

Catholic Universities and Juridic Persons

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Abstract

In this article, the author maintains that a Catholic university does not need to be established as a separate juridic person to be subject to rights and obligations in canon law. The Church's law allows a group of persons or things to join together as a juridic person to be recognized by the Church and to have rights and obligations in the Church. The provisions of canon law have consistently permitted the Church's oversight of Catholic universities through the establishment of a juridic bond with the institution or with its sponsor, or through the recognition of a special bond between the Church and Catholic universities which participate in the mission of the Church. Civil incorporation alone does not alter the university's canonical status. The author then briefly examines the implications of this issue for a Catholic university.

Introduction

A university is in the business of providing education in a variety of ways. Anyone associated with a university, from a member of the incoming freshman class to the chairperson of the university's Board of Trustees, should expect the university to adhere to the many civil law requirements that regulate its status as a university. Yet, these same persons may not be aware that a Catholic university is also subject to the Church's body of laws known as canon law.¹

In general, the Church's laws apply to physical persons, moral persons, and juridic persons, all with their own rights and obligations in canon law. Physical persons in canon law are those individuals who

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¹ See Melanie M. Morey and John J. Piderit, *Catholic Higher Education: A Culture in Crisis* (New York: Oxford University Press, 2006), 303-304.

have been baptized and incorporated into the Church.² Although many physical persons are involved with its operations, a Catholic university itself is not a physical person. The only entities that the 1983 *Code of Canon Law* defines as moral persons by divine law are the Catholic Church and the Apostolic See.³ However, just as persons or entities can come together to be established as corporations in civil law, canon law permits groups of persons or things to join together to be established as juridic persons. This category, therefore, has implications for a Catholic university. A juridic person is an artificial person in canon law. Similar to the manner in which a corporation is a legal person in civil law, a juridic person is a construct of canon law, through which a group of persons or things is recognized by the Church and has canonical rights and obligations. For example, by law, all dioceses⁴ and religious institutes,⁵ such as the Jesuits or the Sisters of Mercy, are constituted as juridic persons. Additionally, an association of the Christian faithful, such as the Legion of Mary or the married couples' group Teams of Our

² *Code of Canon Law, Latin-English Edition: New English Translation* (Washington, DC: Translated by Canon Law Society of America, 1998), c. 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." All subsequent English translations of canons from this code will be taken from this source unless otherwise indicated.

³ *Code of Canon Law*, c. 113§1: "The Catholic Church and the Apostolic See have the character of a moral person by divine ordinance itself." The code uses the terms "Apostolic See" and "Holy See" interchangeably. See c. 361: "In this Code, the term Apostolic See or Holy See refers not only to the Roman Pontiff but also to the Secretariat of State, the Council for the Public Affairs of the Church, and other institutes of the Roman Curia, unless it is otherwise apparent from the nature of the matter or the context of the words." However, the terms "Holy See" and "Apostolic See" are not synonymous with "the Vatican." For a discussion of the difference between the "Holy See" or "Apostolic See" and "the Vatican," see Kurt Martens, "The Position of the Holy See and the Vatican City State in International Relations," *University of Detroit Mercy Law Review* 83 (2006): 729-760.

⁴ *Code of Canon Law*, c. 373: "It is only for the supreme authority to erect particular churches; those legitimately erected possess juridic personality by the law itself." A diocese is the primary example of a particular church, but a particular church would also include groupings of a portion of the people of God in a territorial prelature, a territorial abbacy, an apostolic vicariate, an apostolic prefecture and an apostolic administration. See *Code of Canon Law*, c. 368.

⁵ *Code of Canon Law*, c. 634§1: "As juridic persons by the law itself, [religious] institutes, provinces [of an institute], and houses [of an institute] are capable of acquiring, possessing, administering, and alienating temporal goods unless this capacity is excluded or restricted in the constitutions."

Lady can ask to be established as a juridic person.⁶ The issue that has been posed for a Catholic university, however, is whether it must be an independent juridic person to be subject to rights and obligations in canon law. I will demonstrate in this article that a Catholic university is subject to canonical rights and obligations even if it is not established as a distinct juridic person.

Some commentators, such as James Coriden and Ladislav Örsy, have argued to the contrary, stating that because most Catholic universities in the United States have not been established as juridic persons, they have no formal canonical tie with the Church.⁷ This line of reasoning asserts that religious communities⁸ and dioceses established many Catholic universities in the United States, but the universities themselves never sought independent recognition in canon law. Thus, the argument goes, canon law does not apply to them. A corollary to this argument entails the alleged separate identity of Catholic universities that have been civilly incorporated with boards of lay trustees.

