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FOCUS SECTION - FACING CHALLENGES, REMAINING CATHOLIC

Structuring Catholic Schools: Creative Imagination Meets Canon Law*

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How can Catholic school administrators and those who advise them bring creative imagination to bear on the question of how best to structure their schools in civil and canon law? Questions about the juridic structuring of Catholic schools are receiving increased attention today due to issues of liability and property ownership that have arisen in connection with various kinds of litigation the Catholic Church has been involved in. Likewise, questions are sometimes raised about the “Catholic identity” of Catholic schools. These more recent developments have simply added a sense of urgency to questions reflected upon for quite some time by Church officials and those involved with Catholic schools.

In the United States there has been a tendency to assume that “parish schools” are normative, presumed—if not mandated—by canon law. Canon law actually says nothing about parish schools, however. The American emphasis on parish schools, grade schools in particular, is actually a product of the mandate by the Third Council of Baltimore that parochial schools be established in every parish.¹ However, neither the 1917 Code of Canon Law nor the 1983 Code says anything specifically about “parochial” or parish-based schools.

Considerable efforts have been expended over the years to implement the mandate of III Baltimore. The mandate of III Baltimore did not distinguish between elementary and high schools, which may have led to uncertainty at times about the precise juridic status of Catholic high schools. There seems little room for doubt, however, that parochial grade schools have always been understood as part of the parish they are associated with, governed and administered as a parish institution within the parish juridic structure.²

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The fact of the matter is that canon law has always allowed for considerable variety and flexibility in the juridic structures that are available for establishing and administering Catholic schools. This chapter will explore the underlying requirements of canon law for establishing and administering Catholic schools, with a view toward helping to arrive at creative solutions to the question of how best to structure these schools civilly and canonically in order to ensure their temporal, spiritual, and religious well-being, and to assure that they can continue to make the kind of significant contributions to fulfilling the Catholic Church's educational mission in the United States that they have throughout U.S. history.

No "One Size Fits All" Solution

The canonical fact of the matter is that there is no one best model for structuring and administering Catholic schools mandated or even suggested by canon law. Rather, a variety of organizational and administrative structures is possible, making it possible to adapt solutions to the particular circumstances of particular localities. It will always be important to keep two central issues in mind when making decisions about a school's legal structure (civil or canonical) and provisions for its day-to-day administration, however:

- Governance (decision-making authority)
- Property ownership (and administration)

It is easy, in the day-by-day chaos involved in keeping a school system going and delivering quality Catholic education, to lose sight of certain fundamental issues involved in questions of structure and governance: First of all, it is important to know and to be clear about who owns what. This is not always an urgent question. Because it is not frequently of urgent concern, considerable ambiguity can creep in regarding issues of property ownership and control over the course of the daily, weekly, monthly, and yearly operations of a school or school system that involve the utilization of large amounts of material and nonmaterial forms of property. Furthermore, it is often possible for uncertainty to exist about who has the authority to make what kinds of decisions in connection with a Catholic school. Some kinds of decision-making authority are clear, for example that the school board has the authority to decide who will be hired as superintendent or principal. Other kinds may not be so clear, however; for example, who has the final authority to decide whether a particular religion book will be used in high school classrooms or not. Both of these kinds of questions are directly related to questions about the school's structure and provisions of the school's governing documents about who gets

to make what decisions. If the answers to these kinds of questions are not clear, more often than not no harm is done: Decisions get made, no one complains, and the day-to-day life of the school and the educational process goes on. In moments of crisis, however, the answers may be crucial, and if there is a lack of clarity in the school's structure of governance or provisions of its governance documents regarding administration, needless anxiety and tensions can build up, important relationships upon which the school depends for support can be damaged, turmoil and even chaos can result. Also, the school may find itself facing liabilities that those responsible for the school did not really anticipate. Thus, it is very important to arrive at the necessary degree of certainty and clarity regarding who owns what property involved in the operation of the school and who has the authority to make what decisions in the school's administration for the school to operate smoothly from day to day and over the course of its life.

Outline of Article

In order to arrive at a better understanding of how best to structure a Catholic school in both canon and civil law we will first consider what a Catholic school is, canonically speaking. Understanding the canonical meaning of "Catholic school" requires in turn some understanding of the canonical concept of the "public ecclesiastical juridic person," because some Catholic schools are operated by such canonical entities, and in fact a Catholic school could itself be a "public ecclesiastical juridic person." However, it also should be borne in mind that a school does not have to be operated by an ecclesiastical person, nor itself be one, in order to be a "Catholic school." Rather, existence as a public ecclesiastical juridic person, or administration and governance by another public ecclesiastical juridic person, are simply two of the available alternatives for establishing the canonical status of a Catholic school.

After taking a look at what canon law says a Catholic school is, we will consider the canonical role of the diocesan bishop in Catholic schools; both the minimal role that canon law anticipates for a bishop with respect to the Catholic schools in his diocese, and also the more enhanced role that he may wish to play and the schools may wish him to play. We will then move on to consider the kind of structures that are available in civil law for giving legal identity to a Catholic school, and how best to correlate the civil option chosen with the requirements of canon law and the desired ecclesial structure and juridic status. In doing so we will highlight once again that in both canon and civil law school governance and the ownership of school property are central issues.

What is a “Catholic School”?

What is a “Catholic school,” then, canonically speaking? In addition to issues of property ownership, liabilities, and administrative authority, the question raises issues concerning a school’s “catholicity;” that is, does the school deliver a truly “Catholic” education, and is the whole life of the school imbued with a Catholic spirit? One must ask, then, what really is meant by a “Catholic” school. Spiritually, theologically, and educationally there may be a variety of answers as to what makes a school “Catholic,” and there may be considerable room for discussion of the particular qualities that make a school “Catholic” in any of those senses. Canonically, however, the answer is quite clear: Canon 803 of the 1983 Code of Canon Law identifies three types of schools that can be considered “Catholic” and identify themselves as such: (a) schools directed (*moderatur*) by the competent ecclesiastical authority, (b) schools directed by a public ecclesiastical juridic person, and (c) schools recognized as “Catholic” in writing by ecclesiastical authority. Thus, understanding “Catholic school” canonically requires understanding what is meant by the competent authority and also what is a “public ecclesiastical juridic person.”

The “competent authority” with respect to the establishment or operation of a Catholic school could always be the Holy See (although only rarely would this be the case). Usually it means the diocesan bishop or someone canonically equal to a diocesan bishop; but in a parish with its own school it could also be the pastor (serving, however, “under the authority of the diocesan Bishop in whose ministry of Christ he is called to share”).³ Religious institutes whose mission is education are also authorized to establish and operate schools, but may only do so with the consent of the diocesan bishop.⁴ Thus, although the Code may recognize a separate basis for religious institutes to establish and operate schools, they can only do so with the expressed authorization of the diocesan bishop. It may be noted that in addition to any such separate basis, schools established and operated by religious institutes also exhibit qualities of both the second and third types of “Catholic” schools mentioned in canon 803 (those run by a public ecclesiastical juridic person,⁵ and those “recognized” as “Catholic” by the competent authority). It is not altogether clear from the canons that the bishop’s consent for a school run by a religious institute would have to be in writing, although it is clear that the consent must be in writing for schools that could only attain the status of “Catholic school” on the basis of canon 803.

Schools Established by the Competent Authority

A “diocesan” high school, established and operated by the diocese with the bishop or his delegate (which would include a “board” established by and answerable to the bishop) actively involved in its administration, would be the clearest example of a “Catholic” school “directed by the competent authority.” How the competent authority establishes and runs such a school is another question, however, with both civil and canon law implications. A bishop could grant juridic status to such a school as a separate public juridic person (discussed below). Doing so might render the exact nature of the school rather ambiguous, however: Would it still be “directed” by the competent authority? Or would it now be a separate and distinct public juridic person in its own right, directed in accordance with its own statutes independent of administration by the diocesan bishop or his delegates?⁶ This is mentioned to highlight that a decision to grant such juridic status to a school has canonical implications that may go beyond those immediately anticipated. (If a bishop gives a school separate juridic person status he could unwittingly relinquish more control and influence over the school than he had intended, unless the statutes of the new juridic person are drafted very carefully.)

The first kind of “Catholic school” recognized in the Code is a school established and operated by the competent authority himself. By virtue of his jurisdiction over the whole Church, which is declared by canon law to be “supreme, full, immediate, and universal ordinary power” (“ordinary” meaning that the power referred to belongs to whoever legitimately holds the office in question), the bishop of Rome, that is the Roman pontiff or pope, is certainly a competent authority who could establish and operate a Catholic school.⁷ The Holy Father may exercise this power personally, but also through the Papal Secretariat of State, the Council for Public Affairs of the Church, and the other institutes of the Roman Curia, which are known collectively as the “Holy See.”⁸ There is no real need to address schools operated by the Holy See here.

Most often, “the competent authority” is going to refer to the diocesan bishop or someone equivalent in authority, usually referred to in canon law as the “local Ordinary.” Canonically an “ordinary” is anyone who has “ordinary” power, that is, power that is attached to an office and that can be exercised by whoever holds that office. Ordinary power can normally be “delegated” to another unless the law provides otherwise. This means that the one who possesses ordinary power can authorize, or “delegate,” someone else to exercise the power in question in particular cases, or sometimes generally at the discretion of the one to whom the power has been delegated. However, the one

to whom power is delegated may only exercise the specific power delegated, and which he or she can exercise only in accordance with the power granted and any limitations placed on its exercise. Anyone who has ordinary power, on the other hand, can exercise it to the full extent of the power attached to the office in question without further limitations.

