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## THE APPLICATION OF *EX CORDE ECCLESIAE* IN THE UNITED STATES

MOST REVEREND JOHN J. LEIBRECHT

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*Pope John Paul II published Ex Corde Ecclesiae, his apostolic constitution on Catholic higher education, on August 15, 1990. As requested by Ex Corde Ecclesiae, U.S. bishops developed an application of that document for the United States during the remainder of the decade. On May 3, 2000, the Vatican approved what the bishops submitted. This article highlights the issues and actions associated with the development of the U.S. application.*

On August 15, 1990, Pope John Paul II promulgated his Apostolic Constitution on Catholic Universities titled *Ex Corde Ecclesiae*. In choosing that title, *From the Heart of the Church*, the pope refers to a letter from Pope Alexander IV to the University of Paris, dated April 14, 1255, when universities as institutions had their origin. Preparations for *Ex Corde Ecclesiae* became public in 1985 when the Vatican Congregation for Catholic Education initiated an official consultation on a proposed papal document regarding Catholic higher education. Revisions were made throughout the years before the apostolic constitution was issued in its final form.

In 1979, Pope John Paul II published an apostolic constitution, *Sapientia Christiana*, for a relatively small number of ecclesiastical universities and faculties in direct relationship to the Vatican itself. That same year, the pope spoke at the Catholic University of America of his deep appreciation for Catholic higher education and repeated that theme later at Xavier University of Louisiana in September 1987. He was aware of the U.S. bishops' pastoral letter, *Catholic Higher Education and the Pastoral Mission of the Church* (NCCB, 1980).

Following an Introduction in which the pope expresses sincere regard for Catholic colleges and universities, *Ex Corde Ecclesiae* is divided into two

parts: The first addresses the identity and mission of the Catholic university; the second lists General Norms to support that Catholic identity and mission.

The vision which John Paul II proposes in Part One of *Ex Corde Ecclesiae* received high praise from representatives of Catholic higher education who interpreted the document as an occasion for renewal of their Catholic identity and mission. The General Norms in Part Two apply to all Catholic universities and other Catholic institutes of higher studies throughout the world and are contained within seven articles: the nature of the General Norms; the nature of the Catholic university; the establishment of a Catholic university; the university community; the Catholic university within the Church; pastoral ministry within the Catholic university; and the need for cooperation among Catholic universities with one another, with state and private universities, and with governmental agencies.

## **DEVELOPING AN APPLICATION DOCUMENT FOR THE UNITED STATES**

*Ex Corde Ecclesiae* (John Paul II, 1990) states that General Norms were to be "applied concretely at the local and regional levels by episcopal conferences" (Part II, Article 1, 2). Such Particular Norms or ordinances, "after review by the Holy See, [will] be valid for all Catholic universities and other institutes of higher studies in the region, except for ecclesiastical universities and faculties." These latter institutions are guided by the 1979 apostolic constitution *Sapientia Christiana* (John Paul II).

Following publication of *Ex Corde Ecclesiae*, the president of the National Conference of Catholic Bishops (NCCB) in the United States, Archbishop Daniel Pilarczyk, established a committee of seven bishops to propose to the Conference Particular Norms for the United States called for by *Ex Corde Ecclesiae*. Named to the Implementation Committee were James Cardinal Hickey, Adam Cardinal Maida, Archbishop Oscar Lipscomb, Archbishop Francis B. Schulte, Bishop James A. Griffin, Bishop James W. Malone, and Bishop John J. Leibrecht, who was asked to serve as chair. Assisting the bishops on the committee were eight presidents of Catholic colleges and universities: Dr. Dorothy McKenna Brown (Rosemont College); Reverend William Byron, SJ (The Catholic University of America); Brother Raymond Fitz, SM (University of Dayton); Dr. Norman C. Francis (Xavier University, New Orleans); Sister Karen M. Kennelly, CSJ (Mount St. Mary's, California); Reverend Edward A. Malloy, CSC (University of Notre Dame); Reverend J. Donald Monan, SJ (Boston College); and Dr. Matthew Quinn (Carroll College). Also named to the Committee as resource persons were Sister Alice Gallin, OSU, executive director of the Association of Catholic Colleges and Universities, and Reverend Monsignor Frederick R. McManus,

faculty member at the Catholic University of America. Available to the Committee were NCCB staff members Sister Sharon Euart, RSM; Reverend Charles Hagan; John Leikweg; and Sister Lourdes Sheehan, RSM.