Those who have promulgated the Church's laws have consistently rejected this argument for a variety of reasons. The specific arguments that we will consider include the following: that the supreme legislator in the Church stipulated that canon law applies to all Catholic universities; that the same legislator determined that all Catholic universities have a "special bond" with the Church due to the nature of their mission and their participation in the ministry of the Church; that most Catholic universities were founded by dioceses or religious institutes, which have a juridic bond that extends to the apostolic works of their sponsored universities; that all baptized Catholics associated with a Catholic university are independently obligated to maintain ecclesiastical communion by virtue of their baptism; and, that the desire of Catholic universities in the United States to participate in the drafting and implementation of

⁶ See *Code of Canon Law*, c. 313: "Through the same decree by which the competent authority...erects it, a public association and even a confederation of public associations is constituted a juridic person, and...receives a mission for the purposes which it proposes to pursue in the name of the Church." See also, *Code of Canon Law*, c. 322: "A private association of the Christian faithful can acquire juridic personality through a formal decree of the competent ecclesiastical authority..."

⁷ See for example, James A. Coriden, "Catholic Universities and Other Institutes of Higher Studies (cc. 807-814)," in *The Code of Canon Law: A Text and Commentary*, ed. James A. Coriden, et al. (New York/Mahwah, NJ: Paulist Press, 1985), 571.

⁸ The *Code of Canon Law* recognizes various forms of consecrated life, including religious institutes (c. 607) and societies of apostolic life (c. 731). The use of the term "religious community" is not intended to exclude any particular form of consecrated life from the discussion, but merely to streamline the discussion.

the revised *Code of Canon Law* and *Ex corde Ecclesiae*⁹ (*ECE*) suggests that they believe that they are subject to canonical regulation.

Even though some twenty-five years have passed since the objection based on juridic personality was first raised, the issue remains relevant. As the complex nature of sponsorship issues related to religious communities and their apostolates continues to develop, especially with regard to education and healthcare, consideration of this question and its impact in these areas is appropriate. Many Catholic universities, for example, may not be aware that even though they have been separately incorporated with predominantly lay boards of trustees and diminished involvement of their sponsoring religious communities, the universities are still subject to the provisions of canon law. Moreover, it is particularly important to clarify this issue while the United States Conference of Catholic Bishops (USCCB)¹⁰ is scheduled to undertake a review of its Application of *ECE* in the United States. That review is scheduled to begin in 2011.¹¹

In this article, I consider the various arguments about Catholic universities and juridic personality. I will first briefly present the historical background of this issue. Next, I will look at the argument that proposes the need for distinct juridic personality. I will then address the reasons why a Catholic university is subject to the laws of the Church, even if it has not been established as a separate juridic person. Throughout this article, I maintain that the latter argument is the more convincing one, and I will endeavor to persuade the reader of the merits of this position. To close, the article offers a limited discussion of the implications of canon law for Catholic universities.

⁹ Pope John Paul II, *Ex corde Ecclesiae: On Catholic Universities* (Vatican City: Typis Polyglottis Vaticanis, 1990). Translation in English by National Conference of Catholic Bishops in *Origins* 20/17 (October 4, 1990): 265-276.

¹⁰ The United States Conference of Catholic Bishops is the episcopal conference for the territory of the United States. It was formed in 2001 when the conference formerly established as the National Conference of Catholic Bishops (NCCB) merged with the United States Catholic Conference (USCC), which carried out the secular activities of the conference.

¹¹ “Ten years after the effective date of this Application, the National Conference of Catholic Bishops will review this Application of *Ex corde Ecclesiae* for the United States.” NCCB, “The Application of *Ex corde Ecclesiae* for the United States,” *Origins* 29/25 (December 2, 1999): 409. See also, Alice Gallin, ed. *Ex corde Ecclesiae: Documents Concerning Reception and Implementation* (Notre Dame, IN: University of Notre Dame Press, 2006), 388-406.

Historical Background

Although the specific question of whether Catholic universities need to be established as a juridic person was not formally raised until preparations were underway for a revised code of canon law, the historical development of the issue can be traced to discussions in the 1960s and 1970s. It was at this time that religious communities in the United States began to separately incorporate their apostolates. A primary impetus for separate incorporation was premised on what is known as the “McGrath thesis.”¹² This theory maintained that the incorporation of their apostolates, such as Catholic hospitals and educational institutions, of a religious community resulted in civil and canonical identities for the institutions that were separate and distinct from the religious community. John Beal describes the “McGrath thesis” as “a sort of declaration of independence of institutional apostolates from [C]hurch authority in general and canon law in particular.”¹³

Initial opposition to the “McGrath thesis” came from (then Father) Adam Maida¹⁴ who argued that civil incorporation alone does not alter the canonical status of an apostolate of a religious community. “Even after its separate civil incorporation, the property of these apostolates remains church property subject to the regulatory norms of canon law[,] and the apostolates themselves fall under ecclesiastical as well as civil jurisdiction.”¹⁵ Notably, the Holy See has rejected the “McGrath thesis” even though many Catholic hospitals and educational institutions have taken the steps to be separately incorporated under civil law.¹⁶ Nevertheless, it seems that the ideas underlying the “McGrath thesis” continue to surface from time to time. With this historical background in mind, we next move to the discussion of Catholic universities and juridic personality.