“Local Ordinary” is a very specific term in canon law: It means, first and foremost of all, diocesan bishops and anyone else placed over a “particular Church” (a technical term usually meaning a diocese), or over a community that is equivalent to a particular Church as identified in canon 368. Canon 368 identifies the following communities as equivalent to a particular Church: a territorial prelate or abbacy, an apostolic vicariate, an apostolic prefecture or an apostolic administration erected in a stable manner—all technical terms, and unusual examples of what can constitute a “particular Church,” that have little relevance to the issues under discussion in this chapter.⁹

The term “Ordinary” also includes anyone who possesses general ordinary executive power in a particular Church or equivalent community, such as vicars general and episcopal vicars. Furthermore, while they may be “ordinaries,” superiors of religious institutes and societies of apostolic life (like the Society of St. Sulpice, of which the author is a member) are not “local” ordinaries in canon law. For all practical purposes, therefore, we are concerned with diocesan bishops as “the competent authority,” since they constitute the competent authority that most Catholic school officials will be involved with, even if there are other “competent authorities” in canon law who could be involved in the establishment and administration of a Catholic school. While the pastor of a parish could be “the competent authority” with respect to a school run by his parish, as already noted this is really only in collaboration with the diocesan bishop, who clearly is the “competent authority” in the diocese and who has wide powers of governance to oversee, override, or direct the governance and administrative role of pastors as competent authorities in their own right. Beyond the diocesan bishop, pastors, and in a very limited sense the Holy See, it is hard to point to other “competent authorities” in the Church of particular significance with respect to canon 803 and the issues we are concerned with in this chapter. Thus, as far as we are concerned the first kind of “Catholic school” identified in canon 803 refers to schools actually established and run by the Holy See, the diocesan bishop, or parish schools overseen and administered by the parish pastor.

Schools Operated by Other Ecclesiastical Public Juridic Persons

The second kind of “Catholic school” identified by canon 803 is schools directed by a public ecclesiastical juridic person. What constitutes a “public ecclesiastical juridic person” is addressed below. For now, suffice it to say that there are potentially many different kinds of public ecclesiastical juridic persons. It has already been mentioned that religious institutes (popularly referred to as religious “orders”) are ecclesiastical public juridic persons automatically by operation of the law itself, whenever and as soon as they are created juridically. However, religious institutes are not the only public ecclesiastical juridic persons. Virtually any collection of persons or things could be made into a public ecclesiastical juridic person, provided its existence and activities are devoted to a legitimate Church purpose and certain other requirements of canon law are met. In other words, a public ecclesiastical juridic person is a legal or canonical animal; an abstraction, very similar in many respects to a corporation in civil law, although not exactly the same. More about that later. For the time being, the important point is that a “Catholic school” may be a school operated by such a legal animal, and theoretically by any such legal animal.

What would guarantee the “Catholic identity” of a school operated by a public ecclesiastical juridic person, then? First of all, as will be seen, only a corporate entity whose activities are devoted to legitimate Church purposes can be an ecclesiastical public juridic person, and the statutes of the juridic person itself must be approved by the competent authority. Thus, a first check on the Catholic identity of a school operated by a public juridic person is the requirement of canon law that activities of the juridic person be directed toward a Church purpose. Anything inconsistent with Church purposes, in the case of a school with the Catholic identity of the school, would authorize the competent authority to intervene and take corrective action.

Sometimes the law provides that an entity is automatically a juridic person as soon as it comes into existence. Its statutes would still require the approbation of the competent ecclesiastical authority, however. And given the requirement that the statutes be approved, it must be assumed that any change in the statutes would have to be approved as well. Thus, the competent authority’s control over approval of the statutes of a juridic person constitutes a second check on provisions of such statutes that would touch on the Catholic identity of a school run by a juridic person or that is itself a juridic person. The law is very specific about what entities are automatically juridic persons, and they are very few. Catholic schools themselves are not juridic persons by the law itself, although a school could itself be erected as a juridic person,

in which case the school would still in that sense be a school operated by an ecclesiastical public juridic person. However, a school can also be operated by a public juridic person without being an ecclesiastical juridic person itself. If an entity is not a juridic person by the law itself it can only become a juridic person through explicit “erection” as such by the competent authority through a written decree. And, as mentioned, the statutes of juridic persons must in any event always be approved by the competent authority.

Finally, canon 803 §3 provides that no school whatsoever, whether it is run by a juridic person, is a juridic person itself, or is some other sort of school, may bear the name “Catholic school” without the consent of the competent ecclesiastical authority, clearly implying that such consent can also always be withdrawn if Church authority feels that a school does not manifest a sufficiently Catholic identity. Thus, it is clear that no school can operate in a diocese as a “Catholic school” without the consent of the diocesan bishop, including any school operated by a public juridic person, a final guarantee of the Catholic identity of the schools in a diocese. If a school fails to maintain a sufficiently Catholic identity, the diocesan bishop can withdraw his consent for the school to identify itself as a “Catholic school.” Furthermore, if the school itself is erected as a juridic person, the requirement that its statutes be approved by the competent authority constitute an additional means through which its Catholic identity can be assured and preserved through oversight by the diocesan bishop (discussed below).

It is very common for religious institutes to operate Catholic schools. Everyone is familiar with the very excellent schools run by the School Sisters of Notre Dame, the Christian Brothers, Xaverians, Jesuits, Benedictines, and on and on and on. Most of the communities we think of as religious orders are ecclesiastical public juridic persons by the law itself. However, schools run by religious orders are not the only possibility for schools run by public juridic persons, which opens a door for creativity in the development of a Catholic school or school system. Erecting a school or a school system as an ecclesiastical public juridic person is one of several possibilities in canon law for giving a Catholic school or school system a clearer ecclesial structural identity, and providing for a clearer and more helpful system of administration and governance that can be made to dovetail well with preferred options and legal requirements in the civil law structure utilized. A school could also be erected as another kind of ecclesiastical juridic person, a private juridic person, with similar potential advantages, especially with respect to coordinating civil and ecclesiastical structures. Before discussing the coordination of civil and canonical structures, however, we need first to take a look at the third type of

Catholic school contemplated by canon 803, and then consider in more detail exactly what a “juridic person” is in canon law.

Schools “Recognized” as Catholic

The third type of “Catholic school” identified in canon 803 is any school that ecclesiastical authority recognizes in writing as a Catholic school. This could be any school whatsoever, assuming of course that ecclesiastical authority would not grant such recognition to a school unless it was convinced that the school is in fact Catholic and that its day-to-day life is imbued with a Catholic spirit and manifests a Catholic identity. Theoretically, however, even a public school could be recognized as a “Catholic school” if it exhibited the necessary traits (hard as that would be to imagine in the United States, since the governing principles of public schools include a notion of strict separation of church and state that would exclude in principle many of the qualities that would be necessary for a school to ever be considered “Catholic”). In any event, a school does not have to have any particular juridic or legal identity in canon law to be considered a Catholic school, so long as it receives recognition of its Catholicity from Church authority (which again could be the Holy See, the diocesan bishop, or any other ecclesial authority competent to grant such recognition).

An important qualification in the law is that the recognition must be given in writing. And once again, one must presume that if the recognition can be given, it can also be withdrawn if the competent authority becomes convinced that the school no longer exhibits the qualities of a Catholic school. Of particular note is that this particular classification of “Catholic school” in canon law allows for almost unlimited latitude with respect to the juridic structuring of schools in canon and civil law, and the provisions made for their governance and administration, provided the competent ecclesiastical authority is comfortable with the form of organization chosen for the school and is willing to recognize it as Catholic. On the other hand, canon 803 §3 is quite clear in stating that no school may refer to itself as Catholic “even if it is in fact Catholic” without the consent of competent ecclesiastical authority. What is crystal clear, therefore, is the extensive power of oversight the competent ecclesiastical authority is given with respect to schools that wish to be considered Catholic, including the power to determine whether or not they may refer to themselves as Catholic.

Latitude Afforded: Importance of Correlating Canon and Civil Structures

The latitude that canon law allows for in creating the juridic structure and juridical norms for the governance and administration of Catholic schools does not mean that just any governance or administrative structure will do. Rather, whatever structure is employed must take into account a complex of factors that involve both canon and civil law. Canonically, the first and foremost concern will be how the role of oversight given to the competent authority by canon law can best be preserved and implemented in the circumstances of the particular school under consideration. Second, decisions must be made about how directly or indirectly ecclesiastical authorities are going to be involved in the school overall and in its day-to-day governance and administration, and then appropriate structures and regulations must be employed to facilitate the degree of involvement agreed upon. Civilly, the question will almost always be how best to implement the ecclesial structure and governance provisions chosen in ways that will be recognized and protected and, if need be, that can be enforced in civil law.

It may appear to go without saying that Church entities should be organized and governed in civil law in ways that are consistent with their structure and the requirements of their governance in canon law. In one sense this is certainly true: in the sense, and to the extent, that the entity is in fact a Church entity. But this actually begs the relevant question and simply brings us back to the issue of Catholic identity. Civil law allows for many different kinds of schools. For a school that wishes to be considered Catholic the question is whether or not its structure and governance in civil law is consistent with a Catholic identity as understood in canon law. That is, do the civil structure and governance provisions recognize and preserve the role of the competent ecclesiastical authority in legally enforceable ways in accordance with the particular kind of Catholic school in question (one operated by the competent ecclesiastical authority, one operated by a public ecclesiastical juridic person, or one “recognized” as Catholic by ecclesiastical authority)? Or has the school been organized civilly in a way that creates an entity that is civilly independent of ecclesiastical authority?¹⁰ If so, it seems clear that it would be difficult to consider the school a “Catholic” school in the canonical sense. Thus, it should be obvious why it is so important to coordinate and correlate the civil and ecclesiastical forms of organization and governance of a school that wishes to be considered “Catholic.”