The Implementation Committee began its work in February of 1991 by reviewing the context within which ordinances or norms were to be formulated. Norms had to respect institutional autonomy and academic freedom recognized by *Ex Corde Ecclesiae*. Norms also had to take into account the differing statutes of each university and, as far as possible and appropriate, federal and state law. The Committee regularly reminded itself of the significant diversity among the 230 Catholic colleges and universities in the United States. It was cognizant of the historical fact that some higher education institutions founded and sponsored by churches, such as Harvard, Yale, Duke, Northwestern, and the University of Southern California, had lost their religious identity.

During the next eight years, three drafts of norms would be proposed. After two years of work by the Implementation Committee, the first draft of an application document was distributed for comment and recommendation in May of 1993 to bishops, presidents of Catholic colleges and universities, sponsoring religious communities, and learned societies. A questionnaire accompanied the draft to be returned to the Committee by December 31, 1993. Bishops and presidents were encouraged to meet with one another to discuss the draft before returning the questionnaires.

The draft had an Introduction and eight ordinances or norms. Three of the ordinances (5, 6, 7) addressed the *mandatum* called for by international Church law through Canon 812: "Those who teach theological disciplines in any institutes of higher studies whatsoever must have a mandate from the competent ecclesiastical authority" (Beal, Coriden, & Green, 2000). The *mandatum* would remain the most neuralgic issue throughout successive efforts to establish Particular Norms for the United States.

Responses to the first draft were such that, at its meeting in March of 1994, the Implementation Committee concluded that it would be better not to attempt amending the draft but to produce an entirely new second draft. At that same meeting, the Committee agreed to employ a full-time project director to assist its work. Such a position was made financially possible through Foundations and Donors Interested in Catholic Activities (FADICA). A search committee quickly selected Reverend Terrence Toland, SJ, for the position. He had extensive experience in Catholic higher education, including as president of St. Joseph's University in Philadelphia. His key role in the coming years was to assist the Implementation Committee by being present at as many local and regional consultations as possible as preparations were made for the development of a second draft.

The new draft of an application document was presented for consultation in August of 1995. Desirous of creating Particular Norms in a pastoral for-

mat, the Implementation Committee constructed the draft around paragraph 28 in *Ex Corde Ecclesiae* (John Paul II, 1990):

Bishops have a particular responsibility to promote Catholic universities, and especially to promote and assist in the preservation and strengthening of their Catholic identity, including the protection of their Catholic identity in relation to civil authorities. This will be achieved more effectively if close and pastoral relationships exist between University and Church authorities, characterized by *mutual trust, close and consistent cooperation and continuing dialogue*. Even when they do not enter directly into the internal government of the University, Bishops should be seen not as external agents but as participants in the life of the Catholic University.

Focusing on the mutual relationship between bishops and Catholic colleges and universities, the new draft was organized into three sections: Mutual Trust, Close Cooperation, and Continuing Dialogue. A different approach, explained by a brief written canonical rationale, was taken to Canon 812. The rationale stated that, in the Committee's opinion:

The values inherent in Canon 812 are best realized through a non-judicial application of the *mandatum*, that is, to the institution of processes and procedures that can be viewed as fulfilling the purpose of Canon 812 while respecting established standards of Catholic higher education. (NCCB, 1995)

Four norms in the section on "Mutual Trust" were viewed as a whole. Taken together, the Committee believed, they responded well to the goals of Canon 812. The new approach to the *mandatum* was influenced by an article of Bishop John Jukes, OFM, in the *Newsletter* (1994) of the Canon Law Society of Great Britain and Ireland. The fresh approach to Canon 812 was well accepted by representatives of Catholic higher education and most bishops, although some bishops believed that the Committee was skirting Canon 812 by not addressing it more directly.