¹² John J. McGrath, *Catholic Institutions in the United States: Canonical and Civil Law Status* (Washington, DC: The Catholic University of America Press, 1968).

¹³ John Beal, “From the Heart of the Church to the Heart of the World: Ownership, Control, and Catholic Identity of Institutional Apostolates in the United States,” in *Sponsorship in the United States Context: Theory and Praxis*, eds. Rosemary Smith, Warren Brown, and Nancy Reynolds (Alexandria, VA: Canon Law Society of America, 2006), 36.

¹⁴ Adam J. Maida, *Ownership, Control and Sponsorship of Catholic Institutions: A Practical Guide* (Harrisburg, PA: Pennsylvania Catholic Conference, 1975).

¹⁵ Beal, “From the Heart of the Church,” 36.

¹⁶ *Ibid.*, 37.

Arguments for Separate Juridic Personality

The contention that Catholic universities do not have canonical rights or obligations unless they are juridic persons predates the 1983 *Code of Canon Law*. For example, in 1976, shortly after Maida opposed the “McGrath thesis,” the College and University Department of the National Catholic Educational Association stated that “we do not consider appropriate nor legally feasible the extension of jurisdiction over noncanonically established institutions at the expense of existing rights of local bishops or the institutions themselves.”¹⁷ This document also argued that “since the colleges and universities in the United States have received their charters from the respective state governments and have independent legal existence as private, non-profit educational institutions, the notion of canonical establishment by the Holy See has never been thought of as typical or standard in the United States.”¹⁸ During the Code drafting process, the Association of Catholic Colleges and Universities (ACCU) also raised this argument in its comments on the 1980 Draft Schema for the canons on Catholic universities. The ACCU asserted that “the present and traditional relationships of the Catholic colleges and universities to the local churches and the religious institutes largely avoid the formalities of direct juridical or canonical bonds.”¹⁹

Following the promulgation of the 1983 *Code of Canon Law*, the Canon Law Society of America’s 1985 commentary suggested that the eight canons on Catholic universities only applied to those few Catholic universities in the United States that had been established formally as separate juridic persons, i.e., Georgetown University, The Catholic University of America, and Niagara University. In addition, James Coriden maintained that the ties between the Church and Catholic universities in the United States were informal.²⁰

¹⁷ National Catholic Educational Association, College and University Department, “Relations of American Catholic Colleges and Universities with the Church: Position Paper of the College and University Department, National Catholic Educational Association,” in *American Catholic Higher Education: Essential Documents, 1967-1990*, ed. Alice Gallin (Notre Dame, IN: University of Notre Dame Press, 1992), 83.

¹⁸ *Ibid.*, 81.

¹⁹ Association of Catholic Colleges and Universities, “Canons 762-770 on Catholic Higher Education Recommendations: A Response from the Association of Catholic Colleges and Universities,” in *American Catholic Higher Education: Essential Documents, 1967-1990*, ed. Alice Gallin (Notre Dame, IN: University of Notre Dame Press, 1992), 167.

²⁰ Coriden, “Catholic Universities,” 571.

Ladislas Örsy has been one of the main proponents of this line of reasoning.²¹ He pointed to canon 114§1,²² which describes how to acquire status as a juridic person. “There are just two ways of acquiring it: (1) automatically, by the operation of law – thus, a diocese cannot exist without being a legal person; (2) by concession, through the instrumentality of a formal decree by the competent ecclesiastical authority.”²³ Since the law does not automatically establish Catholic universities as juridic persons, they need a formal decree to be so established. Örsy conceded, however, that juridic personality could also be established with other forms of evidence, such as historical requests for permission from the sponsoring religious community or the Holy See to sell property or to borrow substantial amounts of money.²⁴

Örsy later described six types of relationships that might exist between a university and the Church, only two of which he identified as based on juridic status.²⁵ First are ecclesiastical universities erected to teach the sacred disciplines and award ecclesiastical degrees, such as the Doctor of Sacred Theology. Second are Catholic universities that a competent ecclesiastical authority has established.²⁶ The Catholic University of America is illustrative of both relationships. For Örsy, the relationship between most Catholic universities in the United States and the Church is based on a bond of communion that does not subject the university to canon law.²⁷

Nevertheless, Örsy seemed to undermine his position when he acknowledged that this bond of communion “can be just as strong as if it rested on legal incorporation or jurisdictional ties...[assuming that] those who live by communion are determined to uphold it.”²⁸ This is an argument that those who dispute Örsy’s position have raised, i.e., that Catholics associated with a Catholic university have an obligation to

²¹ See for example, Ladislas Örsy, “The Mandate to Teach Theological Disciplines: Glosses on Canon 812 of the New Code,” *Theological Studies* 44 (1983): 476.