In order to correlate the ecclesiastical structure and governance of a Catholic school with the civil it is important to understand the role that the concept of the “juridic person” plays in canon law in determining the nature,

structure, and governance of a Church institution. As already noted, a school need not be an ecclesiastical juridic person nor operated by a juridic person in order to be a Catholic school. More often than not, however, if a school is not itself a public ecclesiastical juridic person there will be such a juridic person involved at least at some level in its governance and administration. Therefore, it is important to take a look at what a “juridic person” is in canon law, the different kinds of juridic persons that canon law recognizes, and the various implications of juridic person status. A clear understanding of juridic persons will help to resolve questions about whether a Catholic school should be erected as a public ecclesiastical juridic person or not, and what the relationship, if any, of another kind of Catholic school is or ought to be to a public ecclesiastical juridic person. In doing so, it should also be borne in mind that there does not necessarily have to be a formal relationship between a school that is “recognized” by ecclesiastical authority as Catholic and any public ecclesiastical juridic person (c. 803 §1, third type of “Catholic school”), but it is also possible that a school could be “Catholic” in any or every sense of the word canonically and still be denied the canonical right to identify itself as a “Catholic school” (c. 803 §3).

What Is an “Ecclesiastical Juridic Person”?

Definition: How Created, Types, & Consequences

A “juridic person” in canon law is similar to a corporation in civil law, but not exactly the same. What it has in common with civil corporations, first and foremost, is that it is a corporate entity. Juridic persons are “entireties” of persons or things ordered for a purpose in keeping with the mission of the Church, which transcends the purpose of the individuals involved.¹¹ There are two types of juridic persons in canon law: public and private.¹² What distinguishes the two is that a public juridic person is established by the competent ecclesiastical authority to fulfill the function entrusted to it in the name of the Church in view of the public good; they are essentially public institutions (in the ecclesiastical sense) established by Church authority.¹³ In canon law, the property of juridic persons (of either kind) is owned by the juridic person that has legitimately acquired it, which will most often mean the acquisition of ownership according to the norm of civil law.¹⁴ However, “ecclesiastical property” is defined in the Code as property owned by an ecclesiastical public juridic person.¹⁵ Ecclesiastical property must be administered in accordance with the norms of Book V of the 1983 Code of Canon Law regarding the temporal goods of the Church. That is, the temporal goods of an ecclesiastical *public* juridic person must be administered according to

the norms of Book V of the 1983 Code of Canon Law. However, the goods of private juridic persons, or entities without the canonical status of juridic person, do not have to be administered according to those norms. Thus, if a school is a public juridic person, or is operated by a public juridic person, its goods must be administered in accordance with applicable norms contained in the Code. If a school is not run by a public juridic person and is not itself a public juridic person, the norms of the Code regarding the administration of ecclesiastical property do not have to be complied with because its property is not “ecclesiastical property.”

Any juridic person that does not include the outlined essential features of a public juridic person, that is any *other* juridic person, is a “private” juridic person (for instance, an entity recognized by Church authority as a juridic person that was not established by the competent authority but by the individuals involved; or one that serves a purpose that is not for the public good in general, but is for some more specific and restricted purpose; or a corporate entity that does not fulfill its functions in the name of the Church, but rather only in its own name; or a juridic person where neither the juridic person nor the competent authority wish its property to be considered “ecclesiastical property” and the administration of the property, therefore, subject to the norms of Book V of the Code; etc.). Ordinarily Catholic schools will be associated with public, not private, juridic persons, since Catholic education always touches upon the ecclesial public good. However, it is possible that a school could be operated by a private juridic person or be a private juridic person itself and not run by a public juridic person, and there may be reasons to consider that as an option in the ecclesial juridic structuring of a school in particular circumstances.

Juridic persons come into being canonically in one of two ways: by the law itself, or by a special decree of the competent authority. Certain entities are automatically juridic persons as soon as they come into being legitimately. Thus, for instance, a parish is automatically a juridic person as soon as it is created (c. 515 §3). A bishop cannot create a parish that is *not* a juridic person (meaning that as soon as a parish is legitimately erected it automatically has all of the canonical rights and duties of a juridic person, that is, the rights and obligations of a parish in canon law). A bishop could create another kind of entity that is something like a parish (such as a “quasi-parish,”¹⁶ or an oratory, a shrine or private chapel,¹⁷ or a chaplaincy¹⁸) which does not have all of the qualities of a juridic person (such as legal perpetual existence¹⁹), or all of the rights and duties of a parish; but he could not establish a parish that is not a public juridic person; once established, a parish is automatically a juridic person with all of the qualities, rights, and obligations of a public juridic person

in canon law. Other examples of entities that are automatically a juridic person once they come into existence legitimately in canon law are: dioceses, religious institutes (the houses and organizations of religious orders), seminaries, and ecclesiastical provinces.²⁰

As noted, one of the essential qualities of a juridic person once it comes into existence is that it itself is the subject of the legal (or canonical) rights and duties that correspond to its nature;²¹ hence the importance with respect to a Catholic school of whether or not it is established itself as a public juridic person. If it is, it is no longer subject to the discretionary judgment or ecclesiastical authority of either the competent authority or its own administrators in the same way that it would be if it were not a public ecclesiastical juridic person: It must be governed and administered in accordance with the rights and responsibilities that it has as a public juridic person as identified in canon law and in its statutes. Concomitantly, a juridic person can enforce its rights and obligations in canon law as those rights and obligations are identified in the law and in its statutes. It might also be able to enforce its canonical rights and obligations in civil law as well if its canonical rights and obligations are given recognition in civil law through civilly valid means in its civil structure and governance provisions.

Schools as Juridic Persons

If a school is not itself given the status of a juridic person in canon law, it will not have the canonical rights and obligations of a juridic person. It is significant, then, whether a school is itself a juridic person or is governed or operated by a public juridic person. If a juridic person itself, it must be governed according to its own statutes. If it is operated by another juridic person, canonically the governing juridic person has its own canonical rights and duties with respect to the school as an institution operated by the ecclesiastical juridic person, which may be defined in the statutes of the juridic person or may be the subject of an agreement between the juridic person and the school. Whatever the case may be, norms for the governance and administration of such a school should be well documented. If a school is given a separate juridic status in canon law, the question will be the extent to which the school's civil structure acknowledges, respects, and protects the prerogatives of the ecclesiastical juridic person that operates it so far as canon law is concerned. Canon law in fact anticipates that it is possible that ecclesiastical institutions may end up being given a civil law status that is inconsistent with their ecclesiastical status, and that creates a degree of independence from Church authority, or from the ecclesiastical juridic person that created or has

ecclesiastical responsibility for operating them, than canon law would recognize.²² Canonically speaking, great care should be taken to avoid this kind of variance from occurring.

While some ecclesiastical public juridic persons are such by the law itself, an entity that is not a public juridic person by the law itself can be given this canonical status through a special decree of the competent authority (meaning a written decree that explicitly states that the entity is being made into a public juridic person). There are no *private* juridic persons created as such by the law itself. A private juridic person can only come into existence through a special decree of the competent authority.²³ It is possible that a Catholic school could be created as a private juridic person. However, if a school is erected as a juridic person in canon law it seems more natural to think of it in terms of public rather than private juridic personhood, since the transmission of Catholic doctrine and religious formation touch upon the ecclesiastical public good. There are reasons why a school and the competent authority might prefer that it be erected as a private juridic person, however; primarily to take the administration of its property outside of the ambit of Book V of the Code. However, caution should be exercised in conferring a juridic status on an entity that may be at odds with its very nature. There are reasons why public juridic persons are subjected to the norms of administration of Book V: to safeguard the ecclesiastical public good and the interests of the ecclesiastical public that such entities be administered properly. It is hard to imagine institutions that bear more directly on the ecclesiastical public good than Catholic schools, such that when they themselves are given an independent juridic status in canon law it seems to make more sense to think of them in terms of public juridic persons. That does not exclude the canonical possibility of erecting a school as a private juridic person, but rather serves only as a cautionary note. The more pertinent question regarding Catholic schools may be whether they should be given the independent canonical status of a juridic person, whether public or private, at all. If a school is not given such status in canon law, the question will then be whether the school is going to be operated by an ecclesiastical public juridic person or not. And it must be borne in mind that whatever the juridic status of a school, there will always be the possibility that even if the school is “Catholic” in fact (meaning even if it does qualify as a “Catholic school” under canon 803 or as a school operated by a religious institute), ecclesiastical authority may for some reason not consent to the school identifying itself as a “Catholic school,” in which case canonically it may not legitimately do so (c. 803 §3).

If a school is not operated by the competent authority or a public ecclesiastical juridic person, and is not itself an ecclesiastical public juridic person,

the question will be whether the school has been “recognized” as a Catholic school by the competent ecclesiastical authority. If so, this recognition must be given in writing (c. 803 §1). And if a school is so recognized, the question will then be in what manner governance and oversight by the competent ecclesiastical authority is going to be effectuated, a question discussed further below.

Important Qualifications

Two important qualifications relating to the question of juridic personhood are: (a) that the competent authority not confer such personality on an entity unless it demonstrates that it has the means necessary to achieve its purposes (meaning financial, material, and personnel);²⁴ and, (b) that entity may not acquire juridic personality (either public or private) unless the competent authority has approved its statutes.²⁵ These qualifications highlight the role and involvement of the competent authority (usually the bishop) in determining the structure and controlling documentation that sets forth how an entity is going to be governed and administered if it is going to be granted juridic personhood in canon law. They also highlight the role of the bishop in assuring that a school has demonstrated that it will have the means to succeed. This second element may be especially challenging in relation to the difficulty of developing the means of securing adequate funding for Catholic schools in America, at least if consideration is being given to erecting the school as a juridic person. On the other hand, whether or not a school is going to be a juridic person, this cautionary norm of the law represents sound prudential counsel in assessing the establishment of any ecclesiastical entity that is likely to continue in existence for long into the future and require significant material resources in order to succeed.

