.snc.edu/catalog>> (25 June 2008). See A-IV, Mission Statement of St. Norbert College. See also *The Mission Statement*, <http://www.snc.edu/catalog/info_mission.htm> (25 June 2008).

⁸⁰ There are three different functions or *munera* of the bishop: teaching, sanctifying, and governing. This diversity of roles and functions are given to the People of God. However, these *munera* are discharged in different ways by the members of the church. It is in the office of diocesan bishop that there resides the fullness of the three *munera*. See *CIC* c. 375. See also *LG*, 25-27, pp. 29-33; *FLANNERY*1, pp. 379-384; *CD*, 12-20, pp. 678-683; *FLANNERY*1, pp. 569-575. See also SECOND VATICAN COUNCIL, Decree on the Ministry and Life of Priests *Presbyterorum ordinis*, 7 December 1965, nn. 4-6, in *AAS*, 58 (1966), pp. 991-1024, here pp. 995-1001; English translation in *FLANNERY*1, pp. 863-902, here pp. 868-875.

⁸¹ R. HILL, “An Overview of *Mutuae relationes*,” in J.H. Provost (ed.), *Code, Community, Ministry*, Washington, DC, CLSA, 1983, p. 82. See *CIC/83* c. 394.

accountability to church authority.”⁸² As previously noted, this authority is generally the diocesan bishop, but it may also be the bishops’ conference, the Holy See, or some other approved ecclesial or lay authority—but still there is a bishop.

The recognition by the Church authority of the institution as *Catholic* connotes what is commonly understood as a formal relationship with the Catholic Church. In essence, the institution now has the approval to call itself *Catholic* and is expected to carry out its duties according to certain standards. It is linked to Church authority whereby there is a dimension of supervision, whether direct or indirect.

When it comes to the teaching of religion or theology, it is the diocesan bishop who is the principal teacher in the particular Church. The teaching office of the diocesan bishop is treated in c. 386 of Book II and cc. 747-833 of Book III of the *Code of Canon Law*:

Canon 753: Although the bishops who are in communion with the head and members of the college, whether individually or joined together in conferences of bishops or in particular councils, do not possess infallibility in teaching, they are authentic teachers and instructors of the faith for the Christian faithful entrusted to their care; the Christian faithful are bound to adhere with religious submission of mind to the authentic magisterium of their bishops.⁸³

The 1982 report of the joint committee of the Canon Law Society of America and the Catholic Theological Society of America on the cooperation of theologians and bishops contains in part the following statement:

⁸² F.G. MORRISEY, “What Makes an Institution *Catholic*?” in *The Jurist*, 47 (1987), p. 536.

⁸³ *CIC* c. 753: “Episcopi, qui sunt in communione cum Collegii capite et membris, sive singuli sive in conferentiis Episcoporum aut in conciliis particularibus congregati, licet infallibilitate in docendo non polleant, christifidelium suae curae commissorum authentici sunt fidei doctores et magistri; cui authentico magisterio suorum Episcoporum christifideles religioso animi obsequio adhaerere tenentur.”

In the exercise of teaching authority by bishops, preaching the word takes pride of place (*LG* 25; cf. *Directory on the Pastoral Ministry of Bishops*, par. 55). In addition to this kerygmatic witness of the bishop there is a more formal teaching role which calls him to preserve and protect the truth of faith. This responsibility is commonly perceived as a defensive one, but it is understood more properly in a positive and productive way, namely as the transmission of the authentic gospel of Christ. The bishop teaches in this sense by reason of his position in the church over which he presides, in union with the head of the church and other members of the episcopal college. He teaches in the name of the church and is authorized to make the final prudential judgment as to how the community's faith will be publicly expressed at various stages of its historical development. This can be done most appropriately only if the bishop is also accustomed to consult the faithful on matters of faith and Christian living. At times he will be called to judge whether some opinions endanger or are contrary to faith and Christian life. But in his care for the unity and integrity of faith the bishop must respect the gifts which the Holy Spirit imparts to members of the church for their witness to Christ. Bishops "must make a judgment about the true nature and proper use of these gifts, not in order to extinguish the Spirit, but to test all things and hold fast to what is good" (*AA* 3). They should encourage theologians in the freedom necessary to pursue deeper understanding of the gospel and its meaning for contemporary life. In short, the teaching responsibility of bishops is a specifically pastoral one, grounded in their role as leaders who serve the unity and growth in faith of the ecclesial community.⁸⁴

There is a relationship between bishops and theologians in which the teaching of theology is carried out in ecclesial communion with the hierarchy in a manner that

⁸⁴ "In Service to the Gospel: A Consensus Statement of the Joint Committee," in L.J. O'DONOVAN (ed.), *Cooperation between Theologians and the Ecclesiastical Magisterium, A Report of the Joint Committee of the CANON LAW SOCIETY OF AMERICA and the CATHOLIC THEOLOGICAL SOCIETY OF AMERICA*, Washington, DC, CLSA, 1982, p. 180. See *LG*, 25, pp. 29-31; FLANNERY I, pp. 379-381. See also SECOND VATICAN COUNCIL, Decree on the Apostolate of the Laity *Apostolicam actuositatem*, 18 November 1965, n. 3, in *AAS*, 58 (1966), pp. 837-864, here pp. 839-840. English translation in A.P. FLANNERY (gen. ed.), *Vatican Council II: Constitutions, Decrees, Declarations*, new revised edition, vol. 1, Northport, NY, Costello Publishing, 1992, pp. 766-798, here pp. 768-769.

See also CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops Apostolorum successores*, 22 February 2004, nn. 119-122, Città del Vaticano, Libreria Editrice Vaticana, 2004, pp. 134-137. See also SACRED CONGREGATION FOR BISHOPS, *Directorium de pastoralis ministerio episcoporum Ecclesiae imago*, 22 February 1973, n. 55, Città del Vaticano, Typis polyglottis Vaticanis, pp. 61-62; X. OCHOA, *Leges Ecclesiae post Codicem iuris canonici editae*, Roma, Commentarium pro Religiosis, 1980, vol. V, n. 4174, cols. 6462-6539, here cols. 6479-6480. English translation by the Benedictine monks of the Seminary of Christ the King, Mission, BC, *Directory on the Pastoral Ministry of Bishops*, Ottawa, Publications Service of the Canadian Catholic Conference, 1974, p. 32.

acknowledges the proper roles of the bishop and the theologian. The service that the magisterium and the theologian bring to the Church is of a collaborative nature:

The living magisterium of the church and theology, while having different gifts and functions, ultimately have the same goal: preserving the people of God in the truth which sets free and thereby making them “a light to the nations.”⁸⁵

Collaboration between the theologian and the magisterium occurs in a special way when the theologian receives the canonical mission or the mandate to teach. In a certain sense, such collaboration becomes a participation in the work of the magisterium, linked as it then is by a juridic bond.⁸⁶

And as further stated and reaffirmed by the American bishops:

More specifically, ecclesial communion furnishes the basis for the collaborative relationships between the hierarchy and Catholic universities contemplated in *Ex corde Ecclesiae*: “Every Catholic University is to maintain communion with the universal Church and the Holy See; it is to be in close communion with the local church and in particular with the diocesan bishops of the region or the nation in which it is located.”⁸⁷ The Catholic university is a vital institution in the communion of the Church and is “a primary and privileged place for a fruitful dialogue between the Gospel and culture.”⁸⁸

The richness of communion illuminates the ecclesial relationship that unites the distinct, and yet complementary, teaching roles of bishop and Catholic universities.⁸⁹

Theologians likewise have responsibilities and rights in their relationship with the bishops:

As members of the community of faith, theologians share the common responsibility of maintaining the unity and integrity of Catholic faith, reflected in

⁸⁵ CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on the Ecclesial Vocation of the Theologian *Donum veritatis* (=DVer), 24 May 1990, n. 21, in *AAS*, 82 (1990), pp. 1550-1570, here at p. 1559. English translation in *Origins*, 20 (1990), pp. 117-126, here at p. 122.

⁸⁶ *DVer*, n. 22, p. 1559, *Origins*, 20 (1990), p. 122.

⁸⁷ *ECE*, II, Art. 5, §1, p. 1506; USCC, *ECE*, p. 43; *Origins*, 20 (1990), p. 274.

⁸⁸ *ECE*, I, 43, 49, pp. 1498,1501; USCC, *ECE*, pp. 31-32, 35-36; *Origins*, 20 (1990), p. 273.

⁸⁹ NATIONAL CONFERENCE OF CATHOLIC BISHOPS [USA], *The Application of 'Ex corde Ecclesiae' for the United States*, I, 2, Washington, DC, United States Catholic Conference, 2000, p. 4; also in *Origins*, 30 (2000), pp. 68-75, here at p. 69.

the *sensus fidei* (cf. LG 12) and the documents of tradition in which it is set forth. They must keep in mind the pastoral and missionary effects of their work (ITC Thesis 3). Theologians also acknowledge that it is the role of bishops as authoritative teachers in the Church to make pastoral judgments about the soundness of theological teaching so that the integrity of Catholic doctrine and the unity of the faith community may be preserved. In other words, theological teaching always remains subject to testing in the life of the Church and to the teaching of its bishops.⁹⁰

Bishop and theologians are linked together in carrying out the teaching *munera* in the service of the Church and each has different roles. Likewise, bishops and sponsors of institutes of higher studies have separate and distinct roles in their relationship to the Catholic college or university.

2.5.1 – Bishop and Religious Institute (Sponsor)

The relationship of bishop and religious is principally treated in Book II, Part III, Section I, Title II, Chapter V of the *Code of Canon Law*, under the title, “The Apostolate of Institutes,” cc. 673-683. The first section, cc. 673-677, deals with the apostolate and apostolic action. The second section, cc. 673-683, speaks of the relationship between the diocesan bishop and the apostolic work of the religious.

The mission of the Church is not limited to the work of any particular member of the Church. *Apostolicam actuositatem*, I, 2 states:

The Church was founded to spread the kingdom of Christ over all the earth for the glory of God the Father, to make all men [sic] partakers in redemption and salvation, and through them to establish the right relationship of the whole world to Christ. Every activity of the Mystical Body with this in view goes by the name of “apostolate”; the Church exercises it through all its members, though in

⁹⁰ NATIONAL CONFERENCE OF CATHOLIC BISHOPS [USA], *Doctrinal Responsibilities: Approaches to Promoting Cooperation and Resolving Misunderstandings between Bishops and Theologians*, Washington, DC, NCCB, 1989, p. 7. See LG, 12, pp. 16-17; FLANNERY I, pp. 363-364. See also INTERNATIONAL THEOLOGICAL COMMISSION, *Theses on the Relationship between the Ecclesiastical Magisterium and Theology*, Washington, DC, USCC, 1977, pp. 1-18.

various ways. In fact, the Christian vocation is, of its nature, a vocation to the apostolate as well.⁹¹

Indeed, it is the responsibility and right of all *christifideles* to participate in apostolic activity carried out in communion with the Church. This communion is defined as being joined with Christ in the visible organization of the Church by the bonds of faith, sacraments and ecclesiastical governance.⁹² Christian living is itself apostolic activity. Religious institutes must share in the apostolate of the Church in a way that joins them to the diocesan bishop and their superiors in carrying out the mission of the Church.⁹³

The diocesan bishop is the “father and pastor of the particular Church in its entirety.”⁹⁴

Canon 678, §1: Religious are subject to the power of bishops whom they are bound to follow with devoted submission and reverence in those matters which regard the care of souls, the public exercise of divine worship, and other works of the apostolate.⁹⁵

In *Mutuae relationes*⁹⁶ structure is given to the relationships between bishops and religious institutes on the local, national and international levels. The purpose of the

⁹¹ *AA*, 2, p. 838; FLANNERY1, pp. 767-768.

⁹² See *CIC/83* c. 205.

⁹³ See R.A. HILL, “The Apostolates of Institutes: Canons 673-683,” in J. HITE, S. HOLLAND and D. WARD (eds.), *A Handbook on Canons 573-746*, published under the auspices of the CLSA, Collegeville, MN, Liturgical Press, 1985, pp. 197-220.

⁹⁴ *VC*, 49, p. 422; *Origins*, 25 (1996), p. 697.

⁹⁵ *CIC/83* c. 678, §1: “Religiosi subsunt potestati Episcoporum, quos devoto obsequio ac reverentia prosequi tenentur, in iis quae curam animarum, exercitium publicum cultus divini et alia apostolatus opera respiciunt.” Cf. *CD*, 35, 4, pp. 691-692; FLANNERY1, p. 585.

⁹⁶ SACRED CONGREGATION FOR BISHOPS AND SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Directives on the Mutual Relations between Bishops and Religious Institutes in the Church *Mutuae relationes*, 23 April 1978, in *AAS*, 70 (1978), pp. 473-506. English translation in A.P. FLANNERY (gen. ed.), *Vatican Council II: More Post Conciliar Documents*, New Revised Edition, vol. 2 (=FLANNERY2), Northport, NY, Costello Publishing,

document is to render more effective application of the principles found in *Christus Dominus* and *Perfectae caritatis* of Vatican Council II.⁹⁷

The religious institute works collaboratively with the diocesan bishop in carrying out ministry in the particular Church. Although the bishop may be excluded from the internal affairs of religious institutes in his diocese, he does have responsibility in exercising vigilance over all aspects of apostolic activity in his diocese.⁹⁸ Each religious institute lives out its proper charism in the context of the local culture and remains watchful lest it loses its distinctive character.⁹⁹

The religious institute as a sponsor of an educational apostolate can be of assistance to the bishop in carrying out his role as teacher, particularly as it relates to the theological disciplines. The tone of *Mutuae relationes* is one of cooperation, communication and mutual respect between the diocesan bishop and the religious in his

1998, pp. 209-243. This document came about as a result of a plenary assembly (16-18 October 1975) of the Sacred Congregation for Bishops and the Sacred Congregation for Religious and Secular Institutes after consultation and input from the National Conferences of Bishops, the National Conferences of Religious and the International Unions of Superiors General (of men and of women).

⁹⁷ See *MR*, Introduction, p. 473-474; FLANNERY2, pp. 209-210. Cf. Decree on the Pastoral Office of Bishops in the Church *Christus Dominus*, 28 October 1965, nn. 33-35, in *AAS*, 58 (1966), pp. 673-701, here at pp. 690-692, in FLANNERY1, pp. 564-590, here at pp. 583-586; Decree on the Up-to-Date Renewal of Religious Life *Perfectae caritatis*, 28 October 1965, in *AAS*, 58 (1966), pp. 702-712, in FLANNERY1, pp. 611-623. See also PAUL VI, Apostolic Letter motu proprio *Ecclesiae sanctae* I, 6 August 1966, nn. 22-40, in *AAS*, 58 (1966), pp. 757-775, here at pp. 769-773. English translation in *CLD*, 6 (1963-1967), pp.264-298, here at pp. 278-282; also in FLANNERY1, pp. 591-610, here at pp. 604-609.

⁹⁸ See *CIC* cc. 673-683 which deal with the apostolate of institutes; a reading of *MR*, 52-59 can be helpful in further understanding the relationship between the diocesan bishop and religious men and women in his territory.

⁹⁹ See *MR*, 18, pp. 484-485; FLANNERY2, pp. 222-223.

diocese. Further encouragement is given to the updating of such traditional ministries as schools, hospitals, and social service agencies.¹⁰⁰

It is the responsibility of the diocesan bishop to ensure that religious, whether of diocesan or pontifical right, “feel themselves truly a part of the *diocesan family*.”¹⁰¹ While the bishop has a pastoral role in his relationship with religious in his diocese, difficulties can arise in that the relationship of the bishop to diocesan institutes founded by him or his predecessors is somewhat different from his relationship to pontifical institutes.¹⁰²

Some major superiors of religious institutes are *ordinaries* in their own right.

Canon 134, §1: In addition to the Roman Pontiff, by title of ordinary are understood in the law diocesan bishops and others who, even if only temporarily, are placed over some particular church or a community equivalent to it according to the norm of can. 368 as well as those who possess general ordinary executive power in them, namely, vicars general and Episcopal vicars; likewise, for their own members, major superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic life of pontifical right who at least possess ordinary executive power.¹⁰³

¹⁰⁰ See *MR*, 40, pp. 495-496; *FLANNERY2*, p. 233.

¹⁰¹ *MR*, 18, p. 485; *FLANNERY2*, p. 222, as quoted from *CD*, 34, p. 690, *FLANNERY1*, p. 584.

¹⁰² See *CIC/83* cc. 579, 589. Diocesan right institutes are erected by the diocesan bishop through formal decree, with prior approval of the Apostolic See, and remain under his special care. Where the law calls for the intervention of ecclesiastical authority, it is usually the diocesan bishop who is the competent authority. Pontifical right institutes are erected by the Apostolic See or approved by it through formal decree. Such institutes have usually been of diocesan right for some years previously. Pontifical right institutes are immediately and exclusively under the jurisdiction of the Apostolic See in matters of internal governance and discipline. As such, the institute has an inter-diocesan and often international function in the Church.

¹⁰³ Cf. *CIC/83* c.134, §1: *Nomine Ordinarii in iure intelleguntur, praeter Romanum Pontificem, Episcopi diocesani aliique qui, etsi ad interim tantum, praepositi sunt alicui Ecclesiae particulari vel communitati eidem aequiparatae ad normam can. 368, necnon qui in iisdem generali gaudent potestate exsecutiva ordinaria, nempe Vicarii generales et episcopales; itemque, pro suis sodalibus, Superiores maiores clericalium institutorum religiosorum iuris pontificii et clericalium societatum vitae apostolocae iuris pontificii, qui ordinaria saltem potestate exsecutiva pollent.*” The canon refers to all major superiors of *clerical* religious institutes of pontifical right

While the diocesan bishop is the *ordinary* of the place, at times the major superior may be the competent authority to address certain issues. The traditional canonical role and limited autonomy of religious institutes of consecrated life may be of consequence in the role the bishop has in relationship to colleges and universities founded and sponsored by religious institutes in the United States.¹⁰⁴ Even in instances where a religious institute has the privilege of *exemption*, it does not affect submission to the power of the

and all major superiors of *clerical* societies of apostolic life of pontifical right as *ordinaries* when at least they possess ordinary (by virtue of their office) executive power. Emphasis added. Clerical superiors are capable in law (CIC/83 cc. 596, §2; 732) of exercising power of governance, hence they are *ordinaries*. The Abbot of St. Norbert Abbey, the major superior of the Norbertines who sponsor St. Norbert College, is an ordinary in his own right by virtue of the law. Much has been written on the exercise of power of governance by non-clerical superiors of religious institutes. See E. MCDONOUGH, "The *Potestas* of Canon 596," in *Antonianum*, 63 (1988), pp. 551-606. Although non-clerical major superiors might exercise the power of governance in their institutes, they are not *ordinaries* in the exercise of full canonical powers. The abbot of St. Norbert Abbey is an ordinary in his own right as major superior of the Norbertines attached to the abbey; Norbertines are a religious institute of pontifical right.

¹⁰⁴ See VC, 48-49, pp. 421-423; *Origins*, 25 (1996), p. 697. See also MR, 11, 13, pp. 480, 481-482; FLANNERY2, pp. 217, 218-219. See also CIC/83 cc. 586, 678. Autonomy is the ability to act freely. It is given to the juridic person by its statutes and the common law which is approved by the competent authority; it is not absolute but rather it is relative and exists as an acquired right granted by law or a competent authority. Autonomy is not to be understood as unconditional independence from legitimate higher authority. Cf. J. CASTAÑO, *Gli istituti di vita consacrata*, (cc. 573-730), Rome, Millenium Romae, 1995, pp. 122-123: "L'indipendenza indica che un determinato ente giuridico non ha alcun legame con nessun altro ente, giacchè ognuno rimane nella propria sfera. L'autonomia invece può considerare il fatto che un ente giuridico abbia un legame con un altro ente superiore, ma che rimanga autonomo nel suo operare." "Indipendence indicates that a certain juridical entity has no bond (relationship) with any other entity, since each one remains in its own (proper) sphere. On the other hand, autonomy can be considered the fact that a juridical entity has a bond (relationship) with another higher entity, but it remains autonomous in its functioning." Statutes as defined in c. 94 are regulations: 1) established in accordance with the law; 2) in aggregates of persons and things, binding only those members; 3) whereby the a) purpose, b) constitution, c) governance, d) and methods of operation of these bodies are determined. Statutes are the basic norms by which juridic persons are governed and assist in providing for the functioning of a given body or organization and its management. Cf. P.J. GONSORCIK, *The Canonical Status of Separately Incorporated Healthcare Apostolates in the United States: Current Status and Future Possibilities for the Public and Private Juridic Person*, JCD diss., Ottawa, ON, Saint Paul University, 2001, pp. 84-107 (=GONSORCIK, *Canonical Status of Public and Private Juridic Persons*) for a treatment of juridic persons in the 1983 Code of Canon Law.

bishop where the care of souls, public worship and the works of the apostolate are concerned.¹⁰⁵

The diocesan bishop is to preserve and safeguard the rightful autonomy of the religious institutes in his territory; and there is to be open and cordial dialogue between the bishop and the superiors of the different institutes who sponsor apostolic activity in the diocese.¹⁰⁶ Rightful or true autonomy refers to the internal governance and the patrimony of the religious institute. Autonomy is not absolute; it is externally restricted by the authority of the Apostolic See or the diocesan bishop.¹⁰⁷

2.5.2 – Bishop and Apostolate of Religious Institute (Sponsor)

If the primary apostolate of the religious institute is to witness Christ by its members living a life of prayer and penance dedicated by profession of the counsels of

¹⁰⁵ *CIC/17* c. 488, 2°: “...*religionis exemptae*, religio sive votorum sollemnium sive simplicium, a iurisdictione Ordinarii loci subducta...” defined *exempt religious* as “a religious [institute], whether of solemn or simple vows, removed from the jurisdiction of the local Ordinary” and consequently subjected directly to the authority of the Holy See. The present code eliminates mention of exemption of religious institutes except for c. 591 in that the Supreme Pontiff maintains the power to exempt religious institutes making them subject directly to himself or another ecclesiastical authority. The Norbertines are not an exempt religious institute. See *CD*, 35, §3, p. 691; *FLANNERY1*, p. 585. See also *MR*, 22, p. 487; *FLANNERY2*, p. 224. See also *CIC* cc. 678; 738, §2. See also CONGREGATION FOR BISHOPS, Directory for the Pastoral Ministry of Bishops *Apostolorum successores*, n. 100, pp. 112-113. For more on how the 1917 code treated exemption, and how Vatican II and the revised code treat exemption, see also J. HUELS, “The Demise of Religious Exemption,” in *The Jurist*, 54 (1994), pp. 40-55. See also J.J. CONN, “Bishops and the Apostolates of Religious,” in *CLSAP*, 63 (2001), pp. 49-83.

¹⁰⁶ See *CIC/83* cc. 586; 678, §3.

¹⁰⁷ Cf. T. RINCÓN, “Book II, Part III: Institutes of Consecrated Life and Societies of Apostolic Life,” commentary on c. 586 in E. CAPARROS, M. THÉRIAULT, and J. THORN (eds.), *Code of Canon Law Annotated*, 2nd edition revised and updated of the 6th Spanish language edition “Latin-English edition of the *Code of Canon Law* and English language translation of the 6th Spanish language edition of the commentary prepared under the responsibility of the INSTITUTO MARTÍN DE AZPILCUETA,” E. CAPARROS, H. AUBÉ et al. (eds.), Montréal, QC, Wilson & Lafleur Limitée, 2004, p. 479.

poverty, chastity and obedience,¹⁰⁸ then for some institutes the secondary role and duty is to establish the active apostolate.¹⁰⁹ This apostolic activity of a public juridic person is carried out in the name of and by mandate of the Church:

Canon 675, §1: Apostolic action belongs to the very nature of institutes dedicated to works of the apostolate. Accordingly, the whole life of the members is to be imbued with an apostolic spirit; indeed the whole apostolic action is to be informed by a religious spirit.

§2: Apostolic action is to proceed always from an intimate union with God and is to confirm and foster this union.

§3: Apostolic action, to be exercised in the name and by the mandate of the Church, is to be carried out in the communion of the Church.¹¹⁰

The works of the religious institutes, i.e. their corporate works, their entrusted works and religious assigned to an apostolate, are all indeed ecclesial activities and as such must be exercised with the mandate of the Church.¹¹¹ It is the competent ecclesiastical authority which gives approval, implicitly or explicitly, for these works to be carried out.¹¹² These works have their original mandate in the approved constitutions of the institute and in the

¹⁰⁸ See *CIC/83* c. 673. All religious are called to a life of prayer and penance as witnessed by living out their vows.

¹⁰⁹ See *CIC/83* c. 674. Religious institutes dedicated to a life of contemplation have been held in high esteem throughout Church history; their role and contribution to the life of the Church gives testimony to their unique non-active apostolic call.

¹¹⁰ *CIC/83* c. 675, §1: “In institutis operibus apostolatus deditis, apostolica actio ad ipsam eorum naturam pertinet. Proinde, tota vita sodalium spiritu apostolico imbuatur, tota vero actio apostolica spiritu religioso informetur.” §2: “Actio apostolica ex intima cum Deo unione semper procedat eandemque confirmet et foveat.” §3: “Actio apostolica, nomine et mandato Ecclesiae exercenda, in eius communione peragatur.”

¹¹¹ Here, we are referring to the corporate works of the institute as opposed to apostolic works of individual members of the institute. Cf. *CIC* cc. 665, §1; 671; 682.

¹¹² Cf. *CIC* cc. 611, §2°; 681. Where the diocesan bishop has given approval for the religious institute to erect a house, it is the right of that institute to engage in works proper to the institute, provided the precepts of the law are followed and remain subject to any of the conditions attached to the approval. Should the diocesan bishop entrust a particular work to a religious institute, that work is subject to the authority and direction of the diocesan bishop in keeping with the norm of law, particularly *CIC/83* c. 678, §§2-3.

subsequent approval to establish a house. In the exercise of these external apostolic works, the individual religious is subject to his or her religious superior as well as the diocesan bishop:

Canon 678, §2: In exercising an external apostolate, religious are also subject to their proper superiors and must remain faithful to the discipline of the institute. The bishops themselves are not to fail to urge this obligation if the case warrants it.¹¹³

The diocesan bishops together with the consultation of the superiors of religious institutes work to build up the Body of Christ. Such activities are subject to the authority of the bishop:

Canon 678, §3: In organizing the works of the apostolate of religious, diocesan bishops and religious superiors must proceed through mutual consultation.¹¹⁴

Regular scheduled meetings between the bishop and the superiors of religious who have apostolates in the diocese are beneficial for the Church in general and the faithful in particular. There should be mutual trust and cooperation between the individual bishops and the individual religious communities “in order to promote mutual understanding, which is the necessary precondition for effective cooperation, especially in pastoral matters.”¹¹⁵

¹¹³ *CIC/83* c. 678, §2: “In apostolatu externo exercendo religiosi propriis quoque Superioribus subsunt et disciplinae instituti fideles permanere debent; quam obligationem ipsi Episcopi, si casus ferat, urgere ne omittant.”

¹¹⁴ *CIC/83* c. 678, §3: “In operibus apostolatus religiosorum ordinandis Episcopi dioecesani et Superiores religiosi collatis consiliis procedant oportet.”

¹¹⁵ *VC*, 50, pp. 423-424; *Origins*, 25 (1996), p. 697. Cf. *CD*, 35, 1, pp. 690-691; *FLANNERY1*, p. 584. See CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops Apostolorum successores*, n. 99, pp. 109-110; see also n. 135, pp. 149-150.

Where the bishop entrusts a work to religious, he has greater competence over that work since it is subject to his direction rather than to the religious institute, even though it may be proper to the charism of the religious institute:

Those works, however, even though they be proper and special to the institute, which are entrusted by the local Ordinary shall be subject to his authority and direction, without prejudice to the right of religious superiors to supervise the way of life of the members and even, together with the local Ordinary, the execution of the task entrusted to them.¹¹⁶

Whereas the authority of the bishop principally concerns itself with the apostolic enterprise and the authority of the religious superior looks to the personal and communal welfare of the religious, it is essential that there be dialogue and cooperation. It is only through sincere dialogue and cooperation that the local church is built up and the responsibilities and rights of both the bishop and the religious institute are respected.¹¹⁷

2.5.3 – Bishop and Theologian

The pope and the bishop have the mandate of transmitting and teaching the faith, but the magisterium is free to call upon theologians to aid in the understanding and interpretation of the faith.

Theology has always had and continues to have great importance for the Church, the People of God, to be able to share creatively and fruitfully in Christ's mission as prophet. Therefore, when theologians, as servants of divine truth, dedicate

¹¹⁶ PAUL VI, Letter motu proprio *Ecclesiae sanctae* I, 6 August 1966, n. 29, §2, in *AAS*, 58 (1966), pp. 757-775, here p. 771. English translation in A.P. FLANNERY (gen. ed.), *Vatican Council II: Constitutions, Decrees, Declarations*, new revised edition, vol. 1, Northport, NY, Costello Publishing, 1992, pp. 591-610, here p. 606. See *CIC/83* c. 681. While the bishop coordinates and directs all the apostolic activity in the particular Church, there is a distinction between those works that the religious institute directs and those entrusted works which the bishop directs. See J.J. CONN, "Bishops and the Apostolates of Religious," in *CLSAP*, 63 (2001), pp. 71-72.

¹¹⁷ See CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops Apostolorum successores*, n. 102, pp. 115-116. See also *CIC/83* c. 680.

their studies and labors to ever deeper understanding of the truth, they can never lose sight of the meaning of their service in the Church which is enshrined in the concept *intellectus fidei*. This concept [...] functions correctly when they seek to serve the magisterium, which in the Church is entrusted to the bishops joined by the bond of hierarchical communion with Peter's successor [...]"¹¹⁸

The relationship between the magisterium and theologians is important in the life and mission of the Church, seemingly more so in this contemporary world of globalization and secularization. The work of the Catholic academic theologian to investigate the insights of the Church's teachings whether in the classroom or in scholarly writings is related to but different from the work of the bishop in teaching and defending Church doctrine. Theologians and bishops, each in their own ways, are responsible for serving the truth that is found in the one God. The role of the theologian "is to pursue in a particular way an ever deeper understanding of the word of God found in the inspired Scriptures and handed on by the living tradition of the Church. He [the theologian] does this in communion with the magisterium, which has been charged with the responsibility of preserving the deposit of faith."¹¹⁹

As members of the community of faith, theologians share the common responsibility of maintaining the unity and integrity of the Catholic faith. They are to keep in mind the pastoral and missionary effects of their work and also to acknowledge

¹¹⁸ JOHN PAUL II, Encyclical *Redemptor Hominis*, 4 March 1979, in *AAS*, 71 (1979), pp. 257-324, here at p. 307 (=RH). English translation in *Origins* 8 (1979), pp. 625-644, here at p. 639. See also c. 375, §1: "Episcopi, qui ex divina institutione in Apostolorum locum succedunt per Spiritum Sanctum qui datus est eis, in Ecclesia Pastores constituuntur, ut sint et ipsi doctrinae magistri, sacri cultus sacerdotes et gubernationis ministri." "Bishops, who by divine institution succeed to the place of the Apostles through the Holy Spirit who has been given to them, are constituted pastors in the Church, so that they are teachers of doctrine, priests of sacred worship, and ministers of governance."

¹¹⁹ CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on the Ecclesial Vocation of the Theologian *Donum veritatis*, 24 May 1990, n. 6, in *AAS*, 82 (1990), pp. 1550-1570, here at p. 1552. English translation in *Origins*, 20 (1990), pp. 117-126, here at p. 119.

that it is the role of the bishop(s) as authoritative teachers in the Church to make pastoral judgments regarding the soundness of theological teaching in order that the integrity of Catholic doctrine and the unity of the faith community are preserved. Theological teaching always remains subject to testing in the life of the Church and to the teaching of its bishops.¹²⁰

The relationship of theologian and bishop in the Church is one of collaboration. This cooperation would enable theologians better to understand and to fulfill their specific responsibilities in the Church, consequently “collaboration between the theologian and the magisterium occurs in a special way when the theologian receives the canonical mission or mandate to teach.”¹²¹

2.5.4 – Bishop’s Responsibilities and Rights

Where there are responsibilities there are also rights.¹²² While there is a theological foundation for the office of bishop, we limit our discussion to the canonical

¹²⁰ NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *Doctrinal Responsibilities: Approaches to Promoting Cooperation and Resolving Misunderstandings between Bishops and Theologians*, Washington, DC, NCCB, 1989, p. 7.

¹²¹ *DVer*, n. 22, p. 1559; *Origins*, 20 (1990), p. 122.

¹²² A “right” implies a moral power to act or to be immune from injury; it further implies an obligation on the part of others to respect the right and the existence of some mechanism for the vindication of rights. The term “responsibilities” is less precise. Church documents often speak of *duty* or *obligation*. The *Coetus*, in its work on drafts of the *Lex Ecclesiae Fundamental*, lists a variety of rights of the church and of various classes of persons within the church. The new *Lex* (CIC/83) mentions *munera*, *officia* and *responsabilitas* of persons in the Church. The Pontifical Commission for the Revision of the *Code of Canon Law* issued their redrafted *LEF* on 24 April 1980. This draft was analyzed in a *relatio* by a *coetus specialis* of the Commission dated 5 January 1981. See PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO: SPECIALIS, “*De Lege Ecclesiae Fundamental*” in *Communicationes*, 12 (1980), pp. 25-47; 13 (1981), pp. 44-110. Even though the *LEF* was not promulgated or officially published, it serves as an indicator for the new attention that the current *Code of Canon Law* gives to the matter of

responsibilities and rights of the diocesan bishop in his relationship to Catholic universities and other institutes of higher studies. This authority arises from the office of bishop as teacher, either individually or as a collective body of bishops.¹²³

The responsibilities and rights of bishops flow from their pastoral offices of teaching, sanctifying and governing in the name of the Church. Since these tasks form a single pastoral office, they cannot be fully separated one from the other.¹²⁴ The first or primary task of the bishop is the office or function of teacher.¹²⁵ The Second Vatican Council constitution, *Lumen gentium*, says:

Among the most important duties of bishops that of preaching the Gospel has pride of place. For the bishops are heralds of the faith, who draw new disciples to Christ; they are authentic teachers, that is, teachers endowed with the authority of Christ, who preach the faith to the people assigned to them, the faith which is destined to inform their thinking and direct their conduct; under the light of the Holy Spirit they make that faith shine forth, drawing from the storehouse of revelation new things and old (cf. Mt. 13:53); they make it bear fruit and with watchfulness they ward off whatever errors threaten their flock (cf. 2 Tim. 4:14). Bishops who teach in communion with the Roman Pontiff are to be revered by all as witnesses of divine and Catholic truth; the faithful, for their part, are obliged to submit to their bishop's decision, made in the name of Christ, in matters of faith and morals, and to adhere to it with a ready and respectful allegiance of mind.¹²⁶

rights. References to the *LEF* are to the 1980 revisions: J. P. MCINTYRE (trans.), "Lex Ecclesiae Fundamentalis: seu Ecclesiae Catholicae universae lex canonica fundamentalis, Romae, die 24 April 1980/ Pontificia Commissio Codici Iuris Canonici Recognoscendo," Latin-English translation, Ottawa, Saint Paul University, 1994 (private use). Cf. BOYLE, in *CBTEM*, pp. 1-3; 16-30. See also T. J. GREEN, "Lex Fundamentalis: The Law Within," in *CLSA Proc*, 67 (2005), pp. 21-76.

¹²³ See *LG*, 25, pp. 29-31; FLANNERY1, p. 379-381. See also *CIC/83* c. 753. See also *CIC/83* c. 810, §2.

¹²⁴ See NCCB, *Doctrinal Responsibilities*, p. 6.

¹²⁵ The *munus docendi* is the first work or mission of the Church in spreading the gospel of Jesus Christ. Book III of the 1983 *Code of Canon Law*, entitled *The Teaching Office of the Church*, is not the only place in the Code that deals with the *munus docendi*: see cc. 211; 386; 528; 840; 843, §2; and 1364-1369.

¹²⁶ *LG*, 25, pp. 29-31, here p. 29; FLANNERY1, p. 379-381, here p. 379.

As a Catholic college and a Parish in the Diocese of Green Bay, St. Norbert College cooperates with the bishop in carrying out his ministry of providing for the pastoral care of the College community.¹²⁷ The bishop, the pastor and the college president meet regularly to dialogue and discuss matters of mutual concern. As the Bishops of the United States stated:

One of the ways this relationship is clarified and maintained is through dialogue that includes faculty of all disciplines, students, staff, academic and other administrative officers, trustees and sponsoring religious communities of the educational institutions, all of whom share responsibility for the character of Catholic higher education. The bishop and his collaborators in the local church are integral parties in this dialogue.¹²⁸

The dialogue is ongoing. The diocesan bishop, the college president and the abbot of St. Norbert Abbey meet regularly to discuss the needs of the college community and the needs of the Church of Green Bay. The roles of each are distinct but there is mutual cooperation and dialogue to maintain the common goal of Catholic higher education.

2.5.4.1 – Canonical/Ecclesial

The diocesan bishop has the responsibility and the right to be vigilant over fidelity to Catholic principles in Catholic universities and other institutes of higher studies in his territory:

¹²⁷ The college was designated a personal parish (cf. *CIC/83* c. 518) in 1969 and became St. Norbert College Parish at Old St. Joseph Church under the patronage of St. Norbert. It was the first college in the U.S. to be designated a parish. Students of the college are automatic members of the college parish. Faculty, staff and others who are connected to the college become members by registering. See <www.snc.edu/oldstjoseph/history.html> (3 September 2008). The pastoral care of St. Norbert College Parish is entrusted to the Norbertine community. The diocesan Bishop appoints the Norbertine pastor and parochial vicar upon presentation by the Abbot of St. Norbert Abbey (cf. c. 682).

¹²⁸ NCCB, *Application of 'ECE'*, I, 3, p. 5; *Origins*, 30 (2000), p. 69.

Canon 810, §2: The conference of bishops and diocesan bishops concerned have the duty and right of being watchful so that the principles of Catholic doctrine are observed faithfully in these same universities.¹²⁹

The bishop also has the responsibility to see that a faculty of theology or at least a chair of theology is erected in Catholic universities:

Canon 811, §1: The competent ecclesiastical authority is to take care that in Catholic universities a faculty or at least a chair of theology is erected in which classes are given for lay students.¹³⁰

In addition to these, the bishop is to provide for the pastoral care of college students even those students in colleges which are not Catholic:

Canon 813: The diocesan bishop is to have earnest pastoral care of students, even by erecting a parish or at least by designating priests stably for this, and is to make provision that at universities, even non-Catholic ones, there are Catholic university centers which give assistance, especially spiritual assistance, to youth.¹³¹

Indeed, the bishop as the shepherd and authentic teacher in the particular Church has a duty of vigilance in the full pastoral care of those entrusted to him. This duty and right is also extended to the conference of bishops for those institutions that come under their direction. Should the bishop(s) determine that Catholic teaching is not “observed faithfully” in a Catholic college or university or other institute of higher studies, *Ex corde Ecclesiae* is clear regarding his (their) responsibility of vigilance and action:

¹²⁹ *CIC/83* c. 810, §2: *Episcoporum conferentiae et Episcopi diocesani, quorum interest, officium habent et ius invigilandi, ut in iisdem universitatibus principia doctrinae catholicae fideliter servantur. See CONGREGATION FOR BISHOPS, Directory for the Pastoral Ministry of Bishops *Apostolorum successores*, n. 135, p. 149.*

¹³⁰ *CIC/83* c. 811, §1: “*Curet auctoritas ecclesiastica competens ut in universitatibus catholicis erigatur facultas aut institutum aut saltem cathedra theologiae, in qua lectiones laicis quoque studentibus tradantur.*”

¹³¹ *CIC/83* c. 813: “*Episcopus dioecesanus impensam habeat curam pastorem studentium, etiam per paroeciae erectionem, vel saltem per sacerdotes ad hoc stabiliter deputatos,*

Every Bishop has a responsibility to promote the welfare of the Catholic Universities in his diocese and has the right and duty to watch over the preservation and strengthening of their Catholic character. 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 authorities in accordance with established procedures and, if necessary, with the help of the Holy See.¹³²

In the case of a religious sponsored apostolate, the autonomy of the institution is to be respected by the bishop. It would seem that there is a shared responsibility on the parts of the administration, faculty and the sponsoring institute to maintain a standard of integrity that is in keeping with the spirit and the letter of the canon.¹³³ Where there is a concern, the bishop ought to work closely with the internal authorities of the institution to rectify the matter.¹³⁴

Although the diocesan bishop is the teaching authority in the particular Church, he is not necessarily the authority competent to hire and remove professors or administrators. In the United States, where most Catholic colleges and universities are not

et provideat ut apud universitates, etiam non catholicas, centra habeantur universitaria catholica, quae iuventuti adiutorio sint, praesertim spirituali.”

¹³² *ECE*, Art. 5, §2, pp. 1506-1507; USCC, *ECE*, p. 43, *Origins*, 20, (1990), pp. 274-275. Taking into account that different bodies may establish a Catholic college or university: the Holy See, an Episcopal Conference or another Assembly of Catholic Hierarchy, a diocesan Bishop, a Religious Institute or other public juridical person, or other ecclesiastical or lay persons in accordance with the norm of ecclesial law, the procedures may vary.

¹³³ It would seem that the intent of the commission members was that c. 810, §1 be applied to administration and faculty as well: “Addatur « ad normam statutorum » ut in tuto ponantur iura docentis.” See PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Relatio, ad can. 765*, Città del Vaticano, Typis polyglotis Vaticanis, 1981, pp. 182-183; see also “Acta Commissionis,” in *Communicationes*, 15 (1983), pp. 103-104. The statutes of the university could reflect that the administration and/or faculty also have a duty of vigilance and according to the statutes might discipline or dismiss an errant professor or administrator with or without input from the diocesan bishop.