²² *Code of Canon Law*, c. 114§1: “Juridic persons are constituted either by the pre-script 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.”

²³ Örsy, “The Mandate to Teach,” 479.

²⁴ *Ibid.*, 482.

²⁵ Ladislas Örsy, *The Church: Learning and Teaching: Magisterium, Assent, Dissent, Academic Freedom* (Wilmington, DE: Michael Glazier, Inc., 1987), 113-134.

²⁶ *Ibid.*, 117-119.

²⁷ *Ibid.*, 116-117.

²⁸ *Ibid.*, 132.

maintain communion with the Church.²⁹ Örsy also appeared to call into question his opinion when he conceded that “if the university is committed to Catholic beliefs, it needs to hold in respect whatever the magisterium may declare for the whole Church; otherwise how could it be so committed?”³⁰ Thus, even Örsy seems to question the view that Catholic universities are not subject to canon law unless they are juridic persons. The bond of communion that Örsy describes between Catholic universities and the Church requires them to follow the laws of the Church to evidence their commitment to Catholic beliefs.³¹

Lastly, even if, technically, the argument showing requirement of separate juridic personality has some merit, prevailing with that argument would likely cause more harm to a Catholic university than benefit. For example, in the United States, the federal antidiscrimination laws³² extend an exemption to religiously affiliated universities. The exemption permits an employer that is a religious corporation or educational institution to grant hiring preference to members of their religion.³³ In this situation, evidence of compliance with the Church’s laws would likely benefit a Catholic university. Yet, an individual who brings a discrimination claim could argue that a Catholic university that distances itself from the laws of the Church should be denied the benefit of the exemption.

²⁹ Coriden also conceded that those who teach at or administer Catholic universities must still “act in full communion with the Church.” Coriden, “Catholic Universities,” 572.

³⁰ Örsy, *The Church*, 134.

³¹ *Ibid.*, 136.

³² Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. was made applicable to public and private educational institutions in 1972 and prohibits certain types of employment discrimination. The general prohibition provides at 42 U.S.C. §2000e-2(a):

It shall be an unlawful employment practice for an employer –

- (1) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or
- (2) To limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

42 U.S.C. §2000e-2(a). The discrimination that the Act is intended to prohibit is limited to the categories of race, color, religion, sex and national origin. “It applies to all employers, public or private, who have more than a minimal number of employees, and thus it is probably the most sweeping and significant federal nondiscrimination statute.” Steven G. Poskanzer, *Higher Education Law: The Faculty* (Baltimore, MD: The Johns Hopkins University Press, 2002), 160.

³³ 42 U.S.C. §2000e-1(a).

Such challenges have been raised based on the unclear nature of a university's religious affiliation.³⁴ The evidence to support a claim for religious exemption would reasonably include the university's attempts to comply with the laws of the church to which it is affiliated.³⁵ Moreover, a decision to deny the religious exemption to a Catholic university might influence the Holy See to pronounce that the university should no longer promote itself as a Catholic university. In contrast, a Catholic university that aligns itself with the laws of the Church would, theoretically, more likely be protected in either event.

Arguments That Do Not Require Separate Juridic Personality

Despite the arguments that advanced the need for a Catholic university to be a juridic person to be subject to canon law, competent Church legislators have consistently favored ecclesiastical oversight of Catholic universities. The promulgation of canons 807 through 814, which regulate Catholic universities, in the 1983 *Code of Canon Law* evidences this fact. Although Pope John Paul II also confronted this issue in *ECE*, we will initially consider the arguments that were advanced with the promulgation of the *Code of Canon Law*.

James Conn argued against the need for Catholic universities to have separate juridic personality. He contended that the Roman curia has previously asserted competence over Catholic institutions that might not have been established as juridic persons. In 1959, for example, the Sacred Congregation of Seminaries and Universities declared its competence over universities that were not canonically erected, and more recently the Congregation for Catholic Education (CCE) identified

³⁴ *Killinger v. Samford University*, 917 F.Supp. 773 (N.D. Ala. 1996), *aff'd*, 113 F.3d 196 (11th Cir. 1997).