Two revisions of the August 1995 draft (one in February and another in August 1996) were distributed for further consultations. Bishops and representatives of Catholic higher education were again encouraged to meet locally before the November 1996 meeting of the National Conference of Catholic Bishops where final amendments would be accepted before a scheduled vote. Bishops voted in favor of the document on November 13 by a majority of 223-6. It was sent to the Vatican with the request for review and a *recognitio*—formal approval.

On April 23, 1997, the Vatican forwarded to the NCCB its *Observations of the Congregation for Catholic Education on U.S. Bishops' Application Document*, which praised the extensive consultation process used in drawing

up the document and especially appreciated its emphasis on mutual trust between bishops and institutions of Catholic higher education. However, the Congregation did not recommend a *recognitio* after its review, saying that "The document, while having, in some places, a certain legal tone, lacks, in some other instances, the necessary juridical elements for an effective functioning institutionally of Catholic Universities as University and as Catholic" (p. 54). Another draft would have to be drawn up which would, according to the Congregation for Catholic Education, "have a true juridical character" (p. 54), including implementation of Canon 812 on the *mandatum*.

At the request of the Implementation Committee, NCCB president Bishop Anthony Pilla appointed a subcommittee of canon lawyers to work with the Implementation Committee. The subcommittee was chaired by Anthony Cardinal Bevilacqua. Members were Adam Cardinal Maida, Bishop Raymond Burke, Bishop Thomas Doran, and Monsignor John Alesandro.

The Implementation Committee decided that the new draft should be divided along the lines of *Ex Corde Ecclesiae* itself, namely, Part One containing theological and pastoral considerations and Part Two presenting Particular Norms. After the subcommittee presented a text to the Implementation Committee in November of 1997, a series of meetings between the two committees took place in 1998, resulting in significant revisions and fine-tuning of language. In October of 1998, the new draft was sent to the same parties previously consulted. Bishops discussed the new draft at their November meeting of that year and, while desirous of maintaining a pastoral approach, understood that the application document would be more juridical in tone than the previous draft.

Four principles guided composition of the new draft: (1) that the 1996 draft, seen as incomplete by the Vatican, be retained as much as possible; (2) that the 1996 application be supplemented with necessary canonical language; (3) that the new document attend directly to Canon 812; and (4) that the new draft, including the juridical norms, have a pastoral tone to the extent possible.

Part One of the new document incorporated almost verbatim the general principles of the document passed by the bishops in November of 1996. Two sections were added, one a theological reflection on *communio* and another on Catholic identity. Part Two, containing Particular Norms, was structured according to the same seven categories of the General Norms in *Ex Corde Ecclesiae*: the nature of the norms, the nature of the Catholic university, the establishment of the Catholic university, the university community, the Catholic university within the Church, pastoral ministry, and cooperation. All Particular Norms in the 1996 document were incorporated into the new draft but in more juridical language.

Because the draft was to be more juridical, constant care was taken to employ language that would not naturally open itself to civil challenges.

Norms regarding Canon 812 were designed to respect institutional autonomy and academic freedom within Catholic higher education. Consultations were held during 1999 in preparation for final amendments and vote at the NCCB national meeting in November of that year. On November 17, 1999, by a vote of 223 affirmative to 31 negative with one abstention, the third draft of an application document passed and was sent to the Vatican seeking a *recognitio*.

The Congregation for Catholic Education received the document in a positive manner and, after reviewing it, asked the Implementation Committee its opinion about several possible changes in the text submitted. Most of the proposed changes improved the text but, in a few cases, the Implementation Committee wanted to maintain language in the application document as submitted. The Congregation accepted the recommendations of the Implementation Committee.