¹³⁴ See CONGREGATION FOR BISHOPS, Directory for the Pastoral Ministry of Bishops *Apostolorum successores*, n. 135, p. 149. See also NCCB, *Application of 'ECE'*, I, 3, p. 5; *Origins*, 30 (2000), p. 69.

operated by the diocese but by religious institutes or other juridic persons, it is generally the internal authority of the institution that determines suitability in the hiring and in the termination of faculty members, taking into account “their scientific and pedagogical suitability” and “their integrity of doctrine and probity of life.”¹³⁵ The competent authority and the procedures to be used are set forth in the statutes of the institution.¹³⁶

Granting the mandate (*mandatum*) to teach theological disciplines in a Catholic college or university or other institute of higher studies is another right and responsibility of the diocesan bishop:

Canon 812: Those who teach theological disciplines in any institutes of higher studies whatsoever must have a mandate from the competent ecclesiastical authority.¹³⁷

Indeed, to grant the *mandatum* is a right of the diocesan bishop. Certainly a diocesan bishop and anyone equivalent in law to a diocesan bishop is a “competent ecclesiastical authority.” Although, the canon does not make specific reference to this being the exclusive right of the diocesan bishop, *Ex corde Ecclesiae* and the American Bishops seem to say that it is his exclusive right. We will discuss the question of others as competent to grant the *mandatum* when we look at the nature of the *mandatum* as an administrative act in Chapter 3.

¹³⁵ *CIC/83* c. 810, §1.

¹³⁶ See *CIC/83* c. 810, §1.

¹³⁷ *CIC/83* c. 812: “Qui in studiorum superiorum institutis quibuslibet disciplinas tradunt theologicas, auctoritatis ecclesiasticae competentis mandatum habeant oportet. The term “mandate” (*mandatum*) of c. 812 and *Ex corde Ecclesiae* does not seem to have a universally accepted meaning or understanding. There are also questions as to who can grant it, how it is granted, how it is denied or taken away, who must have it, and in whose name does one teach. We examine these questions in the next chapter.

2.5.4.2 – Secular/Civil

There are distinct differences between the canonical and secular law systems in the United States, but one system may have implications for the other.¹³⁸ The “separation of Church and State” is a foundational element in the American political and legal systems:

The ‘establishment of religion’ clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. *No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa.* In the words of Jefferson, the clause against establishment of religion by law was intended to erect “*a wall of separation between Church and State.*”¹³⁹

Secular law issues are not concerned with internal Church authority in its relationship with a church-related institution. Rather federal and state laws regulate granting the

¹³⁸ For our purposes the use of the term *secular* is distinct from that which applies to Church or the term *ecclesial*. The term *civil law* is used to mean the law of a political society as distinct from *canon law* which refers to the law of the Church. The American system of secular law is the *common law system* as distinguished from the *civil law system*, the exception being that of the State of Louisiana which uses the *civil law system*.

¹³⁹ *Everson v. Board of Education* 330 U.S. 1, at 16 (1947); *Reynolds v. United States* 98 U.S. 145, at 164 (1878) [source citations refer to the name of the parties, the volume number of the United States Supreme Court Records followed by the case number, the location number and the year] as cited in R. CORD, *Separation of Church and State: Historical Fact and Current Fiction*, New York, NY, Lambeth Press, 1982, p. 109. See also above, Chapter 2, note 32. In *Everson v. Board of Education*, the U.S. Supreme Court upheld a state statute that reimbursed the parents of parochial school children for bus transportation expenses. The phrase “separation of Church and state” does not appear in the Constitution of the United States. Thomas Jefferson, writing as President of the United States of America to the Danbury (Connecticut) Baptist Association on 1 January 1802, interpreted the language of the First Amendment as “building a wall of separation between Church and state.” A rule of law should not be drawn from a figure of speech. See also *Wallace v. Jaffree* 472 U.S. 38, 105 S. Ct. 2479 at 2516 (1985); *McCullum v.*

institution public funding and provide for the protection of individual civil rights in matters of employment and advancement.

Federal and state laws recognize official Church authority in Church matters. It would be intrusive for government to be involved in the internal concerns of an established Church, especially if it has its own laws in such matters. As previously noted, the levels of authority at the Catholic college or university are stated in the statutes of the institution. Secular law generally recognizes these statutes as operative.

The bishop may have more direct relationship with the sponsoring religious institute than with the apostolate of the religious institute. If ecclesiastical authority is viewed as having excessive intervention into the internal operations of the college or university this might raise a constitutional question of “an establishment of religion” and may have a direct negative impact on financial assistance from government agencies for American Catholic colleges and universities.

2.5.4.3 – State and Church

In the 1970s the United States Supreme Court decided on a series of cases that established constitutional standards for public funding of secular courses taught in private primary and secondary schools. The standards had as their foundation the decision of a majority of the court in *Lemon v. Kurtzman*,¹⁴⁰ a case in which the Supreme Court ruled that Pennsylvania's 1968 Nonpublic Elementary and Secondary Education Act,¹⁴¹ which

Board of Education, Dist 71 333 U.S. 203 at 247 (1948). See S.K. PADOVER, *The Complete Jefferson*, Freeport, NY, Books for Libraries Press, 1943, pp. 518-519. Emphasis added.

¹⁴⁰ 403 U.S. 602 (1971).

¹⁴¹ PA Stat. Ann., Tit. 24 § 5604 (Supp. 1971).

allowed the state Superintendent of Public Instruction to reimburse nonpublic schools (most of which were Catholic) for teachers' salaries, textbooks and instructional materials, violated the Establishment Clause of the First Amendment. This decision also upheld a decision of the First Circuit, which had struck down the Rhode Island Salary Supplement Act providing state funds to supplement salaries at nonpublic elementary schools by 15%.¹⁴² As in Pennsylvania, most of these funds were spent on Catholic schools.¹⁴³

On 28 June 1971, the Supreme Court unanimously (7-0) found that direct government assistance to religious schools was unconstitutional. In the majority opinion written by Chief Justice Burger, the Court created what has become known as the "Lemon Test" for deciding if a law is in violation of the Establishment Clause.

Essentially there are three conditions for a law to be considered constitutional under the Establishment Clause of the First Amendment: the law must have a legitimate secular purpose, must not have the primary effect of either advancing or inhibiting religion, and must not result in an excessive entanglement of government and religion. The Pennsylvania and Rhode Island state statutes were struck down as unconstitutional because the schools involved in these cases were religious schools, were schools under the control of the Catholic Church hierarchy and were schools whose primary purpose was the propagation of the faith.

¹⁴² RI Gen. Laws Ann. 16-51 (Supp. 1970).

¹⁴³ This was actually three separate cases: *Lemon v. Kurtzman*, *Earley v. DiCenso*, and *Robinson v. DiCenso*. These cases from Pennsylvania and Rhode Island were joined together because they all involved public assistance to private schools, some of which were religious. The final decision has become known by the first case in the list: *Lemon v. Kurtzman*. The full case name is *Alton J. Lemon, et al. v. David H. Kurtzman, Superintendent of Public Instruction of*

The third criterion of the so-called “Lemon Test” is that government statutes cannot foster an excessive entanglement with religion. In *Abington School District v. Schempp*¹⁴⁴ the Supreme Court struck down prayer and other devotional activities in public school on the grounds that such permitting of prayer in public school could be viewed as advancing religion. This court decision is significant in that it created the Lemon Test as a means for evaluating laws concerning the relationship between church and state. The “excessive entanglement” criterion was a new addition to the two aforementioned state statutes in question as being in violation of this third criterion.

The language of the Religion Clauses of the First Amendment is, at best, opaque, particularly when compared with other portions of the Amendment. Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead, they commanded that there should be “no law respecting an establishment of religion.” A law might be one “respecting” the forbidden objective while falling short of its total realization. A law “respecting” the proscribed result, that is, the establishment of religion, is not always easily identifiable as one that violates the Clause. A given law might not establish a state religion, but nevertheless be one “respecting” that end in the sense of being a step that could lead to such establishment, and hence offend the First Amendment.

In the absence of precisely stated constitutional prohibitions, we must draw lines with reference to the three main evils against which the Establishment Clause was

Pennsylvania, et al.; John R. Earley, et al. v. John DiCenso, et al.; William P. Robinson, Jr. v. John DiCenso, et al.

¹⁴⁴ 374 U.S. 203 (1963).

intended to afford protection: "sponsorship, financial support, and active involvement of the sovereign in religious activity."¹⁴⁵

This question of the constitutionality of public aid to non-public elementary and secondary schools, particularly for Catholic schools, and the standards used for determining such aid has far reaching affects. Under the establishment clause these standards determine the eligibility of Catholic and all church related colleges and universities as well as other institutions of higher learning to obtain public funding for the construction of classrooms and housing facilities as long as the facilities are not directly related to the teaching of religion.

Religiously affiliated colleges and universities can and do qualify for some state and federal aid. Most financial aid is in the form of student loans. Divinity schools and theology schools generally are not eligible for direct financial aid as this seems to be consistent with the First Amendment prohibition of the "establishment of religion" clause in the broadest sense.¹⁴⁶

The objection that a "pervasively sectarian" Catholic institution of higher learning would create an adverse ability to qualify for US government financial help was met

¹⁴⁵ See above, note 32. *Walz v. Tax Commission*, 397 U.S. 664, 668 (1970). The Court upheld state tax exemptions for real property owned by religious organizations and used for religious worship. That holding, however, tended to confine, rather than enlarge, the area of permissible state involvement with religious institutions by calling for close scrutiny of the degree of entanglement involved in the relationship. The objective is to prevent, as far as possible, the intrusion of either into the domain of the other.

¹⁴⁶ Cf. K.D. WHITEHEAD, "Catholic Colleges and Federal Funding," San Francisco, CA, Ignatius Press, 1988, pp. 21-33 (=WHITEHEAD, "Catholic Colleges"). Also cf. the Higher Education Act of 1965 and the 1998 Amendments to the Higher Education Act of 1965, Titles III and VII. See US Dept. of Education <<http://www.ed.gov/policy/highered/leg/hea98/index.html>> (27 March 2009).

with a response from David T. Link, Dean Emeritus of the Law School of Notre Dame University:

Many recent cases make it clear that it is possible for a university to be a religious institution without being “pervasively sectarian.” This is not some fine line that must be straddled, but, as indicated earlier, a relatively wide path, since case law indicates that only a small portion of religiously affiliated organizations could be considered to be “pervasively sectarian.” *Ex corde Ecclesiae* certainly assists the Catholic university in developing its Catholic mission...there is a style of being “not pervasively sectarian.” Those Catholic universities that properly define the relationship between their Christian mission and their secular mission of teaching, research, and service will be rewarded by a government law and court system committed to not inhibiting the religious mission. Catholic universities should not fear the possible conflicts between *Ex corde Ecclesiae* and civil law. Instead they should rejoice in the opportunity presented by the apostolic constitution.¹⁴⁷

If the secular mission and the religious mission of the university is clearly defined and demonstrated, it should not be ineligible for public financial funding for those areas of purely secular activity.

K.D. Whitehead further points out that Section 1201 of the Higher Education Act of 1965 specifies which institutions of higher learning are eligible for federal financial aid by defining what it means to be an institution of higher learning. According to the law, the institution must be in the United States or territory; it must admit students with a high school diploma or equivalent, or else students beyond the age of compulsory school attendance who have the “ability to benefit”; it must be legally authorized by the state or territory in which it is located to provide an educational program beyond the secondary level; it must either award a bachelor’s degree or provide at least a two-year program

¹⁴⁷ D.T. LINK, “Comment,” in J.P. LANGAN (ed.), *Catholic Universities in Church and Society: A Dialogue on ‘Ex corde Ecclesiae’*, Washington, DC, Georgetown University Press, 1993, pp. 192-192.

(associate degree) which counts towards a bachelor's degree. Finally, the institution must be accredited.¹⁴⁸

2.5.5 – Sponsor

There are significant questions that emerge regarding the relationship between the college and the religious institute that sponsors it. Often the terms *ownership*, *control* and *sponsorship* are used as interchangeable terms, but there are differences in the canonical and secular meanings and concepts of these terms.¹⁴⁹

In secular law, *ownership* is a “legal collection of rights to use and enjoy property, including the right to transmit it to others.”¹⁵⁰ *Control* is the “power or authority to

¹⁴⁸ See WHITEHEAD, “Catholic Colleges”, p. 31-32. Cf. Section 1201 of the Higher Education Act of 1965 and the 1998 Amendments to the Higher Education Act of 1965 as cited above.

¹⁴⁹ A discussion on the ecclesiastical ownership of a public juridic person is not intended to be a major focus of this work. It is briefly discussed here to acknowledge that there is a relationship between ownership and control and that the American common law concept of ownership differs from that of the canonical understanding of ownership.

¹⁵⁰ BLACK, *Black's Law Dictionary*, p. 1106. See DIPIETRO, “Owners and Trustees,” pp. 82-84. DIPIETRO points out the distinction in the understanding of *canonical* ownership from that of *absolute* ownership, as well as the understanding of *canonical* ownership from that of *stewardship*. See also J.J. MYERS, “Book V: The Temporal Goods of the Church,” commentary on c. 1256 in *CLSA Comm1*, pp. 862-863. See also T.L. BOUSCAREN, A.C. ELLIS, and F.N. KORTH (eds.), *Canon Law: A Text and Commentary*, 4th rev. ed., Milwaukee, WI, Bruce Publishing Co., 1963, p 810 (=BOUSCAREN). The canonical understanding of ownership is rooted in the notion of the *paterfamilias* in regard to the near absolute rights of ownership as found in Roman law. Each juridic person has the right to acquire, own and make use of property (c. 1255). The property of public juridic persons is governed by the canons of Book V; the property of private juridic persons is governed by their own statutes.

In c. 1256 the word *dominium* introduces the notion of complete ownership of property. The canonical notion of *dominium* of a public juridic person “under the supreme authority of the Roman Pontiff” does not mean absolute and full legal power over a thing by those subject to the authority of the Roman Pontiff. It is analogous to the American practice of the state's right of eminent domain whereby the local, state or federal government may legally seize privately owned property for the greater public good.

manage, direct, superintend, restrict, regulate, govern, administer or oversee...the ability to exercise a restraining or directing influence over something.”¹⁵¹ *Sponsorship* in and of itself has no secular legal meaning or definition. It is not a technical term canonically or theologically. *Sponsorship* is used to describe a variety of relationships: founded by, controlled by, supervised by, inspired by, funded by, or morally supported by, which might exist between a religious institute or diocese and a Catholic institution.¹⁵² A *sponsor* in secular and canonical law is one who intervenes for another or makes a promise on behalf of another who cannot act for himself or herself.¹⁵³

In the example of St. Norbert College, the sponsor is the religious institute (community) which as a public juridic person reserves certain civil law and canon law

Physical persons are never the subjects of ownership of ecclesiastical goods, but only the *administrators* of it. The Roman Pontiff, properly speaking, is not the owner of ecclesiastical goods but the administrator of those goods belonging to subordinate juridic persons. The Apostolic See (Roman Pontiff plus the Secretariat of State, the Council for the Public Affairs of the Church and the other Institutes and Offices of the Roman Curia) enjoys the *right of eminent domain*. When the Supreme Pontiff exercises his right of eminent domain, he does so as the supreme administrator and steward (*dispensator*) of ecclesiastical goods. C. 1256 ought to be read in conjunction with c. 1273. The public juridic person is the immediate owner and administrator of lawfully acquired ecclesiastical goods.

¹⁵¹ BLACK, *Black's Law Dictionary*, p. 329. See cc. 1255, 1256. Control is the exercise of authority over another entity, in this present discussion it is linked to ownership of ecclesiastical goods.

¹⁵² See R. KEALY, “Canonical Aspects of Catholic Identity in the Institutional Setting,” in *CLSAP*, 61 (1999), p. 198.

¹⁵³ See BLACK, *Black's Law Dictionary*, p. 1402; *CIC* c. 872. See also MAIDA/CAFARDI, *Church Property*, p. 327. In our context, a sponsor is the public juridic person that has founded and sustained a civilly incorporated apostolate and has reserved certain corporate powers in the structure of the incorporated apostolate that enable it to exercise its canonical and administrative responsibilities in a secular structure; sometimes referred to as *religious sponsor* or *canonical sponsor*.

authority over the affairs of the incorporated apostolate.¹⁵⁴ The ecclesial understanding of *canonical sponsorship* is:

[T]he reservation of civil law control over certain limited canonical areas by the public juridic person that founded and/or sustains an incorporated apostolate that remains canonically a part of the public juridic person. This retention of control need not be such as to create civil law liability on the part of the sponsor for corporate wrongs but should be sufficient, on the other hand, for the canonical stewards of the sponsoring religious institute or diocese to meet their canonical obligations of faith and administration in the activities of the incorporated apostolate.¹⁵⁵

St. Norbert College is separately incorporated from the sponsoring religious institute, according to civil (secular) laws which govern a membership not-for-profit educational institution of high learning in the State of Wisconsin, USA. At the same time, St. Norbert College is canonically an apostolate of the Norbertine community. The Norbertine leadership council acting as corporate member exercises certain powers as specified in the by-laws of the college corporation. In this way the sponsor can fulfill its roll as canonical steward as the college continues to carry out its mission.

Conclusion

We have discussed how a founding religious community can influence the character and mission of its educational apostolates. The religious institute makes the university its own so that the life of the university reflects the charisms of the institute. We have also look at the example of St. Norbert College from its founding as a school to train future priests and Norbertines. We have offered a definition of a Catholic college.

¹⁵⁴ See MAIDA/CAFARDI, *Church Property*, pp. 211-215. The specific powers that might be reserved will be discussed later in Chapter 4.

¹⁵⁵ MAIDA/CAFARDI, *Church Property*, p. 304.

The diocesan bishop as shepherd and teacher of the diocese has obligations and rights that shape his relationship with the apostolate and in particular with the Catholic college and university in his diocese. This is not a sterile relationship; it is a life-giving dynamic relationship with all who contribute to the mission of the college. We have discussed the bishop's relationship with the religious institute as founder and sponsor, the apostolate of the college or university, and the theologian as teacher and faculty at the college or university. Each has its own role with obligations and rights.

In this discussion we have not exhausted the canonical responsibilities and rights of the bishop or the religious institute or the theologian but have pointed out that a clear, open and sincere dialogue must take place in a spirit of mutual respect so that the apostolic mission of the Church may be faithfully achieved in the college and university.

The bishop and the religious institutes work together in the apostolate. While the bishop has the primary responsibility of directing and coordinating all the apostolic activity in the diocese, both the bishop and the religious institutes have a responsibility and right to see that those individuals who participate in apostolic activity do so in accord with the teachings of the Church.¹⁵⁶

In the next chapter we discuss the *mandatum* and *Ex corde Ecclesiae*. We begin with an historical overview of the use of a canonical mission and mandate and how the *mandatum* of c. 812 developed. With the promulgation of *Ex corde Ecclesiae* the impact of the *mandatum* on American Catholic colleges and universities became more evident as the discussions on its implementation spanned the decade of the nineties.

¹⁵⁶ See *CIC/83* cc. 678; 810, §2

We look at the American reaction and some of the concerns raised by college administrators and faculty, some of the concerns raised by sponsoring religious institutes, and some of the civil law challenges that might face a Catholic college when implementing requirements of the canon and the apostolic constitution.

We will also look at the U.S. bishops' "Application of *Ex corde Ecclesiae* for the United States" from initial drafts to *recognitio*.

CHAPTER 3

EX CORDE ECCLESIAE

The public debate over the implementation of *Ex corde Ecclesiae* has been peppered occasionally with statements of serious concern by theologians opposed to the *mandatum* requirement and by others who do not share the vision of Catholic higher education that the apostolic constitution espouses...the General Norms of *Ex corde Ecclesiae* and the Particular Norms adopted by the American bishops anticipate that civil law might well impact an institution's implementation of the apostolic constitution. Consequently, prudence suggests that...American Catholic colleges and universities be aware of the possible intersection of American civil law with provisions of *Ex corde Ecclesiae* and the Particular Norms issued by the American bishops.

Charles H. Wilson¹

Introduction

In this chapter we look at the nature of the *mandatum* itself and the civil law implications as it is implemented in American Catholic colleges and universities. We will also look at how the exercise of the *mandatum* is carried out in relation to the mission of Church. The canon specifies teachers of theological disciplines need the *mandatum*.

The theological disciplines are not listed in c. 812; however, c. 252 lists courses of study for the theological formation of clerics. In its 1979 document on the norms for the implementation of *Sapientia christiana* the Sacred Congregation for Catholic Education lists as theological disciplines: Sacred Scripture, foundational theology,

¹ C.H. WILSON, "Implementation of *Ex corde Ecclesiae* in the United States: the Civil Law Implications for American Catholic Colleges," in *Current Issues in Catholic Higher Education*, 21:2 (2001), p. 27.

dogmatic theology, moral and spiritual theology, pastoral theology, liturgy, church history, patrology, archeology, and canon law.²

Those who teach preaching and counseling are excluded from the obligation. J. Huels points to those who are not bound to the law of c. 812 and the subsequent legislation on its application as: 1) those who do not regularly present academic material in a Catholic university or other applicable institute of higher study (cc. 812, 818); 2) those who do not teach Scripture, dogmatic theology, moral theology, pastoral theology, canon law, liturgy, or church history; 3) those who are not Catholic. Others are bound, no matter when they began to teach.³

Mandate (*mandatum*) as used in the 1917 Code and mandate (*mandatum*) as used in the 1983 Code are not the same. In fact, the word *mandate* (*mandatum*) does not have the same meaning each time it is used in the 1983 Code. We look at the meaning of *mandatum* in the 1983 Code and *Ex corde Ecclesiae*:

Canon 812: Those who teach theological disciplines in any institutes of higher studies whatsoever must have a mandate from the competent ecclesiastical authority.⁴

Why now the need for *mandatum* in the 1983 Code when there was no similar treatment of Catholic universities in the 1917 Code? Why a document like *Ex corde Ecclesiae* today? J.J. Conn offers a few observations on this question. Now a

² See SACRED CONGREGATION FOR CATHOLIC EDUCATION, *Ordinationes ad constitutionem apostolicam Sapientia christiana*, 29 April 1979, art. 51, in *AAS*, 71 (1979), pp. 500-521, here p. 513. English translation of both *SCh* and *OSCh* in *L'Osservatore Romano*, n. 23 (584), 4 June 1979, pp. 3-8, 8-12, here p. 11. See also J. HUELS, "Canon 812: Questions on the Applicability of the Law," in *Roman Replies and CLSA Advisory Opinions*, 2001, p. 93 (=HUELS, "Canon 812").

³ See HUELS, "Canon 812," p. 93.

requirement of a positive act on the part of ecclesiastical authority, it once had been a prerogative of the bishop in the exercise of a right of approval. He speculates that perhaps the legislator was seeking a new way to affirm a theologian's participation in the *munus docendi*, given that in former times teaching was considered to be kind of jurisdiction, the *munus gubernandi*.

The *mandatum* is not about jurisdiction, but rather about the exercise of the teaching function. By means of a positive declaration the bishop can assure the community that the professor is teaching in his own name in communion with the Church's magisterium and not in the bishop's name. Another reason that is offered may be the withdrawal of superiors of institutes of consecrated life from the supervisory role of the universities their institute sponsors.⁵

This however may be the most compelling of possible reasons:

Finally, the strong and consistent resistance among U.S. Catholic academics to any formal relationship with ecclesiastical authority could have confirmed a belief on the part of the legislator that such a relationship in the form of a mandate was all the more needed. From this perspective, the American claims that the legislator does not understand the academic situation in this country or that the canons and norms of [*Ex corde Ecclesiae*] could not reasonably apply here seem especially ironic. U.S. institutions, after all, represent the vast majority of Catholic universities worldwide and their leaders made their views clearly known during the consultations that preceded the Code and [*Ex corde Ecclesiae*]. A fully informed legislator made the law. There should be no doubt about those for whom it was intended.⁶

⁴ CIC/83 c. 812: "Qui in studiorum superiorum institutis quibuslibet disciplinas tradunt theologicas, auctoritatis ecclesiasticae competentis mandatum habeant oportet."

⁵ See J.J. CONN, "Canonical Norms for Catholic Universities: Stewardship for the Catholic Academy," in *Ex corde Ecclesiae: A Conversation "From the Heart of the Church," September 18, 1999*, D.M. O'CONNELL (ed.), Washington, DC, The Catholic University of America, 1999, pp. 20-22 (=CONN, "Canonical Norms").

⁶ CONN, "Canonical Norms," p. 21.

We begin with an historical account of the development of *Ex corde Ecclesiae* from an American perspective and then look at the nature and meaning of mandate and canonical mission.

3.1 – Historical Background

The concept for the *mandatum* of the 1983 Code has in part its foundation in the *missio canonica* of Pope Pius XI's Apostolic constitution *Deus scientiarum Dominus*.⁷ By this pronouncement a canonical mission was required for all who engaged in public teaching of ecclesiastical subjects. The canonical mission was granted by the chancellor after receiving the *nihil obstat* from the Holy See.⁸ The chancellor also had the authority to revoke the canonical mission.⁹

The notion of canonical mission (*missio canonica*) in reference to teaching in the Church is rooted in the Conciliar legislation of the Middle Ages regarding the requirements for preaching. The Council of Trent, in 1546, decreed that no instructor

⁷ PIUS XI, Apostolic Constitution *Deus scientiarum Dominus*, 24 May 1931, in *AAS*, 23 (1931), pp. 241-262. This document dealt with Ecclesiastical Universities and Faculties.

⁸ *DSD*, art. 21, p. 251: "Ut quis in Professorum Collegium legitime cooptetur, requiritur ut...5°: missionem canonicam docendi, post impetratum *Nihil obstat* Sanctae Sedis, a Magno Cancellario acceperit." "In order that someone be legitimately chosen for the rank of college professor it is required that...5°: he shall have received from the Chancellor the canonical mission of teaching, after having received the "Nihil obstat" of the Holy See"

⁹ *DSD*, art. 22, p. 251: "Si quis Professor vel doctrinam catholicam laeserit vel a vitae integritate defecerit, pro gravitate culpae ad normam Statutorum puniatur et, si res ferat, missione canonica docendi a Magno Cancellario privetur." "If any professor either attacks Catholic teaching (doctrine) or ceases in integrity of life, he is to be punished according to the gravity of the fault according to the Statutes, and if the situation requires, he is to be deprived of the canonical mission of teaching by the Chancellor."

could be appointed to teach matters of religion in institutions of Catholic studies without being examined and approved by the local bishop.¹⁰

Later, in 1848, with the federalization of schools and universities in Germany, the Catholic bishops applied canonical mission more broadly to all public instruction of Catholic religion. The Church required all teachers of theology to have an ecclesiastical (canonical) mission from the local bishop to ensure freedom from intervention by the state in the teaching of theology at all levels of education.¹¹

In the context of the 1917 Code, *missio canonica* was used to designate the principal means of acquiring the power of jurisdiction, a power that only the clergy could exercise. The topic of the Catholic university was not directly addressed in the 1917 Code; however, c. 1328 addressed the exercise of the ministry of preaching only with a special grant of the faculty to preach, or by receiving an office to which the faculty of preaching was attached. This concept of *missio* was applied to the broader ministry of teaching, including catechetical teaching as well as preaching.¹²

¹⁰ N.P. TANNER (ed.), *Decrees of the Ecumenical Councils: Council of Trent, Session 5, 17 June 1546, 2nd decree: on instruction and preaching, n. 7*, Latin-English edition, original text established by G. ALBERIGO et al, in consultation with H. JEDIN, London, UK, Sheed and Ward, Washington, DC, Georgetown university Press, 1990, p. 669.

¹¹ Cf. S.A. EUART, "Book III: The Teaching Function of the Church-Catholic Education," commentary on c. 812 in J.P. BEAL et al (eds.), *New Commentary on the Code of Canon Law*, commissioned by the Canon Law Society of America, New York, NY and Mahwah, NJ, Paulist Press, 2000, p. 967 (=EUART, Commentary on c. 812).

¹² *CIC/17* c. 1328: "Nemini ministerium praedicationis licet exercere, nisi a legitimo Superiore missionem receperit, facultate peculiariter data, vel officio collato, cui ex sacris canonibus praedicandi munus inhaereat." "No one is permitted to exercise the ministry of preaching unless he has received this mission from the legitimate Superior by a faculty specifically given or by an office conferred in which inheres the responsibility of preaching according to the sacred canons."

S. Euart makes the point that the simple term *missio*, instead of *missio canonica*, made for considerable discussion on the nuance between the two. She comments that in light of this canonical history, it might be argued that the roots of the mandate (*mandatum*) of CIC/83 c. 812 include the *missio* of CIC/17 c. 1328 as it was understood to be some form of ecclesiastical authorization distinct from the *missio canonica* of the same code:

In recognizing the applicability of canon 1328 to the entire ministry of ecclesiastical teaching, commentators on the 1917 Code had to grapple with the practical application of the *missio* to lay persons. For most, it was not a canonical mission in the strict sense of participation in the Church's power of jurisdiction since only clergy were capable of such power. It could more precisely be called a "mandate" or an "assignment" from ecclesiastical authority. As a "mandate without jurisdiction," such a "commission" was not an ecclesiastical office, but rather an appointment of a lay person by competent ecclesiastical authority to perform a special function.¹³

In his 1979 Apostolic constitution *Sapientia christiana*,¹⁴ Pope John Paul II reasserted the need of a *missio canonica* for all those who teach at ecclesiastical faculties, thereby making a distinction of types of faculties at institutions of higher studies. This document replaced the previous norms of *Deus scientiarum Dominus* for those teaching at ecclesiastical universities; however, it retained the canonical mission for teachers of disciplines related to faith and morals whereas other teachers required permission to teach (*venia docendi*).¹⁵

¹³ S.A. EUART, "Comment on J.H. PROVOST, A Canonical Commentary on 'Ex corde Ecclesiae,'" in J.P. LANGAN, *Catholic Universities in Church and Society: A Dialogue on 'Ex corde Ecclesiae'*, Washington, DC, Georgetown University Press, 1993, p.139.

¹⁴ JOHN PAUL II, Apostolic Constitution *Sapientia christiana*, 15 April 1979, in *AAS*, 71 (1979), pp. 469-499 (=Sch). English translation in *Origins*, 9 (1979), pp. 33-45.

¹⁵ Sch, Art. 27, §1, p.483; *Origins*, 9 (1979), p. 39.

Ecclesiastical faculties or universities are governed by cc. 815-820 and are distinct from Catholic universities which are governed by cc. 807-814. The provisions of cc. 810, 812, and 813 also apply to ecclesiastical universities and faculties.¹⁶

3.1.1 – Mandate (*mandatum*) in CIC/17

In the 1917 *Code of Canon Law* the term *mandate (mandatum)* has several meanings. There are four ways in which it is used: 1) to indicate a direction that is to be followed or a precept that is to be observed (cc. 55, 260 §2, 465 §5, 1645 §3); 2) to indicate a means of authorizing or deputing a person to represent another (cc. 1445, 1659, 1892 n. 3°, 2006); 3) to indicate a special authorization for the vicar general to perform certain acts in the name of the bishop (cc. 113, 152.); and 4) the apostolic authorization required for Episcopal ordination (c. 953). There was no canon requiring a mandate in order to teach theology.

The term *mandate* was used in another unrelated way when it took on the additional meaning of the authorization of the laity to participate in the apostolic endeavors of the bishop through the organized work of Catholic Action. Catholic Action was begun under Pope Pius XI and continued under Pope Pius XII.¹⁷ The role of the laity

¹⁶ See *CIC/83* c. 818: “Quae de universitatibus catholicis in cann. 810, 812 et 813 statuuntur praescripta, de universitatibus facultatibusque ecclesiasticis quoque valent.” The provisions of cc. 810, 812 and 813 likewise apply to ecclesiastical faculties.”

¹⁷ PIUS XI, Encyclical *Quae nobis*, 13 November 1929, in *AAS*, 20 (1929), pp. 384-387. Pius XI linked further the dependence of Catholic Action to the apostolate of the hierarchy in his encyclical *Non abbiamo bisogno*, 29 June 1931, in *AAS*, 23 (1931), pp. 285-312. See also PIUS XII, Address on the Apostolate of the Laity, 05 October 1957, in *AAS* 49 (1957), pp. 924-925, original in French; here pp. 224-225. PIUS XII speaks in terms of “collaboration” rather than in terms of “participation” in the apostolate of the hierarchy. On the nature and definition of Catholic Action, see also PIUS XI, *Ubi arcano*, 23 December 1922, in *AAS*, 14 (1922), pp. 673-700.

to carry out works of the apostolate in relation to the hierarchy was left to the Second Vatican Council to discuss.

Mandate as used in the 1917 Code can mean command, precept, and instruction, as well as the authorization to represent the interests of another. Yet, with all these different uses and meanings for *mandate* there are still other possible ways it might be applied.

3.1.2 – Mandate (mandatum) in Vatican Council II

The distinction between *missio canonica* and *mandatum* was discussed during the preparation of the Second Vatican Council's decree on the Apostolate of the Laity. It was finalized in its document, *Apostolicam actuositatem*.¹⁸ Here the discussion continued that was begun with Catholic Action. How does the laity assist in the apostolate of the hierarchy? What is the laity's role and structure in the Church? Mandate is necessarily part of this discussion and can be found principally in numbers 20 and 24 of the decree.

In number 20 is the stated right of the hierarchy to give a mandate to laity who organize an apostolate that meets all the requirements set forth whether they are called Catholic Action or not:

Several decades ago lay people, dedicating themselves increasingly to the apostolate, in many countries formed themselves into various kinds of movements and societies which, in closer union with the hierarchy, have pursued and continue to pursue ends properly apostolic...these types of apostolate,

¹⁸ SECOND VATICAN COUNCIL, Decree on the Apostolate of the Laity *Apostolicam actuositatem*, 18 November 1965, n. 24, in *AAS*, 58 (1966), pp. 837-864. English translation in A.P. FLANNERY (gen. ed.), *Vatican Council II: Constitutions, Decrees, Declarations*, new revised edition, vol. 1, Northport, NY, Costello Publishing, 1992, pp. 766-798. See R.P. DEELEY, *The Mandate for Those who Teach in Institutes of Higher Learning: An Interpretation of Canon 812 of the Code of Canon Law*, JCD diss., Roma, Pontificia Universitatis Gregoriana, 1986, pp. 31-50 for a full historical approach of the discussions leading up to the final draft of *AA*.

whether or not they go by the name Catholic Action, are today doing a work of much value...

d) The laity, whether coming together of their own accord or in response to an invitation to action and direct cooperation with the hierarchy, which can authorize this cooperation, besides, with an explicit mandate.¹⁹

There is a particular kind of relationship between hierarchy and laity that is established by the mandate. In the Council and pre-Council debates on mandate and lay involvement in the apostolate of the hierarchy, it is maintained that there is a distinct difference between the mandate for Catholic Action and the canonical mission.

This distinction is founded in the type of activity the apostolate directs and the authority by which it is governed. The text of the decree states:

The hierarchy's duty is to favor the lay apostolate, furnish it with principles and spiritual assistance, direct the exercise of the apostolate to the common good of the Church, and see to it that doctrine and order are safeguarded.

Yet the lay apostolate allows of different kinds of relations with the hierarchy, depending on the various forms and objects of this apostolate.

And so organizing the apostolate differently according to the circumstances, the hierarchy brings into closer conjunction with its own apostolic functions such-and-such a form of apostolate, without, however, changing the specific nature of either or the distinction between the two, and consequently without depriving the laity of their rightful freedom to act on their own initiative. This act of the hierarchy has received the name "mandate" in various ecclesiastical documents.²⁰

There are certain activities which the laity can carry out in their own name without authorization from the hierarchy. However, when a mandate (*mandatum*) is given it establishes a special relationship between the hierarchy and the lay person or group in their work. The work is recognized as being "entrusted" to the laity and carried out in communion with the teaching function Church and hence is more subject to the authority who established the mandate than if it were a personal work.

¹⁹ *AA*, n. 20, p. 854-855. FLANNERY1, p. 787.

²⁰ *AA*, n. 24, pp. 856-857. FLANNERY1, p. 789-790.

The Preparatory Commission for the Apostolate of the Laity began its work on 15 November 1960. The commission studied various aspects of the apostolate. In doing so, it became aware of the difficulty in distinguishing between the works of the apostolate which belonged to clerics and the works of the apostolate which belonged to the laity. Meeting in its seventh session on 18 June 1962, the commission's opening declaration of its proposed schema held there is a common foundation in the sacraments of baptism and confirmation.²¹

There is a real difference between canonical mission and mandate. When the Church commits certain responsibilities to lay people which properly belong to the hierarchy, the act by which this is done is called a canonical mission.²² Whereas when a member of the hierarchy assumes under his responsibility an apostolate of the laity it is

²¹ From the work of the Preparatory Commission for the Apostolate of the Laity as noted by DEELEY, pp. 35-37. "Tunc apostolatus laicorum in tota sua extensione enituit, iuxta multiplices et varias operositates; absque dubio tamen cum in Sacramentis Baptismi et Confirmationis fundamentum habeat, maxima apostolicorum officiorum pars tum clericis tum laicis communis est; nec facile saepe distingui potest quid reapse ad clericos, quid vero ad laicos pertineat," Secretaria Generalis Concilii Oecumenici Vaticani II, *Acta et documenta Concilio oecumenico Vaticano II apparando*, Series II (Praeparatoria), In Civitate Vaticana, Typis polyglottis Vaticanis, 1968, v. II, pt. IV, p. 468 (=Praeparatoria). "Then the apostolate of the laity shines forth in all its breadth according to its multiple and varied ways of working; without doubt however, the greater part of apostolic works are common to both clergy and laity since they have their foundation in the Sacraments of Baptism and Confirmation; and it is often not easy to distinguish what pertains in actuality to the clergy and what to the laity."

²² "Semper Ecclesia consuevit laicis munia quaedam committere, quae proprie ad ipsam Hierarchiam pertinet [...]. Actus quo ecclesiastica Hierarchia ad haec similiae munia auxiliaria exercenda laicos advocat, convenienter denominatur missio canonica," Praeparatoria, §11 [*Missio canonica*], p. 476. "The Church is accustomed to commit some tasks (duties) to the laity, duties which properly belong to the hierarchy [...] acts by which the Church hierarchy ask for help in these and similar duties (functions) to be carried out by them (the laity) are appropriately named (called) a canonical mission."

called a mandate. The presumption is that the laity is already capable of carrying out the task in question.²³

The work of a new Conciliar commission continued through the council sessions and concluded with the promulgated text of *Apostolicam actuositatem*. Number 20 of the decree establishes the right of the bishop to give a mandate to an organized apostolate and number 24 treats mandate in a more general way whereby the bishop can acknowledge the undertakings of the laity.²⁴

R. Deeley clarifies the distinctions made by the Council Fathers in that the mandate is seen as a juridical acknowledgement on the part of the bishop that a particular apostolate of the laity is in communion with his plan for the diocese and in communion with the Church. The authority in issuing the mandate has a kind of oversight responsibility which is real but still recognizes the activity of the laity and does not make it his own.²⁵

The mission is essentially different from the mandate in that it is given for tasks normally carried out by the bishop (hierarchy). The question remains as to whether these works are truly clerical or are only reserved for clergy at some given time in Church history. Lay persons receiving a mandate for apostolic activity do not necessarily act in the name of the Church or in the name of the authority granting the mandate.

²³ "Est et alius actus quo ecclesiastica Hierarchia [...] apostolatam laicorum sub sua responsibilitate assumit eumque iuxta adiuncta diversimode ordinat [...] ille actus apte mandatum denominatur," Praeparatoria, §12 [*Mandatum*], pp. 476-477. "This is another act by which the Church hierarchy [...] takes over (assumes) an apostolate of the laity under his own responsibility, and organizes it according to things closely connected to it in various ways [...] that act is aptly called a mandate."

²⁴ AA, nn. 20, 24, p. 854-857. FLANNERY1, pp. 787, 789-790.

²⁵ Cf. DEELEY, pp. 52-53.

Consequently, the activity of the laity can be freely carried out united with the apostolate of the diocesan bishop.²⁶

3.1.3 – Drafting of *CIC/83* c. 812

The development of the present language of c. 812 came about after much discussion and compromise. The first mention of a necessary requirement for one to possess a canonical mission before teaching theology is a note made in a meeting of the *coetus* of the Code Commission discussing institutions of higher studies: “It is noted that they who teach theological lectures need a canonical mission.”²⁷

In 1977 a proposed text of a canon dealing with the same issues was circulated as Canon 64 (novus): “Those who teach theological lectures or matters connected with theology in any Institutes of Higher Studies need a canonical mission.”²⁸ It seems there was an intention to broaden the requirement of a *missio canonica* beyond ecclesiastical

²⁶ Cf. SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen gentium*, 21 November 1964, n. 23, in *AAS*, 57 (1964), pp. 5-75, here at p. 27. English translation in A.P. FLANNERY (gen. ed.), *Vatican Council II: Constitutions, Decrees, Declarations*, new revised edition, vol. 1, Northport, NY, Costello Publishing, 1992, pp. 350-432, here at p. 376. The text speaks of the Roman Pontiff as the successor of St. Peter and the perpetual and visible source and foundation of the unity of the bishops and the whole of the faithful. The individual diocesan bishop is the visible source and foundation of unity in the particular Church. Hence, his apostolic activities can be united with the endeavors of the laity by mandate.