If a school is to be given juridic personality in canon law, it will be important to ascertain that any documents establishing its structure and provisions for its governance and administration in civil law correspond, without contradicting in any way, similar provisions in its ecclesiastical constitution as a juridic person. While it may be advisable in some circumstances for a school to be erected as an ecclesiastical juridic person, normally it will also be given some sort of specific status under civil law in order to provide for the protection of its property and assure the enforceability in civil law of its norms of governance and administration. Here is where significant problems can arise: How does one assure that the provisions of the civil constitution of the entity or school are consistent with the requirements and the specific provisions of its canonical constitution as a juridic person? Doing so requires considerable

canonical and civil law expertise, and one should not assume that someone with canonical expertise understands all of the implications of the civil constitution and governing documents of a civil entity, nor that someone with civil law expertise understands all of the implications of canon law for an ecclesiastical juridic person and its statutes. It will be very important, therefore, to achieve sufficient dialogue and understanding between those with canonical expertise and those with civil law expertise when making decisions about how to structure Catholic schools in canon and civil law, and with respect to norms for their governance and administration having force under both systems.

Governance and Administration

As far as governance and administration are concerned, public juridic persons are governed and administered by those recognized in canon law as having that authority, whether by the universal Code of Canon Law or particular laws of the particular ecclesiastical jurisdiction in question (normally this will be the diocese), or as specified in the statutes of the juridic person as approved by the competent authority. Private juridic persons are governed and administered by whoever is given that role in the juridic person's statutes. These powers of governance and administration refer also to the power of those persons to bind the juridic person legally, thus creating contractual rights and obligations through their actions in governing and administering the juridic person. Thus, for a school that is itself a public juridic person, those who have the power to so act on behalf of the school will be those identified as having those powers in the juridic person's statutes. For a school that is operated by a juridic person (rather than as a juridic person itself), those who have the power of governance and administration of the school will be whoever has the power of immediate governance of the juridic person, unless the approved statutes of the juridic person itself provide otherwise. This is why the pastor of a parish has the ultimate power of governance and administration over a parish school: In canon law he is the one who has the power of immediate governance of the juridic person that is running the school (that is, the parish).²⁶

There is some possibility that particular law (a law created by the bishop for his diocese) could provide for structures of governance in parish schools that confer the ultimate powers of governance and administration over the school to someone other than the pastor, but this possible alternative does not appear ever to have been employed or attempted in the United States. Attempting to alter the governance structure of parish schools in this fashion would likely be greeted with dissatisfaction, if not resistance, by pastors

actively involved in the administration of their own schools, and the extent to which this could be done canonically without the full support of pastors may be open to question and would likely not be able to be accomplished easily. On the other hand, some pastors might welcome the establishment of structures of governance that do not require as much active involvement on their part. However, as is always the case, these kinds of questions of governance are not unrelated to questions about how the school (or a school system) is funded, and the role of the parish as a whole in funding the school. Pastors are not likely to consent to structures of governance that require the parish to provide financial support while at the same time requiring the pastor to relinquish his powers of governance and administration over the school.

As should be evident by now, the diocesan bishop does have certain responsibilities and powers with respect to schools in his diocese that confer upon him powers of governance (if not administration). Care must be taken to distinguish these powers of governance over schools in general from the more direct powers of governance and administration referred to in canon 118 when it says that those acknowledged in universal or particular law “represent a public juridic person and act in its name.”²⁷ Canon 1279 helps to clarify the implications of canon 118 when it specifies that the administrator of the temporal goods of a public juridic person (if not further specified in the statutes) is the one who has “immediate governance” of the juridic person. This helps to distinguish between the more general and remote powers of governance that a bishop has over juridic persons in his diocese from those of the one who “immediately” governs the juridic person. The bishop does not have the “immediate” power of governance over juridic persons in his diocese other than the diocese itself. That power belongs to whoever is identified in the law or the statutes. For a parish it is the pastor (c. 532). Ordinarily “immediate” governance means those who administer the affairs of a juridic person on a day-to-day basis, rather than the diocesan bishop who has only more general supervisory powers in canon law, with the ability to intervene in the administration of a juridic person when abuses occur (unless, of course, he himself is identified as the direct administrator of the juridic person in question in the law or the statutes of the juridic person). This distinction may not always be clear to non-canonists, and, therefore, it is important to make it as clear as possible in the governing documents of the juridic person that confer legal status on it in both canon and civil law.

These features concerning the administration and governance of public juridic persons may influence decisions regarding the conferral of such personhood on a school, since civil law implications must be taken into consideration. Whenever a school is erected as a juridic person, and whenever a

school that is not a juridic person itself is operated by a juridic person, this feature of canon law should be fully incorporated into the civil constitution of the school. Care should be taken to express and safeguard the supervisory role of the competent authority, that is, of the diocesan bishop, while also expressing and safeguarding the relative administrative independence of those who administer the affairs of the school. Care should also be taken to maintain the proper degree of separation between the school and the bishop (and the diocese) so as to avoid giving the impression that the school is owned and operated by the bishop or the diocese. The objective is to avoid creating more of a connection between the bishop (and the diocese) and the school than would be desirable in the school's civil constitution. Considerations of civil liability are a significant concern: Will the full incorporation of canonical provisions in the civil constitution of the school make the diocese as a whole civilly responsible for liabilities of the school, or does it risk making the assets of the school potentially subject to liabilities of the diocese or other ecclesial entities in the diocese? Avoiding these results is not necessarily very easy, and the structuring of a school or school system with these objectives in mind is fraught with pitfalls for the unwary. This is an area where it is particularly important to overcome any potential misunderstanding of the full implications of canon law and civil law and their inevitable interaction by civil and canon lawyers involved in the structuring of the school or school system. It may further require an assessment of whether current civil law offers the means to achieve these objectives adequately, and if not effective strategies for securing necessary amendments to the civil law to render these objectives achievable.

If a school is not a public juridic person, the question is going to be how to safeguard the proper role of the bishop (or other ecclesial competent authority) in civil law without creating an undesirable degree of relationship or mutual identity. The challenge is almost always going to be how most appropriately to correlate canonical requirements for the governance and administration of schools that wish to be considered Catholic with the civil constitution of the school without creating either an undesirable distance or independence of the school from ecclesiastical authority or an undesirable degree of identification of the school with other ecclesial entities. Too remote of an identification of the relationship between the competent authority and the school in the school's civil constitution can result in an inability of the competent authority to exercise his proper supervisory role in ways that will be recognized and enforced in civil law. Too close an identification may result in an undesirable degree of control by ecclesiastical authorities outside of the immediate governance and administration of the school, or in the creation of

risks that the school and its assets could be subjected to claims originating in the acts of some other juridic person or other Church entity official. Thus, the ultimate challenge is to preserve appropriate Church supervision over Church institutions, here in particular Catholic schools, while identifying them as distinct units whose operation and assets are separate from other Church entities (save for the supervisory powers of the competent authority). Making a conceptual distinction between governance and administration can be a helpful way of preserving the appropriate distinction and effectively communicating the nature of this distinction to civil authorities who may at some point have to make relevant determinations.

As far as schools or school systems established and directed by the competent authority are concerned, there are basically three options with respect to juridic personhood that could be employed in the creation of such a school. First of all, a school or school system could be operated directly by the diocese within its existing structure. Since a diocese is a juridic person by the law itself (c. 373), a school operated by a diocese can be viewed both as a school directed by the competent authority and as one directed by an ecclesiastical public juridic person (c. 803 §1). Second, however, a school or school system established and operated by the competent authority would not have to belong to (or be operated by) the diocesan public juridic person. Rather, the competent authority could establish a school or school system as its own public ecclesiastical juridic person, in which case its governance would be determined by its own statutes (preserving intact, of course, the competent authority's power to intervene in the event of maladministration). Doing so would give the school or school system as a juridic person a separate legal existence and identity of its own, and would confer upon it certain rights and responsibilities in canon law that would have to be respected (for instance, perpetual existence and the right to be governed by its own statutes); such rights and responsibilities would not exclude all rights and obligations acknowledged by the Code itself regarding schools and juridic persons (such as oversight by the competent authority), although some could be modified in the statutes (such as the creation of a particular administrative structure somewhat different from what the Code would otherwise contemplate). Since the statutes would have to be approved by the competent authority, there is little risk of provisions that would alter rights and obligations under the Code in ways that would disadvantage or contravene the rights of the competent authority. The important thing with respect to such an independent public ecclesiastical juridic person would be to exercise great care in drafting its statutes in order to assure that the proper role of the competent authority is acknowledged, and that any provisions of the Code that apply to the kind of juridic

person created are a part of its civil constitution and enforceable in civil law as well. One reason for creating an independent juridic person rather than simply having the school or school system operated by the diocese would be to create a clear distinction between the legal identity of the diocese and that of the school or school system for the purposes of clarifying property ownership and issues of liability. So long as this can be done in a way that will clearly express the desired degree of separation in civil law while not sacrificing the supervisory role of the bishop required by canon law or the desired degree of administrative autonomy of the school in either civil or canon law, the conferral of juridic person status in canon law on a school may be one creative way of achieving desired ends of school reorganization in ways that protect vital ecclesial and civil law interests.

A third option that would avoid creating or relying on ecclesiastical juridic persons at all would be to create a school or school system that is explicitly declared not to be operated by the competent authority through the ecclesiastical juridic person of the diocese, but rather is established and run by and through its independent civil structures without any particular ecclesiastical juridic status at all. While this alternative may seem attractive for clarifying issues of ownership and liability in civil law, the risk it runs is that a civil, or even an ecclesiastical, court might determine that notwithstanding protestations to the contrary the school or system is actually in fact an “apostolate” of the juridic person (and civil entity) of the diocese, thus defeating the purpose of trying to establish a clearly different legal identity for the school through the way it is structured in canon and civil law in the first place.