³⁵ Philip R. Moots and Edward McGlynn Gaffney, Jr., *Church and Campus: Legal Issues in Religiously Affiliated Higher Education* (Notre Dame, IN: University of Notre Dame Press, 1979), 70: "Religiously affiliated colleges or universities, defined by a relationship of ownership, management, or control by a church and by a curriculum content directed to the propagation of the religious tenets of the sponsoring church, were granted a broader ability to exercise religious preference in the selection of all their employees." See also, Monika K. Hellwig, "Emerging Patterns among Roman Catholic Colleges and Universities," in *The Future of Religious Colleges*, ed. Paul J. Dovere (Grand Rapids, MI: William B. Eerdmans Publishing Co., 2002), 112; Arthur Gross Schaefer and Dan Van Bogaert, "The Changing Legal Landscape for Clergy," *The Catholic Lawyer* 42 (2002): 117: "In other words, Title VII does permit religious societies to grant preference in favor of members of their religion."

as Catholic universities certain institutions whose juridic status was unclear.³⁶ Thus, historically, the Church has declared her competence over institutions that were not established as juridic persons, which suggests the appropriateness of ecclesiastical oversight of Catholic universities.³⁷

Likewise, Conn maintained that many Catholic universities derive their canonical rights and obligations from the religious communities that founded them.³⁸ Consistent with Maida's position, attempts under civil law to change the governing structures of these universities did not change their juridic status. "They could not thereby unilaterally abdicate their status as juridic persons as long as the local religious communities continued to exist. Only suppression by the competent authority or centennial cessation of activity could cause its demise."³⁹ Finally, Conn argued that the desire of the representatives of Catholic universities in the United States to participate extensively in the drafting process of the canonical provisions that concern Catholic universities seems to indicate that they believe that they are subject to these laws.⁴⁰ Sharon Euart, currently the Executive Coordinator of the Canon Law Society of America and consultant to the USCCB Committee on Canonical Affairs and Church Governance, agreed that a Catholic university established by a religious community or diocese derives its canonical

³⁶ James Conn, "Catholic Universities in the United States and Ecclesiastical Authority" (JCD diss., Pontificia Universita Gregoriana, 1991), 257.

³⁷ *Code of Canon Law*, c. 19: "If a custom or an express prescript of universal law is lacking in a certain matter, a case, unless it is penal, must be resolved in light of laws issued in similar matters, general principles of law applied with canonical equity, *the jurisprudence and practice of the Roman Curia*, and the common and constant opinion of learned persons." (emphasis added).

³⁸ Conn, *Catholic Universities in the United States*, 257.

³⁹ *Ibid.*, 258, citing *Code of Canon Law*, c. 120§1: "A juridic person is perpetual by its nature; nevertheless, it is extinguished if it is legitimately suppressed by competent authority or has ceased to act for a hundred years..."

⁴⁰ In James 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*, ed. David O'Connell (Washington, DC: The Catholic University of America, 1999), 22, Conn argued that "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 [ECE] 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 [ECE]. A fully informed legislator made this law. There should be no doubt about those for whom it was intended."

rights and obligations from these entities. Catholic universities in the United States often began as an apostolate of a religious community or diocese, both of which are juridic persons. Euart points out that even though many Catholic universities have been civilly incorporated and moved to predominantly lay boards of trustees, those actions alone did not change the canonical status of a Catholic university. “Whatever persons, be they clergy, religious, or laity, bear the responsibility of governing colleges or universities which at canon law are considered to belong to sponsoring religious institutes or dioceses are bound to acknowledge the canonical character of the institution and to follow applicable canon laws.”⁴¹ This dialogue occurred while John Paul II was drafting his apostolic constitution *ECE* on Catholic universities. We now turn to *ECE* to address the manner in which the Holy Father engaged the discussion.

***Ex corde Ecclesiae* and Juridic Personality**

In 1990, John Paul II promulgated his apostolic constitution *Ex corde Ecclesiae*. An extensive consultation preceded its promulgation, which included the opportunity for each Catholic university to submit its comments on the various drafts of the document. Again, objections were raised about Catholic universities that have not been established as juridic persons. In 1988, the CCE summarized various comments made about the proposed constitution’s 1985 Draft Schema.⁴² Institutions in the United States were generally dissatisfied with the Draft Schema and the recognition of a juridic link between these institutions and the Church.⁴³ Some Catholic universities, however, recognized that their Catholic identity could benefit from having an ecclesiastical bond.⁴⁴

In *ECE*, John Paul II, as the supreme legislator of the Church, confronted the issue of juridic personality for Catholic universities. He stated that the constitution is “valid for *all* Catholic Universities and other Catholic Institutes of Higher Studies throughout the world.”⁴⁵ He

⁴¹ Sharon Euart, “Church-State Implications in the United States of Canon 812 of the 1983 Code of Canon Law” (JCD diss., The Catholic University of America, 1988), 64-65.