²⁷ W. ONCLIN (Relator), COETUS CONSULTORUM “DE MAGISTERIO ECCLESIASTICO” in *Communicationes*, 7 (1975), p. 159: “Notatur eos qui in Universitatibus lectiones tradunt theologicas missione egere canonica.” “It is noted that those who give theological lessons (courses) in universities need the canonical mission.”

²⁸ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, COETUS STUDIORUM “DE MUNERE DOCENDI,” Sessio III, 21-26 April 1980, in *Communicationes*, 29 (1975), p. 257: “Qui in studiorum superiorum Institutis quibuslibet lectiones tradunt theologicas aut cum theologia conexas missione egent canonica.” “Whoever gives theological instructions (lessons) of any kind in Institutes of higher learning or instruction or instructions (lessons) connected with theology need the canonical mission.”

institutions (a specific category of Catholic institution of higher studies) to include all institutions of higher studies having Catholic identity.

Then in a subsequent meeting the wording of c. 64 was essentially kept with clear differences in c. 767: "It is necessary that those who teach the theological disciplines in any Institutes of higher studies have a mandate (*mandatum*) from the competent Church authority."²⁹ This was the text of c. 812 in the final draft of the Code presented to John Paul II on 29 June 1980.³⁰

There are clearly a number of changes that have taken place. A short explanation is given by the Secretariat of the Code Commission for the change of a requirement for a canonical mission to a mandate. It seems that it was felt that the discussion was no longer concerning a true canonical mission and that the term *mandate* (*mandatum*) was now opportune. The term "*missio canonica*" is not found in the 1983 Code. The use of *mandatum* instead of *missio canonica* in the promulgated version of canon 812 indicates that the mandate is neither a delegation nor a granting of jurisdiction. It does not give the recipient of the *mandatum* disciplinary authority over others in the Church nor does it confer an ecclesiastical office.³¹ In any event, now it is certain that anyone who teaches a

²⁹ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, COETUS STUDIORUM "DE MUNERE DOCENDI," in *Communicationes*, 15 (1983), p. 105: "Qui in Studiorum superiorum Institutis quibuslibet disciplinas tradunt theologicas auctoritatis ecclesiasticae competentis mandatum habeant oportet." "Whoever gives lessons in any theological discipline in Institutes of higher learning must have the "mandatum" of the competent ecclesiastical authority."

³⁰ Cf. *Codex Iuris Canonici*, AAS, 75/2 (1983), p. 147.

³¹ EUART, Commentary on c. 812, p. 968.

theological discipline in any Catholic institute of higher studies must have a *mandate* (*mandatum*) from the competent ecclesiastical authority.³²

3.2 – Understanding the *Mandatum of Ex corde Ecclesiae*³³

What exactly is the *mandatum* required by *Ex corde Ecclesiae* and c. 812? Canonically, the granting of the *mandatum* is, by its nature, a singular administrative act; it is a juridic act³⁴ of authority exercised by one with executive power in the Church, intended for a *specific* or *concrete individual*.³⁵

³² PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, COETUS STUDIORUM “DE MUNERE DOCENDI,” in *Communicationes*, 15 (1983), p. 105: Ratio: “opportunius visum est sermonem instituere de mandato, quam de missione canonica quae in hoc casu non plene aequaretur cum vera canonica missione. Certerum principium heic statuendum est quod qui theologiam docet mandato eget competentis autoritatis ecclesiasticae.” “It seems to be more opportune to begin talking about a mandate (*mandatum*) rather than a canonical mission, which in this case does not totally equal a true canonical mission. Certainly from now on a principle must be stated that anyone who teaches theology needs a mandate (*mandatum*) from the competent Church authority.” It seems that in the previous usage of *missio canonica* there is the implication of jurisdiction.

Cf. R.P. DEELEY, *The Mandate for Those who Teach in Institutes of Higher Learning: An Interpretation of Canon 812 of the Code of Canon Law*, JCD diss., Roma, Pontificia Universitatis Gregoriana, 1986, pp. 3-9; S.A. EUART, *Church-State Implications in the United States of Canon 812 of the 1983 Code of Canon Law*, Canon Law Studies No. 526, JCD diss., Washington, DC, The Catholic University of America, 1989, pp. 1-44. See also J.J. CONN, *Catholic Universities in the United States and Ecclesiastical Authority*, JCD diss., Roma, Editrice Pontificia Universitas Gregoriana, 1991, 346 p. See also J. CONN and L. SABBARESE (eds.), *Iustitia in Caritate: Miscellanea di studi in onore di Velasio De Paolis*, Rome, Urbaniana University Press, 2005, 227-248. See also S.A. EUART, “Theologians and the Mandate to Teach,” in *Origins*, 23 (1993), pp. 465-472.

³³ JOHN PAUL II, Apostolic Constitution *Ex corde Ecclesiae* (=ECE), 15 August 1990, in *Acta Apostolicae Sedis* (=AAS), 82 (1990), pp. 1475-1509. English translation United States Catholic Conference (=USCC), *On Catholic Universities, ‘Ex corde Ecclesiae’*, Washington, DC, USCC, 2000, 48 p. (=USCC, ECE); *Origins*, 20 (1990), pp. 265-276.

³⁴ Juridic acts are actions of authority which are externally manifested and intended to accomplish some legal effect. See *CIC* cc. 124-128 for the necessary elements that make for the validity of a juridic act and the general rules governing them. Cf. C.A. COX, “General Principles Governing All Administrative Processes,” in R.R. CALVO and N.J. KLINGER (eds.), *Clergy Procedural Handbook*, under the auspices of the CLSA, Washington, DC, CLSA, 1992, p. 53

While a singular administrative act is not defined in the 1983 Code, the one who issues it is made clear:

Canon 35: A singular administrative act, whether it is a decree, a precept, or a rescript, can be issued by one who possesses executive power within the limits of that person's competence, without prejudice to the prescript of c. 76, §1.³⁶

Canon 76, §1: A privilege is a favor given through a particular act to the benefit of certain physical or juridic persons; it can be granted by the legislator as well as by an executive authority to whom the legislator has granted this power.³⁷

The *mandatum* is an instrument, it is an objective reality, a piece of paper by which the recipient is given recognition—indeed ecclesiastical recognition, to carry out a role in service to the community and a collaborator in the teaching mission of the Church. The *mandatum* is described as a “technical term referring to the juridical expression of the ecclesial relationship of communion that exists between the Church and the Catholic teacher of a theological discipline in the Catholic university.”³⁸ As such, the *mandatum*

(=CALVO/KLINGER). See J.M. HUELS, *Liturgy and Law: Liturgical Law in the System of Roman Catholic Canon Law*, Montréal, QU, Wilson & Lafleur, 2006, pp. 73-77, although in this work HUELS treats of juridic acts in respect to liturgical law, he gives a concise treatment of juridic acts in general. See also H. PREE, “On Juridic Acts and Liability in Canon Law,” in *The Jurist*, 58 (1998), pp. 41-83, 479-514, for an extensive treatment of juridic acts.

³⁵ The individual can be either a physical or a juridic person.

³⁶ *CIC/83* c. 35: “Actus administrativus singularis, sive est decretum aut praeceptum sive est rescriptum, elici potest, intra fines suae competentiae, ab eo qui potestate executiva gaudet, firmo praescripto c. 76, §1.”

³⁷ *CIC/83* c. 76, §1: “Privilegium, seu gratia in favorem certarum personarum sive physicarum sive iuridicarum per peculiarem actum facta, concedi potest a legislatore necnon ab auctoritate executiva cui legislator hanc potestatem concesserit.”

³⁸ See NATIONAL CONFERENCE OF CATHOLIC BISHOPS [USA], *The Application of ‘Ex corde Ecclesiae’ for the United States*, Washington, DC, United States Catholic Conference, 2000, note 41, p. 26; also in *Origins*, 30 (2000), p. 75: “The *mandatum* is essentially the recognition of an ecclesial relationship between the professor and the Church” (see c. 229, §3). *CIC/83* c. 229, §3: “If the prescripts regarding the requisite suitability have been observed, they [lay persons] are also qualified to receive from legitimate ecclesiastical authority a mandate to teach the sacred sciences.” This is particular law of the United States. It received the *recognitio* of the Holy See on 3 May 2000 and went into force on 3 May 3 2001.

ought to be in writing, since it is an administrative act which is effective in the external forum.³⁹

3.2.1 – Collaboration in Teaching Function

The pope and the bishop have the duty of transmitting and teaching the faith, but the magisterium is free to call upon theologians to aid in the understanding and interpretation of the faith.

Theology has always had and continues to have great importance for the Church, the People of God, to be able to share creatively and fruitfully in Christ's mission as prophet. Therefore, when theologians, as servants of divine truth, dedicate their studies and labors to ever deeper understanding of the truth, they can never lose sight of the meaning of their service in the Church which is enshrined in the concept *intellectus fidei*. This concept [...] functions correctly when they seek to serve the magisterium, which in the Church is entrusted to the bishops joined by the bond of hierarchical communion with Peter's successor...⁴⁰

The relationship between the magisterium and theologians is important in the life and mission of the Church, seemingly more so in this contemporary world of globalization and secularization. The work of the Catholic academic theologian to investigate the insights of the Church's teachings whether in the classroom or in scholarly writings is related to but different from the work of the bishop in teaching and defending Church doctrine. Theologians and bishops, each in their own ways, are responsible for

³⁹ See the first part of *CIC/83* c. 37: "Actus administrativus qui forum externum respicit, scripto est consignandus...." "An administrative act which regards the external forum must be put in writing."

⁴⁰ JOHN PAUL II, Encyclical *Redemptor Hominis*, 4 March 1979, in *AAS*, 71 (1979), pp. 257-324, here at p. 307 (=RH). English translation in *Origins* 8 (1979), pp. 625-644, here at p. 639. See also c. 375, §1: "Episcopi, qui ex divina institutione in Apostolorum locum succedunt per Spiritum Sanctum qui datus est eis, in Ecclesia Pastores constituuntur, ut sint et ipsi doctrinae magistri, sacri cultus sacerdotes et gubernationis ministri." "Bishops, who by divine institution succeed to the place of the Apostles through the Holy Spirit who has been given to them, are

serving the truth that is found in the one God. The role of the theologian “is to pursue in a particular way an ever deeper understanding of the word of God found in the inspired Scriptures and handed on by the living tradition of the Church. He [the theologian] does this in communion with the magisterium, which has been charged with the responsibility of preserving the deposit of faith.”⁴¹

As members of the community of faith, theologians share the common responsibility of maintaining the unity and integrity of the Catholic faith. They are to keep in mind the pastoral and missionary effects of their work and also to acknowledge that it is the role of the bishop(s) as authoritative teachers in the Church to make pastoral judgments regarding the soundness of theological teaching in order that the integrity of Catholic doctrine and the unity of the faith community are preserved. Theological teaching always remains subject to testing in the life of the Church and to the teaching of its bishops.⁴²

The relationship of theologian and bishop in the Church is one of collaboration. This cooperation would enable theologians better to understand and to fulfill their specific responsibilities in the Church, consequently “collaboration between the

constituted pastors in the Church, so that they are teachers of doctrine, priests of sacred worship, and ministers of governance.”

⁴¹ CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on the Ecclesial Vocation of the Theologian *Donum veritatis*, 24 May 1990, n. 6, in *AAS*, 82 (1990), pp. 1550-1570, here at p. 1552. English translation in *Origins*, 20 (1990), pp. 117-126, here at p. 119.

⁴² NATIONAL CONFERENCE OF CATHOLIC BISHOPS, *Doctrinal Responsibilities: Approaches to Promoting Cooperation and Resolving Misunderstandings between Bishops and Theologians*, Washington, DC, NCCB, 1989, p. 7.

theologian and the magisterium occurs in a special way when the theologian receives the canonical mission or mandate to teach.”⁴³

3.2.2 – Collaboration in the Eastern Code

Further indication of the notion of collaboration is found in the *Code of Canons of the Eastern Churches*:

Canon 596: The function of teaching in the name of Church belongs only to bishops; nevertheless, that function is shared, in accord with the norm of law, both by those who have been made collaborators of the bishops through sacred orders and by those who, though not in sacred orders, have received the mandate to teach.⁴⁴

In Eastern Catholic Church law, and in particular according to the canon above, the office of teaching in the name of the Church is the exclusive *competence of the bishop*. It can be *shared*, according to law, by those who are *collaborators of the bishop*, i.e., those who are ordained deacons or presbyters, or those non-ordained who have received a mandate to teach from the bishop.⁴⁵

Only in the Eastern Code is there a canon that speaks specifically of the role of theologians:

⁴³ *DVer*, n. 22, p. 1559; *Origins*, 20 (1990), p. 122.

⁴⁴ *CCEO* c. 596: “In nomine Ecclesiae docendi munus solis Episcopis competit; in eodem tamen munere partem habent ad normam iuris sive ii, qui Episcoporum per ordinem sacrum effecti sunt cooperatores, sive ii, qui in ordine sacro non constituti mandatum docendi receperunt.”

⁴⁵ See J.I. ARRIETTA, “The Active Subject of the Church’s Teaching Office,” in *Studia canonica* 23 (1989), pp. 243-256. See also G. NEDUNGATT, “The Teaching Function of the Church in Oriental Canon Law,” in *Studia canonica*, 23 (1989), pp. 39-60. See also a comparison of the two codes relating to the teaching function of the Church in T.J. GREEN, “The Teaching Function of the Church: A Comparison of Selected Canons in the Latin and Eastern Codes,” in *The Jurist*, 55 (1995), pp. 93-140.

Canon 606, §1: It is for theologians, given their profound understanding of the mystery of salvation and their expertise in the sacred and related sciences as well as in current questions, to explain and defend the faith of the Church and to pave the way for doctrinal progress, while faithfully submitting to the authentic magisterium of the Church and at the same time availing themselves of proper freedom.

§2: In the research and expression of theological truths, it is for them to be solicitous to edify the community of faith and also to cooperate with the bishops resourcefully in the discharge of their teaching function.

§3: Those engaged in theological disciplines in seminaries, universities and faculties are to seek to cooperate with those well-versed in other fields of learning by the sharing of views and resources.⁴⁶

This is the first instance in a code of law that theologians are placed in a distinct group or category of church workers. Theologians have been influential throughout Church history and have certainly contributed to the understanding of the faith. Theologians had a prominent role in the Council of Trent and subsequently theologians were invited to the Second Vatican Council, as experts accompanying their bishop. Bishops were encouraged to bring outstanding theologians and canonists with them who remained outside the discussion halls and voting. Theologians are sharers and collaborators in the Church's teaching function.⁴⁷

The Eastern Code like the Latin Code also requires a mandate to teach subjects regarding Catholic faith and morals for those at Catholic universities or other like institutions of higher learning:

⁴⁶ *CCEO* c. 606, §1: "Theologorum est pro sua mysterii salutis profundiore intellegentia et scientiarum sacrarum affiniumque necnon novarum questionum peritia fideliter magisterio Ecclesiae authentico obsequentes simulque ea, qua par est, libertate utentes fidem Ecclesiae illustrare et defendere progressuique doctrinali consulere." §2: "In veritatibus theologicas investigandis et experimendis eorum est communitatis fidei aedificandae sollicitos esse atque cum Episcopis in eorum munere docendi sollerter cooperari." §3: "Qui in theologicas disciplinas praesertim in seminariis, studiorum universitatibus et facultatibus incumbent, cum hominibus, quo in allis scientiis excellunt, collatis consiliis atque viribus cooperari studeant."

⁴⁷ Cf. V.J. POSPISHIL, *Eastern Catholic Church Law*, Staten Island, NY, Saint Maron Publications, 1996, pp. 366-367.

Canon 644: Those who teach subjects regarding faith and morals in Catholic universities must possess a mandate of the ecclesiastical authority designated by those mentioned in can. 642; the same authority can withdraw this mandate for a grave reason, especially if the teachers lack scientific or pedagogical suitability, experience, or integrity of doctrine.⁴⁸

Like the Latin Code, those who teach some of the sacred sciences and are not Catholic as well as those Catholics who teach subjects only indirectly related to doctrine and morals, do not need the mandate.

By the granting and acceptance of the *mandatum*, the recipient collaborates in some way in the *munus docendi* of the Church as exercised in communion with the Church and under the guidance of the hierarchy. Although, the recipient teaches the theological discipline in his or her name and not in the name of the Church, “nonetheless, they [the teachers] are not separated from the Church’s teaching mission.”⁴⁹ It is by virtue of their baptism and their academic and professional competence that they teach in their own name.⁵⁰ And, as all the faithful, they are subject to the vigilance of the competent ecclesiastical authority.

⁴⁸ *CCEO* c. 644: “Qui disciplinas as fidem et mores spectantes docent in catholicis Studiorum universitatibus, muniti esse debent mandato auctoritatis ecclesiasticae designatae ab eis, de quibus in can. 642; eadem auctoritas hoc mandatum gravi de causa auferre potest praesertim si deficient idoneitas scientifica vel paedagogica, probitas vel doctrinae integritas.” Canon 642 speaks of the “higher administrative authority of a Church *sui iuris*”, this could be the Holy See or the patriarch and synod of bishops.

⁴⁹ See NCCB, *Application of ‘ECE’*, endnote 41. See above, note 8. Cf. *CIC/83* c. 204, §1.

⁵⁰ See NCCB, *Application of ‘ECE’*, II, Art. 4, 4, e, ii, p. 16; *Origins*, 30 (2000), p. 72.

3.2.3 – Fidelity to Truth

At least in the American discussions and documents, the word *mandatum* remains in the Latin form and is not translated into the English word *mandate* and remains a sign of the special relationship between professor and bishop in the service of the Church to fulfill the Church's mission.

The *mandatum* is not meant as an approbation of the teaching of the professor, rather it recognizes the professor's commitment and responsibility to teach "authentic Catholic doctrine and to refrain from putting forth as Catholic teaching anything contrary to the Church's magisterium."⁵¹ The *mandatum* is the bishop's acknowledgment that a Catholic professor of a theological discipline is engaged in teaching within the full communion of the Catholic Church.⁵²

The object of the *mandatum* is the content of the professor's teaching, and thus the *mandatum* recognizes both the professor's "lawful freedom of inquiry" and the professor's commitment and responsibility to teach authentic Catholic doctrine and to refrain from putting forth as Catholic teaching anything contrary to the Church's magisterium.⁵³

By the canonical relationship established with the *mandatum*, the teaching of true Catholic doctrine by the professor is not only expected but also is a commitment on the part of the professor to teach truth as taught by the Church in matters of faith and morals. The human mind is on a quest for the knowledge of the truth and "with every other

⁵¹ NCCB, *Application of 'ECE'*, II, Art. 4, 4, e, iii, p.16; *Origins*, 30 (2000), p. 72.

⁵² NCCB, *Application of 'ECE'*, II, Art. 4, 4, e, i, p.16; *Origins*, 30 (2000), p. 72.

⁵³ See NCCB, *Application of 'ECE'*, II, Art. 2, p. 12; *Origins*, 30 (2000), p. 71.

University, [the Catholic University], shares that “*gaudium de veritate*”, so precious to Saint Augustine, which is that joy of searching for, discovering and communicating truth in every field of knowledge.”⁵⁴

All Catholic teachers at Catholic colleges and universities are expected to be faithful to the teachings of the Church. But it is only the teachers in the theological disciplines that are mandated to be faithful to the Magisterium of the Church in the quest for truth.⁵⁵ Since “by means of a kind of universal humanism a Catholic University is completely dedicated to the research of all aspects of truth in their essential connection with the supreme Truth, who is God,”⁵⁶ the teacher of a theological discipline that rests on the foundation of faith as taught by the Catholic Church has a particular relationship to the Magisterium of the Church in proclaiming the meaning of truth.⁵⁷

Bishop John D’Arcy speaks of the essential character of the *mandatum* as pastoral in a personal reflection paper:

It must be said that the goal of the mandate is eminently pastoral. It is deeply rooted in the Second Vatican Council where the responsibility of the bishop to see that the faith is taught accurately in his diocese is addressed....it is related to a right: the right that the students have to receive the fullness of revealed truth in

⁵⁴ *ECE*, Introduction, 1, p. 1475-1476; USCC, *ECE*, pp. 3-4; *Origins*, 20 (1990), p. 265-267, as quoted from SAINT AUGUSTINE, *Confessions*, X, xxiii, 33: “In fact, the blessed life consists in *the joy that comes from the truth*, since this joy comes from You who are Truth,, God my light, salvation of my face, my God.” PL 32, pp. 793-794; and cf. SAINT THOMAS AQUINAS, *De Malo*, IX, 1: “It is actually natural to man to strive for knowledge of the truth.”

⁵⁵ See *ECE*, II, Art. 4, §3, p. 1505; USCC, *ECE*, p. 42; *Origins*, 20 (1990), p. 274, as referenced from *LG*, n. 25, pp. 29-31; FLANNERY1, pp. 379-381. See also SECOND VATICAN COUNCIL, Dogmatic Constitution on Divine Revelation *Dei verbum*, 18 November 1965, nn. 8-10, in *AAS*, 58 (1966), pp. 817-830, here at pp. 820-822; English translation in FLANNERY1, pp.750-765, here at pp.754-756.

⁵⁶ *ECE*, Introduction, 4, p. 1477; USCC, *ECE*, p. 5; *Origins*, 20 (1990), p. 267, as referenced from J.H. NEWMAN, *The Idea of a University*, London, Longmans, Green and Company, 1931, p. xi.

⁵⁷ See *ECE*, Introduction, 4, p. 1477; USCC, *ECE*, p. 5; *Origins*, 20 (1990), p. 267.

a cohesive and comprehensive manner, in a way which is properly sequenced and is faithful to the church and the guidance of the Holy Spirit.⁵⁸

Hence the *mandatum* of c. 812 can be said to relate in a general way to the bishop's responsibility of guarding the deposit of faith as found in c. 753:

Canon 753: Although the bishops who are in communion with the head and members of the college, whether individually or joined together in conferences of bishops or in particular councils, do not possess infallibility in teaching, **they are authentic teachers and instructors of the faith for the Christian faithful entrusted to their care;** the Christian faithful are bound to adhere with religious submission of mind to the authentic magisterium of their bishops.⁵⁹

And indeed in a specific way related to colleges and universities:

The conference of bishops and the diocesan bishops concerned have the duty and the right of being vigilant that in those universities the principles of Catholic doctrine are faithfully observed.⁶⁰

Both the bishop and the teacher of a theological discipline⁶¹ are called to fidelity, i.e., to be faithful to revealed truth.

⁵⁸ J.M. D'ARCY, "Achieving the Goals of *Ex corde Ecclesiae*," in *Origins*, 29 (1999), pp. 237-238. Bishop D'Arcy of Fort Wayne-South Bend, IN, the home of Notre Dame University, was a member of a sub-committee on *Ex corde Ecclesiae* set up by the Association of Catholic Colleges and Universities. Bishop D'Arcy served on the sub-committee in 2001-2002, in 2003 he served as a bishop-consultant. The committee was comprised of six bishops and six college presidents under the leadership of Pittsburgh's Bishop Donald Wuerl. Other bishops included Auxiliary John Boles of Boston; Paul Bootkoski, administrator of the Newark, N.J., archdiocese; James Hoffman of Toledo, Ohio, and George Niederauer of Salt Lake City. College presidents on the committee were Fr. Dennis Dease of the University of St. Thomas, St. Paul, Minn.; Marilou Eldred, St. Mary's College, South Bend, Ind.; Christian Br. James Gaffney of Lewis University, Romeoville, Ill.; Alice Hayes, University of San Diego; Jesuit Fr. William Leahy of Boston College and Vincentian Fr. David O'Connell of The Catholic University in Washington. Information obtained from the NCCB office in Washington, DC (9 September 2008).

⁵⁹ *CIC/83* c. 753: "Episcopi, qui sunt in communione cum Collegii capite et membris, sive singuli sive in conferentiis Episcoporum aut in conciliis particularibus congregati, licet infallibilitate in docendi non poleant, **christifidelium suae curae commissiorum authenticum sunt fidei doctores et magistri;** cui authentico magisterio suorum Episcoporum christifideles religioso animi obsequio adhaerere tenentur." Emphasis added.

⁶⁰ *CIC/83* c. 810, §2; cf. cc. 810-814, especially c. 812.

3.2.4 – *Mandatum*: Gift or License

The term “mandate/mandatum” appears a number of times in the 1983 Code in different meaning in various contexts: 1) in connection with delegated power (cc. 131, 140 §2, 141, 142 §1); 2) for special functions of a pontifical legate (c. 364, 8°); 3) for special authorization from the Holy See for an Episcopal conference to act (c. 455); 4) for special authorization for vicars general and Episcopal vicars to act in matters reserved to the diocesan bishop (c. 134 §3); 5) for authorization from the Holy See to ordain a bishop (c. 1013); 6) for authorization to act in a judicial action on behalf of another (cc. 1481-1490, 1524 §3, 1620, 6°) ; and 7) for the authorization of a procurator for contracting marriage (cc. 1105, 1686). The mandate is then proof of the authorization to act.

In what form should the *mandatum* be given? Robert Deeley suggests that as an individual administrative act it should be granted through an individual decree since some provision is made in an individual case.⁶² As noted earlier, the decree as it appears in *CIC* c. 48 addresses a decision and a provision and should be in writing:

Canon 48: A singular decree is an administrative act issued by a competent executive authority in which a decision is given or a provision is made for a particular case according to the norms of law. Of their nature, these decisions or provisions do not presuppose a petition is made by someone.⁶³

While it can be argued such an act for the *mandatum* makes a provision for the community, it can also be argued that the instrument for the *mandatum* is a rescript in that it is a written response to a request that benefits the petitioner:

⁶¹ See above, note 2.

⁶² See DEELEY, p. 155.

Canon 59, §1: A rescript is an administrative act issued in writing by competent executive authority; of its nature, a rescript grants a privilege, dispensation, or other favor at someone's request.⁶⁴

Does a person have a right to teach a theological discipline at a Catholic college or university? This requires a complex answer. A well qualified lay person, having the necessary academic degrees, does have the right to teach in his or her own name. The qualified cleric, on the other hand, has the right to teach the sacred sciences in the name of the Church. However, both the qualified cleric and the qualified lay person are required by law to obtain authorization from the competent ecclesiastical authority in order to teach the theological disciplines at a Catholic institution of higher studies. It is a privilege to teach theology at a Catholic college or university. Therefore requesting the *mandatum* to fulfill the requirement in order to teach a theological discipline at a Catholic college or university could be argued as making a request for a favor. The written response granting the request would be a rescript; whereas, a written denial of the request would be a decree since it makes a non-favorable decision.

The 1983 Code gives both the common and the distinguishing features of decrees and rescripts. Three common traits are: 1) they are each singular administrative acts; 2) they each are issued or granted by a competent executive authority, i.e., someone with the necessary executive power of governance either by law or delegation; and 3) each is given in writing.

⁶³ *CIC/83* c. 48: "Decretum singulare intellegitur actus administrativus a competenti auctoritate exsecutiva editus, quo secundum iuris normas pro casu particulari datur decisio aut fit provisio, quae natura sua petitionem ab aliquo factam non supponunt."

⁶⁴ *CIC/83* c. 59, §1: "Rescriptum intellegitur actus administrativus a competenti auctoritate exsecutiva in scriptis elicitus, quo suapte natura, ad petitionem alicuius, conceditur privilegium, dispensatio aliave gratia."

The features that distinguish them are: 1) a singular decree makes a decision or a provision for a particular case, whereas a rescript grants a favor; 2) by its nature, no petition is presupposed for a singular administrative decree, whereas a rescript, by its nature, is given in response to a petition; 3) the observance of a decree that is directed to a person is obligatory (c. 52), whereas the use of a rescript is voluntary, unless one is bound to use it based on some other canonical obligation (c. 71).

In his article, J. Huels points out three additional key distinctions: 4) the motive for a rescript is in the petition itself, whereas the motive for a decree is that of the authority who issues it; 5) the competent authority has the discretion of granting or refusing the rescript, whereas this is not true of every decree; and 6) the immediate purpose of a rescript is usually the benefit of the individual person (physical or juridic) who receives the rescript.⁶⁵

Taking these distinctions and applying them to the *mandatum*, it seems that the *mandatum* of c. 812 and *Ex corde Ecclesiae* might be viewed as a rescript and therefore the rules governing rescripts would apply. The motive for the receiving of the *mandatum* is in the request, since it only applies to those who teach a theological discipline at a Catholic college or university⁶⁶, the competent executive authority (diocesan bishop) has the discretion to grant or refuse it—if it is refused then the reasons must be communicated to the petitioner⁶⁷, and lastly the petitioner primarily benefits in that the

⁶⁵ See J.M. HUELS, “Determining the Correct Canonical Rules for Ambiguous Administrative Acts,” in *Studia canonica*, 37 (2003), pp. 34-35 (=HUELS, “Ambiguous”).

⁶⁶ Ecclesiastical universities and faculties are governed by c. 818—which includes cc. 810, 812 and 813.

⁶⁷ See NCCB, *Guidelines*, 5, p. 5-6; in *Origins*, 31 (2001), p. 130. The one making the request has a right to receive the *mandatum* if all the conditions are fulfilled; if it is denied or

petitioner now complies with the law governing those who teach a theological discipline at a Catholic college or university.

Those not required to have the *mandatum* are those who do not regularly teach academic courses at a Catholic college or university or other institute of higher study; those who do not teach a theological discipline: Scripture, dogmatic theology, moral theology, pastoral theology, canon law, liturgy or church history; and those who are not Catholic.⁶⁸

If there is an adverse decision made by the competent executive authority to withhold or withdraw the *mandatum*, a decree would indeed be issued. It appears that from the points made in the J. Huels article, the *mandatum* can be construed as an ambiguous administrative act. It falls partly in line with the canonical descriptions of both a rescript and a decree; however, it appears that the weight falls to it being a rescript.

If the *mandatum* is granted *motu proprio*⁶⁹ it would seem this is done by decree since a decision is made by the competent authority after gathering all necessary information and proofs needed to make a decision; this being done without a request from

withdrawn, in all justice, the reasons are to be communicated in writing since a decision has apparently been made by the executive authority. The bishop has the right and the obligation to deny the granting of the *mandatum* if there is good reason to do so. In a similar way, the bishop has the right and obligation to withdraw the *mandatum*, if good reason warrants. However, in either case right intention and right conduct are to be presumed for both until the contrary is proven.

⁶⁸ Cf. CIC/83 c. 812; NCCB, *Application of 'ECE'*, II, Art. 4, 4, e, iii. All others are bound no matter when they began teaching at the institution of higher study. This list of theological disciplines ought not be considered exhaustive or definitive, but rather as a helpful standard.

⁶⁹ *Motu proprio*- on one's initiative. An ecclesiastical authority has the right to offer the *mandatum* on his own initiative (which requires an acceptance), provided that the commitment to teach in full communion with the Church. But what is the meaning of "teach in full communion" as applied to theologians? The status of a theologian as a teacher, must not be confused with the

the recipient. A decree can be issued to the willing and to the unwilling, but the *mandatum* granted in this manner must be accepted by the recipient to be effective. The recipient must acknowledge and agree to the terms and conditions of the *mandatum*. If part of the granting of the *mandatum* requires an acknowledgement and commitment to teach in union with the magisterium of the Church, then how is it truly granted without this essential condition?⁷⁰

The *mandatum* granted after a request or given *motu proprio* does not bind the recipient to act or refrain from acting as a decree binds the recipient. It is neither gift nor license, it is however, the necessary instrument granted by request or given *motu proprio* in compliance with c. 812 and *Ex corde Ecclesiae*.⁷¹ The competent ecclesiastical authority who can grant the *mandatum* is the bishop of the diocese in which the Catholic university is located.⁷²

ecclesial status of a member of the church being in “full communion” (NCCB, *Guidelines*, 4 c, p. 4; in *Origins*, 31 [2001], pp. 129-130).

⁷⁰ Cf. A-VII for a Letter Granting the *Mandatum*, a Letter of Request and a bishop’s invitation letter with the conditions. At the end of the guidelines is a sample decree (called a Memorandum) for the *mandatum* to be granted the bishop on his own initiative. The sample decree states: “This *mandatum* takes effect upon my receipt of the enclosed statement of your understanding and acceptance of its terms.” The Guidelines offer a sample of the written acceptance of the professor. The law does not require the professor to *request* or *accept* the *mandatum*; the law requires the professor to *have* a *mandatum*.

⁷¹ The *mandatum* is not an appointment, authorization, delegation or approbation of one’s teaching by church authorities. See NCCB, *Guidelines*, 1, c, p. 2; in *Origins*, 1 (2001), p. 129. See also HUELS, “Ambiguous,” pp. 36-39.

⁷² NCCB, *Application of ‘ECE’*, II, Art. 4, 4, e, iv, 1, p. 17; *Origins*, 30 (2000), p. 73. The *mandatum* may be granted personally by the diocesan bishop or through his delegate. See *CIC/83* c. 137. See also A-VII for sample of letter of request and letter granting the *mandatum*.

3.3 – American Reception of *Ex corde Ecclesiae*

The American reception of *Ex corde Ecclesiae* was mixed to say the least. The 1990 document took until 2001 for its provisions to be effective. It was only after many discussions between college presidents, theologians, canonists and bishops did the document, “*The Application of ‘Ex corde Ecclesiae’ for the United States,*” emerge with the final approval of the American Bishops.

3.3.1 – Concerns of Local Academics

On 11 September 2000, the Catholic Theological Society of America’s Ad Hoc Committee on the *Mandatum* released its report on how theologians viewed the *mandatum* and the perceived problems with it.⁷³ There were also recommendations for national procedures and criteria for the granting, denying, and withdrawal of a *mandatum*, as well as for continuing consultation and dialogue between bishops and theologians.

Among the issues raised in the report were:

- a lack of clarity as to the meaning of a *mandatum*,
- a concern as to what is meant by “full communion,”⁷⁴
- the potential establishment of a hierarchical juridical relationship between the diocesan bishop and the theologian who teaches in the diocese rather than a *communio* relationship based on dialogue and collaboration;

⁷³ CATHOLIC THEOLOGICAL SOCIETY OF AMERICA, “Theologians, Catholic Higher Education, and the *Mandatum*,” A Report by the Ad Hoc Committee on the *Mandatum*, in *Origins*, 30 (2000), pp. 244-255.

- an insufficient understanding of academic theology;
- the importation of a European education model into a North American context; the potential for violation of institutional autonomy if Catholic universities are required to incorporate the *mandatum* and the provisions of *Ex corde Ecclesiae* into their statutes;
- the potential of the Holy See's over centralization of local ecclesiastical decision-making;
- the economic impact on lay theologians if a *mandatum* were to become a condition for employment;
- and the lack of due process protection.⁷⁵

Another provision that causes concern is the requirement that “the university should strive to recruit and appoint Catholics as professors so that, to the extent possible, those committed to the faith will constitute a majority of the faculty.”⁷⁶ Likewise, “to the extent possible, the majority of the board should be Catholics committed to the Church.”⁷⁷ Given the many concerns surrounding the *mandatum*, the report said that although there are many theologians committed to ecclesial accountability nonetheless many theologians have decided not to request a *mandatum*.⁷⁸

College and university presidents are well aware of the importance of institutional autonomy and the academic freedoms of faculty members. The infringement of these

⁷⁴ NCCB, *Application*, II, Art. 4, 4, e, 1.

⁷⁵ CTSA, “Report,” pp. 24-31.

⁷⁶ NCCB, *Application*, II, Art. 4, 4, a.

⁷⁷ NCCB, *Application*, II, Art. 4, 2, b.

fundamental principles can affect the legal status of the institution, its accreditation, and its economic stability. Presidents and members of Boards of Trustees, mindful of their fiduciary obligations, have been careful to observe national laws and protect both institutional autonomy and academic freedom.⁷⁹

3.3.2 – Academic Freedom and Institutional Autonomy

Ex corde ecclesiae references mandate as follows: “Catholic theologians, aware that they fulfill a mandate received from the Church, are to be faithful to the magisterium of the Church as the authentic interpreter of Sacred Scripture and Sacred tradition.”⁸⁰ Theologians are teaching in their own right and in their own name, however, as their mandate (*mandatum*) attests, there is a relationship to the hierarchy through the bonds of ecclesial communion. *Ex corde Ecclesiae* further says, “The Church, accepting ‘legitimate autonomy of human culture and especially of the sciences,’ recognizes the academic freedom of scholars in each discipline in accordance with its own principles and proper methods, and within the confines of the truth and the common good.”⁸¹

In 1967 a group of interested persons met at the regional meeting of the International Federation of Catholic Universities in Land O’Lakes, WI. There were some twenty-six persons representing nine major Catholic universities, members of the

⁷⁸ CTSA, “Report,” p. 24.

⁷⁹ See A. GALLIN, *Independence and the New Partnership in Catholic Higher Education*, Notre Dame, IN, University of Notre Dame Press, 1996, pp. 53-55. GALLIN describes the development of government by lay Boards of Trustees.

⁸⁰ See *ECE*, II, Art. 4, §3, p. 1505; USCC, *ECE* Origins, 20 (1990), p. 274

⁸¹ *ECE*, 29, p. 1491; USCC, *ECE*, p. 23; Origins, 20 (1990), p. 271.

episcopacy, well-known scholars, and leaders of religious communities.⁸² Two phrases became fundamental in their discussions and remain so in future dialogues: academic freedom and institutional autonomy.

The opening paragraph of the statement they produced came to be known as the Land O'Lakes Statement. It reads:

The Catholic university today must be a university in the full modern sense of the word, with a strong commitment to and concern for academic excellence. To perform its teaching and research functions effectively the Catholic university must have a true autonomy and academic freedom in the face of authority of whatever kind, lay or clerical, external to the academic community itself. To say this is simply to assert that institutional autonomy and academic freedom are essential conditions of life and growth and need of survival for Catholic universities as for all universities.⁸³

Institutional autonomy means that the governance of an academic institution is and remains internal to the institution; *academic freedom* is the guarantee given those involved in teaching and research that, within their specific specialized branch of knowledge and according to the methods proper to that specific area, they may search for

⁸² In 1924, the l'Università Cattolica del Sacro Cuore (Milan, Italy) and the Katholieke Universiteit Nijmegen (Nijmegen, Netherlands) took the first step towards bringing Catholic universities together in a Federation. The purpose at the time was to deal with specific issues which were of common concern. The universities came together the following year at the Institut Catholique de Paris, where representatives from fourteen institutions met. The first directory of Catholic universities was published in 1927. It was only after the Second World War that the Fœderatio Universitatum Catholicarum was fully established. Created by a Decree of the Holy See in 1948, it was recognized by Pope Pius XII in 1949 and became the International Federation of Catholic Universities (IFCU) in 1965. A decision was made in 1965 at a meeting in Tokyo to organize regional conferences for the purpose of developing a statement on Catholic universities that would harmonize with the Vatican II document, "The Church in the Modern World." Such meetings were held at Buga (Columbia), Manila, Paris, and Land O'Lakes, WI, USA. The resultant documents were brought to the next IFCU Assembly at Kinshasa (Zaire) in September 1968. <www.ifuc.org> (30 July 2008), see also A. GALLIN, *American Catholic Higher Education: Essential Documents, 1967-1990*, Notre Dame, IN, University of Notre Dame Press, 1992, p. 5 (=GALLIN, *Essential Documents*).

⁸³ GALLIN, *Essential Documents*, p. 7.

the truth wherever analysis and evidence lead them, and may teach and publish the results of the individual and of society within the confines of the truth and the common good.⁸⁴

Pope Benedict XVI said to educators of Catholic universities on his recent American visit:

In regard to faculty members at Catholic colleges and universities, I wish to reaffirm the great value of academic freedom. In virtue of this freedom you are called to search for the truth wherever careful analysis of evidence leads you. Yet it is also the case that any appeal to the principle of academic freedom in order to justify positions that contradict the faith and the teaching of the Church would obstruct or even betray the university's identity and mission; a mission at the heart of the Church's *munus docendi* and not somehow autonomous or independent of it.⁸⁵

Here the Pope is clear in his high regard and encouragement for the pursuit of truth provided there is thoughtful and reasoned analysis. Faith still ought not to conflict with reason. There should be no fear in the pursuit of truth wherever it leads. It remains not only a privilege but also a duty for professors and administrators to ensure that students are instructed in Catholic doctrine and practices.

3.3.3 – Concerns of Local Sponsoring Institutes

What is the role that the sponsor has in seeing that the ecclesial laws are observed and followed at an apostolate? Institutes and societies of religious life have varying relationships with their apostolic works. Sometimes that relationship is through the corporate model of membership with certain powers reserved for control. There is

⁸⁴ See GALLIN, *Essential Documents*, p. 434, note 15. See also A-VIII for the Academic Freedom Statement taken from the Faculty Handbook at St. Norbert College.

⁸⁵ BENEDICT XVI, Address to Educators at Catholic University, 17 April 2008, in *L'Osservatore Romano*, English edition, N. 17 (2041), 23 April 2008, pp.7-8, here p.8; *Ad Catholicam Studiorum Universitatem Americae*, 17 April 2008, in *AAS*, 100 (2008), pp. 325-326.

sometimes a canonical relationship that gives clear control. A sponsor may not be in a position to run the institution so it relies on the commitment of others.

The provisions of *Ex corde Ecclesiae* and the US Bishops' *Application* call for the sponsor to influence compliance at its institutions. As public juridic persons they are responsible for their apostolic works. Without direct control of the college or university and mindful of civil laws, the sponsor is concerned over its role.

The sponsor of the college or university and the diocesan bishop cooperate and dialogue in the work carried out under the religious institute. The principle of *communio* helps to guide the work. Tensions and challenges between sponsor and bishop may arise but when issues of mutual concern are dealt with in collaborative and respectful manner agreeable solutions can be found.