Another issue that needs to be considered carefully in determining how a school established by the competent authority is to be structured is that of governance. As already noted, the Code of Canon Law does require that certain powers of oversight be preserved for the competent authority with respect to schools that wish to be considered Catholic. However, that does not mean that the school has to be run by the competent authority. It may be useful, therefore, to make a distinction between governance and administration (in the strict or specific day-to-day sense). In doing so, governance is meant to refer to the more remote kinds of authority an official with governing powers has to exercise oversight over the proper running of an institution, but which do not imply involvement in day-to-day operational decisions and administration. Administration, on the other hand, is meant here to refer to day-to-day administration. By analogy to civil law structures, it would be something like the distinction between a state superintendent of schools who can establish uniform rules for the administration of schools in his state that apply equally to all schools of the same kind, and who can intervene if a school is

being maladministered, but who does not have the authority to interfere in the day-to-day administrative decisions of the principal and other officials who actually operate schools on a day-to-day basis. Or, it is like the difference between the state legislature, governor, and other state officials, and the mayor of a city and city council, or the administrative departments of a city. State authorities can pass laws and create regulations that must be followed by cities, but no one would say this means that the state owns the city's property, or that state officials can decide how and when to schedule vacation time for city employees. It also means that liabilities created by the city in its day-to-day operations will not be enforceable against property of the state, but only against property of the city.

Canon 118 provides that a public juridic person is governed (and therefore administered) by whomever universal or particular law recognizes as having that authority, or by whomever the statutes provide has that authority. One can see, therefore, the importance of the statutes of a juridic person. If the statutes do not provide otherwise, the competent authority over a juridic person is the one who acts on its behalf (immediately governs and administers it).²⁸ However, the statutes can provide that someone other than this competent authority represents and acts in the name of the juridic person. The intended distinction between governance and administration could be established in both canon and civil law, therefore, through the identification of who has such powers in the ecclesiastical statutes of the juridic person and the governing documents of the civil entity. The competent authority over the juridic person would always retain his powers of oversight and general governance, whereas day-to-day administrative authority could be granted to some other person or persons (including a "board" with respect to certain kinds of decision-making authority).

It should perhaps be noted that canon law and canonical tradition do not themselves make such a sharp distinction between "governance" and "administration." "Administration" is very often understood in the Code as entailing exercise of the "power of governance," and "governance" to include acts of administration. Thus, it should be clearly understood that the distinction between governance and administration suggested herein is not a clear canonical distinction, but rather one that is being employed to distinguish between the remote powers of governance and administration that diocesan bishops (and certain others) possess in canon law and direct administration. This distinction is drawn as much to clarify for civil law purposes the very real distinction that exists in canon law between these two kinds of authority as to express any clear canonical distinction.

For any school that is not operated by the competent authority, but by some other ecclesiastical public juridic person, most of the considerations already noted apply with regard to the three options identified for how a school or school system might be given juridic status in canon law. However, in the case of schools run by other juridic persons, unless the statutes provide otherwise, the person with administrative authority will be understood canonically to be whoever has the power of governance over the juridic person that is operating the school. Thus, if a school is a true “parish” school, the pastor has the power of governance and administration over the school. Pastors have wide discretion with respect to how that power is exercised and how its exercise is structured, but it remains true that the pastor has that ultimate power and responsibility over a true parish school no matter how it is structured administratively.²⁹ With respect to other schools run by other public ecclesiastical juridic persons, the same is true with respect to whoever has the power of governance over the juridic person running the school. Thus, once again great clarity ought to be the aim in the governing documentation respecting how a school is to be administered and governed to acknowledge and identify the actual chain of governance as it would be determined by an application of the provisions of the Code of Canon Law. If that chain of governance is not what those who are responsible for the school want, then some other form of organization should be considered, whether establishing the school or school system as its own public ecclesiastical juridic person, or creating a separate identity (and governance structure) for the school in some other way without conferring upon it any particular ecclesiastical juridic status.

One of the most important features of conferring juridic personhood on an entity in canon law is that its existence becomes, at least theoretically, perpetual.³⁰ What this actually means is that the entity acquires a juridic right to continued existence and may not be “extinguished” (taken out of existence, dissolved as a corporate entity, closed) arbitrarily or at the sole discretion of any individual or authority inside or outside of the entity, but only through compliance with provisions of the law or its own statutes concerning the manner in which it may be declared “extinguished.” In other words, juridic personhood confers upon a juridic person the legal right to continued existence that can only be overridden with great difficulty, especially if those responsible for or involved with the juridic person do not want it to be closed or “extinguished.” There are today, for instance, many familiar cases of efforts to close or reconstitute parishes that parishioners or parties responsible for administration of a parish have resisted that have been reported in the popular press. Notwithstanding such resistance, it is possible for a juridic person to be extinguished under various circumstances, particularly if those involved

recognize a need to do so. It is also possible for juridic persons to be merged, which could have implications for Catholic school “systems” where there is a perceived need to close and consolidate two or more schools. Canon law contains general provisions regarding how juridic persons can be either divided or merged that set forth equitable principles for distribution of the property of the persons involved.³¹ The important thing, once again, is to realize that such measures can be taken, and that canon law allows sufficient flexibility to do so in ways that are sensible in light of local conditions.

Thus far the concept of the “juridic person” has been discussed almost exclusively with respect to individual schools. It should not be forgotten, however, that a whole school system could be created as a juridic person in itself (and once again, because of the ways in which education affects the public good, the presumption is that we would normally be talking about a *public* ecclesiastical juridic person). This is one creative possibility that could be considered for structuring a Catholic school “system” or “school district” that provides for centralized administration while clarifying the desired degree of separateness from other ecclesial entities (such as parishes or the diocese). This could be a possible alternative under certain circumstances, in particular where the desirability of moving away from a parochial or parish school model for grade schools toward a more centralized structure of administration and governance is perceived. The creation of such a juridic person could be one way of relieving parishes of the responsibility of administering a school, and also facilitate arriving at more equitable formulas for funding the schools involved. Thus, creative thinking could lead to utilizing the concept of the public ecclesiastical juridic person in ways that fit well with the best civil constitution for a school “system” that would better serve the needs of the Church and parishes in general and those who are seeking a Catholic school education for their children in particular.

Canonical Role of the Bishop

Governance versus Administration

A distinction has been drawn between governance and administration in relation to juridic persons in general. There is value in considering the implications of this distinction in relation to schools in particular because of the important, and in fact essential, role that canon law assigns to the diocesan bishop with regard to Catholic schools. It may be helpful to distinguish these roles further by highlighting two different kinds of roles that diocesan bishops have in relation to Catholic schools. The one we will refer to as oversight authority; the other as involvement with the schools. The first is a power to

intervene in exercising the responsibility of oversight that canon law assigns to the diocesan bishop with regard to Catholic schools. The second concerns the bishop's *involvement* with Catholic schools in his diocese. The bishop's involvement with Catholic schools is less defined in canon law than his minimal duties with regard to oversight. Bishops should always be involved with Catholic schools in their dioceses, but the degree and kind of involvement they have will be subject to a variety of factors, and is not prescribed by canon law in any particular way. On the other hand, there is a minimum level of oversight that a bishop *must* exercise over Catholic schools in his diocese, and it is presumed that he must intervene in some way if that oversight reveals that something is wrong, whether that be with respect to Catholic identity, the professional or personal conduct of school officials or personnel, or simply with respect to the general educational quality of the school.

Intervention. As everyone who is involved with Catholic education and canon law knows, the primary responsibility for providing children with an adequate education in general, and with an adequate education and formation in the Catholic faith in particular, rests with the parents of Catholic children.³² Canon law asserts that parents must have true freedom in choosing schools for their children, and that the Christian faithful must therefore be concerned that civil society recognizes this freedom and even supports it through school subsidies.³³ The Christian faithful have a right to establish and run schools of whatever kind they choose, but they are especially directed to foster Catholic schools and assist in their establishment and maintenance.³⁴ Religious institutes (commonly referred to as religious "orders") devoted to education are to dedicate themselves to Catholic education through their schools (established with the consent of the diocesan bishop).³⁵ Thus, diocesan bishops have a fundamental role in relation to the establishment of Catholic schools by religious orders in their dioceses, because the law requires their intervention through the giving of consent whenever there is a desire to establish such a school. Furthermore, if schools imbued with a Christian spirit are lacking in a given diocese, the bishop has an affirmative duty to see to it that such schools are established.³⁶

Bishops have special responsibilities with respect to the teaching of Christian doctrine in the schools in their territory. First of all, canon 804 §1 provides that the Catholic religious instruction and education provided in any school whatsoever is subject to the authority of the Church, and that the conferences of bishops are to issue general norms regarding the giving of religious instruction in their territories. Diocesan bishops are furthermore to regulate and exercise vigilance over the giving of such instruction in their

dioceses.³⁷ In particular, the local Ordinary has a duty to see to it that those appointed as teachers of religious instruction in schools (the canon saying “even in non-Catholic ones”) are outstanding in correct doctrine, the witness of a Christian life, and teaching skill.³⁸ Given the affirmation in canon law that the giving of such instruction is subject to the authority of the Church, the canon clearly implies a canonical right of the bishop to intervene in canonically appropriate ways if teachers of the Catholic faith are found wanting with respect to the correctness of their teaching of doctrine, probity of life, or teaching skill.³⁹ In fact, canon 805 acknowledges the right of the local Ordinary in his own diocese to appoint or approve teachers of religion and even remove them or demand that they be removed if a reason of religion or morals requires it. Thus, a diocesan bishop can appoint teachers of religion in his diocese, and also has a *right* to approve those who do teach religion, but the law does not require that he do either. He could allow religion teachers to be appointed freely by the institutions where the Christian religion is taught even without his approval. However, the law reserves to the bishop the right to demand that a particular teacher be removed, or to remove him or her himself, if he feels that reasons of doctrine, competence, or moral probity require it. While the law speaks about the teaching of Christian doctrine in general, for our purposes we are concerned with the teaching of Christian doctrine in Catholic schools. Thus, aside from any role the diocesan bishop may have or assume with respect to the selection of religion teachers and the teaching of religion in Catholic schools in his diocese, the law does reserve to him the right to remove teachers he considers inappropriate or inadequate regardless of the nature of any formal role that he has or does not have in the actual structures of governance and administration of the school.