⁴² Congregation for Catholic Education, “Summary of Responses to Proposed Schema for a Pontifical Document on Catholic Universities,” *Origins* 17/41 (March 24, 1988): 693-705. See also, CCE, “Summary of Responses to the 1985 Draft Schema On the Catholic University,” in *American Catholic Higher Education: Essential Documents, 1967-1990*, ed. Alice Gallin (Notre Dame, IN: University of Notre Dame Press, 1992), 293-322.

⁴³ *Ibid.*, ¶5.7.3.

⁴⁴ *Ibid.*, ¶5.7.4. See also, Hellwig, “Emerging Patterns,” 112.

⁴⁵ Pope John Paul II, *ECE*, Part II, Art. 1, §1 (emphasis added).

did not distinguish between Catholic universities that the Church has established as juridic persons and those that have a bond of communion with the Church. The constitution includes all Catholic universities within its competence. Further, *ECE* indicates that a Catholic university must remain faithful to the Church's teachings and the canonical provisions that regulate Catholic universities.

ECE acknowledges that Church authorities and religious institutes, which are juridic persons, can establish Catholic universities.⁴⁶ The Church's relationship with other Catholic universities is premised on a "special bond" that exists between a Catholic university and the Church.

Every Catholic university, without ceasing to be a university, has a relationship to the Church that is essential to its institutional identity. As such, it participates most directly in the life of the local Church in which it is situated; at the same time, because it is an academic institution and therefore a part of the international community of scholarship and inquiry, each institution participates in and contributes to the life and the mission of the universal Church, assuming consequently a *special bond* with the Holy See by reason of the service to unity which it is called to render to the whole Church. One consequence of its essential relationship to the Church is that institutional fidelity of the university to the Christian message includes a recognition and adherence to the teaching authority of the Church in matters of faith and morals. Catholic members of the university community are also called to a personal fidelity to the Church with all that this implies. Non-Catholic members are required to respect the Catholic character of the university, while the university in turn respects their religious liberty.⁴⁷

ECE's General Norms emphasize the importance of a Catholic university's "[i]nstitutional commitment," which subjects the university to ecclesiastical oversight even in the absence of the juridic personality that a formal bond would provide. "A Catholic University...is linked with the Church either by a formal, constitutive, and statutory bond or by reason of an institutional commitment made by those responsible for it."⁴⁸ The General Norms further maintain that "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 nation in which it is to be located."⁴⁹

⁴⁶ *Ibid.*, Part II, Art. 3.

⁴⁷ *Ibid.*, Part I, Art. 27.

⁴⁸ *Ibid.*, Part II, Art. 2, §2.

⁴⁹ *Ibid.*, Part II, Art. 5, §1.

Thus, John Paul II decreed that a Catholic university is subject to canon law even if it is not a separate juridic person. First, since many Catholic universities were founded by religious institutes, the Church has a juridic bond with them that extends to their apostolates. This position has also been applied in the context of Catholic healthcare. Second, in the absence of a juridic bond, Catholic universities have a “special bond” with the Church due to the nature of their mission, and participation in the Church’s ministry. Third, the university and, by virtue of their baptism, all Catholics who participate in the life of the university must maintain communion with the Church. *ECE* thereby determines the issue: a Catholic university is subject to the laws of the Church. Archbishop J. Michael Miller, formerly the Secretary for the CCE, agreed that a juridic bond is not required for the Church to regulate Catholic universities. He suggested that “the critics’ point was to divorce the university’s Catholic identity from any juridical bond with the visible church. For them, the pope and bishops were outsiders to the academy.”⁵⁰ Yet John Paul II recognized the need for bishops to be active participants in the life of Catholic universities within their dioceses: “Bishops have a particular responsibility to promote Catholic universities and especially to promote and assist in the preservation and strengthening of their Catholic identity.”⁵¹

When the NCCB issued the ordinances to implement *Ex corde* in the United States, they also stated that their norms would apply to all Catholic universities. “These particular norms are applicable to all Catholic colleges, universities and institutions of higher learning within the territory encompassed by the National Conference of Catholic Bishops, contrary particular laws, customs or privileges notwithstanding.”⁵²

To avoid future confusion, the NCCB ordinances direct newly established Catholic universities to identify their relationship with the Church. “At the time of its establishment[,] the university should see to

⁵⁰ J. Michael Miller, “Catholic Universities and Their Catholic Identity,” *Origins* 35/27 (December 15, 2005): 453.

⁵¹ Pope John Paul II, *ECE*, Part I, Art. 28. See Theodore McCarrick, “Become A Member of the University Family,” in *Promising Practices: Collaboration Among Catholic Bishops and University Presidents*, ed. Michael Galligan-Stierle (Fairfield, CT: Sacred Heart University Press, 2005), 33: “The bishop is always a part of the family in every Catholic institution.”