On June 7, 2000, NCCB president Bishop Joseph Fiorenza announced that the Holy See had given its *recognitio* to the document passed by the bishops at their 1999 November meeting. The *recognitio* was formally granted by the Vatican's Congregation for Bishops in accord with provisions of the apostolic constitution *Pastor Bonus* (John Paul II, 1988). The approved document was to become effective one year after the official *recognitio* dated May 3, 2000. The NCCB would, during that year, develop further procedural details for requesting, granting, or withdrawing the *mandatum*.

By 2006, in collaboration with representatives of Catholic universities, the U.S. bishops will develop a process to review and evaluate the implementation of *Ex Corde Ecclesiae* and its application for the United States. In the year 2011, the bishops will formally review the approved application document itself, in light of 10 years' experience.

## THE MANDATUM

As indicated previously, the most difficult issue in creating a U.S. application document for *Ex Corde Ecclesiae* was Canon 812 requiring a *mandatum*. The first proposed draft (May 1993) had three ordinances pertaining to the mandate. Ordinance 5 stated that "The mandate granted to those who teach theology in Catholic colleges and universities should be understood as recognition by the competent ecclesiastical authority of a professor's suitability to teach theological disciplines." Ordinance 6 stated:

Catholic professors of theological disciplines are to be advised by academic officials of the Church's expectation that they request the mandate from the competent ecclesiastical authority, normally the diocesan bishop or his delegate. Accordingly, the bishop is to invite the Catholic professor to request the mandate and, after appropriate review, the bishop is to respond to the request.

The ordinance was worded in this manner in an effort to clarify that the university was not itself involved with the granting, denial, or withdrawal of the mandate. Nor was the mandate designed as part of a hiring or dismissal process.

Ordinance 7 recommended resources to solve disputes which might arise between ecclesiastical authorities and a Catholic college or university or individuals or groups within such institutions. The 1972 NCCB document, *On Due Process*, was listed as was its follow-up 1989 NCCB document, *Doctrinal Responsibilities: Approaches to Promoting Cooperation and Resolving Misunderstandings Between Bishops and Theologians*. Applicable canons in Church law respecting the rights of persons in the Church were also cited.

The three proposed ordinances on the *mandatum* and the resolution of disputes were severely criticized by many representatives within Catholic higher education. In a sense, this could have been expected. In the years before publication of the new *Code of Canon Law* in 1983, representatives of the NCCB and Catholic higher education opposed inclusion of Canon 812. They thought it unnecessary and feared it might cause serious legal problems. But the canon was included in the new *Code*. During consultations in preparation for the 1990 publication of *Ex Corde Ecclesiae*, representatives from the United States requested that Canon 812 not become a part of the apostolic constitution. It was, however, referenced in a footnote. Consistent with earlier substantial opposition to Canon 812 during the 1980s from U.S. episcopal and Catholic higher education representatives, ordinances regarding that canon in the May 1993 draft of the application document were unwelcome.

With that situation in mind, the August 1995 draft of an application document did not deal directly with Canon 812. The Committee asked itself, what is the goal of Canon 812 and can that goal be met in a way other than by a strict reference to Canon 812? It attempted to do so by means of several ordinances, one of which provided

That the institution, following its own procedures in the hiring and retention of professionally qualified faculty and staff, makes serious effort to seek individuals who are committed to the Catholic tradition or, if not Catholic, who are aware and respectful of that tradition.

Another ordinance said:

Aware of the contributions made by theologians to Church and academy, the local bishop in accord with his ecclesial responsibility, in circumstances where he questions whether or not an individual theologian is presenting authentic Catholic teaching, shall follow established procedures and take appropriate action.



Those procedures were noted in the ordinance:

*Doctrinal Responsibilities: Approaches to Promoting Cooperation and Resolving Misunderstandings Between Bishops and Theologians*, approved and published by the National Conference of Catholic Bishops, 17 June 1989, is adopted as the appropriate procedure to assure process acceptable to both bishop and teacher. (NCCB, 1996)

Some bishops opposed this approach to Canon 812 and described it as avoiding canonical requirements. Most bishops agreed, however, that within the context of Catholic higher education in the United States, the approach could achieve the goals of Canon 812.