Beyond his vigilance over the teaching of religion in particular, the law gives the diocesan bishop a more general right to “watch over and visit the Catholic schools in his territory, even those which members of religious institutes have founded or direct.”⁴⁰ Furthermore, he is to issue prescripts regarding the general regulation of Catholic schools valid as well for schools directed by religious institutes while not prejudicing their autonomy concerning internal administration.⁴¹ Thus, as can be seen canon 806 itself seems to recognize the kind of distinction between governance and administration that we have been relying on to try to describe the proper role of the diocesan bishop when specific provisions of the governing norms of a given school do not give him a more direct role, and as the law says even with regard to schools run by religious. Furthermore, while it is primarily the responsibility of the administrators of Catholic schools to see to it that the quality of instruction in their schools is at least as high as that of other schools in the

area, this responsibility is to be fulfilled “under the watchfulness of the local Ordinary,”⁴² once again strongly implying the right of the Ordinary to intervene when there are lapses in this regard.

Finally, the instruction and education given in a Catholic school “must be grounded in the principles of Catholic doctrine; teachers are to be outstanding in correct doctrine and integrity of life.”⁴³ It is in connection with this affirmation, and in the same canon, that the law provides that no school “even if it is in fact Catholic, may use the name ‘*Catholic school*’ without the consent of competent ecclesiastical authority.”⁴⁴ While there may be a variety of other means through which the local Ordinary could intervene to assure the Catholic identity of a school calling itself Catholic, or to assure the probity of life of personnel and soundness of religious education being provided, a principal means of doing so must be seen as this power to allow a school to refer to itself as Catholic or not. One would hope that numerous other steps would be taken before a bishop ever threatened to deny a school the right to refer to itself as “Catholic” if problems are perceived, but it is clear that at some point the local Ordinary (or whatever other ecclesiastical authority might have competence in particular circumstances) does have such power regardless of any other considerations regarding school structure, governing norms, or administrative practices. Hopefully the necessity of ever having to resort to such steps will be obviated by the local Ordinary’s prior involvement with the schools in his diocese, regardless of how close or distant that involvement may be, and through the ability of the local Ordinary to remain sufficiently aware of what is going on in the schools to be able to recognize and address problems or potential problems at a very early stage. Ordinarily the goal would be to mediate the resolution of problems at the lowest possible administrative level before they mushroom into something that threatens the Catholic identity of the school or causes the bishop to feel that he must threaten withdrawal of the canonical right of the school to refer to itself as Catholic. This brings us to the question of the ongoing involvement of the local bishop with the schools in his diocese.

Involvement. Beyond the minimal levels of oversight of Catholic schools that the Code requires diocesan bishops to exercise and to which Catholic schools must accede, it is important that diocesan bishops and Catholic schools work out the level of involvement that the bishop will have with the schools beyond what is minimally required and how that involvement will occur (that is, through what formal structures and in what informal ways). When all is said and done, the smooth operation of Catholic schools in a diocese, and the expression and preservation of the Catholic identity of those

schools, will be as much a matter of the Catholic school culture of the diocese as of formal structures and articulated norms in canon and civil law. It is important and helpful to have well-defined structures and explicit norms, but in the end structures and norms will mean little if there is not a smoothly operating and comfortable relationship between the bishop and each of the schools and the school community as a whole. Thus, it is always helpful to view structures and norms as serving the greater objective of achieving and preserving a truly Catholic identity for each Catholic school, facilitating the smooth operation of day-to-day school life, and the delivery of high-quality general education and religious instruction and formation. These ends are most effectively served by the kind of Catholic school culture that prevails in the diocese, not by norms of law and governing documents and practices. Equally important goals are protection of the security of each school in the possession of the material things it needs to function well in both canon and civil law, and clarity in and the protection of appropriate governing structures. These latter objectives do involve concrete legal norms and articulated norms of governance and administration more than simply the kind of Catholic school culture that develops. They require clearly articulated norms that can be relied on to guide the technical aspects of governance and administration, and a lack of clarity in this regard creates significant risks. The formerly mentioned objectives, on the other hand, depend much more on the kind of spirit that prevails in a Catholic school culture and the quality of the interpersonal relationships of those who participate in that culture. It is not necessary to discuss what may be optimum vehicles and patterns of relationship for achieving these objectives, other than to note two or three alternatives that may be helpful in fostering the kind of relationships that will best help to achieve these objectives.

It is not necessary to discuss issues concerning the involvement of a bishop with schools operated by the competent authority, since those schools are already under the direct supervision and administration of the bishop or those who report directly to him. Obviously, the bishop is already significantly involved. And the structures of governance and norms that guide the bishop's involvement will in this case be entirely within the bishop's discretion and he will necessarily already have a very high degree of awareness of what is going on in the school and the ability to intervene and direct the affairs of the school if and when necessary.

It is less obvious how to achieve the appropriate and desired degree of involvement, vigilance, and supervision by the bishop when dealing with schools operated by other public ecclesiastical juridic persons, or schools with no canonical juridic status that are merely "recognized" as Catholic. The first issue to resolve in this case will be whether or not the diocesan bishop

will hold any formal position in the governing structure of the school. Canon law does not require that the bishop have a formal position in such schools or on their “boards,” but he may. Thus, it should be decided at the outset whether or not it is advisable for the bishop to hold such a position. Ease of supervision and vigilance tend to weigh in favor of bishops having such positions, but the risk of too close a structural identification of the school with the diocese or other ecclesial entities in civil law can weigh against it (depending on the law of the particular jurisdiction involved). It is essential, therefore, that school organizers and diocesan officials work closely with both civil and canonical counsel to assess the benefits and risks of having the bishop hold an official position in the formal school structures (ecclesiastical or civil) and come to a prudent decision about whether this will be the best way for the bishop to serve his essential canonical role. Beyond that, however, in particular instances there may be a desire for the bishop to be on the board of trustees or serve in some other official capacity in the school for other reasons (for instance, a particular bishop’s special interest or expertise in Catholic education and his ability to contribute in some particular way to the success of the school through such more direct involvement in the running of the school). It must be borne in mind that whether or not the bishop has an official position in a Catholic school, his canonical duty and powers of oversight remain and must be able to be exercised. The question is how much further beyond the bishop’s essential and minimal role the bishop and the school wish to go in a given instance, and how formal do they want the bishop’s relationship and powers of governance and administration over the school to be.

If the bishop is not to have a formal position in the structures of governance and administration of a school, the question becomes one of how the bishop’s essential role will be fulfilled, and also how strong and how direct an informal relationship the bishop and the school want there to be between the bishop and the school. Minimal powers of oversight in canon law will always permit a bishop to intervene when he feels there are problems in a given Catholic school, but that does not prevent a greater degree of relationship between the bishop and his delegates and the school to be agreed upon, either through formal or informal agreements and structures or that simply develop as a result of the Catholic school culture of the particular diocese in question. What is to be encouraged, however, is that bishops and school officials recognize when there is insufficient clarity in their understanding of the bishop’s role and how it is to be fulfilled, or regarding the degree to which the bishop would like to be involved or the school community would like him (or his delegates) to be involved, and then work toward greater clarity, whether that can be achieved through informal understandings and

agreements or requires more documented and formal agreements, understandings, and articulated norms.

It may once again be helpful to think in terms of administration versus governance in this context. Do the bishop and school officials want the bishop to be involved in the actual administration of a Catholic school, or do they prefer that his role be limited to one of supervisory governance? If governance, what kind and what level of governance: direct governance through membership on a board or in some other way that recognizes powers of direct governance in both canon and civil law, or indirect governance by way of oversight relying on the existing norms of canon law? The first kind of governance will give the bishop a greater hand in setting policies for a school, and planning and evaluating its performance. The second will tend to limit the bishop's role to intervening when concerns come to his attention, otherwise exercising a more or less "hands off" approach. It is the belief of the author that the smooth and successful operation of Catholic schools will best result from a fairly explicit understanding of which kinds of governance and administration the bishop (or any other relevant competent authority or Church official) will have in Catholic schools in general, and in particular Catholic schools, and that when all is said and done arriving at such understandings depends on the quality of the relationship between a diocesan bishop and other Church officials and school administrators and officials. The important thing is that the right kind of conversation takes place, and that all involved arrive at a high degree of confidence that they understand one another; and that relationships are such that those involved recognize early on when there is a lack of sufficient understanding and agreement. Furthermore, it is important that all concerned tend to the relationships involved and continually maintain the necessary degree of understanding and cooperation to avoid serious problems developing through a lack of communication, understanding, or respect for the appropriate roles that everyone interested in the well-being of Catholic schools should and must be allowed to fulfill.

Correlating Civil and Canon Law Structures and Requirements

One of the most important relationships to cultivate and assure functions well is the relationship between those who advise the bishop, diocesan officials, and Catholic school officials regarding civil law and those who advise them regarding canon law. One of the most important concerns of the Church in the United States today should be to achieve a greater consonance between civil and canonical structures and a greater coordination of the way Catholic institutions are understood to function in canon and civil law. Many very serious

problems can arise in the life of the Church and Catholic institutions, particularly schools, when they end up with a dual identity, one identity in civil law and another in canon law, which do not harmonize well with one another. When essential features of an institution's ecclesial identity do not correlate well with those of its identity in civil law, serious problems are likely to arise. It is not difficult for this kind of situation to come about, because canon and civil law are in many ways similar but in other ways quite different.

Those who are experts in canon law often believe they understand civil law well, when in fact they may not understand it very well at all. Likewise, those learned in civil law sometimes believe they can read the Code of Canon Law and come to understand its provisions quite easily, not realizing that the tendency will be to read the provisions of the Code through a civil law lens and interpret its provision in relation to civil law concepts that are not the same as those undergirding canon law, or that perhaps do not exist in canon law at all. English translations of the Code sometimes use language similar to that used to express civil law concepts familiar to civil law interpreters but that in fact have a somewhat different meaning in canon law. This can seriously exacerbate the problem of miscommunication between civil and canon lawyers. Thus, it is extremely important that civil law experts and canon law experts learn how to engage in dialogue with one another when working on projects that involve Catholic institutions, for our purposes Catholic schools, so that it will be possible to coordinate adequately civil law dispositions with those of canon law in ways that will safeguard the proper ecclesial role of those who have canonical oversight of Catholic schools while not creating embarrassing or very risky consequences in the civil organization of the school or other institution in question. In doing so, the essential issues are: (a) assuring that the structures of governance, oversight, and administration required by canon law will be recognized and respected in civil law, while (b) protecting the security of the temporal goods (property and other assets) of the institution both with respect to ownership (establishing clear title or ownership of property) and protection from ruinous liabilities (including establishing legally limited liability).