⁵² NCCB, “The Application of *Ex corde Ecclesiae* for the United States,” in *Origins* 29/25 (December 2, 1999): 402-409, Part Two, Art. 1, §1. See also, Alice Gallin, ed. *Ex corde Ecclesiae: Documents Concerning Reception and Implementation* (Notre Dame, IN: University of Notre Dame Press, 2006), 388-406.

it that its canonical status is identified, including the ecclesiastical authority by which it has been established or approved or to which it is otherwise related.”⁵³ This identification is in addition to the approval of the university’s statutes and the permission of ecclesiastical authority to use the title Catholic.⁵⁴

John Paul II pronounced in *ECE* that the apostolic constitution applies to *all* Catholic universities. The NCCB norms in the Application document to implement *ECE* indicate that they also apply to all Catholic universities in the United States. The CCE has continued to assert its authority over these institutions as evidenced by the listing of 218 Catholic universities in the United States that are within the CCE’s competence and subject to *ECE*.⁵⁵

Based on these arguments and those presented above, a Catholic university is subject to the provisions of canon law even if it has not been established as a separate juridic person.

Implications for Catholic Universities

We began this discussion recognizing that most persons associated with a Catholic university need to be attentive to civil laws. Now, it is evident that a Catholic university needs to be attentive to its canonical rights and obligations as well. A complete review of Church laws that could potentially apply to a Catholic university is beyond the limited scope of this article. Nevertheless, to follow are some suggestions from a canonical perspective for Catholic universities.

First, as demonstrated above, the civil incorporation of a Catholic university or the alteration of its board of trustees does not determine its canonical status. A Catholic university should not rely on such acts to distance itself from canon law. It would be prudent, however, for a Catholic university to consider the circumstances under which it was originally established. As Robert Kennedy, a distinguished professor of canon law at the Catholic University of America, suggests, the university “should concentrate on careful research to determine the original canonical

⁵³ NCCB, “The Application of *Ex corde Ecclesiae*,” Part 2, Art. 3.

⁵⁴ *Ibid.*

⁵⁵ See Congregation de Institutione Catholica (de Seminariis at que Studiorum Institutis), *Index Editio 2005: Universitates et alia Instituta Studiorum Superiorum Ecclesiae Catholicae* (Vatican City: Libreria Editrice Vaticana, 2005), 82-123.

status of the institution and whether valid canonical steps were ever taken to alter that original status.”⁵⁶

Second, the argument that a Catholic university derives its canonical rights and obligations from a sponsoring religious community or diocese raises the increasingly complicated issue of sponsorship of apostolic works.⁵⁷ The significance of this issue was underscored by the 1997 proposed sale of Saint Louis University Hospital to Tenet Health System Hospitals, Inc. The hospital claimed that it was a distinct civilly incorporated entity that was not subject to canon law. The Holy See disagreed, arguing that, as an apostolate of the Missouri Province of the Society of Jesus, the hospital was subject to canon law. This disagreement resulted despite the hospital’s attempts to limit ecclesiastical control by civilly incorporating and by altering the composition of its board of trustees from members of the religious institute to lay trustees.⁵⁸ It is reasonable to conclude that the Holy See would view such acts by a Catholic university similarly.

Third, a Catholic university, or even more appropriately, a sponsoring religious community or diocese, might consider whether it is advantageous for the university to seek independent juridic status. The university will be subject to the laws of the Church whether it is an independent juridic person or a sponsored apostolate of a religious community or diocese. Maintaining a consistent relationship with its sponsor to assist with fostering the vision of the founder(s) of the university is to the university’s advantage. For the sponsoring body, the status of the university as a separate juridic person might provide the sponsor with a shield from liability. Nevertheless, sponsoring religious institutes have a canonical duty to maintain the spiritual patrimony of the institute and to conduct the apostolic works of the institute in

⁵⁶ Robert T. Kennedy, “Note on the Canonical Status of Church-Related Institutions in the United States,” in *New Commentary on the Code of Canon Law*, ed. John P. Beal, et al. (New York/Mahwah, NJ: Paulist Press, 2000), 176.

⁵⁷ See Rosemary Smith, Warren Brown, and Nancy Reynolds, eds. *Sponsorship in the United States Context: Theory and Praxis* (Alexandria, VA: CLSA, 2006).