3.4 – United States Conference of Bishops

The American bishops, theologians and college presidents have been in dialogue and discussion on the implications of the *mandatum* of canon 812 and when the apostolic constitution *Ex corde Ecclesiae* was promulgated and released in 1990, those discussions intensified. In 2000, the National Conference of Catholic Bishops, predecessor of the United States Conference of Catholic Bishops, received the *recognitio* from the Holy See in November 1999 and promulgated as particular law for the United States “*The Application of ‘Ex corde Ecclesiae’ for the United States.*” The bishops released

“Guidelines Concerning the Academic *Mandatum* in Catholic Universities” just as that, guidelines; these guidelines are not binding as law.⁸⁶

Much debate and discussion has taken place since then. On 3 May 2000, the Congregation for Bishops, after consultation with the Congregation for Catholic Education and the Pontifical Council for the Interpretation of Legislative Texts, granted the requested *recognitio* for the “Application of *Ex corde Ecclesiae* for the United States”. The norms became particular law for all dioceses in the United States on 2 May 2001.⁸⁷ These new norms also addressed the Catholic identity and mission of the university.

Conclusion

The *mandatum* of c. 812 is a singular administrative act that establishes a unique relationship between the competent authority granting the *mandatum* and the one who functions as a teacher of a theological discipline. This differs from other uses of *mandatum/mandate* as found in the 1983 Code. The *mandatum* of c. 812 is described as a technical term referring to the juridical expression of the ecclesial relationship of communion that exists between the Church and the Catholic teacher of a theological discipline in the Catholic university.

The *missio canonica* in reference to teaching in the Church was discussed as being rooted in Church legislation in the Middle Ages. The Church’s requirement for a teacher to be recognized by an ecclesiastical authority in order to teach theology in

⁸⁶ UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Guidelines Concerning the Academic Mandatum in Catholic Universities (Canon 812)*, Washington, DC, United States Conference of Catholic Bishops, 2001, 24 p.; in *Origins*, 31 (2001), pp. 128-131.

secular institutions was a means of ensuring the integrity of the teacher and the material taught. The *missio canonica* formalized by the 1917 Code in c. 1328 addressed the exercise of the ministry of preaching. This was later used to cover the teaching theology in general.

With the 1979 Apostolic constitution *Sapientia christiana*, Paul John II reasserted the requirement of a *missio canonica* for all who teach in ecclesiastical faculties. This replaced the previous norms of *Deus scientiarum Dominus* for those teaching at ecclesiastical universities. The 1983 Code treats Catholic universities and like institutions in cc. 807-814 and ecclesiastical faculties and universities in cc. 815-820. While the *missio canonica* and the *mandatum* were discussed during the preparation of the Second Vatican Council's decree on the Apostolate of the Laity, there is a distinct canonical difference.

The recipient of *mandatum* of c. 812 collaborates in some with the bishop in his exercise of the *munus docendi* of the Church. The professor teaches in his or her own name by virtue of their baptism and with the *mandatum* there is the recognition of the professor's commitment to teach authentic Catholic doctrine and not to put forth as Catholic anything that is not authentic Catholic teaching. The *mandatum* establishes a canonical relationship between the diocesan bishop and the professor.

In September 2000 the Catholic Theological Society of America released a report on the *mandatum* in which some perceived problems were raised. Among the issues the theologians raised were that there is a lack of clarity as to the meaning of a *mandatum*, what does it mean to be in "full communion", the potential establishing of a hierarchical

⁸⁷ NCCB, *Application*, Decree of Promulgation, p. ii; in *Origins*, 30 (2001), pp. 65-75.

relationship between the teacher and bishop rather than a relationship based on dialogue and collaboration, an insufficient understanding of academic theology, the importation of a European education model into a North American context, over centralization of the Holy See over local church decision-making, the economic impact on lay theologians if the *mandatum* is a condition for employment, and the lack of due process protection.

We have examined the history and some the implications that impact American colleges and universities. The debates and discussions surrounding these documents will not be over anytime soon. We have looked at the canonical nature of the *mandatum* and tried to determine if it is gift or license. We saw some issues that concern the theologians and looked at academic freedom and institutional autonomy. Now in Chapter 3 we will look at the example of St. Norbert College as it implements *Ex corde Ecclesiae*.

CHAPTER 4

APPLICATION AT ST. NORBERT COLLEGE

Because of the importance that Catholic and ecclesiastical universities and faculties have in the field of education and evangelization, institutes which are responsible for their direction should be conscious of their responsibility. They should ensure the preservation of their unique Catholic identity in complete fidelity to the Church's magisterium, all the while engaging in active dialogue with present-day cultural trends.

Pope John Paul II¹

Introduction

Catholic colleges and universities are valued assets of the Catholic Church. John Paul II emphasized the importance of Catholic culture as he laid out a vision of authentic Catholic culture for the arena of higher education in his document on consecrated life,

Vita consecrata:

It is evident that besides the teaching, research and services common to all universities, a Catholic university, by institutional commitment, brings to its task the inspiration and light of the Christian message. In a Catholic university, therefore, Catholic ideals, attitudes and principles penetrate and inform university activities in accordance with the proper nature and autonomy of these activities. In a word, being both a university and Catholic, it must be both a community of scholars representing various branches of human knowledge and an academic institution in which Catholicism is vitally present and operative.²

¹ JOHN PAUL II, Post-Synodal Apostolic Exhortation *Vita consecrata*, 25 March 1996, n. 97, in *AAS*, 88 (1996), pp. 377-486, here at pp. 472-473. English translation in *Origins*, 25 (1996), pp. 681-719, here at p. 713.

² JOHN PAUL II, Apostolic Constitution *Ex corde Ecclesiae* (=ECE), 15 August 1990, in *Acta Apostolicae Sedis* (=AAS), 82 (1990), pp. 1475-1509, here pp. 1483-1484. English translation USCC, *On Catholic Universities*, 'Ex corde Ecclesiae', Washington, DC, USCC, 2000, p. 14 (=USCC, ECE); *Origins*, 20 (1990), pp. 265-276, here p. 269.

The Apostolic constitution *Ex corde Ecclesiae* pertains to all Catholic colleges and universities worldwide, the *Application* is particular law in the United States for Catholic colleges and universities and other institutions of higher studies. The *Guidelines* are effective in that particular church where the local ordinary chooses to use them, they are guidelines not law. The requirements of c. 812 and *Ex corde Ecclesiae* for the *mandatum* are the responsibility of the teacher of the theological discipline. Nowhere does the law involve the university itself in obtaining the *mandatum*. Yet many universities and colleges help to facilitate their faculty members in seeking it. The law does not require the university to assist in any way.

St. Norbert College falls under the obligation to follow the provisions of *Ex corde Ecclesiae* and c. 812.

4.1 – Application of Canon 812 at SNC

Professors in the Religious Studies department of St. Norbert College are all aware of the requirement of the *mandatum*. The former bishop of Green Bay (2003-2007), Bishop David Zubic, made a sincere effort to dialogue with the Religious Studies professors and invited them to request the *mandatum*. The bishop met several times with department for conversation and dialogues in order to bring about a better understanding of the issues surrounding the requirements of the law.

The bishop and college president meet on a regular basis and this affords strong lines of communication. In July 2008, St. Norbert College had a new President, its 7th president in the college's 110-year history. Mr. Tom Kunkel is committed to maintaining the college's Catholic identity and mission. Together with the Vice-President for Mission

and Heritage and the pastor of the college parish there is dialogue with professors that fosters a climate of openness and acceptance. The Norbertine presence on campus and the close proximity to St. Norbert Abbey offers to the whole college community a deeper appreciation for the college's history.

4.1.1 – Administrators and Faculty

The day-to-day management and operation of the college is the primary responsibility of the administration and support staff. They are the direct providers for a suitable venue and environment in which the faculty and students function. In the last half of the twentieth century American Catholic colleges and universities have undergone a big shift in their overall operation and governance. The administration must, therefore, have a clear grasp of the meaning and understanding of the mission and identity of the college or university. It is with the administration at its various levels that students and faculty have the most direct interaction.³

The faculty, too, ought to have a clear understanding of and respect for the stated mission of the institution. American Catholic college and university faculty members synthesize three influences within academic life: that of Catholicism, the intellectual and cultural life of the United States, and the charism and traditions of the institution.⁴

³ Cf. T.J. MURPHY, *A Catholic University: Vision and Opportunity*, Kansas City, MO, Sheed & Ward, 1991, 83 (=MURPHY, *A Catholic University*).

⁴ D.J. O'BRIEN, *From the Heart of the American Church: Catholic Higher Education and American Culture*, Maryknoll, NY, Orbis Books, 1994, pp. 16-17 (=O'BRIEN, *From the Heart*). O'BRIEN speaks of "God, Country, and Notre Dame."

4.1.2 – Fidelity to the Mission of the College or University

In the past the religious institutes of women and men who founded the colleges and universities also provided the administrators and a large number of the faculty. This insured a direct link for supervision by the sponsoring institute over the administration and faculty of the college. This governance model has now changed and the leadership roles both inside and outside of the classroom are more in the hands of laypersons. While the structure of the Catholic college and university has changed and there is more dialogue and cooperation between faculty and administration, between administration and trustees, the sponsoring institute maintains links with all levels of the college community: students, faculty, staff, administration, and trustees. The institution remains attached to its values and mission.⁵ In *Ex corde Ecclesiae*, John Paul II calls on all faculty members and administrators to promote and respect the mission and identity of the college and university.⁶

4.1.3 – Adding to the Mission of the Local Church

A Catholic institution has to be Catholic. Buckley called for recognition of the intimate connection between the intellectual and the religious, so that the religious cannot be just an isolated part of the institution.

The fundamental proposition of the Catholic university is that the religious and the academic are intrinsically related. Any movement toward meaning and truth is inchoatively religious. This obviously does not suggest that quantum mechanics or geography is religion or theology; it does mean that the dynamism

⁵ MURPHY, *A Catholic University*, p. 87.

⁶ Cf. *ECE*, II, Art. 4, §§1, 2, 5 pp. 1504-1505; USCC, *ECE*, pp. 41-42; *Origins*, 20 (1990), p. 274.

inherent in all inquiry and knowledge, if not inhibited, is toward ultimacy, toward a completion in which an issue or its resolution finds place in a universe that makes final sense, that is, in the self-disclosure of God, the truth of the finite.⁷

It is the charism of the founding religious community that remains alive and vibrant in all areas of the college's life and mission, and it is the charism that continues to contribute to the college's Catholic identity in the light of the distinctively Catholic vision.⁸ In maintaining its close ties to the universal Church, St. Norbert Catholic College fosters close communion with the local Church in ways consistent with its nature by contributing to the work and mission of the local Church. The bishop is expected to receive relevant information from the college and university about its life and activities.⁹ This relationship with the local Church is carried out by the whole of the college and university community: students, faculty, administrators, trustees and sponsor.¹⁰ The Bishop of the Diocese of Green Bay and the Abbot of St. Norbert Abbey each meet regularly with the President of the college.

4.1.4 – Faculty Handbook

The Faculty Handbook of St. Norbert College contains the norms and standards that shape the obligations and rights of the faculty. The handbook is divided into five

⁷ M.J. BUCKLEY, "The Catholic University and the Promise Inherent in Its Identity," in J.P. LANGAN (ed.), *Catholic Universities in Church and Society: A Dialogue on 'Ex corde Ecclesiae'*, Washington, DC, Georgetown University Press, 1993, p. 82 (=LANGAN, *Catholic Universities*).

⁸ Ibid., pp. 74-94.

⁹ Cf. *ECE*, II, Art. 5, §§1, 3 pp. 1506-1507; USCC, *ECE*, pp. 43-44; *Origins*, 20 (1990), pp. 274-275.

¹⁰ Cf. *ECE*, II, Art. 4, 1504-1505; USCC, *ECE*, pp. 41-42; *Origins*, 20 (1990), p. 274.

sections: Faculty Constitution, Faculty Policy Statement, Academic Regulations, Procedures and Information, and By-laws of St. Norbert College.

The Faculty Constitution of St. Norbert College, Section I of Faculty Handbook, opens with a statement of purpose that is the foundation of the Constitution of the Faculty by which the faculty under leadership and organization of its choosing constitutes a reserve of collective professional skills and competence that enables it to speak with its own responsible voice:

The President's commission to the Faculty, contained in the April 13, 1965, Faculty Bulletin, sets forth the foundation upon which this Constitution has been created. It is the intent of this commission and of this Constitution that the Faculty, deliberating under leadership and organization of its own choosing, shall make its contribution to the formation of educational policy. It is the assumption of the Faculty Constitution that the Faculty constitutes a reserve of collective professional skills and competence that enables it to speak with its own responsible voice.¹¹

Article I, Membership and Organization of the Faculty, sets forth who constitute the Faculty:

A member of the Faculty shall be a person who is appointed by the President of the College and who is primarily concerned with teaching and kindred academic matters. The term "academic rank" in this section shall refer specifically to Professor, Associate Professor, Assistant Professor, or Instructor. The Faculty, therefore, includes:

- A. Teaching and research personnel who hold academic rank and have either full-time or joint appointment.
- B. The Dean of the College and all other members of the Board of Administration who have academic rank.
- C. Full-time librarians with academic rank.
- D. Commissioned officers of the Military Science Department assigned to full-time teaching duties.
- E. College personnel who hold joint appointments as administrators and as Faculty members with academic rank.

¹¹ Faculty Handbook, I, The Faculty Constitution, "Preamble", 8 February 2008, <<http://www.snc.edu/thefaculty/facultyhandbook>> (19 July 2008).

F. All others to whom the Faculty explicitly extends membership by a two-thirds majority of those present and voting in formal session.¹²

Membership in the Faculty is very specific and it is established by a written document mutually agreed to by the President of the College and the aspirant faculty member:

A contract to teach at St. Norbert College shall be a written agreement between the Faculty member and the President of the College, who represents the Board of Trustees. The final terms of the contract will be decided by the President of the College after consultation with the Dean of the College who, in turn, will have consulted the Associate Dean of the appropriate Division.¹³

The terms and conditions of every appointment to the Faculty will be stated or confirmed in writing, and a copy of the appointment document will be supplied to the Faculty member. Any subsequent extensions or modifications of an appointment, and any special understandings, or any notices incumbent upon either party to provide, will be confirmed in writing and a copy will be given to the Faculty member.¹⁴

Faculty status is the primary responsibility of the faculty; there are provisions made in handbook for Norbertines to receive faculty status in virtue of academic expertise or administrative position:

By virtue of the Norbertine foundation of the College, the continued Norbertine ownership and substantial support of the institution, and the fact that the Norbertine presence on campus gives to the College's programs a distinctive character permeating the educational experience of its students, Norbertines have a unique role to play in the life of St. Norbert College. The character and strength of the institution, indeed, cannot be maintained without a strong Norbertine presence both in the College administration and on the Faculty. To help insure this presence while at the same time sustaining the highest professional standards of competence for administrators and Faculty, the College has adopted the following policy regarding the appointment and tenure of Norbertines to the College staff.

¹² Faculty Handbook, I, Art. I, Sec. 1, "Members of the Faculty".

¹³ Faculty Handbook, Section II, Art IV, 1, "Contracts".

¹⁴ Faculty Handbook, Section II, Art IV, 2, "Terms".

A. Appointments

All qualified Norbertines who wish to come to the College should be assigned to this mission, even in cases where the immediate need of the College in the area of the Norbertine's expertise may not be pressing. If, for example, the appointment of a Norbertine professor of chemistry would somewhat overstaff this department, such an appointment is to be regarded as a strengthening of the department which the College could not afford except for the Norbertine contribution. The same holds true also for areas such as student affairs, campus ministry, and others. In such instances, there must be no injustice to lay people teaching or working in the department. It must be strongly emphasized that the result desired by the application of this policy is an increased Norbertine presence, not a reduced lay component.

B. Tenure

The professional competence and performance of all Norbertines appointed to the staff of the College shall be evaluated by the same criteria, and according to the same policies and procedures, published in the Faculty Policy Statement for all Faculty, or, in the case of administrators, by the same criteria, and according to the same procedures, established for all staff members in the same area. When a Norbertine Faculty member, in keeping with the policies published in the Faculty Policy Statement, is to be considered for a granting of tenure, however, the principles cited above as governing the appointment of Norbertines to the staff shall likewise govern in any question (other than those of professional competence and satisfactory performance of duties) regarding the awarding of tenure.¹⁵

The Vice-President for Mission and Heritage is a Norbertine with faculty status granted by the Faculty. The primary duty for the Vice-President for Mission and Heritage is to advise the President in matters of Catholic Identity and the Core Values of the college. The President has a Mission and Heritage Council whose members include students, faculty, administration, and Norbertines:

The Council advises the President in the development and enhancement of the College's Catholic identity and Norbertine heritage. The Council will report on a regular basis to the President.

The President appoints all members. Membership includes one member of the administrative association, one member of the staff association, one member of the hourly association, two students, two faculty, and one at-large Norbertine

¹⁵ The Faculty Handbook, Section IV, XIII, "Appointment and Tenure of Norbertines".

member. The Vice-President for Mission & Heritage serves as ex officio, member.¹⁶

All teachers and professors are informed at the time of their contracts of the Catholic identity of the College, its implications and about their responsibilities to promote or to at least respect that identity. Those teaching in religious studies are informed of *Ex corde Ecclesiae* and the *mandatum* by the department chairperson.¹⁷ The Mission Statement and Core Values follow the Organizational Chart at the beginning of Section IV of the faculty handbook.¹⁸ All faculty members and administrators and indeed all who are hired at the college are given copies of the Mission Statement and Core Values with the explicit understanding of the nature and character of St. Norbert College.¹⁹

While St. Norbert College has not yet incorporated the required *mandatum* into its by-laws or the faculty handbook, nonetheless, each faculty member who ought to have the *mandatum* is aware of that requirement. Those who have received the *mandatum* as well as those who have not are known only to the bishop and the college president. There is no public information given as to who has or does not have the *mandatum*. It is left to the individual professor to disclose that information if she or he wishes to do so.

¹⁶ The Faculty Handbook, Section IV, XXXVIII, C, 11, "Mission and Heritage Council".

¹⁷ Cf. *ECE*, II, 4, §§1-2, 4, p. 1505; USCC, *ECE*, pp. 41-42; *Origins*, 20 (1990), p. 274.

¹⁸ The Faculty Handbook, Section IV, II, "The Mission Statement". See A-IV, Mission Statement of St. Norbert College. See also *The Mission Statement*, <http://www.snc.edu/catalog/info_mission.htm> (25 June 2008).

¹⁹ See Human Resources, <<http://www.snc.edu/hr/>> (18 July 1008). Those who may not be Catholic by religious affiliation are to respect and support the mission and heritage of the College.

4.2 – Students and student life

The Student Handbook gives the practical implications for life as a student at St. Norbert College. It restates the goals and objectives together with the mission statement. Incoming new students with their parents come to campus during the preceding summer to hear about life on the Fox River in De Pere, WI. They also visit St. Norbert Abbey and hear from Norbertines about the history and heritage of the college and the founding community of men.

Because the college is so much a part of the history of northeast Wisconsin and the Catholic Church of Green Bay, unique opportunities and experiences await the student. The Student Handbook addresses the academic life as well as the social life of the campus. Conscious of the institution's rights and responsibilities towards each student, St. Norbert College affirms the right of each student to be free from discrimination based on race, color, religion, national origin, creed, gender, or physical challenges. The freedom experienced by all members of the St. Norbert College community does not permit any member to interfere with the personal growth of others.

In its stated Goals and Objectives, St. Norbert College emphasizes the personal, moral, and intellectual development of the student. These goals are rooted in the Judeo-Christian heritage that teaches responsibility to self and others in the context of community. The College through its Student Affairs office offers programs and services that provide educational opportunities and experiences that contribute to the development of the whole person and lend support to the academic goals of the college. There is an effort to provide a balance of social, cultural and recreational activities that benefit the entire College community. The Vice-President of Student Affairs works closely with the

other vice-presidents so the student may have the best opportunities for growth and development.

4.2.1 – SNC Curriculum

The academic curriculum provides choices of courses in Catholic practice and doctrine.²⁰ All students at the college are required to complete two courses in Religious Studies. Freshmen and sophomores may choose either *Introduction to Theology* or *Introduction to Bible*. Juniors and seniors may choose from several upper level courses. There are minor and major studies in Religious Studies, as well as minor and major studies in Peace and Justice that explore Catholic Social Teaching. There are also Ethics courses offered in business. There is Common Prayer or Sacred Hour each week, a time when no classes, labs or meetings may take place throughout the campus, including administrative offices. During this time, different campus organizations representing various constituencies of the campus community lead an inspirational service in the College Church. Students, faculty, trustees, Norbertines, and staff all have an opportunity to participate in the planning and leading of one of the services. It is a sacred time for private or communal reflection.

St. Norbert College attracts students primarily from the upper mid-west of the United States. The current report from the Registrar indicates that of the nearly two thousand students, most identify themselves as Catholic and most of these students

²⁰ NATIONAL CONFERENCE OF CATHOLIC BISHOPS [USA], *The Application of 'Ex corde Ecclesiae' for the United States*, II, Art. 4, 5, b, Washington, DC, United States Catholic Conference, 2000, p. 17; also in *Origins*, 30 (2000), pp. 68-75, here at p. 73. This is particular law for the United States. It received the *recognitio* of the Holy See on 3 May 2000 and went into force on 3 May 2001.

attended a Catholic high school. The college is a welcoming community for all. The challenge the College faces is in attracting and retaining a diverse student body and faculty in order to form a more authentic human community.²¹

4.3 – Reserved Powers

The two-tiered structure of St. Norbert College has the Norbertines as the sole member of the college corporation.²² This sole member has reserved to itself certain powers that are above the powers of the Board of Trustees. The business and property of St. Norbert College, Inc. is under the jurisdiction and control of the member, except where delegated to the Board of Trustees. The determination of the scope of these powers is set forth in the by-laws²³ as reserved to the Member and is determined by the Member alone in all events.²⁴

The verification and affirmation of the college to its mission and identity is in the ultimate control of the sponsoring institute. In the case of St. Norbert College, the

²¹ See A-V, Religious Dimension of St. Norbert College. The Student Handbook is available on internet through the St. Norbert College web page <www.snc.edu/studenthandbook>

²² The two-tiered structure was discussed previously. See above, Chapter 1, notes 131, 132.

²³ See MAIDA/CAFARDI, *Church Property*, pp 117-123. The authors give details on the secular law effects of setting up non-profit corporations and the reservation of powers. In a membership corporation the corporate members are the highest level of corporate authority, and while the board of trustees runs the corporation within the framework of the corporate powers given it by the members, the members reserve to themselves certain powers that the trustees do not have. In addition, the corporation is a legal person separate from its members and the trustees; and the separate incorporation places a limitation of liability on the members and the trustees.

²⁴ See A-III, Restated By-laws of St. Norbert College, Art. III, Secs. 1-2, “Membership; Powers, Duties and Rights”. The corporate member in the two-tiered not-for-profit member corporation of SNC is the leadership of the Norbertine community, viz., the Abbot with his

catholicity of the college is verified in the continuing influence which the Norbertines exert through the exercise of their reserved powers, membership on the board of trustees, and their presence at the college in faculty, staff and administrative positions.²⁵

4.3.1 – Nature

The college as a secular incorporated entity is distinct in the eyes of secular law from the founding/sponsoring institute.²⁶ Of the powers, duties and rights reserved to the Member of St. Norbert College, Inc., the first addresses the mission and nature of the College:

To assure that the philosophy and mission of St. Norbert College Inc. is in agreement with the philosophy of the Order of Canons Regular of Premontre and the Roman Catholic Church, and to do any and all things deemed necessary by the Member to implement this assurance. In this light, the Member specifically makes reference to the Mission Statement and Core Values of St. Norbert College attached hereto and made a part of this section as [if] set forth in full herein.²⁷

The public actions or statements of anyone who is part of the college community—student, faculty, staff, administrator, or trustee—which are contrary to or undermine the philosophy, mission or policies of the College could result in disciplinary action up to and including dismissal, removal, or termination of contract.²⁸

Council. The corporation as a legal (secular) fictitious person is separate from the corporate member and the trustees.

²⁵ See KENNEDY, “McGrath, Maida, Michaels,” pp. 357-358.

²⁶ Ibid., p.358. See also MCGRATH, *Catholic Institutions*, pp.34-35.

²⁷ See A-III, Restated By-laws of St. Norbert College, Art. III, Sec. 2, “Powers, Duties and Rights”. The Reserved Powers of the Member are not limited to the Philosophy of the College but extend also to areas of fiscal and financial concerns; trustees; and administrators.

²⁸ It is the policy of St. Norbert College that the Human Resources Department informs the potential employee in writing of the terms of employment before hiring. Then at the time of

4.3.2 – Use of Powers

The sponsoring religious institute as the canonical steward of its apostolates is responsible to see that the sponsored apostolates act in accordance with the authentic moral and religious teaching authority of the Church.²⁹ To this end, the corporate member by exercising reserved powers can oversee and insure that the mission and philosophy of the sponsored college or university is maintained.

By establishing the College as a membership corporation with reserved powers, the sponsor satisfies in secular law that which in canon law governs the works or apostolates of the sponsoring religious institute. Hence, the external dimension of the Catholic identity of St. Norbert College exists because it is an apostolate of the Norbertine community.³⁰

4.3.3 – Specific Reserved Powers

When establishing a two-tiered membership corporation, like St. Norbert College, the sponsoring religious institute should have reserved powers sufficient to meet its canonical obligations. Reservation of the following powers, either directly or indirectly,

hire an acknowledgement of receipt of the terms of employment is signed by the employee. The terms and conditions of contractual employees are spelled out in their contract before signing. At the time of hire, the college's Statement of Non-discrimination is also given to the new employee. Cf. Human Resources, <<http://www.snc.edu/hr/>> (18 July 2008). In accepting the nomination as a trustee one acknowledges the nature and mission of the college and affirms their support. See A-III, Restated By-laws of St. Norbert College, Art. IV, Sec. 3, "Method of Appointment; Vacancies; Removal." The *mandatum* and *Ex corde Ecclesiae* are discussed by the Chairperson of the Religious Studies with potential hires of that department.

²⁹ Cf. *CIC/83* cc. 118, 1284.

³⁰ Cf. *CIC/83* cc. 673, 675, 677. See also J.J. CONN, "Bishops and the Apostolates of Religious," in *CLSA Proc*, 63 (2001), pp. 49-83.

requiring the member to approve their exercise by the board of trustees, is necessary to ensure that the Norbertines are involved in decisions:

- To establish or change the philosophy according to which the corporation operates;
- To amend the corporate charter or by-laws;
- To appoint the board of trustees;
- To lease, sell, or encumber corporate real estate; and
- To merge or dissolve the corporation and distribute assets.³¹

The first three of these powers, corporate philosophy, corporate structure, and corporate trustees, are necessary to ensure Catholic identity. The last two powers are necessary to ensure that the incorporated apostolate's real property, as it pertains to the sponsoring public juridic person, is administered in keeping with canon law. In addition to these five reserved corporate powers, which canonical stewards must have for the proper exercise of the responsibilities, three others might also be reserved:

- To appoint or approve the appointment of the chief executive officer/chairperson of the Board of Trustees;
- To approve capital and operating budgets; and
- To require a certified audit of corporate finances and to appoint the certified public accountant to perform the audit.³²

The chief executive officer is in the public eye and creates the *image* of the corporation. It is the chief executive officer, together with the board of trustees, who is responsible for protecting the religious identity of the institution (College). The next two powers are helpful in terms of prudent management.

³¹ See MAIDA/CAFARDI, *Church Property*, pp 156-157.

³² *Ibid.*, p. 157. See A-III, Restated By-laws of St. Norbert College, Art. III, Sec. 2, "Powers, Duties and Rights", for the reserved powers of the College membership corporation.

With the first five necessary powers and the three helpful powers, the corporate members can responsibly carry out their canonical duties of “faith and administration”.³³

4.3.4 – By-laws and Changes

In the Articles of Incorporation and in the By-laws, the corporate member reserves to itself the power to make changes in the corporate documents as it deems are needed. These reserved powers are stated in the Articles of Incorporation of St. Norbert College, Inc. and restated in the current By-laws of the College:

From the Articles of Incorporation-

These Articles of Incorporation and the By-laws of the Corporation may be altered, amended or repealed and the initial By-laws adopted by action of the Corporate Member, pursuant to its Articles of Incorporation and By-laws.³⁴

From the Restated By-laws-

The Board of Trustees shall review these by-laws annually and shall recommend desirable changes to the Corporate Member. The Corporate Member wishes to have these by-laws kept current, and to have them provide an adequate and functional framework for the operation of St. Norbert College, Inc.³⁵

The powers, duties and rights of the Member shall be, but not limited to the following:

To approve the articles of incorporation and by-laws, and to make amendments to them, from time to time.³⁶

³³ See MAIDA/CAFARDI, *Church Property*, pp. 155-162. The authors give a full and complete approach to the structure of reserved powers in a membership corporation.

³⁴ A-II, Articles of Incorporation of St. Norbert College, Art. Nine, “Amendment of Articles of Incorporation and By-laws”.

³⁵ A-III, Restated By-laws of St. Norbert College, Art. XVII, Review and Revision of By-laws.

³⁶ A-III, Restated By-laws of St. Norbert College, Art. III, Sec. 2f, “Powers, Duties and Rights”. This is one of the reserved powers of the Member.

By retaining the right to approve changes in the by-laws, the Corporate Member has guaranteed that the initial philosophy and civil law structure will remain intact. This freezes the corporate structure until the member approves a change and it further assures the Catholic identity of St. Norbert College. Otherwise an uncooperative board of trustees could amend the member out of existence and diminish or extinguish the Catholic identity of the College.

4.4 – Contentious Issues

The Bishop, in virtue of his office, clearly has the role and obligation to foster, promote and safeguard the integrity of Catholic Church doctrine and tradition in his local territory. The Catholic university or college, in virtue of its nature, identity and mission, has the role and obligation to promote and safeguard its communion with the Church in that same territory. Each exists “in communion” with the other.³⁷

D. O’Connell states that in the discussions leading up the document on “The Application of *Ex corde Ecclesiae* for the United States” concerns were voiced that “the new text was at best, risky and, at worst, destructive of whatever progress had been made in the ongoing dialogue about Catholic identity that had been occurring among bishops and Catholic educators since *Ex corde Ecclesiae* was first issued in 1990.”³⁸

Issues of contention arise out the role and authority of the bishop as it relates to the college or university. The Particular Norms of the *Application* follow the General Norms of *Ex corde Ecclesiae* and are fully consistent with the General Norms. The

³⁷ Cf. D.M. O’CONNELL, “The Norms Implementing *Ex Corde Ecclesiae* in the United States: Implications for Dioceses,” in *CLSA Proceedings*, 62 (2000), p. 230.

Application attempts to explain what the *mandatum* means and does not mean. Some criticize the requirements of the *Application* as compromising institutional autonomy and academic freedom. Disputes are bound to arise between the diocesan bishop and the university, when disputes do arise dialogue and all efforts to resolve the dispute ought to be done for the good of the Church and the university. The next evaluation of the *Application* should occur at ten years after its effective date (May 3, 2001).³⁹

4.5 – The Heart of the Matter

How will issues of contention be resolved? The Catholic college or university is an integral part and member of the Catholic family, joined to the whole community in faith and work. It contributes to the mission of the Church by presenting reasoned truth through the eyes of faith. Autonomy and freedom are at the heart of any discussion of *Ex corde Ecclesiae* and the *mandatum*. If the college or university is Catholic, then its autonomy and freedom is upheld in the Church as much as the autonomy and freedom of any individual person.

In studying the two documents, *Ex corde Ecclesiae* and the Application of *Ex corde Ecclesiae* some of the issues of contention that have been addressed by various parties include the statement in the General Norms of *Ex corde Ecclesiae* that all Catholic universities directly established or approved by the Holy See, an Episcopal Conference or other body of Catholic Hierarchy or by a diocesan Bishop are to incorporate the General Norms of *Ex corde Ecclesiae* into their institution's statutes and have them approved by

³⁸ Ibid., p. 219.

the competent ecclesiastical authority. While this directive does not speak to most American Catholic college or universities, the second part of the directive expects that all other Catholic colleges and universities would incorporate these general norms into their statutes, by-laws or other such governing documents.⁴⁰

A directive such as this seems to go against the American values of autonomy, independence and freedom. If enforced by the university or college that has been established as an apostolate of a religious institute, even one with reserved powers, it might be open to a legal action in the courts. A valid contract entered into by the university and the professor before the 1983 Code of Canon Law or before the *Application* for the United States went into force might be challenged on the basis that the provisions of the contract are now changed to make the *mandatum* a requirement for continued employment. US courts have thus far been reluctant to interfere with issues seen as internal Church matters.⁴¹

³⁹ Ibid., pp. 231-232. The first evaluation was to occur at the five year mark of 3 May 2006.

⁴⁰ *ECE*, II, Art. 1, §3, p. 1502, USCC, *ECE*, p. 38, *Origins*, 20 (1990), p. 274.

⁴¹ See the case of *Beverly M. Brazauskas vs. Fort Wayne-South Bend Diocese*, Indiana Supreme Court, No 71503-0205-CV-268, 25 September 2003. Ms. Brazauskas filed a suit in February 1993 alleging wrongful termination from a parish position by the Pastor; she subsequently amended her law suit before it was decided when she was not hired by Notre Dame University, claiming that she was blacklisted by Bishop D'Arcy and other diocesan officials. Her law suit was eventually dismissed and she later refiled and appealed. Counsel for the diocese appealed to *Ex corde Ecclesiae* and Catholic identity. The lower courts and the Court of Appeals ruled for the diocese, and the ruling was upheld by the Indiana Supreme Court. The US Supreme Court refused to hear the case and sent it back to the lower courts where the decision stands. This case shows that the appeal to *Ex corde Ecclesiae* and Catholic identity demonstrates the current reluctance of US courts to rule on matters seen as internal to Church governance. The *mandatum* is an internal Church matter.

4.5.1 – The President

Ex corde Ecclesiae states that university teachers and administrators are to be “both willing and able to promote that [Catholic] identity...or, at least to respect, that identity.”⁴² St. Norbert College inaugurated its seventh president on 10 October 2008. The search committee was faced with the question of the religious affiliation of the new president. The Application of *Ex corde Ecclesiae* states that “the university president should be Catholic.”⁴³ The president does not have to be Catholic but merely should be Catholic. This question was decided by the Member of the St. Norbert College corporation since it is reserved to the member to approve administrators of the college.⁴⁴ In universities and colleges with a different corporate structure it might be the diocesan bishop who decides this issue. This does not preclude the competent authority from deciding that the president need not be Catholic.

4.5.2 – The Trustee

Ex corde Ecclesiae states that the board of trustees or other equivalent body is responsible for maintaining and strengthening of the Catholic identity of the university and that members of the board or other governing body must be informed of their

⁴² *ECE*, II, Art. 4, §§1-2, p. 1505, USCC, *ECE*, p. 41, *Origins*, 20 (1990), p. 274.

⁴³ NCCB, *Application of 'ECE'*, II, Art. 4, 3a, p. 15; *Origins*, 20 (1990), p. 72.

⁴⁴ In this matter of the religious affiliation of the college president, the corporation member stated that it would not approve a non-Catholic as president. See above, notes 24 and 27 and the reference to the By-laws of the college corporation. The sponsoring religious institute exercised one of its reserved powers by the action of the abbot and his council.

responsibility to promote or respect the Catholic identity of the university.⁴⁵ The *Application of 'Ex corde Ecclesiae'* makes an even stronger statement as to the responsibility of trustees to be committed to the Catholic identity of the university and that to the extent possible a majority of the board is to be Catholic:

The board (of trustees) should develop effective ways of relating to and collaborating with the local bishop and diocesan agencies on matter of mutual concern.⁴⁶

Each of the trustees makes that commitment to mission and identity of St. Norbert College. The name of potential trustees is presented to the Abbot and his council as the corporation member to exercise the reserved power of the approval and the removal of trustees.⁴⁷ The auxiliary bishop of the diocese of Green Bay is a trustee by invitation of the board of trustees. The active presence of a member of the local hierarchy on the board strengthens the Catholic identity of St. Norbert College. This is in keeping with *The Application*.

4.5.3 – The Professor

Ex corde Ecclesiae states that “all professors are expected to be aware of and committed to the Catholic mission and identity of their institutions.”⁴⁸ The Human Resources office at St. Norbert College informs all potential employees of the nature and character of the college. In all employment contracts there is a clause that states the

⁴⁵ *ECE*, II, Art. 4, §1, p. 1505, USCC, *ECE*, p. 41, *Origins*, 20 (1990), p. 274.

⁴⁶ NCCB, *Application of 'ECE'*, II, Art. 4, 2, pp. 14-15; *Origins*, 20 (1990), p. 72.

⁴⁷ See A-III, Restated By-laws of St. Norbert College.

⁴⁸ *ECE*, II, Art. 4, §2, p. 1505, USCC, *ECE*, p. 41, *Origins*, 20 (1990), p. 274.

Catholic identity of the college and the expected commitment to at least respect that identity. An employee faces possible termination should this clause be violated in word or action.⁴⁹

St. Norbert College does not discriminate in hiring but does seek to have the best qualified candidate in the classroom who fosters and supports the mission and identity of the college. The tenure process for all professors requires a written statement from the professor of how he or she has contributed to the mission of the college. This requirement came from the board of trustees in the revision of the tenure process in 2008.

4.5.3.1 – Contracts: old and new

The question of changing the provisions of a contract entered into before the 1983 Code of Canon Law and/or before the *Application* for the United States was in force to now require the *mandatum* is a concern of some professors. J. Huels addresses the effect of non-retroactivity. Canon 9 states: “Laws regard the future, not the past, unless they expressly provide for the past.”⁵⁰ There seems to be at least two opinions expressed on how this might affect the present enforcement of the law requiring the *mandatum*. One opinion is that the law of the *mandatum* binds only those who began teaching since 27 November 1983 when the 1983 code went into force, since the requirement of canon 812 was new to that code. The other opinion is that the *Application* for the United States

⁴⁹ NCCB, *Application of ‘ECE’*, II, Art. 4, 4a-b, p. 15; *Origins*, 20 (1990), p. 72.

⁵⁰ *CIC* c. 9: “Leges respiciunt future, non praeterita, nisi nominatim in eis de praeteritis caveatur.” Cf. J.M. HUELS, “Canon 812: Questions of the Applicability of the Law,” in *Roman Replies and CLSA Advisory Opinions*, 2001, pp. 90-93.

binds only those professors who began teaching after 3 May 2001 when it went into force as particular law for the United States.

J. Huels believes that neither opinion is correct since both appear to be based on a flawed understanding of canon 9. A law today cannot reach back and affect acts that took place before the new law became effective. However, a law today can affect acts that occur after the law became effective. A contract that was signed before the law of the *mandatum* (*CIC* c. 812 [1983] and the *Application* for the United States [2001]) became effective is not in question today. The professor without a *mandatum* might not lose his or her job since the requirement of possessing a *mandatum* was not a condition of the original contract nor was it law at that time. However, as J. Huels further points out in his article, the requirement to have a *mandatum* remains in force since it is present law. It is not retroactive and has nothing to do with the pre-existing contract.

Newly written contracts should have the possessing of a *mandatum* as a condition for employment or even have an amended condition for an existing contract. A new law could create new legal obligations regardless of the conditions in an existing contract. At St. Norbert College the possession of a *mandatum* is not presently a contracted condition for employment, however, the board of trustees has discussed that issue and it will be studied further. The question of the necessity of making it explicit is still debated by the administration and the board of trustees.

4.5.3.2 – Course Material

Ex corde Ecclesiae states that “freedom in research and teaching is recognized and respected...so long as the rights of the individual and the community are preserved

within the confines of the truth and the common good.”⁵¹ While academic freedom is respected and the guidelines of particular disciplines followed, Catholic teachers are to be faithful to Church teaching and all others are to be respectful of Church teaching.⁵² At Saint Norbert College the various disciplines set curriculum standards mindful of the guidelines in the Academic Freedom Statement⁵³ and the teachings of the Church.⁵⁴

Should a professor at St. Norbert College teach as truth that which clearly contradicts Catholic church teaching, the professor might be open to disciplinary action from academic peers and other administration officials following the prescribed procedures for such action. These procedures are contained in the Faculty Handbook of the college. The competency of professors in the classroom and the orthodoxy of the subject matter is scrutinized by students and peers. Students are given the opportunity to evaluate their professors at the end of the semester.⁵⁵

⁵¹ *ECE*, II, Art. 2, §5, p. 1503, USCC, *ECE*, pp. 39-40, *Origins*, 20 (1990), p. 274.

⁵² *ECE*, II, Art. 4, §3, p. 1505, USCC, *ECE*, p. 42, *Origins*, 20 (1990), p. 274.

⁵³ See A-VIII.

⁵⁴ Cf. *CIC* c. 217: “Since they are called by baptism to lead a life in keeping with the teaching of the gospel, the Christian faithful have the right to a Christian education by which they are to be instructed properly to strive for the maturity of the human person and at the same time to know and live the mystery of salvation.” It is seemingly the right of the Christian faithful to receive proper and authentic instruction in the Catholic faith in all Catholic institution of learning, regardless of the level or status of the institution.

⁵⁵ These evaluations are called SOOTS= Student Opinion Of Teachers. They are taken seriously by students, department administrators and professors. Professors and department administrators are given copies of the evaluations. Discussions with professors regarding problematic issues of pedagogy and content may be warranted as a result of the SOOTS.