There should be no reluctance to acknowledge openly that for the sake of providing children with a sound education and a good religious formation it is necessary to seek and to achieve limited liability for the institutions that provide this service. This is a benefit that other kinds of corporate entities are afforded by civil law in the United States, and there is no reason why Catholic schools and other Church institutions should not enjoy that same benefit for the sake of the greater good of educating children and providing them with religious formation (or to safeguard the other kinds of charitable services the

Church provides). Indeed, it is a canonical duty of administrators of Church goods to see to it that the goods of the institutions they are involved with are protected by civilly valid means,⁴⁵ a duty that those who advise them regarding civil and canon law should help them find effective ways of fulfilling.

To return to a point made at the outset of this article, there can be no “one size fits all” solution to the question of how best to organize a Catholic school under civil law to correlate with the requirements of canon law, or the best structure to choose in canon law to correlate its canonical structure with an appropriate civil law structure. Solutions are highly dependent on the civil law of the particular jurisdiction in question, the particular school one finally decides to have under canon law, and whether or not the civil law of the particular jurisdiction allows for a form of organization that will adequately allow for the requirements of canon law and the canon law structure chosen to be given expression and respected in civil law without adverse consequences. There is a growing awareness that this is a problem plaguing virtually all Church institutions and structural entities, although our concern is schools specifically. Thus, it may be helpful to review the essential kinds of schools that can be recognized as “Catholic schools” in canon law, and then summarize very briefly the basic kinds of organizational structures utilized for schools in American civil law, and then ask how these different modalities can be correlated in the structuring of a given school.

Once again, a “Catholic school” in canon law is a school that is operated by the competent authority (for our purposes a bishop or diocese), one that is operated by some other public ecclesiastical juridic person, or one that is “recognized” as Catholic by the competent authority. As already noted, this definition of the different kinds of entities that can be considered a Catholic school allows for a great deal of latitude regarding how a particular school may be organized under both canon and civil law. If it is a school operated by the competent authority, the fundamental issue is going to be whether or not it is desirable for the school to be understood in civil law as a subdivision of the diocese (thus making it an asset of the diocese, and also its assets liable for general liabilities of the diocese and the diocese liable for its obligations). If that is not what is desired, then civil law experts must be asked if there is a way to give the school a juridic personality in civil law that will establish the desired degree of separation between the school and the diocese (and other ecclesial entities) while preserving the competent authority’s ability to govern and administer the school directly. With respect to a school operated by some other ecclesiastical public juridic person, what civil law structure will best express its independent identity from the diocese (or for that matter from “the Church,” even as a part of the Church, while remaining an independent

or quasi-independent entity), while also allowing in civil law for the level of oversight on the part of the diocesan bishop anticipated by canon law? As far as schools with no ecclesiastical juridic personality that are nonetheless “recognized” as Catholic are concerned, how will the appropriate oversight role of the bishop be recognized and protected in civil law?

Civil law allows for a variety of means for establishing the ownership of an entity’s assets, and for structuring its governance and the administration of its affairs and assets. Beyond what is generally available, any given jurisdiction in the United States may also offer its own unique alternatives. We have already identified ownership, administration, and governance as the essential ecclesial concerns. The question will be, then, how any given civil structure (or the lack of an articulated civil structure) will affect those issues in civil law. Civil law may have to be relied on to enforce questions of ownership, and perhaps even of administration and governance, according to the norm of civil law irrespective of canonical requirements when the issue at hand is considered not to involve the “internal governance” of a Church institution, but rather only matters of purely civil law. Civil courts may not agree that a particular question concerns internal Church governance even if the Church is convinced that it does. In such instances, if the jurisdiction of the civil court is properly invoked, the court is more than likely to resolve the question at hand and enforce its judgment regardless of a Church institution’s position on the matter. Thus, it is extremely important to do everything possible to assure from the outset that the Church institution’s affairs have been structured in civil law in ways that correlate with the canonical rights and responsibilities at stake, so that the canonical rights and responsibilities can be enforced in civil law in ways similar to the results that would be obtained under canon law alone.

Generally speaking, property is owned and the affairs of an organization are administered and governed under American law in one of four basic ways: as a sole proprietorship, as a partnership, as an association, or as a corporation. Furthermore, with respect to charitable enterprises, it is often possible for property to be held by and governed as a trust. Each of these alternatives has its own civil law implications. Sole proprietorship gives, in many ways, the highest degree of control and recognition of ownership to a single individual, but it does nothing to insulate an organization or the individuals involved from liabilities associated with the activities of the organization or the individuals involved. Partnerships afford less individual control in decision-making, but also do little if anything to limit liability: In fact, they make partners equally liable for one another’s actions within the scope of the partnership. Associations allow greater protection for members from personal

liability for actions of the association as such, but do not protect the assets of the association itself. The law does not generally prescribe particular structures of governance to protect members in the decision-making processes of an association, although civil law may recognize and enforce operating rules explicitly adopted by the organization itself, at least as among the members. However, internal structures of governance would not necessarily protect the organization or its members from liabilities to third party nonmembers.

The corporate form of organization under civil law may be the most popular for schools and many other Church entities because of the advantages it offers for creating a separate and distinct legal identity for the corporate entity, which allows it to own its own property and govern itself as a distinct legal entity separate from the individuals who create and operate it. The liability of a corporation is limited in civil law to the assets of the corporation and cannot be imposed on the individuals involved or some other entity not included in the identity of the corporation. However, some requirements of corporate law may challenge or even contradict the kinds of power of intervention and oversight that canon law accords to the diocesan bishop or some other Church authority once an entity is established as a civil corporation, especially if the articles of incorporation and bylaws of the corporation are not written very carefully and the corporation itself is not careful to function in accordance with all of the applicable norms of civil corporate law and its own bylaws. Civil law does recognize a variety of different kinds of corporations in different jurisdictions, including corporations sole, business corporations, municipal corporations, charitable corporations, and professional corporations. Some jurisdictions may also recognize a special category of corporation for schools. The common features of all that are pertinent to the current discussion are the capacity to exist, function, and be governed as a corporate entity, and limited liability (that is, liability limited to the assets of the corporation and that cannot be assessed against the individuals involved in the corporation or entities outside of the corporation's structure, although there are very exceptional circumstances when a court will allow liabilities to be apportioned beyond the limits of the corporation, but they are not relevant to the current discussion). As far as schools are concerned, the most important consideration is that those responsible for the school make sure they understand completely all of the implications in civil law if the corporate form is chosen, and examine carefully with canonical and civil law advisors who are adequately schooled in one another's disciplines the extent to which the corporate form will accord well with the ecclesial form of organization desired, and that great care is taken to assure that the corporate articles and bylaws re-

flect the ecclesial structure and norms of governance and administration they want to apply to the school.

One device long utilized by civil lawyers in circumstances similar to those involved in correlating the ecclesial and civil structures and norms of governance for a Catholic school is "incorporation by reference." American corporate law in particular affords individuals and organizations a great deal of latitude, in fact, almost unlimited latitude, in organizing, governing, and administering the affairs of the corporations they create however they wish. The only essential is that the corporate documentation express the form of organization and governance and the norms for administration that the organizers desire for the entity, and that the entity then govern and administer its affairs according to that structure and those norms once it is given a recognized existence in civil law. It is possible in formulating corporate documents to incorporate by reference other documents without setting forth all of their provisions, so long as the other documents are clearly identified and readily available. Thus, it would always be possible to incorporate particular provisions of canon law in the articles of incorporation or bylaws of a civil corporation, either by setting forth the relevant canonical provisions verbatim or by simply identifying them and incorporating them "by reference" (with explicit identifying information regarding the provisions one wishes to incorporate by reference). It would also be possible to simply state in the articles or bylaws that the corporation is governed by "the Code of Canon Law" or "canon law" to the extent applicable, or some such language, although the more general the reference in corporate documents the more open they will be to interpretation. In the event of any disagreement or dispute over the meaning of the incorporation by reference, expert testimony by individuals learned in canon law would be required to attempt to resolve differing interpretations.

If the device of incorporation by reference is employed, one should be especially careful to avoid conflicts or contradictory provisions between what is explicitly stated in the articles or bylaws and whatever is incorporated by reference. If it is intended that canon law will trump civil law or specific provisions in the articles or bylaws in a given instance, the circumstances under which canon law is to prevail should be specified in the incorporating reference. However, careless use of incorporation by reference could create more problems than it solves, especially to the extent that it appears to integrate the civil corporation into a larger ecclesial corporate entity, possibly defeating one or more of the purposes for which civil incorporation was chosen in the first place (i.e., to create a separate and distinct legal identity for the corporation, in this instance a school or school system, and to limit liabilities to the assets of that corporation and insulate the entity). Thus, if incorporation

by reference is going to be utilized, it is very important that one make sure of its effects on the overall interpretation of the corporate documents and its possible effects in civil law. In the event that civil law issues have to be determined by a civil court, it is the civil court that will be interpreting the corporate documents. Thus, one should assure that the meaning and intent of any incorporation by reference will be clear to any civil law judge reading the documents, and that doing so really accomplishes what was aimed at. On the other hand, caution should be exercised to avoid unintended consequences, such as creating an entity that looks like just one part of another entity, rather than an independent entity subject to reserved powers of ecclesial governance in certain well-defined circumstances.