⁵⁸ See Archbishop Justin Rigali, “St. Louis University Hospital Sold to For-Profit Corporation,” *Origins* 27/38 (March 12, 1998): 629-633; Jordan F. Hite, “The Temporal Goods of Religious Institutes,” in *Church Finance Handbook*, eds. Kevin E. McKenna, Lawrence A. DiNardo, and Joseph W. Pokusa (Washington, DC: CLSA, 1999), 50-52; Bernard C. Huger, “Canon Law Issues of Sponsorship, Governance Control and Alienation as They Relate to Catholic Church Entities in the United States: A Diocesan Attorney’s Perspective,” *Catholic Lawyer* 41 (2001-2002): 21.

communion with the Church.⁵⁹ “A Catholic university is identified as Catholic because of its purpose and means. Its purpose or end is holiness, sanctification; and the means to that end are the sanctifying (primarily sacramental) activities, the teachings and the unifying authority of the Catholic Church as manifested in an authentic context of higher education.”⁶⁰ As a result, if a Catholic university derives its relationship with the Church through its sponsor, that same sponsor will likely assist with promoting the university’s Catholic identity, as its canonical obligations include protecting the spiritual patrimony of the religious community and maintaining communion with the Church in its apostolates.

Fourth, the property of a Catholic university, although civilly incorporated, is ecclesiastical property. When the school wishes to alienate property which is the stable patrimony of a public juridic person and whose value exceeds the sum defined by law, along with the civil law requirements, the juridic person needs to seek approval from the competent ecclesiastical authority for such transactions.⁶¹ It would be helpful for a Catholic university to invite a canonist into these conversations in particular.

Fifth, those involved in the administration of a Catholic university are very aware of accreditation standards, which often emphasize the importance of having an autonomous governing board. In an attempt to create a certain degree of independence from the sponsoring religious institute or diocese of a Catholic university’s governing board, the composition of many boards was changed to include an increasing number of lay trustees, rather than being limited to members of the religious institute or

⁵⁹ See *Code of Canon Law*, c. 578: “All must observe faithfully the mind and designs of the founders regarding the nature, purpose, spirit, and character of an institute, which have been sanctioned by competent ecclesiastical authority, and its sound traditions, all of which constitute the patrimony of the same institute;” c. 675§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;” c. 677§1: “Superiors and members are to retain faithfully the mission and works proper to the institute. Nevertheless, attentive to the necessities of times and places, they are to accommodate them prudently, even employing new and opportune means.”

⁶⁰ Daniel Pilarczyk, “A Catholic University and Its Trustees,” *Origins* 31/21 (November 1, 2001): 362.

⁶¹ See *Code of Canon Law*, c. 1291: “The permission of the authority competent according to the norm of law is required for the valid alienation of goods which constitute by legitimate designation the stable patrimony of a public juridic person and whose value exceeds the sum defined by law.”

persons associated with the sponsoring diocese. This diversity among board members also led to the opportunity to include as board members persons knowledgeable about business, law, education and a variety of other areas of expertise. Yet, this demonstration of a Catholic university's governing board's autonomy might seem at times to be at odds with the university's relationship with its sponsoring diocese or religious community or with its desire to comply with the provisions of canon law. Still, board members will recognize that a Catholic university needs to promote its Catholic identity and to foster the purposes for which it was founded. Frequently, the lay trustees will look to those who are members of the sponsoring religious community or diocese for leadership and guidance on how to maintain an appropriate balance between these competing interests. Additionally, a Catholic university might consider welcoming a canonist to be a member of the board of trustees so that he or she can alert the other board members to actions that have canonical implications. If done well, these mutually supportive relationships will actually strengthen the identity of the governing board and, ultimately, the identity of the institution as both Catholic and a university.

Lastly, while some might see only the burdens placed on the Catholic university that recognizes its canonical status, adhering to the provisions of canon law should actually help the university to enhance its Catholic identity. Certainly, the Church wants a Catholic university to flourish so that it can continue to be "recognized as an incomparable center of creativity and dissemination of knowledge for the good of humanity."⁶²

Conclusion

This article has demonstrated that a Catholic university does not need to be separately established as a juridic person to be subject to rights and obligations in canon law, nor does the civil incorporation of a university and the realignment of the board of trustees automatically remove a Catholic university from these requirements. A Catholic university is a treasure of the Church that can be strengthened, nourished, and protected by the laws of the Church.

In his April 2008 meeting with Catholic educators of the United States, Pope Benedict XVI challenged his audience: "Is the faith tangible

⁶² Pope John Paul II, *ECE*, Introduction, Art. 1.

in our universities and schools? Is it given fervent expression liturgically, sacramentally, through prayer, acts of charity, a concern for justice and respect for God's creation? Only in this way do we really bear witness to the meaning of who we are and what we uphold."⁶³ Through her laws, the Church continues to assist Catholic universities with their ministry, to enrich the university's Catholic identity, and to promote the beauty of that which is a Catholic university.

⁶³ Pope Benedict XVI, "Speech to Educators," *Origins* 37/46 (May 1, 2008): 742.