4.5.4 – The Student

Student life on a Catholic campus extends to student organizations. The potential interaction of *Ex corde Ecclesiae* and student organizations might come to a head where there might be conflicts with Church teaching. The 1980 events of Georgetown University can be given as an example. This is reflected in the complexity between the religious clauses of the First Amendment, civil rights laws, academic freedom and the university's rights of defining itself, underlying all this is the role of canon law.⁵⁶

P. Burling and G. Moffatt address the recognition of student groups and the regulation of campus speech at a Catholic university and in particular how it was addressed at Georgetown University. To identify a student group with a college, e.g. calling the group St. Norbert "X", is considered a form of speech and as such an American court should have no power to compel a Catholic college or university to "speak" in favor of a group that is in support of a cause or position that is contrary to Catholic Church doctrine. The courts ought not require that the group be allowed to use

⁵⁶ Cf. P. BURLING and G. MOFFATT, "Notes from the Other Side of the Wall: A University Counsel's Reflections on Potential Interactions between the Civil Law and the Apostolic Constitution," in LANGAN, *Catholic Universities*, pp. 163-167. The Catholic identity of the college or university might be argued to exclude a student group that supports that which is contrary to a specific teaching of the Church. *Ex corde Ecclesiae* has the potential of empowering factions within the Catholic community who may be dissatisfied with events on a Catholic college campus. Then the authors write of another student group in February 1991 at Georgetown that was committed to discussing the pro-choice position but not to advocate abortion or make referral to abortion clinics. This group encountered opposition from the university but was permitted to meet on campus but then it met further opposition from the diocesan bishop, Cardinal Hickey, and from alumni and other interested Catholics. The Cardinal was called upon to remove the Catholic status of the university but he recognized that he had no competency in the matter since Georgetown was accorded that status by the Holy See. When taken to the Holy See the matter became moot as the university revoked the group's funding. This certainly is just one of many times that the diocesan bishop will be called upon to intervene in the affairs of a Catholic college. See "Abortion-Rights Club at G.U. Irks Hickey," in *Washington Post*, 14 March 1991, p. C-5.

the college name. Likewise, it is clearly against federal law to discriminate among students in providing educational services on sectarian grounds.⁵⁷ St. Norbert College has among its many student organizations the Rainbow Coalition which is open to all students regardless of sexual orientation. The organization is officially recognized and funded by the college through student activity fees.

While it can be argued canonically as a right to form associations (c. 215), a right that is guaranteed both in canon law and civil law, canon law addresses the purpose of the association namely, “charity or piety or the promotion of the Christian vocation in the world...”⁵⁸ A Catholic institution has the right to determine if such an organization satisfies these purposes or not and also has the right to give or not give ecclesial recognition to an association of the faithful under canon law.⁵⁹

Gay and lesbian groups on Georgetown University’s Main Campus and Law Center brought a civil suit against the university in 1980, after nearly four years of discussion with university officials to receive official recognition and student activity funds, under the District of Columbia Human Rights Act, DC Code sec. 1-2520 (1981 ed.) which prohibits discrimination on the basis of sexual orientation. Georgetown

⁵⁷ Cf. *Widmar v. Vincent*, 454 U.S. 263 (1981). Invalidating state university regulation which denied access to school facilities to religious student organizations as a violation of free speech; the school had, with a secular purpose, created a limited open forum open to all forms of discourse, and could not thereby prohibit religious discourse.

⁵⁸ *CIC/83* c. 215: “The Christian faithful are at liberty freely to found and direct associations for purposes of charity or piety or for the promotion of the Christian vocations in the world and to hold meetings for the common pursuit of these purposes.”

⁵⁹ See R.J. KASLYN, “Commentary on Canon 215” in J.P. BEAL, J.A. CORIDEN, and T.J. GREEN (eds.), *New Commentary on the Code of Canon Law*, commissioned by the CLSA, New York, NY and Mahwah, NJ, Paulist Press, 2000, pp. 270-271.

defended itself on the grounds that the Human Rights Act did not apply to the university under the university's rights of the Free Exercise Clause of the First Amendment.

On appeal to the Court of Appeals of the District of Columbia, the court held that the Human Rights Act did not require Georgetown to recognize or endorse the student group, but it did hold that the Act required Georgetown to afford the group equal access to university services and facilities.⁶⁰

4.6 – The Mandate (*Mandatum*)

Ex corde Ecclesiae states that “Catholic theologians, aware that they fulfill a *mandate* from the Church, are to be faithful to the Magisterium of the Church...” (canon 812 is footnoted), and that all teachers are to respect Church teaching.⁶¹ In the *Application of 'Ex corde Ecclesiae'* the language is stated more strongly, “Catholics...are required to have a *mandatum* granted by competent ecclesiastical authority” (canon 812 is endnoted).⁶² The *mandatum* is described as “a technical term referring to the juridical

⁶⁰ Cf. *Gay Rights Coalition v. Georgetown University*, 536 A. 2d 1, 16-17 (DC 1987). The Court of Appeals held that the Act did not require the university to give official recognition to the group, but it distinguished an intangible endorsement from the provision of actual services. The university could not withhold tangible benefits in the form of student funding and meeting places from the group on the basis of sexual orientation. The court also accepted that the university's acceptance of federal funds did not waive its defense based on the constitutional rights of free exercise of religion. While the court recognized that the Act burdened the university's free exercise right, it found that such burden was permissible in light of the District of Columbia's compelling interest in eradicating discrimination on the basis of sexual orientation, which the court found outweighed the university's free exercise right. *Gay Rights Coalition*, 536 A. 2d at 39.

⁶¹ *ECE*, II, Art. 4, §3, p. 1505, USCC, *ECE*, p. 42, *Origins*, 20 (1990), p. 274. Note 50 references the *mandate* of c. 812.

⁶² NCCB, *Application of 'ECE'*, II, Art. 4, 4e, 1, p. 16; *Origins*, 20 (1990), p. 72. Note 40 references c. 812; *ECE*, II, Art. 4, §3.

expression of the ecclesial relationship of communion that exists between the Church and the Catholic teacher of a theological discipline in the Catholic university.”⁶³

The *mandatum* is essentially the mutual recognition of the ecclesial relationship between the professor and the Church. This is between the individual professor and the local bishop. The university does not seek the *mandatum*, it is the personal responsibility of the professor. If a professor does not have the *mandatum*, whether because it is not sought, it is denied, or it is removed, the university must determine the action to be taken in accordance with its statutes and mission.⁶⁴ The *Application* does not bind the university. R. Kaslyn points out in his article that the university or college has a “limited role in reference to the *mandatum*, a role specified by its own statutes.”⁶⁵

St. Norbert College has not made the possession of the *mandatum* a mandatory part of its by-laws nor made it a condition for employment. However, *Ex corde Ecclesiae*, as well as the mission and identity of the college are discussed with all candidates for the Religious Studies faculty. Many of the faculty who teach in the department do have the *mandatum* and dialogue continues between the bishop and faculty on this issue. The possession of the *mandatum* is a matter of law. The enforcement of consequences for not possessing the *mandatum* is still discussed.

The college administration does not make public who has or does not have the *mandatum* by policy; it is up to the individual professor whether or not to make that known. The justification for the *mandatum* is the underlying right and responsibility of

⁶³ NCCB, *Application of 'ECE'*, endnote 41.

⁶⁴ NCCB, *Application of 'ECE'*, endnote 41, references c. 229, §3; c 810, §1.

⁶⁵ R.J. KASLYN, “Canon 812: Role of College Officials in Obtaining Faculty *Mandatum*,” in *Roman Replies and CLSA Advisory Opinions*, 2004, p. 144.

the bishop to safeguard the faithful teaching of Catholic doctrine.⁶⁶ While any student or parent can ask the professor if he or she has a *mandatum*, it is the professor who discloses that information since it is a matter between the bishop and professor. However, the bishop might also disclose that same information. The *mandatum* is not a matter of the internal forum and there does not seem to be sound reason to keep it secret.

The bishop of the place where the college or university is located has the responsibility to establish procedures for the granting or refusing the *mandatum*. Should a professor be refused the *mandatum*, that must be communicated in writing and the professor given the opportunity to appeal (recourse) that decision either through the procedures established by the local bishop or those procedures found in universal law.⁶⁷ The *Application of 'ECE'* does not give specific details as to the procedure for the requesting, granting or removing the *mandatum*.

The university or college would not be involved unless and until the the bishop informs the appropriate university or college authority of his refusal to grant the *mandatum*. All parties are to be accorded the respect due them and their good name (c. 220).⁶⁸

⁶⁶ NCCB, *Application of 'ECE'*, endnote 41.

⁶⁷ UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *Guidelines Concerning the Academic Mandatum in Catholic Universities (Canon 812)*, Washington, DC, United States Conference of Catholic Bishops, 2001, n. 6, p.6; in *Origins*, 31 (2001), n. 6, p. 130.

⁶⁸ *CIC* c. 220: "No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy."

4.6.1 – Affirmation of the Commitment

A new century has begun, a new millennium is underway. In the Vision Statement presented at the Fall College Community Conference of 1996 at St. Norbert College, President Thomas Manion said:

Our vision is to build our Catholic intellectual tradition and to be recognized as a leader among the highest quality learning institutions in American higher education...the College is an institution that exists to facilitate learning, not just to provide instruction...the College assumes a common philosophy and shared goals in academic affairs and student activities...the entire College community, inspired by our Board of Trustees, is committed to the cultivation of a vital Catholic identity.⁶⁹

And in the Vision Statement presented by President Bill Hynes in 2005:

Inspired by and grounded in a unique triad of Catholic, liberal arts, and Norbertine traditions, we seek to be an inclusive and diverse St. Norbert College that will be an internationally acknowledged academic community that exemplifies and sets the standard for:

- Advancing personal, intellectual, and spiritual growth,
- Improving the condition of human dignity and social justice, and
- Preparing and engaging the next generation of leaders to serve as ethical and dynamic agents of change in their local, regional, national, and global communities.⁷⁰

And in the Inaugural Address of President Tom Kunkel in 2008:

What does it mean, to be a truly excellent college?

It means you have creative administrators and staff who are full partners in the mission. It means that in a nation one of whose glories is higher education, St. Norbert must be known literally everywhere as a model of Catholic and liberal arts education.

In a world marked by relativism, St. Norbert College still stands for the same values it did when Abbot Pennings founded it in the waning days of the 19th century. In recent years the College has renewed its commitment to the

⁶⁹ This is taken from a report prepared for the St. Norbert College Community: The Strategic Plan for St. Norbert College 1996-2001: Goals and Objectives," 22 January 1997.

⁷⁰ This is taken from a report prepared for the St. Norbert College Community: "The Strategic Action Plan for St. Norbert College 2005-2010," 14 December 2005.

Norbertine mission and heritage, and that will remain a priority for as long as I'm privileged to serve as your president.⁷¹

Present and past presidents of St. Norbert College have made public statements of commitment to the mission and heritage of the college. Under their leadership the college has remained firm in its commitment to the core values and vision that have come down through the years. In furthering an understanding of and in continuing a dialogue with the laity who are intimately connected to the everyday life and activities of the College, a periodic review of the by-laws in keeping with the clear division of authority is not only appropriate but also is a demonstration of responsible stewardship.⁷² This ultimately provides the best protection of the Catholic identity of St. Norbert College.

4.7 – Stability

Questions of authority and control will inevitably continue to arise and potential conflict between sponsor and corporation can be avoided by a mutual understanding of their relationship in canon law as well as their relationship in civil law.

The values and philosophy as defined in the corporation documents and in canon law are to prevail, not the personalities of those sitting on boards and committees. True power rests in the ability to exercise appropriate influence over issues that matter. The ultimate issues are matters concerning the mission of the institution (College) and the

⁷¹ Taken from President Tom Kunkel's Inaugural Address, 10 October 2008. <<http://www.snc.edu/president/inauguration/inauguraladdress.html>> (20 February 2009).

⁷² Those connected to the everyday life of the college include current and former students, faculty, staff, administrators, and trustees. The Norbertines as sponsor of the college feel very connected and are very committed to St. Norbert College. The diocesan bishop is invited to participate as a partner in the work and ministry of the college. The auxiliary bishop of the diocese is a member of the board of trustees of St. Norbert College.

Church itself.⁷³ The by-laws of St. Norbert College reserve essential powers to the sponsoring corporate member and as long as the sponsoring religious institute exists and maintains relationship with the college, the college Catholic identity is stable.

Conclusion

St. Norbert College is a Catholic college and its history and mission are strong. We have looked at life at the college, its history and its structure. The College community is committed to the ideals and principles of its founders and sponsor. The relationship with the diocesan bishop is one of mutual respect and awareness of the obligations and rights of each in the mission they carry out.

The *mandatum* has been requested by more than half of the faculty in the Religious Studies department and all the Norbertines teaching at the college have it. As more understanding is reached more may indeed ask for it. We have looked c. 812 and seen how it developed and how as Church law it is followed.

The requirement to possess the *mandatum* for all those who engage in teaching the theological disciplines in a Catholic college is the current ecclesiastical law. It can be a matter of contracts but it is not a negotiable item. The trustees of the college can write its requirement into the statutes (by-laws) of the institution; but this must also be reflected in the college's Faculty Handbook.⁷⁴ The sponsoring religious institute through the

⁷³ Cf. *ECE*, Conclusion, p. 1508-1509; USCC, *ECE*, p. 47-48; *Origins*, 20 (1990), p. 275.

⁷⁴ See C.H. WILSON, "Comment--Notes from the Other Side of the Wall: A University Counsel's Reflections on Potential Interactions between the Civil Law and the Apostolic Constitution," in LANGAN, *Catholic Universities*, p. 179.

exercise of its reserved powers might also amend the statutes (by-laws) to have the requirement enforced.

There are issues that will not be readily resolved but can be resolved through continued dialogue and open discussion and a mutual respect for the roles of all the parties concerned. We have looked at some of the issues of concern and as the future unfolds and more lived experiences result from the implementation of *Ex corde Ecclesiae* and canon 812, there may be a better understanding and appreciation if the true nature of the *mandatum*.

St. Norbert College is the only Norbertine college in the world and it has a rich history. The Norbertines and the college community are intent on passing on the Catholic, Norbertine heritage and academic excellence of St. Norbert College to the next generation of women and men well into the next century.

CONCLUSION

Catholic universities exist because of the presumption that “nothing human is alien to the Church” and that knowledge which comes in discrete pieces ought to be part of a body of knowledge which, in turn, should be open to being seen in the light of revelation. Since most disciplines do not employ faith data directly in their research or methods, a dialogue between faith and reason should be part of what scholars at Catholic institutions are open to undertaking with their colleagues for the sake of the completeness of their own scholarship.

John C. Haughey¹

Ex corde Ecclesiae and the *mandatum* are law. The rich history of universities and the Church’s role in education is, especially for the American Church, deep and inspiring. The American Church has relied upon the commitment and dedication of many communities of women and men formed in Christ and united in ecclesial communion who took up the call to teach and found schools at all levels. Their educational endeavors arose out of the explicit religious motivation of communities of consecrated life often founded for the advancement of a particular mission and undertaken as the corporate apostolates of their institute.

How does an American Catholic college or university implement the requirements of the *mandatum* of c. 812 and *Ex corde Ecclesiae*? We have attempted to clarify the way the *mandatum* impacts the life of the college, its provisions requiring the *mandatum* and some of the issues surrounding the granting and withdrawing of it. We have seen how the *Application* was received by American academia and through the example of St.

Norbert College how an American Catholic college moves toward the implementation of these ecclesial laws.

A request for the *mandatum* and its granting acknowledges a theologian's intent to teach in full communion with the magisterium of the Church and gives public acknowledgement of the professor's legitimate exercise of the teaching function. Teaching in his/her own name, the theologian collaborates with the diocesan bishop in the *munus docendi*. While baptized persons can teach in their own name, there is a unique relationship established between the diocesan bishop and the theologian with the granting and acceptance of the *mandatum*.

It is the Catholic teacher of the theological discipline who is to request the *mandatum*, even one who is not a Catholic may wish to request it if he or she is teaching a theological discipline at a Catholic college or university. It is not the obligation of the college to request the *mandatum* for the teacher. It is a private matter between the bishop and the theologian (teacher of the theological discipline).

The sponsor using its influence and reserved powers can insist that the requirements of canon 812 and the *mandatum* be enforced. St. Norbert College remains faithful to its Catholic identity and heritage recognizes the private and personal nature of the *mandatum*. The college community carries out its mission and role as a leading Catholic college in midwestern United States and through its corporation by-laws and faculty handbook guidelines deals with the internal matters of the college. The Norbertines as the sponsor of St. Norbert College have required the *mandatum* for all

¹ J.C. HAUGHEY, "Faculty Research and Catholic Identity" in P.W. CAREY and E.C. MULLER (eds.), *Theological Education in the Catholic Tradition: Contemporary Challenges*, New York, NY, 1997, p. 150.

Norbertines teaching at the college and have encouraged the administration of the college to insist that all teachers in the religious studies department possess the *mandatum*. The *mandatum* requirement is discussed with all potential teachers of religious studies. It has not yet reached the level of being required for employment, however, the discussion is at the level of the board of trustees and between leadership of the Norbertines and college President. This dialogue is also with the bishop.

We have examined the various elements found in canon 812, which is the canonical foundation for the *mandatum* of *Ex corde Ecclesiae*. We have also examined the National Conference of Catholic Bishops' document, "The Application of *Ex corde Ecclesiae* for the United States," which received the *recognitio* of the Holy See and is now particular law for the United States. We also examined the bishops' accompanying document, "Guidelines Concerning the Academic *Mandatum* in Catholic Universities."

American colleges and universities are not European. There is a cultural experience of life and Church that is uniquely American. There is no definition of the American life and culture but Americans know what it is by living it. A critique of *Ex corde Ecclesiae* is that a European model of education is being imposed on an American experience of education and the European model does not work for American educators. This is a critique that needs further fleshing out and might be the subject of a further study. It took ten years after it was promulgated and several drafts of how it would be implemented in the United States before the apostolic constitution on Catholic higher education *Ex corde Ecclesiae* came to be applied here in the United States.

There still remain many issues that raise concerns for universities and theologians—present students and future students, parents, administrators and faculty

present and future, Catholics and non-Catholics, alumni and alumnae, bishops and other clergy, and religious institutes. I think the goal is same for all of us but the means of getting there causes the tensions.

There are over two-hundred Catholic colleges and universities and like institutions of higher learning in the United States, most are sponsored by religious institutes who no longer have day-to-day control in their college's operations. The subject of further study might be to look at various models. Might it be time to consider other models of institutions of higher learning. Might it be better to turn them completely over to lay control and let them be secular and only maintain theology departments that are Catholic and under the direction of the Church. In other words, go the way of Europe and Canada.

While *mandatum* and *missio canonica* are similar and not the same, might it be better to have a *mandatum* for all teachers of theological disciplines whether in a Catholic or Ecclesiastical university or faculty and do away with *missio canonica* as it is now used. Might this be better for a Catholic university that has ecclesiastical faculties. What might that involve and how would it comply with all the laws governing both kinds of institutions and faculties? A question that needs further exploration.

Might it be better to establish such institutions of higher learning completely under the control of the diocesan bishop or conference of bishops, thereby assuring full implementation and compliance with Church doctrine and law in all disciplines. Might it be better to have only specialized universities and colleges and faculties who teach those disciplines in full accord with Church doctrine.

We examined the Catholic identity of the university and how that is lived out in the academic community. The documents do not define a Catholic university but do offer descriptions of what a Catholic college or university ought to be like. We offered an alternative definition. Still there remains concern about academic freedom and autonomy. The juridical judgment by a local bishop who in most cases has no juridical role in the administration of the college or university in his territory raises concern. Might this be perceived as an imbalance that jeopardizes the autonomy of the university and the academic freedom of the theologian-teacher.

We have looked at other implications that arise from *Ex corde Ecclesiae* and the *Application*. As the documents are experienced over the next years and as we have dialogue and evaluation I believe the common goal will be achieved. When a level of trust and mutual respect is realized by all concerned parties then the duties and rights of all the faithful as they relate to higher education will assure the continued growth and integrity of our American Catholic colleges and universities.

A-I
ARTICLES OF INCORPORATION
FOR
ST. NORBERT ABBEY
(PREMONSTRATENSIAN FATHERS)

**Articles of
Incorporation
of the Order of the Premonstratensian Fathers
of the City of De Pere in the county of Brown in the
State of Wisconsin**

Know all men by these presents that we the undersigned the Very Rev. B. H. Pennings, the Rev. L. J. Broens adults and residents of the city of De Pere in Brown County, Wisconsin and Rev. S. C. Mickers adult and resident of the town of Lincoln, Kewaunee County Wisconsin, do hereby declare, make, sign and acknowledge the following articles of incorporation.

I

The said Very Rev. B. H. Pennings, Rev. L. J. Broens and Rev. S. C. Mickers do hereby declare, that they have associated and do hereby associate themselves for the purposes of forming a corporation under and pursuant to the Revised Statutes of the State of Wisconsin, in such case made and provided for the purposes of conducting, pursuing, promoting and establishing churches, seminaries, schools and colleges in the State of Wisconsin and other States in the United States for the benefit of and in connection with the order of the Premonstratensian Fathers as existing in the Roman Catholic Church and under the supervision, rules and control of said order as so existing.

II

The name of this corporation shall be the Order of The Premonstratensian Fathers and the location of this corporation shall be in the city of De Pere in Brown County in the State of Wisconsin.

III

This corporation is formed without capital stock

IV

This corporation is formed and connected for ever with the Roman Catholic Church and is and shall be for ever under the supervision and control of said church and

all the officers and members of this corporation shall be regular communicants of said church.

V

The general officers of said corporation shall be a Prior, a Sub prior, a Circator and three directors.

VI

The Prior shall be an officio, one of the Directors and the President of this corporation, he shall preside at all meetings, and he shall have the general supervision of this corporation and shall be the general executive officer of this corporation. He shall fill all vacancies in any office, he shall sign all orders and sign all documents and papers requiring his signature and perform such other duties incumbent upon him as by the laws, rules and regulations of the order of the Premonstratensian Fathers as now existing in said Roman Catholic Church prescribed.

VII

The Sub prior shall be an officio, one of the Directors and Vice-President of this corporation and his duties shall be to preside at the meetings in the absence of the President and in case of the absence or inability of the President to discharge the duties of his office he shall then perform all duties incumbent upon the Prior in the manner prescribed by the rules, laws and regulations of said Order.

VIII

The Circator shall be an officio one of the Directors of this corporation and his duties shall be as are prescribed by the laws, rules and regulations of the Order of the Premonstratensian Fathers as existing in said Roman Catholic Church.

IX

The Prior, the Sub prior and the Circator of this corporation shall be appointed in the manner as now prescribed by the laws, rules and regulations of the Order of the said Premonstratensian Fathers as existing in said Order of the Roman Catholic Church and shall be subject to removal and expulsion as therein provided.

X

All property real or personal of whatsoever kind nature or description which shall be owned or acquired by this corporation shall be vested in its corporate name and shall be solely devoted to the purposes and the objects of this corporation and all the real and the personal estate which may be lawfully conveyed to it or which may be held by it either by or through demise, gift, grant, purchase or otherwise shall descend in perpetual succession to the persons forming this corporation and their successors and all deeds,

contracts or Indentures made by this corporation shall be signed and executed by the Prior as provided for by the laws, rules and regulations of said order.

XI

Any member of the Order of the Premonstratensian Fathers as the same exists in the Roman Catholic Church may if otherwise acceptable become a member of this corporation upon complying with and subject to the rules, regulations and laws of said order and pursuant to the provisions thereof.

XII

The discharge, expulsion, eviction, discharge (sic), resignation, withdrawal or removal of either of the parties hereto or of such as may hereafter join this corporation from the said Order shall discharge him or them as member or members of this corporation and shall forfeit all his or their right, title, claim or interest of whatsoever kind or nature he or they, has, have or may have in this corporation from all claim or demand he or they may have or claim against it.

XIII

The rules, regulations and laws of said Order of the Premonstratensian Fathers as now existing or which may hereafter be adopted by said Order shall in all things be followed and observed and the said rules, regulations and laws are hereby made the essence of this corporation.

In witness whereof, We the said incorporators have hereunto set our hands this 18th day of October 1898.

B. H. Pennings	President
L. J. Broens	Vice-President
S. C. Mickers	Director
Chas. F. Gallagher	
A. D. Smits	
State of Wisconsin	
S.S.	
County of Brown	

Be it remembered that on this 18th day of Oct. 1898, personally came before me the above named The Very Rev. B. H. Pennings, The Rev. L. J. Broens, and The Rev. S. C. Mickers to me known to be the persons who signed the foregoing articles of incorporation and declared and acknowledged the same to be their free act and deed.

M. J. Maes- Notary Public, Brown Co, Wisconsin

This is a true copy of the articles of incorporation

SEAL

place

Notary Public

of the seal.

Brown Co., Wisconsin

- True copy of the articles of incorporation -

A-II
ARTICLES OF INCORPORATION
FOR
ST. NORBERT COLLEGE

ARTICLES OF INCORPORATION OF
ST. NORBERT COLLEGE, INC.

The undersigned, pursuant to Chapter 181, Wisconsin statutes, has executed the following Articles of incorporation in order to form a non-profit corporation hereunder, to be known as St. Norbert College, Inc.

ARTICLE ONE

NAME AND OFFICE

The name of the Corporation shall be St. Norbert College, Inc. The address of the principal office is St. Norbert College, College Avenue, De Pere, Wisconsin, 54115. The name and address of its initial registered agent is Neil J. Webb, College Avenue, De Pere, Wisconsin, 54115.

ARTICLE TWO

NOT-FOR-PROFIT CORPORATION

This Corporation is not organized for profit and is a Corporation organized and operated exclusively for benevolent, religious, educational, scientific and other charitable purposes. No part of the accumulations, gains, profits or net earnings shall inure to the benefit of any member, person or individual, except the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and reimburse reasonable expenses incurred. No substantial part of the activities of this Corporation shall consist of the carrying on of propaganda or otherwise attempting to influence legislation, and this Corporation shall not participate in or intervene in any political campaign on behalf of any candidate for public office or in any activity contrary to the provisions of Section 501 (c) (3) of the Internal Revenue Code of 1954 as now in effect or as subsequently amended.

ARTICLE THREE

PERIOD OF EXISTENCE

This Corporation shall have perpetual existence.

ARTICLE FOUR

OBJECTS AND PURPOSES

The objects and purposes of this Corporation shall be the operation and management of the affairs, property, business and activities of St. Norbert College and as such shall be duly benevolent, beneficial, educational, charitable, religious and scientific. Its operation shall be conducted within the context of the theology, philosophy, other teachings and

doctrines of the Roman Catholic Church and shall be in compliance with the objectives and philosophy of The Order of Canons Regular of Premontré, a religious order of the Roman Catholic Church. Within these stated purposes, St. Norbert College shall be committed to the moral, personal, and intellectual development of its students; the maintenance of an environment in which such development may take place; and the presentation of a value oriented academic program and campus ministry which best utilizes the College's human and financial resources.

ARTICLE FIVE

POWERS

This Corporation, in order to carry out its objects and purposes, shall have the powers necessary or convenient to affect any or all of the purposes for which the Corporation is organized, as set out in Section 181.04, Wis. Stats., and, generally, in Chapter 181, Wis. Stats., including the powers set forth herein:

Section 1. To own, acquire, hold, manage or direct corporations which are organized for the purpose of furthering St. Norbert College's purposes.

Section 2. To buy, sell, rent, develop, improve, mortgage, invest or deal in or operate any and every kind and character of property or any interest therein, real or personal, tangible or intangible.

Section 3. To receive and accept gifts, bequests and devises and to hold and administer property of any kind in trust for the support and maintenance of any of the work and activities of the Corporation.

Section 4. As incidental to the objects and purposes of the Corporation as herein described:

- (a) To enter into, make, perform, and carry out contracts of every kind and character which may be necessary or convenient for the business of this Corporation with any person or persons, partnership, business, corporation, private, public or municipal, or any body politic.
- (b) To acquire by purchase, exchange, subscription or otherwise and to receive, mortgage, pledge, sell, assign, transfer, exchange or otherwise dispose of evidences of indebtedness or obligations created by any other corporation or corporations organized under the laws of the State of Wisconsin or of any other State and to pay therefore, in whole or in part, with cash or other property or with bonds or other obligations of this Corporation; and while the owner or holder of any such evidences of indebtedness or obligations of any such other corporation or corporations, to possess and exercise in respect thereto all the rights, powers and privileges of ownership;
- (c) To borrow or raise moneys for any of the purposes of this Corporation, and, from time to time, to issue bonds, debentures, notes or other obligations, secured or unsecured, of this Corporation for moneys so borrowed, or in payment for property acquired, or for any of the other objects or purposes of this Corporation or in connection with its business; to secure such bonds, debentures, notes and other obligations by mortgage or mortgages, or deed or deeds of trust, or pledge or other lien upon any or all of the property, rights, privileges or franchises of

this Corporation, wheresoever situated, acquired or to be acquired; and to pledge, sell or otherwise dispose of any or all of such bonds, debentures, notes and other obligations of this Corporation for its corporate purposes.

Section 5. To, from time to time, establish, discontinue, implement and maintain programs in religious and educational services in cooperation with public or private service agencies to meet the needs or improve the conditions of the people it serves.

Section 6. To carry on any other lawful activities or do anything whatsoever which the Corporation may deem proper or convenient or capable of being carried on in connection with the foregoing, or otherwise, or which may be calculated, directly or indirectly, to promote the interests of the Corporation, or to enhance the value of its property; and to have, enjoy and exercise all the rights, powers and privileges which are now or which may hereafter be conferred upon not-for-profit corporations by the laws of Wisconsin and to do any and all of the things hereinbefore set forth, as principal and as agent, to the same extent as natural persons might or could do.

Section 7. The foregoing clauses shall each be construed as powers and the matters expressed in each clause shall, except as otherwise provided, be in no way limited by reference to, or inference from, the terms of any other clause but shall be regarded as independent powers; and the enumeration of specific powers shall not be construed to limit or restrict in any manner the meaning of the general powers of the Corporation nor shall the expression of one thing be deemed to exclude another, although it be of like nature, not expressed; provided that all of the foregoing powers and matters set forth in these Articles shall be limited to those which do not jeopardize the Corporation's tax exempt status under Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or under the laws of the State of Wisconsin.

ARTICLE SIX

MEMBERSHIP

The membership of this Corporation shall be the non-profit corporation organized and existing pursuant to the laws of the State of Wisconsin under the name The Premonstratensian Fathers. Further membership provisions will be provided in the by-laws.

ARTICLE SEVEN

BOARD OF DIRECTORS

Section 1. The business and affairs of this Corporation shall be managed by a Board of Directors appointed by the membership, the number and method of appointment of whom shall be fixed by the officially adopted By-laws of this Corporation.

Section 2. The initial Board of Directors, to serve until their successors are duly appointed, consists of four (4) Directors, who are as follows:

Rev. Alfred A. McBride
St. Norbert Abbey
1016 North Broadway
De Pere, WI54115

Rev. E. Thomas DeWane
St. Michael the Archangel Priory
506 Maryhill Drive
Green Bay, WI 54303

Rev. Robert K. Finnegan, Provisor
St. Norbert Abbey
1016 North Broadway
De Pere, WI 54115

Rt. Rev. Sylvester M. Killeen
St. Norbert Abbey
1016 North Broadway
De Pere, WI 54115

In no event shall the Corporation have less than three (3) Directors.

ARTICLE EIGHT

DISSOLUTION

Section 1. This Corporation may be dissolved by the decision of the Member, whose decision in such matter shall be determined pursuant to its Articles of Incorporation and By-Laws Absent any contrary provision therein, such decision shall be made by the affirmative vote of a majority of all members of the Board of Directors of the Corporate Member.

Section 2. Upon dissolution of this Corporation any assets remaining after the payment of all debts, claims and obligations shall be distributed as the voting member of the Corporation, or its successor may determine, but distribution shall be made only to such corporations or foundations as have been granted exemption from federal income tax under the provisions of Section 501 (c) (3) of the Internal Revenue Code.

ARTICLE NINE

AMENDMENT OF ARTICLES OF INCORPORATION AND BY-LAWS

These Articles of Incorporation and the By-laws of the Corporation may be altered, amended or repealed and the initial By-laws adopted by action of the Corporate Member, pursuant to its Articles of Incorporation and By-Laws.

ARTICLE TEN

INCORPORATOR

The name and address of incorporator is T.M.O., De Pere, Wisconsin, 54115.

EXECUTED IN DUPLICATE THIS 21 DAY OF December, 1981.

STATE OF WISCONSIN

: SS

COUNTY OF BROWN :

Personally came before me this 21 day of December 1981, the above named T.M.O. to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, Brown County, Wis.

THIS MUST BE RECORDED PROMPTLY WITH THE COUNTY REGISTER OF DEEDS

United States of America

State of Wisconsin
Office of Secretary of State

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

The undersigned, as Secretary of State of the State of Wisconsin, certifies that the attached is a duplicate of a document accepted and filed in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at Madison, on the date of filing of said document.

VEL PHILLIPS
Secretary of State

A-III
RESTATED BY-LAWS
OF
ST. NORBERT COLLEGE

October 2008

RESTATED

BY-LAWS OF ST. NORBERT COLLEGE, INC.

ARTICLE I.

OBJECTIVES AND PURPOSES

Section 1. Precepts. St. Norbert College, Inc. ("Corporation") shall exist and function pursuant to the precepts of civil law, the norms of the Roman Catholic Church, and the philosophy of the Order of Canons Regular of Premontre. The Corporation shall be managed and directed according to the doctrines, disciplines, laws and rules and regulations of the Roman Catholic Church.

Section 2. Purposes. The purposes of the Corporation shall be the operation and management of the affairs, property, business and activities of St. Norbert College and as such shall be duly benevolent, beneficial, educational, charitable, religious or scientific. Its operation shall be conducted within the context of the theology, philosophy, other teachings and doctrines of the Roman Catholic Church, and shall be in compliance with the objectives and philosophy of the Order of Canons Regular of Premontre, a religious order of the Roman Catholic Church. Within these stated purposes, St. Norbert College shall be committed to the moral, personal and intellectual development of its students; the maintenance of an environment in which such development may take place; and the presentation of a value-oriented academic program and campus ministry which best utilizes the college's human and financial resources.

ARTICLE II.

PRINCIPAL OFFICE AND REGISTERED AGENT

Section 1. Name. The name of the Corporation shall be St. Norbert College, Inc. Its principal place of business is located at 100 Grant Street, De Pere, Wis. 54115.

Section 2. Registered Office. The address of the registered office of the Corporation is 100 Grant Street, De Pere, Wisconsin, 54115.

ARTICLE III.

MEMBERSHIP

Section 1. Membership. The sole Member of this corporation shall be the nonprofit corporation organized and existing pursuant to the laws of Wisconsin under the name The Premonstratensian Fathers, which corporate Member shall act through its appropriate officers and directors, pursuant to its articles of incorporation and by-laws.

Section 2. Powers, Duties and Rights. The business and property of St. Norbert College, Inc., shall be under the jurisdiction and control of its membership, except where delegated to the Board of Trustees. The determination of the scope of any powers set forth as reserved to the Member shall be determined by the Member alone, and in all events. The powers, duties and rights reserved to the Member shall be, but not limited to, the following:

- a). To assure that the philosophy and mission of St. Norbert College Inc., is in agreement with the philosophy of the Order of Canons Regular of Premontre and the Roman Catholic Church, and to do any and all things deemed necessary by the Member to implement this assurance. In this light, the Member specifically makes reference to the Mission Statement and Core Values of St. Norbert College attached hereto and made a part of this section as if set forth in full herein.
- b). To make the final decision upon recommendation of the Board of Trustees on alienation, encumbrance, or disposition of real property or real property improvements (including fixtures), whenever such proposed alienation involves land or buildings of the College campus or utilized for College purposes and whenever such transaction involves a value of over \$1,000,000.00.
- c). To make the final decision upon recommendation of the Board of Trustees on alienation, encumbrance, or disposition of real property improvements (including fixtures), whenever such assets are held for investment or pursuant to donations for other than direct educational use and whenever such transaction involves a value of over \$1,000,000.00.
- d). To consult with and to approve or withhold approval of proposed appointments to the Board of Trustees as such proposals are submitted from time to time by the Board of Trustees.
- e). To remove members of the Board of Trustees, as deemed necessary by the Member.
- f). To approve the articles of incorporation and by-laws, and to make amendments to them, from time to time.

- g). To cause the dissolution of the Corporation.
- h). To designate appropriate accounting systems and audits for the Corporation.
- i). To provide insurance and to designate legal counsel, as part of its overall corporate pattern.
- k). To consider and approve the annual operating and capital expenditure budget for the Corporation, provided, however, that the trustees shall submit such budgets to the Member at least two weeks prior to the starting date of the budget period. Until the trustees are advised by the Member as to the action of the Member in reference to a budget, the trustees may operate on the assumption that said budget has been approved, and any action taken by the trustees in reliance thereupon shall be deemed ratified by the Member. The Member, however, may request modifications of a budget during the term of the budget year, as such budget affects the remainder of the said budget year.
- l). To authorize all financial obligations maturing more than one year from the date of their creation, and to authorize all financial obligations maturing less than one year from the date of their creation which are in excess of \$2,000,000.00. This reservation shall not apply to equipment leases involving a total financial commitment of less than \$1,000,000.00.
- m). To approve the selection and removal by the Board of Trustees of the President of the College.

Section 3. Meetings. The annual meeting for action by the Member of the Corporation shall be held during the month of July each year. The date, time and place for said annual meeting shall be determined by the Member.

Special meetings of the corporate Member of the Corporation may be held at such times and places as may be provided pursuant to the by-laws of the corporate Member.

Section 4. Place of Meetings. Meetings, whether regular or special, may be held within or without the State of Wisconsin.

Section 5. Action Without Meeting. Any action required or permitted to be taken at a meeting of the Member may be taken without a meeting if consent in writing, setting forth the action to be taken, and filed with the records of the Corporation, shall be signed by the President or Vice-President of the Premonstratensian Fathers, as the action of the corporate Member, duly undertaken pursuant to its articles and by-laws.

ARTICLE IV.

BOARD OF TRUSTEES

Section 1. General Powers. Except as to authority reserved to the Member, the Board of Trustees shall constitute the policy-making body of the Corporation, shall have and exercise the corporate powers prescribed to a Board of Directors by law, and shall have and may exercise all of the following powers of the Corporation, together with all other powers necessary or beneficial in discharging such delegated responsibility:

- a). To define the Corporation's policies, goals and objectives.
- b). To establish such committees and reporting criteria as may be needed for the proper operation of the Corporation and the achievement of its goals.
- c). To recommend to the Member, and to adopt subject to the approval of the Member, the annual operating and capital expenditure budgets for the Corporation.
- d). To provide for adequate financing and operations by insuring sufficient revenues, and by enforcing businesslike controls over expenditures.
- e). To oversee the budget of the College and establish policy guidelines for the endowment and for all investments and major fund-raising efforts.
- f). To adopt a long-range strategic plan for the orderly development of the Corporation's programs and services.
- g). To approve the officers of the Corporation, other than the President, as provided by Article VI.
- h). To establish compensation for, designate the duties of, and evaluate the President of the Corporation.
- i). To seek candidates for positions on the Board of Trustees, and after approval by the Committee on Trustees, to submit said candidates for approval to the Member before such candidates are appointed. Upon receiving such approval, to appoint members of the Board of Trustees.
- j). To implement accounting systems and audits for the Corporation as directed by the corporate Member; to authorize and implement additional accounting systems or audits as deemed necessary by the Board of Trustees.
- k). To select, evaluate, continue or remove the President of the College, in

consultation with the Member or its designee, subject to the ultimate approval of the corporate Member.

- l). To grant degrees.
- m). To approve or disapprove of the President's selections of vice-presidents.
- n). To enact rules and regulations pertaining to the faculty, student affairs, curriculum and the establishment or discontinuance of majors or academic programs as the Board may from time to time determine.
- o). To seek, accept, or refuse conditional gifts, grants, subscriptions and bequests made to the College.
- p). To elect, evaluate, continue or remove the Chair of the Board of Trustees.
- q). To determine and periodically review the goals and objectives and the mission of the College, and consistent with said goals and objectives to establish, review and approve changes in the educational programs of the College.
- r). To establish procedures regarding appointment, promotion, tenure, sabbatical and other leaves, phased retirement and designation of Professor Emerita or Professor Emeritus and dismissal of faculty members. To approve or disapprove promotion and tenure.
- s). To authorize any changes in tuition and fees within the College.

Section 2. Number and Tenure. The Board shall be comprised of not less than five (5), nor more than forty-five (45) members. Not less than twenty (20%) percent nor more than thirty (30%) percent shall be members of the Norbertine Order, unless such provision would result in fewer than three (3) members of the Norbertine Order. There shall always be at least three (3) trustees who are members of the Norbertine Order. Trustees shall serve for a term of five (5) years each. Any new trustee elected after February 1, 2002 may serve a maximum of two consecutive five (5) year terms. The membership of the Board shall be divided into five (5) equal groups which shall serve staggered five (5) year terms.

Section 2.1 Alumni Member. The immediate past President of the St. Norbert College International Alumni Board shall serve as an ex officio member of the Board of Trustees.

Section 2.2 Young Alum. The Board shall elect a young alumnus of St. Norbert College to serve as a trustee for a term of two (2) years. For the purpose of this section

2.2, a young alumnus shall be a graduate of the College, whose graduation date is less than ten (10) years prior to the date of his or her election to the Board. The initial young alumnus term shall commence June 1, 2005.