In a footnote in the August 1995 draft, the Implementation Committee called for additional study of Canon 812 if the Vatican would grant its *recognitio*. Frequent consultations between bishops and representatives of Catholic higher education since the publication of *Ex Corde Ecclesiae* created strong new relationships. Bishops on the Implementation Committee believed that additional time could develop even stronger relationships, which would help in addressing Canon 812 more fully. The Committee did not see its proposed ordinances as evasive of Canon 812, but as a prudent attempt to address the canon's goals. The April 23, 1997, *Vatican Observations of the Congregation for Catholic Education* required a more juridically direct response to Canon 812.

The subcommittee chaired by Cardinal Bevilacqua was faced with a challenging task because professional canonical literature on the *mandatum* was limited. The *mandatum* had to be located within the parameters of institutional autonomy and academic freedom; sensitivity to both civil and ecclesiastical law was required; and the appropriate role of the bishop and the rights of the individual theologian had to be recognized.

Article 4, 4 of the application document approved by the Vatican contains the following ordinances describing the *mandatum*: (1) The *mandatum* is fundamentally an acknowledgment by Church authority that a Catholic professor of a theological discipline is a teacher within the full communion of the Catholic Church. (2) The *mandatum* should not be construed as an appointment, authorization, delegation, or approbation of one's teaching by Church authorities. Those who have received a *mandatum* teach in their own name in virtue of their baptism and their academic and professional competence, not in the name of the bishop or of the Church's magisterium. (3) The *mandatum* 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.

Following this description are brief statements regarding the process for requesting and granting the *mandatum*: "The competent ecclesiastical authority to grant the *mandatum* is the bishop of the diocese in which the Catholic

university is located; he may grant the *mandatum* personally or through a delegate" (p. 73). The text then adds that "without prejudice to the rights of the local bishop, the *mandatum*, once granted, remains in effect wherever and as long as the professor teaches unless and until withdrawn by competent ecclesiastical authority" (NCCB, 2000, p. 73). The ordinances on the process for granting the *mandatum* conclude by saying that "The *mandatum* should be given in writing. The reasons for denying or removing the *mandatum* should also be in writing" (p. 73). Four footnotes (41-44) comment on norms pertaining to the *mandatum* (NCCB, 2000).

In June of 2000, NCCB president Bishop Joseph Fiorenza appointed a committee to develop guidelines for the academic *mandatum* in Catholic universities. The guidelines would add detail to what was already approved in the application document. Archbishop Daniel Pilarczyk was appointed chair of the committee; members were Cardinal Anthony Bevilacqua, Bishop Edward K. Braxton, Bishop Thomas G. Doran, and Bishop Donald W. Wuerl.

At its national meeting on June 15, 2001, subsequent to consultations with theologians and representatives of Catholic higher education, the bishops approved guidelines offering procedures on the granting, withholding, or withdrawal of the *mandatum*. The guidelines contain suggestions on how a professor of theological disciplines might seek a *mandatum* and how a bishop might offer it on his own initiative.

An appropriate committee within the NCCB (now named the United States Conference of Catholic Bishops), possibly the Bishops and Presidents Committee established in 1974, will serve as a means of encouraging implementation of *Ex Corde Ecclesiae* in the United States.

## THE ASSOCIATION OF CATHOLIC COLLEGES AND UNIVERSITIES

In varying ways, learned societies participated in the consultations on successive drafts of an application document for *Ex Corde Ecclesiae* in the United States. Among them were the Catholic Theological Society of America, the College Theology Society, the Canon Law Society of America, the Fellowship of Catholic Scholars, and the Cardinal Newman Society.