Section 3. Methods of Appointment; Vacancies; Removal. The Committee on Trustees of the Board of Trustees shall recommend candidates for appointment to the Board of Trustees to the corporate member, which shall approve said candidates, or disapprove same, after which a majority of the Board of Trustees present at a meeting of the Board may appoint approved members to the Board. This procedure shall also be utilized for removal of Board members. Vacancies shall be filled in the same manner as original appointments are made. Appointments of Norbertine members to the Board shall abide and follow the "Book of Customs" of St. Norbert Abbey. Students, faculty members, and administrative officers of the College shall not serve as trustees. Any member of the Board of Trustees, except members of the Norbertine Order, may be removed from office by the Board of Trustees, for cause, or as provided in the powers reserved to the Member. If the Board of Trustees wishes to remove a member, two-thirds (2/3) affirmative vote of the trustees in office for recommendation of removal shall be made to the corporate Member, which shall act upon said vote.

Section 4. Meetings. There shall be at least three regular meetings of the Board of Trustees annually, which shall be held in the winter, spring and fall on such date and place as may be designated by the Chair of the Board. The annual meeting of the Board shall be the spring meeting each year.

Special meetings may be held at the call of any two (2) of the Chair, the President and the Secretary; and it shall be the duty of the Chair or the Secretary to call such special meetings on the request of ten (10) trustees, setting forth the objects of the meeting.

Section 5. Notice of Meetings. Written notice of all meetings of the Board of Trustees shall be sent by the Secretary to each trustee at least ten days before the date of the meeting. In case of special meetings, the notice shall state the purposes of the meeting, and no business shall be transacted at such meeting that does not relate to the purposes stated.

Section 6. Waiver of Notice. Whenever notice is required to be given under provisions of the statutes or of the articles of incorporation or of these by-laws, a waiver in writing signed by the persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance at any meeting by a trustee shall be conclusively deemed a waiver of notice of that meeting unless objection is made at the outset of such meeting to the failure to give proper notice.

Section 7. Quorum. A majority of the trustees shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of a majority of the trustees present and voting at the duly called meeting of the Board or any committee shall be the act of the Board of Trustees or that committee, except as may be provided by statute or by the articles of incorporation, or by these by-laws.

Section 8. Action Without Formal Meeting. Any action required or permitted to be taken by the Board of Trustees or by any committee thereof may be taken without a formal meeting. A written consent setting forth the actions so taken and signed by two thirds or more of the members of the Board or by all of the members of a committee, as the case may be, must be filed with the minutes of the proceedings of the Board or the committee. When the resolution has been adopted, all directors or committee members, including those that did not vote, shall be notified of the approval.

Section 9. Meetings by Electronic Means of Communication. To the extent provided in these bylaws, the Board of Directors, or any committee of the Board, may, conduct any regular or special meeting by the use of any electronic means of communication, provided (1) all participating directors or committee members may simultaneously hear each other's communication during the meeting, or (2) all communication during the meeting is immediately transmitted to each participating member, and each participating member is able to immediately communicate messages to all other participating member.

ARTICLE V.

TRUSTEES EMERITI

A trustee who has served for a minimum of two (2) terms, upon recommendation of the Committee on Trustees, may be elected by a majority of the Board of Trustees as a trustee emeritus. This position shall be reserved for those trustees with records of distinctive service. A trustee emeritus shall not be counted as a member of the Board of Trustees for any purpose. The College will maintain an active outreach program for trustee emeriti and provide regular opportunities for social interaction with trustees.

ARTICLE VI.

OFFICERS OF THE CORPORATION

Section 1. The officers of the College shall be the Chair, Vice-Chair, Secretary and Treasurer of the Board of Trustees, the President and one or more vice-presidents. The Chair and Vice-Chair shall serve for terms of one (1) year or until their successors are elected and qualified. The President, Secretary and Treasurer shall serve such terms

as may be determined by the Board of Trustees at the time of their appointment or election. Unless a vacancy occurs at another time, elections of the Chair, Vice-Chair, Secretary and Treasurer shall be held at the annual meeting of the Board. A vacancy in any office may be filled at anytime. One or more vice-presidents shall be appointed by the President with the approval of the Board of Trustees.

Section 2. The Chair and Vice-Chair shall be members of the Board of Trustees. The President shall be ex officio, a member of the Board without power to vote and shall not be counted as a member of the Board or any committee for the purposes of determining a quorum. The other officers of the College shall not be members of the Board of Trustees.

Section 3. The Board may approve the appointment of other officers (such as an assistant treasurer or an assistant secretary) upon recommendation of the President as it deems necessary. Such officers shall hold office at the discretion of the Board of Trustees and shall be subject to removal by affirmative vote of a majority of the entire membership of the Board of Trustees.

Section 4. In the event of a vacancy in the office of the President, the Board shall appoint a special presidential search committee to submit nominations for candidates to the office pursuant to the standing board policy which is separate from these by-laws.

ARTICLE VII.

POWERS AND DUTIES OF THE CHAIR AND VICE-CHAIR OF THE BOARD OF TRUSTEES

The Chair shall preside at all meetings of the Board of Trustees, shall have a right to vote on all questions, shall appoint members to all committees and shall have such other powers and duties as the Board from time to time may prescribe. In the absence of the Chair, the Vice-Chair shall perform the duties of the office of the Chair and have such other powers and duties as the Board may from time to time prescribe.

ARTICLE VIII.

DUTIES OF THE PRESIDENT OF THE COLLEGE

The President of the College shall be the chief executive officer of the College and the official adviser to and executive agent of the Board of Trustees and its executive committee. The President shall, as educational administrative leader of the College, exercise a general superintendence over all the affairs of the institution, and bring such matters to the attention of the Board as are appropriate to keep the Board fully informed

in meeting its policy-making responsibilities. Furthermore, the President shall have power, on behalf of the trustees, to perform all acts and execute all documents to make effective the actions of the Board or its executive committee, and except as otherwise provided in these by-laws, shall be ex officio, a member of all committees of the Board without power to vote. The authority and duties of the President shall include, but shall not be limited to, the following:

- a). To direct the execution of all policies established by the Board of Trustees. This shall include, but not be limited to, fiscal and educational programs, contractual activities, planning, negotiations, investigations and the maintenance of broad contracts and relationships with governmental and private agencies, to the extent consistent with furthering the objectives, policies and programs of the College.
- b). To develop and submit to the Board of Trustees for their approval a plan of corporate structure and organization for the officers and personnel of the Corporation.
- c). To present to the Board of Trustees and the Executive Committee periodic reports on the spiritual and educational affairs of the College and the financial activities of the Corporation, together with the preparation of such other special reports or information as may be required or requested by the Board of Trustees or one of its committees.
- d). To oversee the selection, employment, control, evaluation, continuation and discharge of employees, including the appointment of the delegation of duties to officers, agents and employees. The appointment of the vice-president for academic affairs and the dean of the college, vice-president for business and finance, vice-president for student affairs, vice president for college advancement, vice-president for mission and heritage, secretary and treasurer shall be subject to approval by the Board of Trustees.
- e). To administer the maintenance of physical properties and other assets of the Corporation in a good state of repair and operating condition.
- f). To supervise the business affairs of the Corporation to insure that revenues are collected and received and thereafter expended to the best possible advantage and in the best interests of the Corporation.
- g). To cooperate with and act as a liaison with committees designated by the Board of Trustees, with other persons, agencies or entities having contact with the College, and with the public at large.
- h). To attend in person all meetings of the Board of Trustees and attend in person or through such officers, agents or employees as he may delegate or designate, all meetings of the committees appointed by the Board.

i). To perform any and all duties or responsibilities as may be necessary or appropriate and in the best interest of furthering the objectives of the Corporation. In addition, the Board of Trustees may from time to time expressly provide that an officer appointed by the President will be vested with all of the powers and charged with all of the duties of the President in the event of the President's death, absence, disability, or inability to carry out the duties of the office.

j). To submit all proposed building plans and fund raising programs to the Board of Trustees.

ARTICLE IX.

POWERS AND DUTIES OF THE VICE-PRESIDENTS

Each vice-president shall have such powers and shall perform such duties as may be assigned by the President with approval of the Board of Trustees. In case of the death, absence, disability or inability of the President to carry out the duties of the President, the duties of that office shall be performed by the academic vice-president, or (in the absence of the academic vice-president) by the most senior vice-president available, which shall be the vice-president with the greatest length of service to the College, as appointed by the Board of Trustees.

ARTICLE X.

POWERS AND DUTIES OF THE SECRETARY

The Secretary shall have the custody of the Seal of the College and shall attest to and affix said Seal to such documents as required in the business of College, including but not limited to deeds, bonds, mortgages, agreements, contracts, diplomas, evidences of the award of degrees, transcripts, abstracts of resolutions, certificates, minutes, and by-laws issued pursuant to the authority of the College. The Secretary shall give proper notice of all meetings of the Board of Trustees and shall keep a record of the appointment of all committees of the Board of Trustees. Furthermore, the Secretary shall keep or cause to be kept a record of the minutes of all meetings of the Board of Trustees and each of its committees.

ARTICLE XI.

POWERS AND DUTIES OF THE TREASURER

The Treasurer shall be responsible for carrying out the mandates of the Board of Trustees and its finance committee in overseeing the financial resources of the College, including, but not limited to, cash, securities, stocks, bonds and all other property,

personal or real, owned by the Corporation. The Treasurer shall assure that all books and accounts are accurately kept, and furthermore, shall present a full and detailed financial statement properly audited by an independent certified accountant, to the Board at its fall meeting and, if requested, at any other meeting of the Board of Trustees or any meeting of its finance or executive committees. The Treasurer shall cooperate with the member in establishing accounting procedures designed to cause this corporation to coordinate its accounting and audit procedures with those of the member and its other affiliates.

The Treasurer shall monitor and manage the investments of the college corporation, including all funds and endowments, as recommended by the investment committee, and approved by the Board of Trustees. In addition, the Treasurer may be required to furnish a bond for the faithful performance and discharge of these duties, as may be directed by the Board or required by state statute. The Treasurer shall be an ex officio member of the finance, investment and audit committees.

ARTICLE XII.

COMMITTEES

Section 1. There may be such special or ad hoc committees as the Board of Trustees may from time to time establish for the discharge of particular duties.

Section 2. There shall be an executive committee and the standing committees as specified in this article. Members of the Executive Committee shall be elected by the Board at the annual meeting of the Board of Trustees. Members of standing committees shall be appointed by the Chair, after consultation with the Board, annually, at or following the annual meeting of the Board of Trustees. Except as provided in these by-laws, the Chair of the Board and the President of the College shall be ex officio members of all standing committees, and each standing committee shall include at least three additional trustees. Except as otherwise provided in this article, additional members, including persons who are not on the Board of Trustees, may be appointed. The Chair of each standing committee and a majority of its members shall be trustees.

Section 3. The Board of Trustees may at any time discontinue any of its standing committees for such time as may be determined, and the duties of any committee so discontinued shall be performed during such discontinuance by another committee of the Board.

Section 4. The Chair of any committee, with the consent of the Chair of the Board, may request the President of the College to appoint an officer of the College or a member of the administrative staff to serve as a liaison between the committee and the office of the President, and the President shall designate such a person to perform that service. Such liaison person shall assist the committee in carrying out its duties.

Section 5. Except as otherwise provided in this article, all standing committees shall meet at least three (3) times annually.

Section 6. Executive Committee.

- a). The Executive Committee shall have a minimum of nine (9) members, all of whom shall be trustees. Three (3) members shall be members of the Norbertine Order. All committee chairs shall be members of the Executive Committee by virtue of the office. The Chair of the Board of Trustees shall be the Chair of the Executive Committee. The President shall be ex officio, a member of the Executive Committee without power to vote, and shall not be counted as a member of that committee for the purpose of determining a quorum. Committee chairs shall serve as long as the office is held.
- b). Between meetings of the Board of Trustees, the Executive Committee shall have general supervision of the administration and property of the College, except that, unless specifically empowered by the Board of Trustees to do so, it may not take any action inconsistent with a prior act of the Board of Trustees, approve the operating budget, award degrees, remove or appoint the President of the College, or any member of the Board of Trustees, or take any action which has been reserved for the Board to the exclusion of the Executive Committee.
- c). The Executive Committee shall meet periodically as dictated by business matters of the College which require Committee approval.
- d). A majority of the members of the Executive Committee shall constitute a quorum for the transaction of business.
- e). Minutes of the meetings of the Executive Committee shall be taken and shall be distributed promptly to each member of the Board following such Executive Committee meeting.

Section 7. Academic Committee. The Academic Committee shall have a minimum of five (5) members. It shall, in cooperation with the President, study and appraise the quality of the academic program, recommend the establishment or the disestablishment of all transcriptable academic programs, measure the program relative to other comparable institutions in terms of teaching load, class size, student-faculty ratios, instructional expenditures, research and other relevant factors; formulate desirable short and long-range enrollment goals; advise the financial committee on the specifications and requirements for financing the academic program; and make such reports and recommendations to the Board of Trustees relative to the foregoing as may be required. The committee shall also review matters affecting the faculty of the College,

including those affecting the academic program, including salary, pension, tenure, promotion, and other personnel policies. It shall also consider proposals on such matters and report and make recommendations thereon to the Board of Trustees as may be required. The academic vice-president of the College shall be an ex officio member of the Committee, without power to vote.

Section 8. Student Affairs Committee. The Student Affairs Committee shall have a minimum of five (5) members. It shall review matters affecting all aspects of student life of the College, other than those relating to the academic program, including residential policies, and counseling. It shall also consider proposals on such matters, and report and make recommendations thereon to the Board of Trustees as may be required. The Vice-President of Student Affairs shall be an ex officio member of the Committee, without power to vote.

Section 9. Finance Committee. The Finance Committee shall have a minimum of five (5) members; It shall review annual operating and capital budgets prepared and presented under the direction of the President and make recommendations with respect to the Board of Trustees. It shall review major financial transactions not provided for in the budget and submit proposed variances with recommendations to the Board of Trustees or the acting committees. It shall also approve and review financial aid strategies, and review the administration of the College's financial aid resources. It shall regularly report its activities to the Board of Trustees. The Vice-President of Business and Finance of the College shall be an ex officio member of the Finance Committee, without power to vote.

Section 10. Audit Committee. The Audit Committee shall have a minimum of five (5) members. It shall periodically appraise the financial control and accounting systems of the College and recommend any changes it deems appropriate. It shall recommend the designation of an independent auditor each year if it so chooses in addition to the auditor chosen by the corporate member, and shall cause to be prepared and submitted to the Board of Trustees at least once a year, an audited statement of the financial condition of the College as of the close of the fiscal year, and the receipts and expenditures for each year either from the audit of the independent auditor or of the corporate member's auditor. The Committee may request any designated independent auditor, or any officer or employee of the College, to appear before it to report on the financial condition of the College and answer any questions the Committee might have. The Vice-President of Business and Finance shall be an ex officio member, without power to vote.

Section 11. Advancement Committee. The Advancement Committee shall have a minimum of five (5) members. It shall review and recommend fund raising which is necessary to enable the College to carry out its purpose and shall oversee Alumni and Parent Relations. It shall regularly report on its activities to the Board of Trustees. The Vice-President of College Advancement shall be an ex officio member of the Advancement Committee, without power to vote.

Section 12. Committee on Enrollment Management and Communications The Committee on Enrollment Management and Communications shall have a minimum of five (5) members. It shall oversee the areas of communications, marketing admissions, financial aid, and retention. It shall regularly report on its activities to the Board of Trustees. The Vice-President of Enrollment Management and Communications shall be an ex officio member of the Committee on Enrollment Management and Communications, without power to vote.

Section 13. Committee on Trustees. The Committee on Trustees shall have a minimum of five (5) members This standing committee is charged with maintaining an active candidate list and it shall present candidates to be recommended as trustees to the corporate Member and thereafter to be elected by the Board. The committee shall prepare annually a slate of officers, namely: Chair, Vice-Chair, Secretary and Treasurer and, as vacancies occur, a list of Executive Committee members to be elected by the Board. The Committee shall furnish information relating to the background and qualifications of all nominees for trusteeship at least two (2) weeks prior to the board meeting at which an election is scheduled to take place. Among its other functions are creating and carrying out a program of orientation for new trustees and a program of continuing education for all trustees concerning critical issues in higher education and evaluating board members. The committee shall report to the Board of Trustees at all annual meetings and otherwise as circumstances dictate. President will be an ex officio member of the committee without the power to vote.

Section 14. Building Committee. The building committee shall have a minimum of five (5) members. It shall review and analyze maintenance and operations policy, recommend improvements, review and recommend approval of plans and cost estimates for new facilities, and make recommendations either to the finance committee or the Board of Trustees. It shall regularly report on its activities at meetings of the Board of Trustees as circumstances dictate. The Vice-President of Business and Finance shall be an ex officio member of the Building Committee without the power to vote.

Section 15. Investment Committee. The Investment Committee shall have a minimum of five (5) members. The committee shall review the administration of the investments of the College. The committee shall also review the investment policy guidelines and recommend revisions to the Board of Trustees as needed. The committee shall review the recommendations of the administration to employ investment counsel or to retain an investment manager or managers who shall operate within the policy guidelines. It shall regularly report its activities to the Board of Trustees. The Vice-President of Business and Finance shall be an ex officio member of the investment committee, without power to vote.

Section 16. Mission and Heritage Committee. The Mission and Heritage

Committee shall have a minimum of five (5) members. It shall oversee the areas of Office of Mission and Heritage; Campus Ministry Department; Peace and Justice Center; and the Program for Faith, Learning and Vocation. It shall monitor the implementation of the Mission and Heritage Plan and other related activities of the College. It shall report regularly to the Board of Trustees. The Vice-President for Mission and Heritage shall be an ex officio member of the committee without power to vote

ARTICLE XIII.

INDEMNIFICATION

Each trustee and officer of the College shall be indemnified against all expenses actually and necessarily incurred by such trustee or officer in connection with the defense of any action, suit, or proceeding in which he or she has been made a party by reason of being or having been such trustee or officer, except in relation to matters as to which such trustee or officer shall be adjudicated in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of duty.

ARTICLE XIV.

CONFLICTS OF INTEREST

A trustee shall be considered to have a conflict of interest if:

- a). Such trustee has existing or potential financial or other interest which impair or might reasonably appear to impair such member's independent, unbiased judgment in the discharge of his or her responsibilities to the College, or
- b). Such trustee is aware that a member of his or her family (which for purposes of this paragraph shall be a spouse, parent, siblings, children and any other relative if the latter reside in the same household as the trustee), or any organization in which such trustee (or member of his or her family) is an officer, director, employee, member, partner, trustee, or controlling stockholder, has such existing or potential financial or other interest. All trustees shall disclose to the Board any possible conflict of interest at the earliest practicable time. No trustee shall vote on any matter, under consideration at a Board or committee meeting in which such trustee has a conflict of interest. The minutes of such meeting shall reflect that a disclosure was made and that the trustee having a conflict of interest abstained from voting. Any trustee who is uncertain whether a conflict of interest may exist in any matter may request the Board or committee to resolve the questions by a majority vote.

ARTICLE XV.

DISCRIMINATION PROHIBITED

In administering its affairs, the College shall not discriminate against any person on the basis of race, creed, color, national or ethnic origin, sex, age or handicap.

ARTICLE XVI.

FISCAL YEAR

The fiscal year of the Corporation shall begin on 1st day of June, and end on the 31st day of May in each calendar year.

ARTICLE XVII.

REVIEW AND REVISION OF BY-LAWS

The Board of Trustees shall review these by-laws annually and shall recommend desirable changes to the corporate Member. The corporate Member wishes to have these by-laws kept current, and to have them provide an adequate and functional framework for the operation of St. Norbert College, Inc.

ARTICLE XVIII.

SEAL

The Board of Trustees shall provide a corporate seal upon which the name of the Corporation shall be embossed. The Secretary of the Corporation shall be in charge of the Seal and shall use the same by causing the Seal to be impressed or affixed or in any other manner reproduced in these by-laws or as may from time to time be directed by the Board of Trustees.

.ARTICLE XIX.

AMENDMENTS

These by-laws may be altered, amended or repealed, and new by-laws may be adopted by action of the corporate Member.

This restatement of the By-Laws of St. Norbert College, Inc. incorporates the revisions approved by The Premonstratensian Fathers February 2009.

Last By-Law Review:

Committee on Trustees – May 12, 2008

A-IV
MISSION STATEMENT
OF
ST. NORBERT COLLEGE

Mission Statement

St. Norbert College, a Catholic liberal arts college embracing the Norbertine ideal of *communio*, provides an educational environment that fosters intellectual spiritual and personal development.

St. Norbert College Traditions

Communio

As an academic institution, our community is rooted in the Norbertine ideal of *communio*, which is characterized by mutual esteem, trust sincerity, faith and responsibility. *Communio* is lived through open dialogue, communication consultation and collaboration. *Communio* encourages us to respond individually and collectively to the needs of our local and global communities.

Historically, the earliest Christians described the distinct quality of their common life as *communio* - a life characterized by faith in Jesus Christ and a commitment to one another. St. Norbert of Xanten later reformed Catholic life by establishing a new Order that reflected this ideal.

Today St. Norbert College, formed in the Catholic, liberal arts and Norbertine traditions, embodies Norbert's ideal of *communio* by embracing all people while maintaining its own identity. When pursued through the lens of *communio*, our mission challenges us to educate the whole person intellectually, spiritually and personally by engaging:

the Catholic intellectual tradition, which calls us to:

- Seek truth through an ongoing dialogue between faith and reason
- Recognize the sacred dignity of all persons
- Utilize knowledge in working toward a Gospel vision of justice
- Affirm the goodness encountered in creation and culture
- Scrutinize reality in an effort to add to the treasury of human wisdom

the liberal arts tradition, which calls us to:

- Cultivate a love of lifelong learning through excellence in teaching
- Understand diverse cultures, perspectives and beliefs
- Collaborate with others to gain knowledge, solve problems and seek truth
- Communicate to seek mutual understanding
- Share our intellect and abilities to create a compassionate world community

the Norbertine tradition, which calls us to:

- Fulfill our vocation by embodying Christ's example of loving service
- Seek peace and reconciliation in the spirit of St. Norbert
- Pray and reflect communally and individually welcoming all to participate
- Practice hospitality in the spirit of the Gospel and the Rule of St. Augustine
- Respond to the needs of our local community

A-V
RELIGIOUS DIMENSION
OF
ST. NORBERT COLLEGE

The Division of Mission and Heritage promotes faith development and spiritual well being for the College community. Grounded in the good news of Jesus the Christ, we draw on the richness of our Catholic, Norbertine and liberal arts traditions to encourage reflective action. We work to enliven the core values of St. Norbert College by integrating faith and reason in the search for truth and wisdom. Through educational and transforming spiritual experiences, we seek to build a culture that prepares members of the College community for every good work.

The division consists of the Office of the Vice-President for Mission and Heritage, Campus Ministry, the Peace and Justice Center, and the Program of Faith, Learning & Vocation. Collaboration with the St. Norbert College Parish, the Office of Norbertine Life and Vocation as well as the Center for Norbertine Studies all work together to support and enhance the division's initiatives.

Office of the Vice-President for Mission and Heritage

The Office of the Vice-President for Mission and Heritage educates, clarifies and promotes the Catholic, Norbertine and liberal arts traditions for the St. Norbert College community. The office collaborates with other areas of the College to create a campus climate and culture where our three traditions are practiced and brought to life on a daily basis.

Campus Ministry

Through its program and staff, Campus Ministry serves the students and community of St. Norbert College as a companion on the journey toward spiritual maturity. Campus Ministry offers varied opportunities for students of all faith backgrounds to serve, question, pray, discuss and experience community.

Peace and Justice Center

The Peace and Justice Center is an educational resource that aims to expand your horizons and link you to the global community. It promotes the attainment of peace through justice. The guiding principles for the center spring from the mission of St. Norbert College and the social teachings of the Catholic Church

Faith, Learning & Vocation

The Program of Faith, Learning & Vocation at St. Norbert College aims to identify and prepare a new generation of highly talented and religiously committed leaders. The program is shaped by Norbert's understanding that while called to contribute our gifts to the needs of the world, we can only sustain such efforts in communities of prayer and learning.

Old St. Joseph Church

Old St. Joseph Church is the focal point of the College and is open to anyone from 6:00 a.m. to 11:00 p.m. The congregation is comprised of students, staff and members of the community. Masses are held Sunday at 10:00 a.m. and 7:00 p.m. Weekday Masses are held at 6:45 a.m. and 12:20 p.m. during the school year.

Center for Norbertine Studies

The purpose of the center is to study, reflect upon and disseminate knowledge understanding of how the Norbertine motto *docere verbo et exemplo* to teach and example – is embodied and carried unto the future in the context of the Liberal arts tradition of the College.

A-VI
FACULTY REMOVAL PROCEDURE
FOR
ST. NORBERT COLLEGE

Dismissal for
Cause July 08

1. The Faculty Handbook references the AAUP 1958 policy paper on dismissal for cause. Attached; see also:

[http://www.aaup.org/ AA UP
/pubsres/policydocs/contents/statementon+proceduralstandardsinfaculty+dismissal
+proceedings.htm](http://www.aaup.org/AAUP/pubsres/policydocs/contents/statementon+proceduralstandardsinfaculty+dismissal+proceedings.htm)

That venerable document, however, should not be used without referencing the most recent interpretations. The best single summary of thought and practice coming from the AAUP is Donna Urban, "Termination and Discipline" written 2004 and revised 2006.

See:

<http://www.aaup.org/AAUP/protect/legal/topics/term-discp.htm>

2. The most cited list of precedents is Robert Hendrickson, "Removing Tenured Faculty For Cause," which I believe is not available on the web or through the SNC electronic resources. See:

[http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_n
fpb=true&_ERICEExtSearch_SearchValue_O=EJ370318&ERICEExtSearch_Search
Type_0=no&accno=EJ370318](http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_ERICEExtSearch_SearchValue_O=EJ370318&ERICEExtSearch_SearchType_0=no&accno=EJ370318)

3. The most authoritative early document that has furnished the foundational values to guide dismissal for cause is the AAUP 1940 Statement. The key passage is: "After the expiration of a probationary period, teachers should have permanent or continuous tenure, and their service should be terminated only for adequate cause or under extraordinary circumstances because of financial exigencies."

4. Tenure is protection against "arbitrary" removal from the tenured position. "Arbitrary" is defined in both a substantive and procedural manner. In other words, the removal must be *for reasons* that relate directly to the adequate performance of the role and *using procedures* that academic observers would generally consider fair, careful, and observant of the generally understood responsibility of a faculty itself in governing "faculty status." (As regards the latter point, a "due process" is normally set up by a faculty and involves elected representatives of the faculty having a significant part in the process.)

5. Substantive grounds for removal involve (1) lapses in meeting relevant ethical standards specifically involving the appropriate treatment of persons, and (2) lapses in meeting (other) relevant standards of competence (questions of ability or willingness to complete the work associated with the position; questions of "neglect of duty"). Over the years, some ethical standards have also become legal standards (e.g., norms and laws against sexual exploitation of students). In general, it has recently become much easier to

dismiss for cause in the first type of case, especially when the lapse involves or may involve racism, sexism, and/or a probable illegal act. Removal for more general forms of incompetence is more difficult.

6. In cases of based on questions of competent performance in general, "due process" (as opposed to "arbitrary dismissal") is exhibited by proper procedure and also by clearly citing the deficiencies to the person involved and encouraging reform before actual removal. This is to "provide an opportunity for remediation." Moreover, obtaining and using evaluations by peers (faculty peers, and during, not after, the dismissal hearings) are likely to be very important if the case goes to court, and are generally considered elements of due process.

1958 Statement on Procedural Standards in Faculty Dismissal Proceedings

The following statement was prepared by a joint committee representing the Association of American Colleges (now the Association of American Colleges and Universities) and the American Association of University Professors and was approved by these two associations at their annual meetings in 1958. It supplements the 1940 Statement of Principles on Academic Freedom and Tenure by providing a formulation of the "academic due process" that should be observed in dismissal proceedings. The exact procedural standards here set forth, however, "are not intended to establish a norm in the same manner as the 1940 Statement of Principles on Academic Freedom and Tenure, but are presented rather as a guide.

The governing bodies of the American Association of University Professors and the Association of American Colleges, meeting respectively in November 1989 and January 1990, adopted several changes in language in order to remove gender-specific references from the original text.

Introductory Comments

Any approach toward settling the difficulties which have beset dismissal proceedings on many American campuses must look beyond procedure into setting and cause. A dismissal proceeding is a symptom of failure; no amount of use of removal process will help strengthen higher education as much as will the cultivation of conditions in which dismissals rarely, if ever, need occur.

Just as the board of control or other governing body is the legal and fiscal corporation of the college, the faculty is the academic entity. Historically, the academic corporation is the older. Faculties were formed in the Middle Ages, with managerial affairs either self-arranged or handled in course by the parent church. Modern college faculties, on the other hand, are part of a complex and extensive structure requiring legal incorporation, with stewards and managers specifically appointed to discharge certain functions.

Nonetheless, the faculty of a modern college constitutes an entity as real as that of the faculties of medieval times, in terms of collective purpose and function. A necessary precondition of a strong faculty is that it has first-hand concern with its own membership. This is properly reflected both in appointments to and in separations from the faculty body.

A well-organized institution will reflect sympathetic understanding by trustees and teachers alike of their respective and complementary roles. These should be spelled out carefully in writing and made available to all. Trustees and faculty should understand and agree on their several functions in determining who shall join and who shall remain on the faculty. One of the prime duties of the administrator is to help preserve understanding of those functions. It seems clear on the American college scene that a close positive relationship exists between the excellence of colleges, the strength of their faculties, and the extent of faculty responsibility in determining faculty membership. Such a condition is in no way inconsistent with full faculty awareness of institutional factors with which governing boards must be primarily concerned.

In the effective college, a dismissal proceeding involving a faculty member on tenure, or one occurring during the term of an appointment, will be a rare exception, caused by individual human weakness and not by an unhealthful setting. When it does come, however, the college should be prepared for it, so that both institutional integrity and individual human rights may be preserved during the process of resolving the trouble. The faculty must be willing to recommend the dismissal of a colleague when necessary. By the same token, presidents and governing boards must be willing to give full weight to a faculty judgment favorable to a colleague.

One persistent source of difficulty is the definition of adequate cause for the dismissal of a faculty member. Despite the 1940 *Statement of Principles on Academic Freedom and Tenure* and subsequent attempts to build upon it, considerable ambiguity and misunderstanding persist throughout higher education, especially in the respective conceptions of governing boards, administrative officers, and faculties concerning this matter. The present statement assumes that individual institutions will have formulated their own definitions of adequate cause for dismissal, bearing in mind the 1940 *Statement* and standards that have developed in the experience of academic institutions.

This statement deals with procedural standards. Those recommended are not intended to establish a norm in the same manner as the 1940 *Statement of Principles on Academic Freedom and Tenure*, but are presented rather as a guide to be used according to the nature and traditions of particular institutions in giving effect to both faculty tenure rights and the obligations of faculty members in the academic community.

Procedural Recommendations

1. *Preliminary Proceedings Concerning the Fitness of a Faculty Member.* When reasons arise to question the fitness of a college or university faculty member who has tenure or whose term appointment has not expired, the appropriate administrative officers should ordinarily discuss the matter with the faculty member in personal conference. The matter may be terminated by mutual consent at this point; but if an adjustment does not result, a standing or ad hoc committee elected by the faculty and charged with the function of rendering confidential advice in such situations should informally inquire into the situation, to effect an adjustment, if possible, and, if none is effected, to determine whether in its view formal proceedings to consider the faculty member's dismissal should be instituted. If the committee recommends that such proceedings should be begun, or if the president of the institution, even after considering a recommendation of the committee favorable to the faculty member, expresses the conviction that a proceeding should be undertaken, action should be commenced under the procedures that follow. Except where there is disagreement, a statement with reasonable particularity of the grounds proposed for the dismissal should then be jointly formulated by the president and the faculty committee; if there is disagreement, the president or the president's representative should formulate the statement.
2. *Commencement of Formal Proceedings.* The formal proceedings should be commenced by a communication addressed to the faculty member by the president of the institution, informing the faculty member of the statement formulated, and also informing the faculty member that, at the faculty member's request, a hearing will be conducted by a faculty committee at a specified time and place to determine whether he or she should be removed from the faculty position on the grounds stated. In setting the date of the hearing, sufficient time should be allowed the faculty member to prepare a defense. The faculty member should be informed, in detail or by reference to published regulations, of the procedural rights that will be accorded. The faculty member should state in reply whether he or she wishes a hearing, and, if so, should answer in writing, not less than one week before the date set for the hearing, the statements in the president's letter.
3. *Suspension of the Faculty Member.* Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay.
4. *Hearing Committee.* The committee of faculty members to conduct the hearing and reach a decision should be either an elected standing committee not previously concerned with the case or a committee established as soon as possible after the president's letter to the faculty member has been sent. The choice of members of the hearing committee should be on the basis of their objectivity and competence and of the regard in which they are held in the academic community. The committee should elect its own chair.
5. *Committee Proceeding.* The committee should proceed by considering the statement of grounds for dismissal already formulated, and the faculty member's response written before the time of the hearing. If the faculty member has not requested a hearing, the committee should consider the case on the basis of the obtainable information and decide whether the faculty member should be removed; otherwise, the hearing should go forward. The committee, in consultation with the president and the faculty member, should exercise its judgment as to whether the hearing should be public or private. If any facts are in dispute, the testimony of witnesses and other evidence concerning the matters set forth in the president's letter to the faculty member should be received.

The president should have the option of attendance during the hearing. The president may designate an appropriate representative to assist in developing the case; but the committee should determine the order of proof, should normally conduct the questioning of witnesses, and, if necessary, should secure the presentation of evidence important to the case.

The faculty member should have the option of assistance by counsel, whose functions should be similar to those of the representative chosen by the president. The faculty member should have the additional procedural rights set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*, and should have the aid of the committee, when needed, in securing the attendance of witnesses. The faculty member or the faculty member's counsel and the representative designated by the president should have the right, within reasonable limits, to question all witnesses who testify orally. The faculty member should have the opportunity to be confronted by all adverse witnesses. Where unusual and urgent reasons move the hearing committee to withhold this right, or where the witness cannot appear, the identity of the witness, as well as the statements of the witness, should nevertheless be disclosed to the faculty member. Subject to these safeguards, statements may, when necessary, be taken outside the hearing and reported to it. All of the evidence should be duly recorded. Unless special circumstances warrant, it should not be necessary to follow formal rules of court procedure.

6. *Consideration by Hearing Committee.* The committee should reach its decision in conference, on the basis of the hearing. Before doing so, it should give opportunity to the faculty member or the faculty member's counsel and the representative designated by the president to argue orally before it. If written briefs would be helpful, the committee may request them. The committee may proceed to decision promptly,

without having the record of the hearing transcribed, where it feels that a just decision can be reached by this means; or it may await the availability of a transcript of the hearing if its decision would be aided thereby. It should make explicit findings with respect to each of the grounds of removal presented, and a reasoned opinion may be desirable. Publicity concerning the committee's decision may properly be withheld until consideration has been given to the case by the governing body of the institution. The president and the faculty member should be notified of the decision in writing and should be given a copy of the record of the hearing. Any release to the public should be made through the president's office.

7. *Consideration by Governing Body.* The president should transmit to the governing body the full report of the hearing committee, stating its action. On the assumption that the governing board has accepted the principle of the faculty hearing committee, acceptance of the committee's decision would normally be expected. If the governing body chooses to review the case, its review should be based on the record of the previous hearing, accompanied by opportunity for argument, oral or written or both, by the principals at the hearing or their representatives. The decision of the hearing committee should either be sustained or the proceeding be returned to the committee with objections specified. In such a case the committee should reconsider, taking account of the stated objections and receiving new evidence if necessary. It should frame its decision and communicate it in the same manner as before. Only after study of the committee's reconsideration should the governing body makes a final decision overruling the committee.
8. *Publicity.* Except for such simple announcements as may be required, covering the time of the hearing and similar matters, public statements about the case by either the faculty member or administrative officers should be avoided so far as possible until the proceedings have been completed. Announcement of the final decision should inch statement of the hearing committee's original action, if this has not previously been made known.

A-VII
LETTER OF REQUEST
AND
GRANTING OF
MANDATUM



January 29, 2002

Deacon James B. Herring, O. Praem.
St. Norbert College
Campus Ministry
100 Grant Street
De Pere, Wisconsin 54115-2099

Dear Deacon James:

Thank you for your letter requesting the *mandatum*. I am presuming that your request includes agreement with all the requirements for receiving the *mandatum* as expressed in my earlier letter.

In response, I hereby acknowledge your intention to remain within the full communion of the Catholic Church in fulfillment of your role and responsibility as a teacher of Catholic theological disciplines.

I recognize your commitment to teach authentic Catholic doctrine and to refrain from putting forth as Catholic teaching anything contrary to the Church's magisterium.

Therefore, I grant you the *mandatum* required by Canon 812 and I thank you for the important work that you carry on within the Church.

May the Holy Spirit help both of us and all who teach in the Church carry out effectively our teaching responsibilities.

With prayers and best wishes, I am

Sincerely yours in Christ,

Most Reverend Robert J. Banks
Bishop of Green Bay



CAMPUS MINISTRY

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January 24, 2002

Most Reverend Robert J. Banks, D.D.
Bishop of Green Bay

Your Excellency,

I respectfully request your acknowledgment and grant of the *Mandatum* in accordance with canon 812 of the Code of Canon Law.

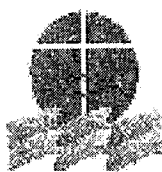
I hereby declare my role and responsibility as a professor of a Catholic theological discipline with the full communion of the Catholic Church. I am currently an adjunct professor teaching the course Introduction to Theology at St. Norbert College. I hold the academic degree(s) JCL from St. Paul University, MCL from University of Ottawa and St. Paul University, MA in Theology from DeSales School of Theology, MDiv in Theology from DeSales School of Theology, and BA in Philosophy from St. Charles Borromeo Theological Seminary. Enclosed, please find my curriculum vitae and course syllabus.

As a professor of a Catholic theological discipline, I am committed to teach authentic Catholic doctrine and to refrain from putting forth as Catholic teaching anything contrary to the Church's Magisterium.

Sincerely in Christ,

(Deacon) James B. Herring, O. Praem.

cc. Abbot E. Thomas DeWane, O. Praem.
President William J. Hynes
Dean Michael B. Lukens



Diocese of Green Bay

Office of the Bishop

December 3, 2001

Deacon James Herring, O. Praem.
St. Norbert College
100 Grant Street
De Pere, Wisconsin 54115-2099

Dear Deacon Herring:

As the local Catholic bishop, I am writing this letter to each of the faculty members of St. Norbert College who are listed as teaching in the Department of Religious Studies. The subject of the letter pertains to the Catholic faculty members, but it may also be of interest to the other faculty members.

As you most likely know, the Catholic Church now requires that all Catholics who teach a theological discipline in a Catholic college have a *mandatum* from the local diocesan bishop. The *mandatum* is an acknowledgment that a Catholic professor of a theological discipline is teaching within the full communion of the Catholic Church. In other words, it recognizes that the faculty member is committed to teaching authentic Catholic doctrine and will refrain from putting forth as Catholic teaching anything contrary to the church's magisterium.

Personally, I see the *mandatum* as an acknowledgment that the faculty member is carrying on an important work or ministry within the Church.

If you are a Catholic faculty member teaching a theological discipline and now wish to receive the required *mandatum*, you should send me a letter in which you request the *mandatum* and include a declaration that you will teach in full communion with the Church. This should be done before June 1, 2002.

It is my intention to respond to any request as soon as possible. I think the faculty member's declaration of intent to teach in full communion is by itself an adequate basis for the grant of the requested *mandatum*.

I hope that you and the other members of your department realize that I am not writing because of any problem at St. Norbert. The members of your department are highly regarded in our Diocese. I am personally grateful for the assistance that has been given to me on many occasions by members of the department, whether or not they are Catholic.

Enclosed for your information is a copy of the official *Guidelines* concerning the *mandatum*.

Thank you for your attentive reading of this letter and for all your good work at St. Norbert College.

Sincerely yours,

Most Reverend Robert J. Banks
Bishop of Green Bay

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A-VIII
ACADEMIC FREEDOM STATEMENT
FROM
FACULTY HANDBOOK
ST. NORBERT COLLEGE

1940 Statement of Principles on Academic Freedom and Tenure

with 1970 Interpretive Comments

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges (now the Association of American Colleges and Universities) agreed upon a restatement of principles set forth in the 1925 Conference Statement on Academic Freedom and Tenure. This restatement is known to the profession as the 1940 Statement of Principles on Academic Freedom and Tenure.

The 1940 Statement is printed below, followed by Interpretive Comments as developed by representatives of the American Association of University Professors and the Association of American Colleges in 1969. The governing bodies of the two associations, meeting respectively in November 1989 and January 1990, adopted several changes in language in order to remove gender-specific references from the original text.

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole.¹ The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research.

Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.^[1]²

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

Academic Freedom

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.^[2] Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.^[3]
3. College and university teachers are citizens, members of a learned profession,

¹The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

²Boldface numbers in brackets refer to Interpretive Comments that follow.

and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.[4]

Academic Tenure

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.
2. Beginning with appointment to the rank of full-time instructor or a higher rank,[5] the probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years.[6] Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period. [7]
3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have.[8]
4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.[9]
5. Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

1940 Interpretations

At the conference of representatives of the American Association of University Professors and of the Association of American Colleges on November 7-8, 1940, the following interpretations of the 1940 *Statement of Principles on Academic Freedom and Tenure* were agreed upon:

1. That its operation should not be retroactive.
2. That all tenure claims of teachers appointed prior to the endorsement should be determined in accordance with the principles set forth in the 1925 *Conference Statement on Academic Freedom and Tenure*.

3. If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

1970 Interpretive Comments

Following extensive discussion on the 1940 Statement of Principles on Academic Freedom and Tenure with leading educational associations and with individual faculty members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the joint committee felt the preferable approach was to formulate interpretations of the Statement in terms of the experience gained in implementing and applying the Statement for over thirty years and of adapting it to current needs.

The committee submitted to the two associations for their consideration the following "Interpretive Comments." These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-sixth Annual Meeting as Association policy.

In the thirty years since their promulgation, the principles of the 1940 *Statement of Principles on Academic Freedom and Tenure* have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that association either alone or in conjunction with the Association of American Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 *Statement*, to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 *Statement* is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 *Statement*; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents*, 385 U.S. 589 (1967), "Our Nation is deeply committed to safe-guarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

The numbers refer to the designated portion of the 1940 *Statement* on which interpretive comment is made.

1. The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in the exercise of their responsibilities to the institution and to students, and in their conduct when resigning from their institution or when undertaking government-sponsored research. Of particular relevance is the *Statement on Professional Ethics*, adopted in 1966 as Association policy. (A revision, adopted in 1987, may be found in AAUP, *Policy Documents and Reports*, 10th ed. [Washington, D.C., 2006], 171-72.)
2. The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for

teachers to avoid persistently intruding material which has no relation to their subject.

3. Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 *Statement*, and we do not now endorse such a departure.
4. This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 *Statement* immediately following its endorsement which reads as follows:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph 3 of the section on Academic Freedom in the 1940 *Statement* should also be interpreted in keeping with the 1964 *Committee A Statement on Extramural Utterances*, which states inter alia: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph 5 of the *Statement on Professional Ethics* also deals with the nature of the "special obligations" of the teacher. The paragraph reads as follows:

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

5. The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of the teacher's specific title.³
6. In calling for an agreement "in writing" on the amount of credit given for a faculty member's prior service at other institutions, the *Statement* furthers the general policy of full understanding by the professor of the terms and conditions of the appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution.⁴

³ For a discussion of this question, see the "Report of the Special Committee on Academic Personnel Ineligible for Tenure," *Policy Documents and Reports*, 9th ed. (Washington, D.C., 2001), 88-91.

⁴ For a more detailed statement on this question see "On Crediting Prior Service Elsewhere as Part of the Probationary Period," *Policy Documents and Reports*, 10th ed. (Washington, DC, 2006), 55-56.

7. The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 *Statement* with respect to the termination of service of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the *Standards for Notice of Non-reappointment*, endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964). These standards are:

Notice of non-reappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

1. *Not later than March 1 of the first academic year of service*, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

2. *Not later than December 15 of the second academic year of service*, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.

3. At least twelve months before the expiration of an appointment after two or more years in the institution.

Other obligations, both of institutions and of individuals, are described in the *Statement on Recruitment and Resignation of Faculty Members*, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

8. The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the *Recommended Institutional Regulations on Academic Freedom and Tenure*, prepared by the American Association of University Professors.

9. A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the *Statement on Procedural Standards in Faculty Dismissal Proceedings*, jointly approved by the American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 *Statement* is silent.

The 1958 *Statement* provides: "Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

BIBLIOGRAPHY

I. PRIMARY SOURCES

- A. The Code of Canon Law (chronologically ordered)**
- B. Other Papal and Conciliar Documents (chronologically ordered)**
- C. Documents from the Roman Dicasteries**
- D. Documents from the Episcopal Conference (USA)**
- E. Documents of the Norbertines**
- F. Other Sources**

II. BOOKS

III. ARTICLES

I-PRIMARY SOURCES

A. THE CODE OF CANON LAW

- Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus*, Typis polyglottis Vaticanis, 1917. English translation E.N. PETERS (ed.), *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco CA, Ignatius Press, 2001, xxxv, 777 p.
- Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus fontium annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1989. English-language translation: *Code of Canon Law: Latin-English edition, New English Translation*, prepared under the auspices of the CLSA, Washington, DC, CLSA, 1999, xliii, 651 p.
- Codex Canonum Ecclesiarum Orientalium auctoritate Ioannis Pauli PP. II promulgatus fontium annotatione auctus*, Libreria Editrice Vaticana, 1995. English translation *Code of the Canons of the Eastern Churches: Latin-English edition, New English Translation*, prepared under the auspices of the CLSA, Washington, DC, CLSA, 2001, xli, 860 p.

B. OTHER PAPAL AND CONCILIAR DOCUMENTS

- PIUS X, Encyclical *Il fermo proposito*, 11 June 1905, in *ASS*, 37 (1904-1905), pp. 741-767. English translation in V.A. YZERMANS, *All Things in Christ: Selected Encyclicals and Documents of Saint Pius X*, Westminster, MD, Newman Press, 1954, pp. 59-70.
- PIUS XI, Encyclical *Ubi arcano*, 23 December 1922, in *AAS*, 14 (1922), pp. 673-700.
- _____, Encyclical *Quae nobis*, 13 November 1929, in *AAS*, 20 (1929), pp. 384-387.
- _____, Encyclical *Divini illius Magistri*, 31 December 1929, in *AAS*, 22 (1930), pp. 49-86. English translation *Christian Education of Youth*, Washington, DC, NATIONAL CATHOLIC WELFARE CONFERENCE (=NCWC), 1936, 43 p.; T.P. McLAUGHLIN (ed.), *The Church and the Reconstruction of the Modern World*, Garden City, NY, Image Books, 1957, pp. 76-114 (=McLAUGHLIN, *Church and Reconstruction*).
- _____, Apostolic Constitution *Deus scientiarum Dominus*, 24 May 1931, in *AAS*, 23 (1931), pp. 241-262.
- _____, Encyclical *Non abbiamo bisogno*, 29 June 1931, in *AAS*, 23 (1931), pp. 285-312. English translation *Concerning "Catholic Action": The Conflict in Italy*, Washington, DC, NCWC, 1931, 32 p.; *The Apostolate of the Laity* in McLAUGHLIN, *Church and Reconstruction*, pp. 301-333.
- _____, Apostolic Letter *Catholicas Studiorum Universitates*, 27 July 1949, in *AAS*, 42 (1950), pp. 385-387.
- PIUS XII, Address on the Apostolate of the Laity, 5 October 1957, in *AAS* 49 (1957), pp. 922-939.

- Acta et documenta Concilio oecumenico Vaticano II apparando*, In Civitate Vaticana, Typis polyglottis Vaticanis, 1960-1969, 23 vols.
- Acta synodalia Sacrosancti Concilii oecumenici Vaticani II*, cura et studio archivi Concilii Oecumenici Vaticani II, In Civitate Vaticana, Typis polyglottis Vaticanis, 1970-1990, 5 vols., 27 parts.
- SACROSANCTUM OECUMENICUM CONCILIUM VATICANUM II, *Constitutiones, decreta, declarationes*, cura et studio Secretariae Generalis Concilii Oecumenici Vaticani Romae, Typis polyglottis Vaticanis, 1966, xxiv, 1292 p. English translation A.P. FLANNERY (gen. ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents*, new rev. ed., vol. 1, Northport, NY, Costello Publishing, 1996, xxiv, 1036 p. (=FLANNERY1).
- PAUL VI, Apostolic Letter motu proprio *Ecclesiae sanctae* I, 6 August 1966, in *AAS*, 58 (1966), pp. 757-775. English translation in *CLD*, 6 (1963-1967), pp. 264-298; FLANNERY1, pp. 591-610.
- _____, Apostolic Letter motu proprio *Ecclesiae pastores*, 19 March 1975, in *AAS*, 67 (1975), pp. 281-284. English translation in *CLD*, 8 (1973-1977), pp. 991-996.
- _____, Address to Presidents and Rectors of the Universities of the Society of Jesus, 6 August 1975, in *AAS*, 67 (1975), pp. 531-536. English translation in *CLD*, 8 (1973-1977), pp. 966-972.
- JOHN PAUL II, Encyclical *Redemptor Hominis*, 4 March 1979, in *AAS*, 71 (1979) pp. 257-324. English translation in *Origins*, 8 (1979), pp. 625-644.
- _____, Apostolic Constitution *Sapientia Christiana*, 15 April 1979, in *AAS*, 71 (1979), pp. 469-521. English translation in *Origins*, 9 (1979), pp. 33-45; *ORE*, n. 23 (584), 4 June 1979, pp. 3-8.
- _____, Address to Presidents of Catholic Universities and other Members of the Academic Community, The Catholic University of America, USA, 6 October 1979, in *AAS*, 71 (1979), pp. 1260-1264. "Excellence, Truth, and Freedom in Catholic Universities," in *Origins*, 9 (1979), pp. 306-308.
- _____, Apostolic Constitution *Sacrae disciplinae leges*, 25 January 1983, in *AAS*, 75, 2 (1983), pp. vii-xiv. English-language translation: *Code of Canon Law: Latin-English edition, New English Translation*, prepared under the auspices of the CLSA, Washington, DC, CLSA, 1999, pp. xxvii-xxxii.
- _____, Address to Catholic Educators, Basilica of St. John the Baptist, Newfoundland, Canada, 12 September 1984, in *AAS*, 77 (1985), pp. 405-411. "Aid to Catholic Schools," in *Origins*, 14 (1984), pp. 225-227.
- _____, Address to Leaders of Catholic Higher Education, Xavier University of Louisiana, USA, 12 September 1987, in *AAS*, 80 (1988), pp. 761-768. "Catholic Higher Education," in *Origins*, 17 (1987), pp. 267-270.
- _____, Homily at Opening Mass of the World Synod of Bishops, Basilica of St. Peter, Vatican City, 1 October 1987, in *AAS*, 80 (1988), pp. 369-373. "The Laity's Proper and Specific Tasks," in *Origins*, 17 (1987), pp. 338-340.

- JOHN PAUL II, Apostolic Constitution *Pastor bonus*, 28 June 1988, in *AAS*, 80 (1988), pp. 841-923. English translation F. KELLY, J. PROVOST, and M. THÉRIAULT (eds.), bilingual and annotated Latin-English edition prepared by M. THÉRIAULT under the auspices of the Canadian Conference of Catholic Bishops, Ottawa, ON, Faculty of Canon Law: Saint Paul University, 1999, 80 p.
- _____, Post-Synodal Apostolic Exhortation *Christifideles laici*, 30 December 1988, in *AAS*, 81 (1989), pp. 393-521. English translation in *Origins*, 18 (1989), pp. 561-595.
- _____, Apostolic Constitution *Ex corde Ecclesiae*, 15 August 1990, in *AAS*, 82 (1990), pp. 1475-1509. English translation USCC, *On Catholic Universities, 'Ex corde Ecclesiae'*, Washington, DC, USCC, Fifth Printing 2000, 48 p.; *Origins*, 20, (1990), pp. 265-276.
- _____, Apostolic Constitution *Fidei Depositum*, 11 October 1992, in *AAS*, 86 (1994), pp. 113-118. English translation in *Origins*, 22 (1993), pp. 525-529; American version of English-language translation: *Catechism of the Catholic Church*, Liguori, MO, Liguori Publications, USCC, 1994, pp. 1-6.
- _____, Post-Synodal Apostolic Exhortation *Vita consecrata*, 25 March 1996, in *AAS*, 88 (1996), pp. 377-486. English translation in *Origins*, 25 (1996), pp. 681-719.
- _____, Apostolic Letter motu proprio *Ad tuendam fidem*, 18 May 1998, in *AAS*, 90 (1998), pp. 457-461. English translation in *Origins*, 28 (1999), pp. 113-116.
- _____, Apostolic Letter *Apostolos suos*, 21 May 1998, in *AAS*, 90 (1998), pp. 641-658. English translation in *Origins*, 28 (1998), pp. 152-158.
- _____, *Ad Limina* Address to U. S. Bishops, 24 June 2004, in *Origins*, 34 (2004), pp. 220-222.
- BENEDICT XVI, Address to Educators at Catholic University, 17 April 2008, in *L'Osservatore Romano*, English edition, N. 17 (2041), 23 April 2008, pp. 7-8; *Ad Catholicam Studiorum Universitatem Americae*, 17 April 2008, in *AAS*, 100 (2008), pp. 320-327.

C. DOCUMENTS FROM THE ROMAN DIACASTERIES

- CONGREGATION FOR BISHOPS, Directory for the Pastoral Ministry of Bishops *Apostolorum successores*, 22 February 2004, Città del Vaticano, Libreria Editrice Vaticana, 2004, 311 p.
- CONGREGATION FOR CATHOLIC EDUCATION, New Norms for *Deus Scientiarum Dominus*, 20 May 1968, in *Seminarium*, 20 (1968), pp. 765-787.
- _____, "Proposed Schema for a Pontifical Document on Catholic Universities," 15 April 1985, in *Origins*, 15 (1986), pp. 706-711, preceded by comments of presidents of Catholic Universities, pp. 697-705.
- _____, "Summary of Responses to the Draft Schema on Catholic Universities," 5 March 1988, in *Origins*, 17 (1988), pp. 693-705.

- CONGREGATION FOR CATHOLIC EDUCATION, "The Religious Dimension of Education in a Catholic School: Guidelines for Reflection and Renewal," 7 April 1988, in *Origins*, 18 (1988), pp. 213-228.
- _____, "New Draft of Document on Catholic Universities," 8 November 1988, in *Origins*, 18 (1988), pp. 445-463.
- _____, "The Catholic School on the Threshold of the Third Millennium," 28 December 1997, in *Origins*, 28 (1998), pp. 409-412.
- CONGREGATION FOR CATHOLIC EDUCATION and PONTIFICAL COUNCIL FOR THE LAITY AND PONTIFICAL COUNCIL FOR CULTURE, *Presenza della Chiesa nell'università e nella cultura universitaria*, 22 May 1994, in *LE*, 1998, vol. VIII, n. 5571, cols. 13187-13199. English translation in *Origins*, 24 (1994), pp. 74-80.
- CONGREGATION FOR THE DOCTRINE OF THE FAITH, Letter on the mandate to teach, 25 July 1986, in *Origins*, 16 (1986), pp. 201-203.
- _____, "Profession of Faith and Oath of Fidelity," 25 February 1989, in *Communicationes*, 21 (1989), pp. 32-34. English translation in *Origins*, 18 (1989), pp. 661-663.
- _____, Instruction on the Ecclesial Vocation of the Theologian *Donum veritatis*, 24 May 1990, in *AAS*, 82 (1990), pp. 1550-1570. English translation in *Origins*, 20 (1990), pp. 117-126.
- _____, Letter to the Bishops of the Catholic Church on Some Aspects of the Church Understood as Communion *Communio notio (κοινωνία)*, 28 May 1992, in *AAS*, 85 (1993), pp. 838-850. English translation in *ORE*, n. 24 (1245), 17 June 1992, pp. 8-9.
- _____, "Regulations for Doctrinal Examination," 27 June 1997, in *Origins*, 27 (1997), pp. 221-224; en français dans *La Documentation catholique*, 94 (1997), pp. 819-821, suivi des perspective théologiques, pp. 821-824.
- _____, "Profession of Faith, Oath of Fidelity," in *AAS*, 90 (1998), 29 June 1998, pp. 542-551; in *Communicationes*, 30 (1998), pp. 42-49. English translation followed by a commentary in *Forum*, 9:1 (1998), pp. 21-34.
- SACRED CONGREGATION FOR BISHOPS, *Directorium de pastorali ministerio episcoporum Ecclesiae imago*, 22 February 1973, Città del Vaticano, Typis polyglottis Vaticanis, 1973, 252 p.; also in *LE*, 1980, vol. V, n. 4174, cols. 6462-6539. English translation by the Benedictine monks of the Seminary of Christ the King, Mission, BC, *Directory on the Pastoral Ministry of Bishops*, Ottawa, Publications Service of the Canadian Catholic Conference, 1974, vii, 116 p.
- SACRED CONGREGATION FOR BISHOPS and SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Directives on the Mutual Relations between Bishops and Religious in the Church *Mutuae relationes*, 23 April 1978, in *AAS*, 70 (1978), pp. 473-506. English translation in A.P. FLANNERY (gen. ed.), *Vatican Council II: More Post Conciliar Documents*, new rev. ed., vol. 2, Northport, NY, Costello Publishing, 1998, pp. 209-243 (=FLANNERY2).

- SACRED CONGREGATION FOR CATHOLIC EDUCATION, "The Catholic School," 19 March 1977, l'original en français dans *La Documentation catholique*, 74 (1977), pp. 705-716. English translation in FLANNERY2, pp. 606-629.
- _____, Ordinationes ad constitutionem apostolicam *Sapientia Christiana*, 29 April 1979, in *AAS*, 71 (1979), pp. 500-521. English translation in *ORE*, n. 23 (584), 4 June 1979, pp. 8-12;
- _____, "Lay Catholics in Schools: Witnesses to Faith," 15 October 1982, l'original en français dans *La Documentation catholique*, 79 (1982), pp. 979-991. English translation in FLANNERY2, pp. 630-661.
- SACRED CONGREGATION FOR CATHOLIC EDUCATION and COUNCIL FOR THE LAITY, letter *À Deux Reprises Déjà*, 15 July 1976, in *Enchiridion Vaticanum*, 5 (1976), pp. 1336-1338.
- SACRED CONGREGATION FOR SEMINARIES AND UNIVERSITIES, Ordinationes ad constitutionem apostolicam *Deus scientiarum Dominus*, 12 June 1931, in *AAS*, 23 (1931), pp. 263-284.
- _____, Normae quaedam ad constitutionem *Deus scientiarum Dominus* de studiis academicis ecclesiasticis recognoscendam, 20 May 1968, in *Seminarium*, 20 (1968), pp. 765-787.
- PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Communicationes*, vols. 1-15, 1969-1983; PONTIFICIA COMMISSIO AD CODICEM IURIS CANONICI AUTHENTICE INTERPRETANDUM, vol. 16, 1984; PONTIFICIA COMMISSIO CODICE IURIS CANONICI AUTHENTICE INTERPRETANDO, vols. 17-20, 1985-1988; PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS INTERPRETANDIS, vols. 21-31:1, 1989-1999; PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS, vols. 31:2- , 1999- .
- _____, *Lex Ecclesiae Fundamentalis: seu Ecclesiae Catholicae universae lex canonica fundamentalis*, Romae, 24 April 1980, Città del Vaticano, Libreria editrice Vaticana, 1980, 54 p. English translation (private use) J.P. MCINTYRE, Ottawa, ON, Saint Paul University, 1994, 35 p.
- _____, *Relatio: complectens synthesim animadversionum ab Em. mis atque Exc. mis Patribus Commissionis ad novissimum schemes codicis iuris canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis (Patribus Commissionis strictè reservata)*, Città del Vaticano, Typis polyglottis Vaticanis, 1981; in *Communicationes*, 14 (1982), pp. 117-231.
- _____, *Codex iuris canonici: schema novissimum iuxta placita Patrum Commissionis emendatum atque Summo Pontifici praesentatum*, Città del Vaticano, Typis polyglottis Vaticanis, 1982.

D. DOCUMENTS FROM THE EPISCOPAL CONFERENCE (USA)

- NATIONAL CONFERENCE OF CATHOLIC BISHOPS (=NCCB), "To Teach as Jesus Did: A Pastoral Message on Catholic Education," 14 November 1972, in *Origins*, 2 (1972), pp. 349-364.

- NATIONAL CONFERENCE OF CATHOLIC BISHOPS, "Teach Them," 6 May 1976, in *Origins*, 6 (1976), pp. 1-7.
- _____, "Catholic Higher Education and the Mission of the Church," 13 November 1980, in *Origins*, 10 (1980), pp. 378-384.
- _____, *Doctrinal Responsibilities: Approaches to Promoting Cooperation and Resolving Misunderstandings between Bishops and Theologians*, Washington, DC, NCCB, 1989, 29 p.
- _____, "The Teaching Ministry of the Diocesan Bishop: A Pastoral Reflection," 14 November 1991, in *Origins*, 21 (1992), pp. 473-492.
- _____, *A Manual for Bishops: Rights and Responsibilities of Diocesan Bishops in the Revised Code of Canon Law*, rev. ed., 1st edition prepared by T.J. GREEN, Washington, DC, UNITED STATES CATHOLIC CONFERENCE (=USCC), 1992, 84 p.
- _____, *The Application of 'Ex corde Ecclesiae' for the United States*, Washington, DC, United States Catholic Conference, 2000, 28 p.; in *Origins*, 30 (2000), pp. 68-75.
- _____, *Guidelines Concerning the Academic 'Mandatum' in Catholic Universities (Canon 812)*, Washington, DC, United States Conference of Catholic Bishops, 2001, 24 p.; in *Origins*, 31 (2001), pp. 128-131.

E. DOCUMENTS OF THE NORBERTINES

- Articles of Incorporation of St. Norbert College, Inc.*, State of Wisconsin, USA, 29 December 1981, 9 p.
- LAGERWEY, W. (trans., ed.), *Letters Written in Good Faith*, prepared under the auspices of ST. NORBERT ABBEY, Green Bay, WI, Alt Publishing, 1996, vii, 547 p.
- The By-Laws of St. Norbert College, Inc.*, Restated and Adopted by the Corporate Member, De Pere, WI, St. Norbert Abbey, 11 January 2005, 17 p.
- The Day of Pentecost: Constitutions and Appendices*, Constitutions and Rule: Latin-English edition, 5th edition of the English-language translation, THE ORDER OF CANONS REGULAR OF PRÉMONTRÉ, De Pere, WI, St. Norbert Abbey, 1998, xxiii, 137 p.

F. OTHER SOURCES

- Acta Sanctae Sedis, In Compendium Opportune Redacta et Illustrata*, Romae, Ex Typographia polyglotta, 1865-1904.
- Acta Sanctae Sedis, Ephemerides Romanae*, Romae, Ex Typographia polyglotta, 1905-1908.
- Acta Apostolicae Sedis, Commentarium Officiale*, Città del Vaticano, Typis polyglottis Vaticanis, 1909- .

- Catechismus Ecclesiae Catholicae*, Città del Vaticano, Libreria editrice Vaticana, 1992.
American version of English-language translation: *Catechism of the Catholic Church*, Liguori, MO, Liguori Publications, USCC, 1994, xii, 803 p.
- Enchiridion Vaticanum: Documenti ufficiali della Santa Sede*, 16th ed., vols. 1-, Bologna, Edizioni Dehoniane Bologna, 1997.
- GASPARRI, P. (ed.), *Fontes Codicis iuris canonici*, Romae, Typis polyglottis Vaticanis, 1926-1936, 9 vols.
- OCHOA, X. (ed.), *Leges Ecclesiae post Codicem iuris canonici editae*, Roma, Commentarium pro Religiosis, 1966-1998, 8 vols.
- TANNER, N.P. (ed.), *Decrees of the Ecumenical Councils*, Latin-English edition, original text established by G. ALBERIGO et al, in consultation with H. JEDIN, London, UK, Sheed and Ward, Washington, DC, Georgetown University Press, 1990, 2 vols.
- THIRD PLENARY COUNCIL OF BALTIMORE, *Acta et decreta concilii plenarii baltimorensis tertii*, 1884, Praeside Illmo. ac Revmo. JACOBO GIBBONS, Baltimore, John Murphy & Co., 1886, cix, 321 p.
- WORLD COUNCIL OF CHURCHES, *Church and State: Opening a New Ecumenical Discussion*, Faith and Order Paper, n. 85, Geneva, Switzerland, WORLD COUNCIL OF CHURCHES, 1978, 183 p.

II-BOOKS

- ALBRIGHT, W.F., *From the Stone Age to Christianity*, Garden City, NY, Doubleday, 1957, viii, 432 p.
- ALLEY, R. S. (ed.), *The Supreme Court on Church and State*, New York, NY, Oxford University Press, 1988, xiv, 445 p.
- AMOS, J. et al., *The Search for Identity: Canonical Sponsorship of Catholic Healthcare*, St. Louis, MO, The Catholic Health Association, 1955, xi, 88 p.
- ANDERSON, C., *Teaching as Believing: Faith in the University*, Studies in Religion and Higher Education 2, Waco, TX, Baylor University Press, 2004, xi, 234 p.
- BEAL, J. P., J. A. CORIDEN, and T. J. GREEN (eds.), *New Commentary on the Code of Canon Law*, commissioned by the CLSA, New York, NY and Mahwah, NJ, Paulist Press, 2000, xxxiii, 1952 p.
- BLACK, H.C., *Black's Law Dictionary*, 7th ed., St. Paul, MN, West Publishing Co., 1990, xiv, 1657 p.
- BOUCHER, M.-A., *Rénovation conciliaire du droit des religieux*, JCD diss., Ottawa, ON, Saint Paul University, 1977, xi, 265 p.
- BOUSCAREN, T.L., A.C. ELLIS, and F.N. KORTH (eds.), *Canon Law: A Text and Commentary*, 4th rev. ed., Milwaukee, WI, Bruce Publishing Co., 1963, 1004 p.

- BROWN, B.F., *The Canonical Juristic Personality with Special Reference to Its Status in the United States of America*, Canon Law Studies No. 39, JCD diss., Washington, DC, The Catholic University of America, 1927, v, 212 p.
- BUCKLEY, J. et al., *Report of the Catholic Theological Society of America on the Profession of Faith and the Oath of Fidelity*, Washington, DC, Catholic Theological Society of America, 1990, 133 p.
- BURNS, J. and B. KOHLBREBBER, *A History of Catholic Education in the United States*, New York, NY, Benziger Brothers, 1937, xi, 295 p.
- BUTLER, A.M., M.E. ENGH, and T.W. SPALDING (eds.), *The Frontiers and Catholic Identities*, Maryknoll, NY, Orbis Books, 1999, xxxii, 221 p.
- BUTLER, F.J. (ed.), *American Catholic Identity: Essays in an Age of Change*, Kansas City, MO, Sheed & Ward, 1994, vi, 266 p.
- CALVO, R.R. and N.J. KLINGER (eds.), *Clergy Procedural Handbook*, prepared under the auspices of the CLSA, Washington, DC, CLSA, 1992, vii, 283 p.
- CAPARROS, E., M. THÉRIAULT, and J. THORN (eds.), *Code of Canon Law Annotated*, 2nd edition revised and updated of the 6th Spanish language edition "Latin-English edition of the *Code of Canon Law* and English language translation of the 6th Spanish language edition of the commentary prepared under the responsibility of the INSTITUTO MARTÍN DE AZPILCUETA," E. CAPARROS, H. AUBÉ et al. (eds.), Montréal, QC, Wilson & Lafleur Limitée, 2004, xli, 2066 p.
- CARPENTER, S.H., *New Hope for Catholic Higher Education: 'Ex Corde Ecclesiae'-A Lay Perspective*, Bloomington, IN, AuthorHouse, 2006, x, 149 p.
- CASTAÑO, J., *Gli istituti di vita consacrata, (cc. 573-730)*, Roma, Millenium Romae, 1995, 350 p.
- CATHOLIC THEOLOGICAL SOCIETY OF AMERICA, *A Report on the Profession of Faith. and the Oath of Fidelity*, 15 April 1990, Washington, DC, CTSA, 1990, 133 p.
- COBBAN, A.B., *The Medieval Universities: Their Development and Organization*, London, UK, Methuen, 1975, x, 264 p.
- CONN, J.J., *Catholic Universities in the United States and Ecclesiastical Authority*, JCD diss., Roma, Pontificia Università Gregoriana, 1991, xiii, 346 p.
- CONN, J.J. and L. SABBARESE (eds.), *Iustitia in Caritate: Miscellanea di studi in onore di Velasio De Paolis*, Città, del Vaticano, Urbaniana University Press, 2005, 548 p.
- CORD, R.L., *Separation of Church and State: Historical Fact and Current Fiction*, New York, NY, Lambeth Press, 1982, xv, 307 p.
- CORIDEN, J.A., T.J. GREEN, and D.E. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary*, commissioned by the CLSA, New York, NY/Mahwah, NJ, Paulist Press, 1985, 1152 p.
- D'ANTONIO, W.V., J.D. DAVIDSON, D.R. HOGE, and M.L. GAUTIER, *American Catholic Today: New Realities of Their Faith and Their Church*, Lanham, MD, Rowman & Littlefield, 2007, x, 204 p.

- DALY, L.J., *The Medieval University: 1200-1400*, New York, NY, Sheed and Ward, 1961, xiv, 241 p.
- DEELEY, R.P., *The Mandate for Those who Teach in Institutes of Higher Learning: An Interpretation of Canon 812 of the Code of Canon Law*, JCD diss., Romae, Pontificia Universitas Gregoriana, 1986, xxii, 215 p.
- DIGNAN, P.J., *A History of the Legal Incorporation of Catholic Church Property in the United States (1784-1932)*, Studies in American Church History, 14, PhD diss., Washington, DC, The Catholic University of America, 1933, viii, 291 p.
- DOYLE, J.A., *Civil Incorporation of Ecclesiastical Institutions: A Canonical Perspective*, JCD diss., Ottawa, ON, Saint Paul University, 1989, x, 235 p.
- DORAN, J., *Just Autonomy of Religious Institutes and Episcopal Authority from the Second Vatican Council to the Ninth Ordinary Synod of Bishops on Consecrated Life*, JCD diss., Ottawa, ON, Saint Paul University, 1998, xi, 282 p.
- DOVRE, P.J. (ed.), *The Future of Religious Colleges*, Grand Rapids, MI, William B. Eerdmans Publishing, 2002, xi, 368 p.
- DULLES, A., *The Catholicity of the Church*, Oxford, England, Clarendon Press, 1985, vii, 199 p.
- _____, *Models of the Church*, expanded edition, New York, NY, Doubleday Dell, 1987, 256 p.
- DUNN, B.K., *Sponsorship of Catholic Institutions: Particularly Healthcare Institutions by the Sisters of Providence in the Western United States*, JCD diss., Ottawa, ON, Saint Paul University, 1995, v, 272 p.
- DUQUESNE UNIVERSITY LAW SCHOOL, *Acts of the Colloquium-Public Ecclesiastical Juridic Persons and Their Civilly Incorporated Apostolates in the Catholic Church in the USA: Canonical-Civil Aspects*, Pontifical University of Saint Thomas Aquinas in Rome and Duquesne University School of Law in Pittsburgh, PA, Duquesne University of Law, 1998, iv, 355 p.
- ELLIS, J.T., *The Formative Years of The Catholic University of America*, Washington, DC, American Catholic Historical Association, 1946, xiv, 415 p.
- EUART, S.A., *Church-State Implications in the United States of Canon 812 of the 1983 Code of Canon Law*, Canon Law Studies No. 526, JCD diss., Washington, DC, The Catholic University of America, 1989, xii, 322 p.
- FOX, J. (ed.), *Render Unto Caesar: Church Property in Roman Catholic and Anglican Canon Law*, Rome, Pontifical University of Saint Thomas Aquinas the *Angelicum*, 2000, xi, 152 p.
- FROELE, B.T. and M.L. GAUTIER, *Catholicism USA: A Portrait of the Catholic Church in the United States*, prepared for the Center for Applied Research in the Apostolate (CARA) at Georgetown University, Maryknoll, NY, Orbis Books, 2000, xviii, 233 p.

- GAFFNEY, E. McG. and P.C. SORENSEN; H.R. GRIFFIN (ed.), *Ascending Liability in Religious and Other Nonprofit Organizations*, Macon, GA, Center for Constitutional Studies and Mercer University Press, 1984, xvi, 147 p.
- GAILLARDETZ, R.R., *Teaching with Authority: A Theology of the Magisterium in the Church*, Collegeville, MN, Liturgical Press, 1997, xv, 296 p.
- _____, *Witnesses to the Faith: Community, Infallibility, and the Ordinary Magisterium of Bishops*, New York, NY/Mahwah, NJ, Paulist Press, 1992, 238 p.
- GALLIN, A., *Negotiating Identity: Catholic Higher Education since 1960*, Notre Dame, IN, University of Notre Dame Press, 2000, 280 p.
- GALLIN, A. (ed.), *Ex Corde Ecclesiae: Documents Concerning Reception and Implementation*, Notre Dame, IN, University of Notre Dame Press, 2006, 479 p.
- _____, *Independence and the New Partnership in Catholic Higher Education*, Notre Dame, IN, University of Notre Dame Press, 1996, 178 p.
- _____, *American Catholic Higher Education: Essential Documents, 1967-1990*, Notre Dame, IN, University of Notre Dame University Press, 1992, xii, 448 p.
- GLEASON, P., *Contending with Modernity: Catholic Higher Education in the Twentieth Century*, New York, NY, Oxford University Press, 1995, xiii, 434 p.
- GONSORCIK, P.J., *The Canonical Status of Separately Incorporated Healthcare Apostolates in the United States: Current Status and Future Possibilities for the Public and Private Juridic Person*, JCD diss., Ottawa, ON, Saint Paul University, 2001, xv, 299 p.
- GUILDAY, P.K., *The Life and Times of John Carroll, Archbishop of Baltimore, 1735-1815*, Westminster, MD, Newman Press, 1954, x, 864 p.
- HASKINS, C.H., *The Rise of Universities*, New York, NY, Peter Smith, 1940, x, 134 p.
- HAUER, J.L., *The Juridical Status of Loras College – Dubuque, Iowa*, JCD diss., Roma, Pontificium Universitatem S. Thomae in urbe, 2005, 408 p.
- HAYES, E., *Rightful Autonomy of Life and Charism in the Proper Law of the Norbertine Order*, Canon Law Studies No. 532, JCD diss., Washington, DC, The Catholic University of America, 1990, xii, 588 p.
- HESBURGH, T.M. (ed.), *The Challenge and Promise of a Catholic University*, Notre Dame, IN, University of Notre Dame Press, 1994, 381 p.
- HESBURGH, T.M. with J. REEDY, *God, Country, Notre Dame*, New York, NY, Doubleday, 1990, xii, 331 p.
- HITE, J., S. HOLLAND and D. WARD (eds.), *A Handbook on Canons 573-746*, published under the auspices of the CLSA, Collegeville, MN, Liturgical Press, 1985, 400 p.
- HOFFMAN, F.J., *The Apostolic Constitution 'Ex corde Ecclesiae' and Catholic Universities in the United States*, JCD diss., Roma, Pontificium Athenaeum Sanctae Crucis, 1996, xvii, 282 p.

- HOPKINS, B.R., *The Law of Tax-Exempt Organizations*, 8th ed., Hoboken, NJ, John Wiley, 2003, xxii, 1106 p.
- HUELS, J.M., *Liturgy and Law: Liturgical Law in the System of Roman Catholic Canon Law*, Montréal, QU, Wilson & Lafleur, 2006, 249 p.
- HUNT, M.J., *Catholic Colleges: A New Counter-Culture*, New York, NY/Mahwah, NJ, Paulist Press, 1993, iii, 172 p.
- HUNT, T.C., E.A. JOSEPH, R.J. NUZZI, and J.O. GEIGER (eds.), *Handbook of Research on Catholic Higher Education*, Greenwich, CT, Information Age Publishing, 2003, xi, 363 p.
- INTERNATIONAL THEOLOGICAL COMMISSION, *Theses on the Relationship between the Ecclesiastical Magisterium and Theology*, Washington, DC, United States Catholic Conference, 1977, 18 p.
- KAITHARATH, A.L., *The Autonomy and Hierarchical Dependence of Religious Institutes According to the Code of Canon Law*, JCD diss., Rome, Pontificia Universitas Urbaniana, 2002, xvii, 213 p.
- KASLYN, R.J., *'Communion with the Church' and the Code of Canon Law: An Analysis of the Foundation and Implications of the Canonical Obligation to Maintain Communion with the Catholic Church*, Queenston, ON, Edwin Mellon Press, 1994, xii, 297 p.
- KAUFMAN, P.S., *Why You Can Disagree and Remain a Faithful Catholic*, new expanded and rev. ed., New York, NY, Crossroad, 1995, xvi, 222 p.
- LANGAN, J. P. (ed.), *Catholic Universities in Church and Society: A Dialogue on 'Ex corde Ecclesiae'*, Washington, DC, Georgetown University Press, 1993, 272 p.
- LARSON M.A. and C.S. LOWELL, *The Religious Empire: The Growth and Danger of Tax-Exempt Property in the United States*, Washington, DC, R. B. Luce, 1976, 281 p.
- LEGRAND, H. (ed.), *The Nature and Future of Episcopal Conferences*, Washington, DC, The Catholic University of America, 1988, 234 p.
- MAIDA, A.J., *Ownership, Control and Sponsorship of Catholic Institutions: A Practical Guide*, Harrisburg, PA, Pennsylvania Catholic Conference, 1975, xi, 67 p.
- MAIDA, A.J. and N.P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations: A Canon Law Handbook*, St. Louis, MO, The Catholic Health Association of the United States, 1984, xxii, 339 p.
- MAY, W.W. (ed.), *Vatican Authority and American Catholic Dissent*, New York, NY, Crossroad Publishing Co., 1987, vi, 208 p.
- MCLAUGHLIN, T.P. (ed.), *The Church and the Reconstruction of the Modern World*, Garden City, NY, Image Books, 1957, 433 p.
- MCGRATH, J.J., *Church and State in American Law: Cases and Materials*, Milwaukee, WI, Bruce Publishing, 1962, xviii, 414 p.
- _____, *Catholic Institutions in the United States: Canonical and Civil Law Status*, Washington, DC, The Catholic University of America, 1968, ix, 48 p.

- MICHIELS, G., *Principia generalia de personis in Ecclesia: commentarius libri I Codicis juris canonici: canones praeliminares 87-106*, 2nd ed., Tornaci, BEL, Desclée, 1955, xviii, 708 p.
- MILLER, J.H. (ed.), *Vatican II: An Interfaith Appraisal*, INTERNATIONAL THEOLOGICAL CONFERENCE, Notre Dame, IN, University of Notre Dame Press, 1966, xii, 656 p.
- MOREY, M.M. and J.J. PIDERIT, *Catholic Higher Education: A Culture in Crisis*, New York, NY, Oxford University Press, 2006, xiv, 450 p.
- MOOTS, P.R. and E.M. GAFFNEY, *Church and Campus: Legal Issues in Religiously Affiliated Higher Education*, Notre Dame, IN, University of Notre Dame Press, 1979, xv, 207 p.
- MURPHY, J.P., *Visions and Values in Catholic Higher Education*, Kansas City, MO, Sheed & Ward, 1991, xviii, 234 p.
- MURPHY, T.J., *A Catholic University: Vision and Opportunities*, Collegetown, MN, Liturgical Press, 2001, viii, 135 p.
- NEVILLE, G., *The Religious Superior's Council in the 1983 Code of Canon Law*, JCD diss., Ottawa, ON, Saint Paul University, 1988, xiv, 248 p.
- NEWMAN, J. H., *The Idea of a University*, London, EN, Longmans, 1891, xx11, 527 p.
- NUESSE, C.J., *The Catholic University of America: A Centennial History*, Washington, DC, The Catholic University of America, 1990, xx, 508 p.
- O'BRIEN, D.J., *From the Heart of the American Church: Catholic Higher Education and American Culture*, Maryknoll, NY, Orbis Books, 1994, xxii, 240 p.
- O'BRIEN, G.D., *The Idea of a 'Catholic' University*, Chicago, IL, The University of Chicago Press, 2002, 239 p.
- O'CONNELL, D.M., *An Analysis of Canon 810 of the 1983 Code of Canon Law and Its Application to Catholic Universities and Institutes of Higher Learning in the United States*, Canon Law Studies No. 536, JCD diss., Washington, DC, The Catholic University of America, 1990, iv, 292 p.
- O'CONNELL, D.M. (ed.), *Ex corde Ecclesiae: A Conversation "From the Heart of the Church" September 18, 1999*, Washington, DC, The Catholic University of America, 1999, 60 p.
- O'DONOVAN, L.J. (ed.), *Cooperation Between Theologians and the Ecclesiastical Magisterium*, A Report of the Joint Committee of THE CANON LAW SOCIETY OF AMERICA and THE CATHOLIC THEOLOGICAL SOCIETY OF AMERICA, Washington, DC, CLSA, 1982, viii, 189 p.
- OCHOA, X. (ed.), *Index verborum cum documentis Concilii Vaticani Secundi*, Roma, Commentarium pro Religiosis, 1967, 847 p.
- _____, *Index verborum ac locutionum Codicis iuris canonici*, 2nd complete edition, Città del Vaticano, Liberia editrice Lateranense, 1984, xv, 592 p.
- OLECK, H.L., *Nonprofit Corporations, Organizations & Associations*, Englewood Cliffs, NJ, Prentice-Hall, 1988, xxii, 1274 p.