In a singular way, close relationships developed between the NCCB Implementation Committee and the Association of Catholic Colleges and Universities. Sister Alice Gallin, OSU, served as a resource person on the Implementation Committee when it began its work in 1991. Her successors, Benito Lopez and Monika Hellwig, also served as resource persons to the Committee. At the 1994, 1995, and 1996 annual ACCU assemblies, representatives of the NCCB Implementation Committee were invited to speak and dialogue with the membership. At those meetings, fears were freely expressed, conflicting opinions clarified, objections registered, agreements

underscored, and recommendations made. Each successive annual meeting witnessed improving mutual understanding and openness even though tenacious differences sometimes remained.

The ACCU did not favor the application draft of May 1993, but supported the draft of 1995. On October 28, 1999, Monika K. Hellwig, executive director of ACCU, wrote to the U.S. bishops with the request that the latest draft not be voted upon at its November meeting and, failing that, that it be defeated. In the name of the ACCU Board, she voiced legal, academic, and financial concerns.

On February 2, 2000, Bishop John Leibrecht, chair of the Implementation Committee, was invited to the ACCU annual meeting to speak and dialogue about the application document passed by the U.S. bishops a few months earlier. His comments were directed toward safeguards built into the document which, bishops believed, could significantly ameliorate at least some of the concerns among ACCU's membership. For instance, the chief purpose of the Particular Norms, as clearly stated in the norms, is to "assist Catholic colleges and universities in their *internal process* of reviewing their Catholic identity" (NCCB, 2000). Governance remains internal to the institution itself. The norms point to what a Catholic college or university decides internally regarding its Catholic identity. The application document's opening statement that the Particular Norms relate to the university's internal processes modifies the entire section on Particular Norms.

The bishops tried to build flexibility into the document. The document says that in applying the General and Particular Norms of *Ex Corde Ecclesiae* Catholic colleges and universities are to take into account "their own statutes and, as far as possible and appropriate, relevant provision of applicable federal and state law, regulations and procedures" (p. 71). The phrase "as far as possible and appropriate" (p. 71) provides helpful guidance (NCCB, 2000).

Institutions are to conform their existing statutes to the Particular Norms "as much as possible." Such language recognizes the diversity within Catholic higher education and the different legal environments in which institutions exist. Phrases in the Particular Norms such as "to the extent possible" and "should" and "by reference and in other appropriate ways" provide flexibility (NCCB, 2000).

Finally, Bishop Leibrecht asked for analysis of the description of the *mandatum* and the processes for granting, withholding, or withdrawing it. The Vatican indicated that Canon 812 had to be dealt with juridically and the bishops' document did that within a context of proper relationships and legal concerns. The success of the bishops' efforts to be sensitive to the milieu of Catholic higher education in this country remains to be seen.

The ACCU, acting as a national organization and through its individual members, will continue dialogue with the U.S. bishops and collaborate with professional associations related to Catholic higher education.

## CONCLUSION

Part One of the apostolic constitution *Ex Corde Ecclesiae* presents a vision regarding the identity and mission of Catholic colleges and universities. It does so within the framework of institutional autonomy and academic freedom, which are to be hallmarks of every Catholic college and university.

Part One of the U.S. application document views the bishop not as involved in the internal affairs of the Catholic college or university, but as a participant in its life according to his appropriate role. Relationships between the Catholic college and university and the local bishop are to be built on mutual trust, cooperation, and dialogue.

Part Two of both *Ex Corde Ecclesiae* and its U.S. application contains norms which are to be dealt with through internal processes of the college or university, somewhat similar to the internal processes in which norms from accrediting associations, professional associations, and athletic associations are addressed.

Professors of theological disciplines are expected to seek or accept a *mandatum* from the local bishop indicating that, in their teaching and research, they act in full communion with the Catholic Church. As academics, they present the teachings of the Church with integrity and refrain from presenting as Catholic teaching anything contrary to the magisterium.

Dialogue will continue between bishops and Catholic colleges and universities as well as with professional associations related to Catholic higher education. The United States Conference of Catholic Bishops will develop ways of supporting the application of *Ex Corde Ecclesiae*.

Addressing Catholic identity and mission is a process that will take years. In 10 years, the application document for the United States will undergo a formal review in light of experience.

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