- ÖRSY, L., *The Church Learning and Teaching: Magisterium, Assent, Dissent, Academic Freedom*, Wilmington, DE, Michael Glazier, 1987, 172 p.
- _____, *The Profession of Faith and the Oath of Fidelity: A Theological and Canonical Analysis*, Wilmington, DE, Glazier, 1990, 71 p.
- PADOVER, S.K., *The Complete Jefferson*, Freeport, NY, Books for Libraries Press, 1943, xxix, 1322 p.
- PEDERSEN, O., *The First Universities: 'Studium generale' and the Origins of University Education in Europe*, English translation by R. NORTH, Cambridge, UK, Cambridge University Press, 1997, xvi, 310 p.
- PELIKAN, J., *The Idea of the University: A Reexamination*, New Haven, CT, Yale University Press, 1992, x, 238 p.
- PFNAUSCH, E.G. (ed.), *Code, Community, Ministry*, 2nd rev. ed., Washington, DC, CLSA, 1992, vi, 145 p.
- PINHEIRO, A., *Bishop-Religious Relationship in the Apostolic Activities of the Diocese According to the Code of Canon Law*, JCD diss., Roma, Pontificia Universitas Lateranensis, 1986, 174 p.
- POSPISHIL, V.J., *Eastern Catholic Church Law*, Staten Island, NY, Saint Maron Publications, 1996, liv, 938 p.
- POWER, E.J., *A History of Catholic Higher Education in the United States*, Milwaukee, WI, Bruce Publishing, 1958, xiii, 383 p.
- PROVOST, J.H. (ed.), *Code, Community, Ministry*, Washington, DC, CLSA, 1983, vi, 116 p.
- _____, *The Church as Communion*, Washington, DC, CLSA, 1984, v, 245 p.
- RASHDALL, H., *The Universities of Europe in the Middle Ages*, new ed., F.M. POWICKE and A.B. EMDEN (eds.), London, UK, Oxford University Press, 1936, 3 vols.
- REESE, T.J. (ed.), *Episcopal Conferences: Historical, Canonical and Theological Studies*, Washington, DC, Georgetown University Press, 1989, xii, 296 p.
- _____, *A Flock of Shepherds: The National Conference of Catholic Bishops*, Kansas City, KS, Sheed & Ward, 1992, 360 p.
- ROBBERS, G. (ed.), *Church Autonomy: A Comparative Survey*, Frankfurt, Germany, Peter Lang, 2001, 716 p.
- ROBERTS, J.H. and J. TURNER, *The Sacred and the Secular University*, Princeton, NJ, Princeton University Press, 2000, xii, 184 p.
- ROCHE, M.W., *The Intellectual Appeal of Catholicism and the Idea of a Catholic University*, Notre Dame, IN, University of Notre Dame Press, 2003, x, 51 p.
- RUMMEL, L., *History of the Catholic Church in Wisconsin*, Madison, WI, Knights of Columbus-Wisconsin State Council, 1976, viii, 261 p.
- SCHACHNER, N., *The Mediaeval Universities*, New York, NY, F.A. Stokes Publishers, 1938, viii, 388 p.

- SHEA, J.G., *Life and Times of the Most Rev. John Carroll, Bishop and First Archbishop of Baltimore, Embracing the History of the Catholic Church in the United States, 1763-1815*, New York, NY, J.G. Shea, 1888, 695 p.
- _____, *History of the Catholic Church in the United States, from the Division of the Diocese of Baltimore, 1808, and Death of Archbishop Carroll, 1815, to the Fifth Provincial Council of Baltimore, 1843*, New York, NY, J.G. Shea, 1890, xvi, 734 p.
- SHEEHY, G. et al. (eds.), *The Code of Canon Law: Letter & Spirit, A Practical Guide to the Code of Canon Law*, prepared by the CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND in association with the CANADIAN CANON LAW SOCIETY, Collegetown, MN, Liturgical Press, 1995, xxv, 1060 p.
- SMITH, R., W. BROWN and N. REYNOLDS (eds.), *Sponsorship in the United States Context: Theory and Praxis*, Alexandria, VA, CLSA, 2006, vii, 151 p.
- STEINFELS, P., *A People Adrift: The Crisis of the Roman Catholic Church in America*, New York, NY, Simon & Schuster, 2003, xxi, 392 p.
- SULLIVAN, F.A., *Magisterium: Teaching Authority in the Catholic Church*, New York, NY/Mahwah, NJ, Paulist Press, 1983, 234 p.
- THE BENEDICTINE MONKS OF SOLESMES (selector/arranger), *Papal Teachings: The Lay Apostolate (Benedictus XIV- Pius XII)*, translated by a secular priest, Boston, MA, Daughters of St. Paul, 1961, 727 p.
- The Official Catholic Directory, 1817-2008*, New York, NY, P.J. Kenedy & Sons, 2008, 2089 p.
- TURNER, F.M. (eds.), *The Idea of a University: John Henry Newman*, New Haven, CT, Yale University Press, 1996, xxxiv, 367 p.
- VORGRIMLER, H. (gen. ed.), *Commentary on the Documents of Vatican II*, Freiburg, Herder and Herder, 1967-1969, 5 vols.
- WHITEHEAD, K.D., *Catholic Colleges and Federal Funding*, San Francisco, CA, Ignatius Press, 1988, 115 p.
- WILCOX, J.R. and I. KING (eds.), *Enhancing Religious Identity: Best Practices for Catholic Campuses*, Washington, DC, Georgetown University Press, 2000, xxv, 389 p.
- WILSON, J.F. and D.L. DRAKEMAN (eds.), *Church and State in American History*, 3rd expanded and updated ed., Boulder, CO, Westview Press, 2003, ix, 438 p.
- WOOD, J.E., E.B. THOMPSON, and R.T. MILLER, *Church and State In Scripture and Constitutional Law*, Waco, TX, Baylor University Press, 1958, 171 p.
- YZERMANS, V.A. (ed.), *All Things in Christ: Selected Encyclicals and Documents of Saint Pius X*, Westminster, MD, Newman Press, 1954, xviii, 275 p.
- ZOLLMANN, C., *American Church Law*, St. Paul, MN, West Publishing, 1933, xv, 675 p.
- ZORZI, D., *Towards Altering Canonical Status: A Case for Catholic Universities and Colleges in Canada*, JCD diss., Ottawa, ON, Saint Paul University, 1995, 269 p.

III-ARTICLES

- ABBASS, J., "The Temporal Goods of the Church: A Comparative Study of the Eastern and Latin Codes of Canon Law," in *Periodica*, 83 (1994), pp. 669-714.
- ALESANDRO, J., "Overview of the Revised Code of Canon Law," in *The Catholic Lawyer*, 29 (1984), pp. 165-186.
- _____, "The Revision of the Code of Canon Law: A Background Study," in *Studia canonica*, 24 (1990), pp. 92-101.
- ANTON, A., "The Theological Status of Episcopal Conferences," in *The Jurist*, 48, (1988), pp. 185-219.
- ARAUJO, R.J., "*Ex corde Ecclesiae* and Mission-Centered Hiring in Roman Catholic Colleges and Universities: To Boldly Go Where We Have Gone Before," in *The Journal of College and University Law*, 25 (1999), pp. 835-864.
- ARMOUR, R.A., "American Higher Education and the Churches: A United Methodist Perspective on Catholic Identity and Methodist Ethos," in *The Jurist*, 59 (1999), pp. 98-110.
- ARRIETTA, J.I., "The Active Subject of the Church's Teaching Office," in *Studia canonica*, 23 (1989), pp. 243-256.
- BANKS, R., "Promoting Choice in Education," in *Origins*, 24 (1994), pp. 444-445.
- BASSETT, W., "Relating Canon and Civil Law," in *The Jurist*, 44 (1984), pp. 3-18.
- BEAL, J.P., "The Exercise of the Power of Governance by Lay People: State of the Question," in *The Jurist*, 55 (1995), pp. 1-92.
- _____, "Where's the Body? Where's the Blood? The Teaching Authority of the Diocesan Bishop and the Rights of Catholic School Teachers," in *CLSA Proc*, 57 (1995), pp. 91-128.
- _____, "Catholic Theological Faculties in the United States," in *Studia canonica*, 37 (2003), pp. 443-466.
- BELLACOSA, J.W., "*Ex Corde Ecclesia*: Reflections, Perspectives and Proposals," in *The Catholic Lawyer*, 40 (2001), pp. 313-322.
- BERBUSSE, E.J., "The Catholic College vs. Academic Freedom," in *Homiletic and Pastoral Review*, 86 (1986), pp. 11-20.
- BERNARDIN, J., "The Purpose of a National Bishops' Conference," in *Origins*, 9 (1979), pp. 1-11.
- _____, "Catholic Institutions and Their Identity," in *Origins*, 21 (1991), pp. 33-36.
- BEVILACQUA, A., "Catholic Schools in the 21st Century," in *Origins*, 19 (1989), pp. 396-400.
- _____, "Diversity among Catholic Universities," in *Origins*, 29 (2000), pp. 475-477.

- BEYER, J., "Ad documentum 'Notae Directivae pro Mutuis Relationibus inter Episcopos et Religiosos in Ecclesia' Adnotatione," in *Periodica*, 68 (1979), pp. 563-611.
- _____, "Religious in the New Code and their Place in the Local Church," in *Studia canonica*, 17 (1983), pp. 171-183.
- _____, "De novo iure circa vitae consecratae instituta et eorum sodales quaesita et dubia solvenda," in *Periodica*, 73 (1984), pp. 411-450.
- _____, "Religious and the Local Church," in *The Way Supplement*, 50 (1984), pp. 80-98.
- _____, "Le nouveau Code de droit canonique: esprit et structures," in *Nouvelle revue théologique*, 106 (1984), pp. 360-382, 566-583.
- BORRAS, A., "The Canonical Limits of Catholic Identity: Some Problematical Situations," in *Concilium*, 5 (1994), pp. 47-59.
- BOUCHER, M.-A., "Un nouveau droit proposé aux Instituts religieux," in *Studia canonica*, 11 (1977), pp. 351-388.
- BOUCHET, P., "La hiérarchie et l'apostolat des religieux," in *Revue de droit canonique*, 18 (1968), pp. 105-130.
- BUECHLEIN, D.M., "Catholic School Values," in *America*, 180:14 (1999), pp. 7-9.
- BUELT, E. and C. GOLDBERG, "Canon Law & Civil Law Interface: Diocesan Corporations," in *The Catholic Lawyer*, 36 (1995), pp. 69-81.
- BURNS, E.M., "How is the University Catholic," in *Current Issues in Catholic Higher Education*, 8:2 (1988), pp. 10-14.
- BYRON, W.J., "A Catholic Reflection on Academic Freedom," in *Origins*, 18 (1989), pp. 598-604.
- _____, "Catholic Education in a Pluralistic Society," in *Origins*, 19 (1990), pp. 669-675.
- _____, "Essential Ingredients for Trusteeship in Today's Catholic Colleges and Universities," in *Current Issues in Catholic Higher Education*, 20:2 (2000), pp. 89-93.
- CACCIAVILLAN, A., "On Responding to Questions of Catholic Identity," in *Origins*, 22 (1992), pp. 406-407.
- CAMPBELL, P., "The New Code of Canon Law and Religious: Some Civil Law Considerations," in *The Jurist*, 44 (1984), pp. 81-109.
- CATHOLIC THEOLOGICAL SOCIETY OF AMERICA, "Theologians, Catholic Higher Education and the *Mandatum*," A Report by the Ad Hoc Committee on the *Mandatum*, in *Origins*, 30 (2000), pp. 244-255.
- CONLIN, D.C., "The McGrath Thesis and Its Implication on a Canonical Understanding of the Ownership of Ecclesiastical Goods," in *CLSA Proc*, 64 (2002), pp. 73-96.
- CONLOGUE, W. and W. BROUGHTON, "Beyond the *Mandatum: Ex corde Ecclesiae* and American Catholic Higher Education," in *Current Issues in Catholic Higher Education*, 22 (2001), pp. 7-21.

- CONN, J.J., "Bishops and the Apostolates of Religious," in *CLSA Proc*, 63 (2001), pp. 49-83.
- CORIDEN, J., "The Teaching Mission of the Church-A Commentary," in *The Living Light*, 20 (1984), pp. 119-145.
- CURRAN, C.E., "Catholic Schooling: The Church and the University," in *Christian Century*, 111:14 (1994), pp. 419-421.
- _____, "The Catholic Identity of Catholic Institutions," in *Theological Studies*, 58 (1997), pp. 90-109.
- DALY, E.F., "The Needed Mandate to Teach," in *CLSA Proc*, 46 (1984), pp. 114-129.
- DANNEELS, G., "The Dynamics of a Catholic University," in *Origins*, 30 (2001), pp. 557-564.
- _____, "The Catholic University," in *Current Issues in Catholic Higher Education*, 21:2 (2001), pp. 3-16.
- D'ARCY, J.M., "Achieving *Ex corde Ecclesiae*'s Goals," in *Origins*, 29 (1999), pp. 236-242.
- DEELEY, R.P., "An Interpretation of Canon 812," in *CLSA Proc*, 50 (1988), pp. 70-86.
- DI NOIA, J.A., "Ecclesiology of Communion and Catholic Higher Education," in *Origins*, 29 (1999), pp. 268-272.
- DIPIETRO, M., "Changes in Governance of Catholic Colleges and Universities: Some Practical Observations," in *Current Issues in Catholic Higher Education*, 11:2 (1991), pp. 8-13.
- DOMINIC, A., "Charism, Charisms, and Faddism," in *Review for Religious*, 53 (1994), pp. 43-57.
- DRAHMAN, T., "Sponsorship," in *Current Issues in Catholic Higher Education*, 11:2 (1991), pp. 26-27.
- DULLES, A., "The Teaching Authority of Bishops' Conferences," in *America*, 148 (1983), pp. 453-455.
- _____, "The Mandate to Teach," in *America*, 158 (1988), pp. 293-295.
- _____, "What is the Role of a Bishops' Conference?" in *Origins*, 17 (1988), pp. 790-796.
- _____, "Episcopal Conferences: Their Teaching Authority," in *America*, 162 (1990), pp. 7-9.
- _____, "The Teaching Mission of the Church and Academic Freedom," in *America*, 62 (1990), pp. 397-402.
- EGAN, R.J., "Can a University be Catholic?" in *Commonweal*, 123 (1996), pp. 11-14.
- ELLIS, J.T., "American Catholics and the Intellectual Life," in *Thought*, 30 (1955), pp. 351-388.

- ELLIS, J.T., "The Catholic Church and Her Universities: A View From History," in *Current Issues in Catholic Higher Education*, 8:1 (1987), pp. 3-9.
- _____, "Judgment and Justice," in *Current Issues in Catholic Higher Education*, 22:1 (2001), pp.3-6.
- ESSELMAN, T., "The Study of Episcopal Conferences: An Application of the Principle of Functionality," in *The Jurist*, 51 (1991), pp. 311-325.
- EUART, S.A., "Council, Code, and Laity: Implications for Lay Ministry," in *The Jurist*, 47 (1987), pp. 492-505.
- _____, "Implications of Canon 812 for Federal Constitutionality of Government Aid to Catholic Colleges and Universities," in *The Jurist*, 50 (1990), pp. 167-197.
- _____, "Theologians and the Mandate to Teach," in *Origins*, 23 (1993), pp. 465- 472.
- FERME, B., "*Ad tuendam fidem*: Some Reflections," in *Periodica*, 88 (1999), pp. 579-606.
- FINN, D., "Theologian Addresses the Draft Guidelines for the *Mandatum*," in *Origins*, 30 (2000), pp. 429-430.
- FIORENZA, J., "Vatican Approves U.S. *Ex corde Ecclesiae* Document," in *Origins*, 30 (2000), pp. 65-67.
- _____, "The Church's Multifaceted Ministry of Reconciliation," in *Origins*, 30 (2000), pp. 97-100.
- _____, "Statement After Passage of *Mandatum* Guidelines," in *Origins*, 31 (2001), p. 140.
- FITZMYER, J.A., "John Paul II: Academic Freedom and the Magisterium," in *America*, 141 (1979), pp. 247-249.
- GALANTE, J.A., "The Relationship of the Diocesan Bishop and Institutes of Pontifical Right," in *CLSA Proc*, 56 (1994), pp. 90-96.
- GALLEN, J.F., "Authority and Autonomy," in *Review for Religious*, 43 (1984), pp. 594-599.
- GALLIN, A., "Sponsorship as Partnership," in *Current Issues in Catholic Higher Education*, 4:2 (1984), pp. 7-10.
- _____, "Catholic College and University Presidents Respond to Proposed Vatican Schema," in *Origins*, 15 (1986), pp. 697-704.
- _____, "On the Road Toward a Definition of a Catholic University," in *The Jurist*, 48 (1988), pp. 536-558.
- _____, "Catholic Higher Education and the 1983 Code of Canon Law," in *CLSA Proc*, 52 (1990), pp. 134-151.
- GALVIN, J. P., "*Ex corde Ecclesiae*: Perspectives on the Document," in *The Jurist*, 59 (1999), pp. 111-118.
- GAUTHIER, A., "Juridical Persons in the Code of Canon Law," in *Studia canonica*, 25 (1991), pp. 77-92.

- GHIRLANDA, G., "De Episcoporum Conferentia deque exercitio potestatis magisterii," in *Periodica*, 76 (1987), pp. 573-604.
- _____, "Iusta autonomia et exemptio institutorum religiosorum: fundamenta et extensio," in *Periodica*, 78 (1989), pp. 113-142.
- _____, "Relations Between Religious Institutes and Diocesan Bishops," in *Consecrated Life*, 14:1 (1989), pp. 37-71.
- GIBBONS, R.E., "Sponsors and Directors: An Important Conversation," in *Current Issues in Catholic Higher Education*, 11:2 (1991), pp. 23-25.
- GRAHAM, J., "The Relationship between Religious Institutes and the Diocese," in *CLSA Proc*, 60 (1998), pp. 82-90.
- GRAMUNT, I., "Autonomy and Identity of Catholic Universities in the United States," in *Ius Ecclesiae*, 4 (1992), pp. 463-493.
- GRANFIELD, P., "The Concept of Church as Communion," in *Origins*, 28 (1999), pp. 753, 755-758.
- GRAUWEN, W.M., "De Vitae van Norbertus," in *Analecta Praemonstratensia*, 42 (1966), pp. 322-326.
- GREEN, T.J., "Persons and Structures in the Church: Reflections on Selected Issues in Book II," in *The Jurist*, 45 (1985), pp. 24-94.
- _____, "The Authority of Episcopal Conferences: Some Normative and Doctrinal Considerations," in *CLSA Proc*, 51 (1989), pp. 123-136.
- _____, "The Church's Teaching Mission: Some Aspects of the Normative Role of Episcopal Conferences," in *Studia canonica*, 27 (1993), pp. 23-57.
- _____, "The Teaching Function of the Church: A Comparison of Selected Canons in the Latin and Eastern Codes," in *Studia canonica*, 55 (1995), pp. 93-140.
- _____, "*Lex Fundamental*is: The Law Within," in *CLSA Proc*, 67 (2005), pp. 21-76.
- GREINACHER, N., "Catholic Identity in the Third Epoch of Church History," in *Concilium*, 5 (1994), pp. 3-14.
- GRENNAN, J., "Freeing the Catholic College from Juridical Control by the Church," in *Journal of Higher Education*, 40 (1969), pp. 101-107.
- GRISEZ, G., "The Duty and Right to Follow One's Judgment of Conscience," in *Homiletic & Pastoral Review*, 89:7 (1989), pp. 10-20.
- GROS, J., "The Ecumenical Component to Catholic Identity in Higher Education," in *Current Issues in Catholic Higher Education*, 22:2 (2002), pp. 61-71.
- HAGAN, C.H., "Reclaiming the Sacred: The Challenge of 'The Apostolic Constitution on Catholic Universities' to Educate the Whole Person," in *Seminarium*, 32 (1992), pp. 249-257.
- HARRINGTON, P., "Civil and Canon Law Issues Affecting American Catholic Higher Education 1948-1998: An Overview and the ACCU Perspective," in *Current Issues in Catholic Higher Education*, 20:1 (1999), pp. 45-87.

- HAYES, M.A., "As Stars for All Eternity: A Reflection on Canons 793-795," in *Studia canonica*, 23 (1989), pp. 409-427.
- HEFT, J.L., "Theology in a Catholic University," in *Origins*, 25 (1995), pp. 243-248.
- _____, "Catholic Universities as Open Circles: Academic Freedom," in *Origins*, 35 (2006), pp. 660-663.
- HEFT, J.L. and F.P. PESTELLO, "Hiring Practices in Catholic Colleges and Universities," in *Current Issues in Catholic Higher Education*, 20:1 (1999), pp. 89-97.
- HELLWIG, M.K., "The American Catholic University and the Apostolic Constitution *Ex corde Ecclesiae*: A History," in *Current Issues in Catholic Higher Education*, 20:1 (1999), pp. 21-40.
- _____, "Higher Education and the Catholic Church: Some Underlying Assumptions," in *Current Issues in Catholic Higher Education*, 20:2 (2000), pp. 27-39.
- _____, "Definition of Mandatum Is Still Vague," in *Catholic International*, 11:2 (2000), p. 204.
- _____, "Globalization: the Challenge Catholic Universities Cannot Ignore," in *Current Issues in Catholic Higher Education*, 23:1 (2003), pp. 37-44.
- HERRANZ, J., "The Personal Power of Governance of the Diocesan Bishop," in *CLSA Proc*, 49 (1987), pp. 16-34.
- HICKEY, J.A., "The Bishop as Teacher," in *The Ministry of Bishop: Papers from the Collegeville Assembly*, THE BISHOPS' ASSEMBLY FOR PRAYER AND REFLECTION ON EPISCOPAL MINISTRY, 13-23 June 1982, St. John's University, Collegeville, MN, Washington, DC, USCC (1982), pp. 15-20.
- _____, "Group Wants Georgetown's Catholic Status Revoked," in *Origins*, 21 (1992), pp. 506-507.
- HITE, J., "Church Law on Property and Contracts," in *The Jurist*, 44 (1984), pp. 117-133.
- HOLTSCHNEIDER, D.H. and M.M. MOREY, "Relationship Revisited: Changing Relationships between U.S. Catholic Colleges and Universities and Founding Religious Congregations (and various responses)," in *Current Issues in Catholic Higher Education*, 21:1 (2000), pp. 3-65.
- HOYE, W.J., "The Religious Roots of Academic Freedom," in *Theological Studies*, 58 (1997), pp. 409-428.
- HUBBARD, H., "The Collaboration Needed by Bishops and Religious," in *Origins*, 19 (1989), pp. 332-336.
- HUELS, J.M., "The Demise of Religious Exemption," in *The Jurist*, 54 (1994), pp. 40-55.
- _____, "Canon 812: Questions on the Applicability of the Law," in *Roman Replies and CLSA Advisory Opinions*, 2001, pp. 90-93.
- _____, "Permissions, Authorizations and Faculties in Canon Law," in *Studia canonica*, 36 (2002), pp. 25-58.

- HUELS, J.M., "Determining the Correct Canonical Rules for Ambiguous Administrative Acts," in *Studia canonica*, 37 (2003), pp. 5-53.
- _____, "The Juridic Status of Catholic Faculties of Theology: Overview of the Universal Law," in *Studia canonica*, 37 (2003), pp. 301-322.
- HUGER, B.C., "Canon Law Issues of Sponsorship, Governance, Control and Alienation as They Relate to Catholic Entities in the United States: A Diocesan Attorney's Perspective," in *The Catholic Lawyer*, 41 (2001), pp. 19-26.
- HUGHES, R.T., "The Idea of a Christian University," in *Current Issues in Catholic Higher Education*, 21:2 (2001), pp. 83-94.
- HUNT, J.F., "Look Before You Sign: *Ex corde* and College Trustees," in *Commonweal*, 127:19 (2000), pp. 11-12.
- JANOSIK, C.M., "Catholic Higher Education: By our Ties Must We Be Known," in *Current Issues in Catholic Higher Education*, 20:2 (2000), pp. 41-55.
- JENKINS, J., "The Role of a Catholic University," in *Origins*, 35 (2005), pp. 277-281.
- _____, "Academic Freedom: Statement After Consultation," *Origins*, 35 (2006), pp. 751-754.
- JUKES, J., "A Commentary on the 'Notae directivae' for the Mutual Relations Between Bishops and Religious in the Church," in *Clergy Review*, December (1978), pp. 472-477; continued in *Clergy Review*, January (1979), pp. 21-31.
- KASLYN, R.J., "Canon 812: Role of College Officials in Obtaining Faculty *Mandatum*," in *Roman Replies and CLSA Advisory Opinions*, (2004), pp. 144-145.
- KAUFFMAN, C.J., "Mediating Catholic Identity: The Catholic University of America, The First Fifty Years," in *The Jurist*, 59, (1999), pp. 119-132.
- KEALY, R., "Canonical Aspects of Catholic Identity in the Institutional Setting," in *CLSA Proc*, 61 (1999), pp. 195-209.
- KEISS, I., "The Relationship Between an Institution's Trustees and Its Sponsoring Religious Community," in *Current Issues in Catholic Higher Education*, 11:2 (1991), pp. 28-30.
- KENNEDY, R.T., "McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil-Law Status of Church-Related Institutions in the United States," in *The Jurist*, 50 (1990), pp. 351-401.
- _____, "The Declaration on Religious Liberty Thirty Years Later: Challenges to the Church-State Relationship in the United States," in *The Jurist*, 55 (1995), pp. 479-503.
- KILMARTIN, E.J., "Lay Participation in the Apostolate of the Hierarchy," in *The Jurist*, 41 (1981), pp. 89-116.
- KING, A.F. and K.W. ALEXANDER, "The Reassertion of Church Doctrine in American Higher Education: The Legal and Fiscal Implications of the *Ex corde Ecclesiae* for Catholic Colleges and Universities in the United States," in *Journal of Law and Education*, 29:2 (2000), pp. 149-173.

- KIRTLAND, R., "Authority and Academic Freedom," in *America*, 156 (1987), pp. 348-349.
- KOMONCHAK, J., "On the Authority of Bishops' Conferences," in *America*, 179:6 (1998), pp. 7-10.
- KRUKOWSKI, J., "The Juridical Personality of the Church in Relation to the State," in *Studia canonica*, 14 (1980), pp. 377-389.
- LAGHI, P., "True Universities That Also are Catholic," in *Origins*, 21 (1991), pp. 325-328.
- _____, "Trust, Cooperation and Dialogue," in *Origins*, 25 (1995), pp. 177-179.
- _____, "Catholic Higher Education: Practice and Promise," in *Seminarium*, 35 (1995), pp. 594-603.
- _____, "Vatican Observations on U.S. Bishops' *Ex corde Ecclesiae* Application Document," in *Origins*, 27 (1997), pp. 53-57.
- LANDY, T.M., "Catholic Studies at Catholic Colleges and Universities," in *America*, 178:1 (1998), pp. 12-17.
- LAVELLE, M.J., "What is Meant by a 'Catholic' University?" in *America*, 170 (1994), pp. 4-7.
- LEIBRECHT, J., "The Bishop, the University, and *Ex corde Ecclesiae*," in *Origins*, 23 (1994), pp. 605-608.
- _____, "Implementing *Ex corde Ecclesiae*," in *Origins*, 24 (1994), pp. 445-446.
- _____, "Dialogue Themes: Bishops and University Presidents," in *Origins*, 24 (1995), pp. 577-582.
- LESSARD, R., "Theological and Canonical Reflections on Bishops' Conferences," in *Origins*, 18 (1988), pp. 146-151.
- LLOBELL, J., "La revocación administrativa de la 'missio canonica docendi' por falta de unidad con la autoridad competente," in *Fidelium iura*, 13 (2003), pp. 185-201.
- LYNCH, J., "The Changing Role of Bishops," in *The Jurist*, 39 (1979), pp. 289-312.
- MAIDA, A.J., "Canonical and Legal Fallacies of the McGrath Thesis on Reorganization of Church Entities," in *The Catholic Lawyer*, 19 (1973), pp. 275-286, 287-299.
- _____, "'Sponsoring Congregations' Answer to McGrath Thesis: Corporate Control," in *Hospital Progress*, 61:4 (1980), pp. 66-68, 80-84.
- MALONE, J., "The Religious Dimension of Catholic Education," in *Chicago Studies*, 28 (1989), pp. 264-276.
- _____, "Reflections on Applying the Apostolic Constitution," in *Origins*, 23 (1993), pp. 472-474.
- _____, "Sharing Responsibility: University and Bishop," in *Origins*, 24 (1995), pp. 580-582.

- MALVAUX, B., "Les professeurs et la mission canonique, le mandat d'enseignement, la profession de foi, le serment de fidélité, le *nihil obstat*," in *Studia canonica*, 37 (2003), pp. 521-548.
- MCBRIEN, R.P., "Academic Freedom in Catholic Universities: The Emergence of Party Line," in *America*, 159 (1988), pp. 454-458.
- _____, "Why I Shall Not Seek a Mandate," in *America*, 182:4 (2000), pp. 14-16.
- _____, "Theologians at Risk: *Ex corde* and Catholic Colleges," in *Academe*, J-F (2001), pp. 13-16.
- MCCREADY, W., "Catholic Schools and Catholic Identity: Stretching the Vital Connection," in *Chicago Studies*, 28 (1989), pp. 217-231.
- MCDONOUGH, E., "Religious Superiors and Government," in *The Way Supplement*, 50 (1984), pp. 61-70.
- _____, "Canonical Considerations of Autonomy and Hierarchical Structure," in *Review for Religious*, 45 (1986), pp. 669-690.
- _____, "The *Potestas* of Canon 596," in *Antonianum*, 63 (1988), pp. 551-606.
- MCGLYNN, J.V., "Religious Communities on the College Campus: 'Presence' vs. Control," in *America*, 127 (1972), pp. 365-367.
- MCGRATH, J., "Canon Law and American Church Law: A Comparative Study," in *The Jurist*, 18 (1958), pp. 260-278.
- MCHUGH, J., "Bishops and Catholic Higher Education," in *Origins*, 27 (1997), pp. 179-182.
- MCMANUS, F.R., "Academic Freedom and the Catholic University of America," in *America*, 160 (1989), pp. 506-509.
- _____, "Report on a Study of the Profession of Faith and Oath of Fidelity," in *CLSA Proc*, 53 (1991), pp. 190-220.
- MILLER, J.M., "Catholic Universities and Their Catholic Identity," in *Origins*, 35 (2005), pp. 451-458.
- MODDE, M.M., "Lay Governance in Catholic Institutions," in *CLSA Proc*, 54 (1992), pp. 185-194.
- MONAN, J.D. and E.A. MALLOY, "*Ex corde Ecclesiae* Creates an Impasse," in *America*, 180:3 (1999), pp. 6-12.
- MORLINO, R., "Reflections on *Ex corde Ecclesiae*," in *Origins*, 29 (2000), pp. 478-480.
- MORRISEY, F.G., "The Apostolate of Religious According to the New Code," in *Australasian Catholic Review*, 60 (1983), pp. 380-391.
- _____, "Decisions of Episcopal Conferences in Implementing the New Law," in *Studia canonica*, 20 (1986), pp. 105-121.
- _____, "Juridic Status: Canonical Provisions, Possible Applications," in *Health Progress*, 67 (1986), pp. 41-45.

- MORRISEY, F.G., "What Makes an Institution *Catholic*?" in *The Jurist*, 47 (1987), pp. 531-544.
- _____, "The Directory for the Administration of Temporal Goods in Religious Institutes," in *Unico Ecclesiae Servitio: Canonical Studies Presented to Germain Lesage, OMI, on the Occasion of his 75th Birthday and 50th Anniversary of his Presbyteral Ordination*, M. THÉRIAULT and J. THORN (eds.), FACULTY OF CANON LAW, Ottawa, ON, Saint Paul University, 1991, 355 p.
- MURPHY, D.J., "Catholic Education towards the Third Millennium," in *Grail*, 8 (1992), pp. 70-91.
- MURRAY, D., "The Legislative Authority of the Episcopal Conference," in *Studia canonica*, 20 (1986), pp. 33-47.
- NEDUNGATT, G., "The Teaching Function of the Church in Oriental Canon Law," in *Studia canonica*, 23 (1989), pp. 39-60.
- "New Norms for Catholic Higher Education: Unworkable and Dangerous," Editorial in *America*, 179:15 (1998), pp. 3-4.
- NOËL, C., "Le Statut juridique des institutions de théologie et de sciences religieuses au Canada," in *Studia canonica*, 37 (2003), pp. 411-442.
- NOONAN, J., "From Equality to Leadership: Catholic Universities," in *Origins*, 30 (2001), pp. 585-588.
- O'BRIEN, D.J., "The Church and Catholic Higher Education," in *Current Issues in Catholic Higher Education*, 13:2 (1993), pp. 14-25.
- O'CONNELL, D.M., "The Norms Implementing *Ex corde Ecclesiae* in the United States: Implications for Dioceses," in *CLSA Proc*, 62 (2000), pp. 217-232.
- O'CONNOR, B., "The Ten Top Reasons for Attending a Catholic College/University," in *Current Issues in Catholic Higher Education*, 20:2 (2000), pp. 117-118.
- O'CONNOR, J., "The Bishop as Teacher of the Faith," in *Origins*, 18 (1989), pp. 682-686.
- O'HARE, J.A., "The American Catholic University: Pluralism and Identity," in *Current Issues in Catholic Higher Education*, 8:2 (1988), pp. 30-34.
- _____, "The Vatican and Catholic Universities," in *America*, 160 (1989), pp. 503-505.
- ÖRSY, L., "Hierarchy and Religious: Responsibilities and Rights," in *The Way Supplement*, 33 (1978), pp. 115-125.
- _____, "The Mandate to Teach Theological Disciplines: Glosses on Canon 812 of the New Code," in *Theological Studies*, 44 (1983), pp. 476-488.
- _____, "Reflections on the Text of a Canon," in *America*, 154 (1986), pp. 396-399.
- _____, "Episcopal Conferences: Their Theological Standing and Their Doctrinal Authority," in *America*, 155 (1986), pp. 282-285.
- _____, "Magisterium: Assent and Dissent," in *Theological Studies*, 48 (1987), pp. 473-497.

- ÖRSY, L., "Episcopal Conferences: Report on a Meeting," in *America*, 158 (1988), pp. 119-122.
- _____, "Profession of Faith and the *Oath of Fidelity*," in *America*, 160 (1989), pp. 345-347.
- _____, "Bishops and Universities: Dominion or Communion," in *America*, 169:16 (1993), pp. 11-16.
- _____, "How to Relate Theology and Canon Law," in *Origins*, 22 (1993), pp. 43-46.
- _____, "Episcopal Conferences and the Power of the Spirit," in *The Jurist*, 59 (1999), pp. 409-431.
- PAGÉ, R., "Le Document sur la profession de foi et le serment de fidélité," in *Studia canonica*, 24 (1990), pp. 51-68.
- _____, "La Responsabilité des Évêques dans l'enseignement: le Mandat," in *Ius Ecclesiae*, 5 (1993), pp. 699-717.
- _____, "From the University which is Really Catholic to a University which is Legally Catholic," in *Concilium*, 5 (1994), pp. 91-99.
- PILARCZYC, D., "Academic Freedom: Church and University," in *Origins*, 18 (1988), pp. 57-59.
- _____, "What is a Catholic School?" in *Origins*, 28 (1999), pp. 405-408.
- _____, "A Catholic University and Its Trustees," in *Origins*, 31 (2001) pp. 361-364.
- PITTAU, G., "Characteristics of Catholic Universities," in *Origins*, 29 (1999), pp. 165-169.
- _____, "Catholic University in the 21st Century," in *Origins*, 29 (2000), pp. 561-566.
- PREE, H., "On Juridic Acts and Liability in Canon Law," in *The Jurist*, 58 (1998), pp. 41-83, 479-514.
- PROVOST, J.H., "Structuring the Church as a *Communio*," in *The Jurist*, 36 (1976), pp. 191-245.
- _____, "Canons 810, 812, 833: Relationship of Bishop to University Authorities," in *Roman Replies and CLSA Advisory Opinions 1985*, pp. 44-48.
- _____, "The Canonical Aspects of Catholic Identity and *Ex corde Ecclesiae*," in *Studia canonica*, 25 (1991), pp. 155-191.
- _____, "Approaches to Catholic Identity in Church Law," in *Concilium*, 5 (1994), pp. 14-25.
- _____, "The Sides of Catholic Identity," in *Current Issues in Catholic Higher Education*, 14:2 (1994), pp. 16-19.
- QUADE, Q., "A University Perspective on the *Oath of Fidelity*," in *America*, 160 (1989), pp. 348-349.
- RAHNER, K., "Theology and the Teaching Office," in *Doctrine and Life*, 31 (1981), pp. 622-634.

- RASCHKO, M., "Reflections on the Role of Theology in Light of the *Mandatum*" in *Seattle Theology and Ministry Review*, 1 (2001), pp. 51-59.
- RATZINGER, J., "The Church and the Theologian," in *Origins*, 15 (1986), pp. 761-770.
- RATZINGER, J., "The Bishop as Teacher of the Faith," in *Origins*, 18 (1989), pp. 681-682.
- REESE, T.J., "The Bishops' *Mandatum*," in *America*, 181:18 (1999), p. 3.
- RICHARD, J., "La liberté du théologien dans l'Église et à l'Université," in *Église et Théologie*, 12 (1981), pp. 357-388.
- RINERE, E.A., "Catholic Identity and the Use of the Name *Catholic*," in *The Jurist*, 62 (2002), pp. 131-158.
- RIORDAN, P., "Does the Church Teach?" in *Doctrine and Life*, 37 (1987), pp. 19-27.
- RODRIGUEZ, R., "Issues and Problems Affecting the Juridical Relationship between the Diocesan Bishop and the Catholic Universities," in *Philippines Canonical Forum*, 5 (2003), pp. 51-74.
- SALMI, R.P., "*Ex corde Ecclesiae* and Student Affairs Pedagogy," in *Current Issues in Catholic Higher Education*, 23:1 (2003), pp. 73-90.
- SAVAGE, T.J., "The Board's Role in Maintaining Institutional Identity," in *Current Issues in Catholic Higher Education*, 4:2 (1984), pp. 3-6.
- _____, "Trustees and Sponsors of Catholic Higher Education: What Should They be Talking About Together?" in *Current Issues in Catholic Higher Education*, 11:2 (1991), pp. 5-7.
- SCHROTH, R.A., "Tough Choices on Campus: The Catholic Character of a University," in *Commonweal*, 113 (1986), pp. 170-175.
- SECOND INTERNATIONAL CONGRESS OF DELEGATES OF CATHOLIC UNIVERSITIES, "L'Université Catholique dans le monde moderne," in *Periodica*, 62 (1973), pp. 625-657. English translation: "The Catholic University in the Modern World," *NCEA College Newsletter*, 35 (1973), pp. 1-10.
- SERITELLA, J., "The Code of Canon Law and Civil Law," in *The Catholic Lawyer*, 29 (1984), pp. 195-206.
- _____, "Problems of Ecclesiastical and Religious Organizations: Civil Law Perspective," in *The Jurist*, 48 (1984), pp. 51-66.
- SHANNON, P., "Canon Law/Civil Law," in *The Jurist*, 45 (1985), pp. 618-630.
- SMITH, K.S., "Don't Tread on Us: Canon Law and Catholic Universities," in *Commonweal*, 113 (1986), p. 173.
- SOBANSKI, R., "The Theology and Juridic Status of Episcopal Conferences at the Second Vatican Council," in *The Jurist*, 48 (1988), pp. 68-106.
- STEINFELS, M., "The Catholic Intellectual Tradition," in *Origins*, 25 (1995), pp. 169-173.
- STEINFELS, P., "Catholic Identity: Emerging Consensus," in *Origins*, 25 (1995), pp. 173-179.

- STRYNKOWSKI, J.J., "Theological Pluralism and Canonical Mandate," in *The Jurist*, 42 (1982), pp. 524-533.
- SULLIVAN, F.A., "The Ordinary Universal Magisterium," in *The Jurist*, 56 (1996), pp. 338-360.
- _____, "Recent Theological Observations on Magisterial Documents and Public Dissent," in *Theological Studies*, 58 (1997), pp. 509-515.
- _____, "The Teaching Authority of Episcopal Conferences," in *Theological Studies*, 63 (2002), pp. 472-493.
- TOLAND, T., "The Catholic in Catholic Higher Education," in *Origins*, 30 (2001), pp. 584-585.
- TRIPOLE, M., "Ex corde Ecclesiae: A History from Land O'Lakes to Now," in *Review for Religious*, 59:5 (2000), pp. 454-470.
- TRAUTMAN, D.W., "The Role of a Theologian at a Catholic University," *Origins*, 32 (2003), pp. 710-713.
- URRUTIA, F.J., "Administrative Power in The Church According to the Code of Canon Law," in *Studia canonica*, 20 (1986), pp. 253-273.
- _____, "De exercitio muneris docendi a Conferentiis Episcoporum," in *Periodica*, 76 (1987), pp. 605-636.
- VALDRINI, P., "Les universités catholiques: exercice d'un droit et contrôle de son exercice (canons 807-814)," in *Studia canonica*, 23 (1989), pp. 445-458.
- WALF, K., "Future Aspects of Catholic Identity," in *Concilium*, 5 (1994), pp. 127-135.
- WARNER, R.V., "The Relationship Between Trustees and Sponsoring Religious Congregations," in *Current Issues in Catholic Higher Education*, 11:2 (1991), pp. 14-16.
- WATSON, W.M., "Pastoral Reflections on Catholic Higher Education," in *America*, 180:18 (1999), pp. 7-10.
- WHITEHEAD, K.D., "Religiously Affiliated Colleges and American Freedom," in *America*, 156 (1987), pp. 96-98, 112.
- _____, "University Identity Crisis," in *Crisis*, 14 (1996), pp. 37-41.
- WILENS, M., "The Church Knowing and Acting: The Relationship between Theology and Canon Law," in *Louvain Studies*, 20 (1995), pp. 21-40.
- WILKES, P., "Catholic Spoken Here: A Report from the Academic Front," in *America*, 180:15 (1999), pp. 13-15.
- WILSON, C.H., "Ex corde Ecclesiae: The New Apostolic Constitution for Catholic Universities," in *The Catholic Lawyer*, 34 (1990), pp. 17-32.
- _____, "Ex corde Ecclesiae and American Higher Education: A Quandry or an Opportunity?" in *Current Issues in Catholic Higher Education*, 14:2 (1994), pp. 5-15.

- WILSON, C.H., "Implementation of *Ex corde Ecclesiae* in the United States: the Civil Law Implications for American Catholic Colleges," in *Current Issues in Catholic Higher Education*, 21:2 (2001), pp. 27-37.
- Wuerl, D.W., "ACADEMIC FREEDOM AND THE UNIVERSITY," in *The Priest*, 45 (1989), pp. 29-34.
- _____, "The Institutional Identity of a Catholic University," in *Origins*, 29 (1999), pp. 232-236.
- ZECH, C., "The Faculty and Catholic Institutional Identity," in *America*, 180:18 (1999), pp. 11-15.

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