Once again, it is not possible to prescribe the best possible civil law vehicle for correlating the requirements of canon law with those of civil law in order to express clearly in both laws the kind of Catholic school one wishes to have. Often it will be difficult to achieve such correlation in a way that will assure that the school will be able to function in ways that will achieve all of the consequences one wants in both canon and civil law. After deciding upon the kind of Catholic school one wants in canon law, and how to arrange in canon law for the desired relationship between the competent authority and the school while safeguarding the canonically required degree of oversight, one should study very carefully the available civil law modalities in the jurisdiction in which the school is going to exist, and, with the advice of competent civil and canon law experts, determine the best way to correlate these structures with the best civil law structure available in the jurisdiction. It is important that this task be undertaken with the utmost seriousness and with the very best advice obtainable from the canonical and civil law perspectives. It is important to take the time necessary to assure that the key individuals involved understand thoroughly the civil and canonical consequences of whatever forms of organization are being considered in both canon and civil law before creating the particular juridic status according to which the school will exist and function. Not infrequently, it may not be possible to achieve a perfect fit between the requirements of canon law and what is available in civil law. If this is the case, there is no reason why the Church should not approach the state legislature to request modifications in the law that would make more appropriate vehicles available in civil law for expressing the true nature of the school canonically, while providing adequate and reasonable protection for school assets and assuring school governance and administration in accordance with all that is required and desired from the canonical perspective.

Conclusion

Catholic schools in the United States have entered a new era. Until very recently parish schools have been the norm for Catholic grade schools, although Catholic high schools have been based on a variety of models ranging from schools run by religious orders to diocesan schools to cooperative schools and so on. For a variety of reasons the need is being felt today to reorganize Catholic schools and Catholic school systems. The vision of Catholic educators for reorganizing Catholic educational institutions is often marked by an inspired creativity. Not infrequently, this spirit of creativity encounters interpretations of canon law that are experienced as obstacles, leading to a sense of frustration that is only exacerbated by a growing awareness of the importance of correlating canonical juridic structures with the civil law structures employed to assure the security of property ownership and certainty of governance of schools before the civil law.

The purpose of this chapter has been to consider the alternatives that canon law makes available for the structuring of Catholic schools. In doing so we first looked at what a “Catholic school” actually is as far as canon law is concerned, discovering three kinds of schools that can be classified as “Catholic” in canon law: those established and operated by hierarchical Church authorities themselves, those operated by an ecclesiastical public juridic person (including but not limited to schools run by religious orders), and schools “recognized” as Catholic by the competent ecclesial authority.

In order to understand better the implications of choosing one rather than another of those three kinds of Catholic schools we examined what a “juridic person” is in canon law, the distinction between “public” and “private” juridic persons, and various implications of employing juridic person status for a Catholic school at all. We considered further the distinction between a school that is itself a juridic person and schools that are not themselves juridic persons but are run by an ecclesiastical public juridic person. In looking at all of this we highlighted the importance of correlating the ecclesial structure chosen for a school or school system with the civil structure employed, so as to avoid creating a “dual identity” for a school with elements of its civil structure and governance provisions at odds with those of its ecclesiastical identity and structure.

We reviewed the essential role of oversight that a diocesan bishop has over the Catholic schools in his diocese, but also the different levels of involvement that a diocesan bishop may wish to assume in Catholic schools in general and in specific schools and that school officials might find desirable. We then took a very brief look at the principal forms of property ownership

and organization that corporate entities, in this case schools, may employ under civil law in the United States, again highlighting the importance of being aware of the different alternatives available and then intentionally choosing and clearly expressing the kind of structuring and norms of governance and administration being employed for the school in both canon and civil law, with a view once again toward correlating the dispositions chosen under both systems so as to create, to the greatest extent possible, a single identity and set of governing norms for the school that will have the same effects in both canon and civil law. We noted that underlying concerns in making decisions about school structure and governance are assuring the oversight role of the competent authority, facilitating the desired level and form of involvement of the competent authority (diocesan bishop) in the school or school system, creating the desired degree of separation between the school in its legal identity and the competent authority and other Church entities, adequately safeguarding the ownership and security of property owned by the school, limiting the legal liability of the school to the desired extent and to the extent permitted by civil law, and safeguarding in civil law the desired structure of governance and administrative authority in the school.

When all is said and done, it is hoped that both a fuller and a more particular understanding of what canon law actually says about Catholic schools will help to dispel the sense that canon law is an obstacle to creative school reorganization, and demonstrate instead that it can be a useful tool for structuring Catholic schools creatively and establishing norms of governance and administration that will enhance the security and smooth functioning of the school and assure that it is capable of delivering quality education and faith formation in an atmosphere imbued with a truly Catholic spirit. At the same time, it is hoped that this chapter helps to raise awareness that the norms of canon law exist to safeguard important values of the faith and express in a succinct form cautionary norms based upon long experience with the juridic structuring and governance of Catholic institutions that can help schools as they go through processes of restructuring to avoid pitfalls that may come back to haunt them in the future if the cautionary provisions and implications of canon law go unheeded.

Finally, it is hoped that the chapter will help to convince those involved with Catholic schools, and those involved in the governance of Catholic institutions in general, of the importance of initiating and sustaining an ongoing dialogue between and among canon and civil lawyers who assist the Church that will help them to realize that whenever it is necessary to correlate canonical and civil structures and norms of governance it will be necessary for civil lawyers to examine and reexamine every assumption they have about canon

law, and for canon lawyers to examine and reexamine every assumption that they have about civil law, and then listen patiently and carefully to one another in order to come to a true and more accurate understanding of what the meaning and consequences of any particular aspect of each legal system actually are within the understanding of that legal system itself. Only then will those who assist the Church in this area truly be able to coordinate and correlate the dispositions employed in each system in ways that will harmonize them, rather than put them at odds with one another, and in so doing achieve the objectives sought by the Church. Nowhere could this be more important than with respect to Catholic schools, and it is hoped that this chapter will at least help Catholic school administrators and those who assist them to ask the right questions when confronted with the maze of considerations that come into play when questions of canon and civil law become an issue in the reorganization of a Catholic school or Catholic school system.

Notes

1. III Plenary Council of Baltimore, *Acta* no. 199, I, II.
2. That is, as property of and governed and administered by the “juridic person” that the parish is. Very few high schools, however, have been understood as the property of or run by a particular parish, and, therefore, questions have always arisen as to who or what is the ecclesial entity that actually owns and operates a particular high school. For schools operated by religious institutes, there is no question that they are owned and operated by the religious institute (unless erected separately as a juridic person, or at least as a civil corporation, in their own right). One suspects, however, that for many Catholic high schools the ecclesiastical juridic structure may not be, or may not have been, all that clear even when the civil corporate or juridic structure has been perfectly clear. That is one of several problems highlighted by this study: That is, the juridic consequences when the civil structure given to a school (or other ecclesial entity) may not be consistent with its ecclesial juridic structure, or with certain requirements of canon law if there is no clear ecclesiastical juridic structure to which the entity conforms.
3. Canon 519, 1983 Code of Canon Law (hereafter CIC 1983). All subsequent references to canons are to the canons of CIC 1983 unless otherwise noted.
4. Canon 801.
5. Canons 116 and 634.

6. Canon law anticipates that every public ecclesiastical juridic person will have its own governing statutes settling basic questions of governance and administration.

7. Canon 331.

8. Canons 360 and 361.

9. Canons 134 and 368.

10. This question relates to the much-discussed “McGrath thesis,” which has influenced the civil structuring and governance of many Church institutions that are operated as “apostolates” of religious communities, etc. See in particular: Robert Kennedy, “McGrath, Maida and Michiels: Introduction to a Study of the Canonical and Civil-Law Status of Church-Related Institutions in the United States,” *The Jurist* 50 (1990) 351-401. The McGrath thesis will not be discussed in this article because the kind of Catholic schools this chapter is directed toward are those that consider themselves to be a part of the educational mission of the Church not only with respect to general education but with regard to religious education and formation as well. As such, as explained herein, accountability to, or at least formal recognition by, ecclesiastical authority is definitive of what constitutes such schools as “Catholic” at all, and as such the McGrath discussion is not directly pertinent to the issues at hand. Rather, the concern of this chapter is how to assure in the civil arrangements made for a school that its Catholic identity will both be preserved and be able to be preserved and strengthened in ways that are consistent with, and protectable through, its civil structure and governance provisions, or at least that will not be circumvented by the civil structure and governance provisions.

11. Canon 114 (translation the author’s). The concept of an “entirety” is key to understanding what is a juridic person. Standard translations of this canon use the expression “aggregates,” but some authors object to this terminology in English because it implies that the juridic person is the sum total of the persons or things of which it is constituted. This is not really an accurate understanding of what a juridic person is juridically, because juridically speaking the juridic person is a separate entity from any or all of the persons or things of which it is constituted: It is a true juridic person in and of itself as an entirety of those persons or things. Once a juridic person comes into being, the individual persons or things that make it up can change, but the juridic person remains a legal “person” for all legal intents and purposes (meaning it is in itself the subject of legal rights and responsibilities as a corporate entity). Thus, for instance, with a school the students

change every year; some stay, others go, and still other new students arrive and begin their studies there. Administrators come and go, but the school remains as an identifiable and distinct legal entity: a legal “person.” Admittedly the “personhood” of a juridic person, as with a civil corporation, is a legal fiction. They are not real “persons” in the sense that a human being is a person. However, legally they are in fact real legal persons because they are legally the real subjects of legal rights and responsibilities that can be juridically enforced. For this reason, the author prefers the term “entirety” or “entireties” to “aggregate” or “aggregates” in describing a juridic person. The Latin text of the Code says *universitas rerum* and *universitas personarum*, terms that are virtually untranslatable into English in a way that will truly capture the nuances of these Latin expressions.

12. Canon 116.

13. Canon 116 §1.

14. Canon 1256; c. 1290.

15. Canon 1257.

16. Canon 516.

17. Canons 1223-1234.

18. Canons 1640, 572.

19. Canon 120.

20. Canon 373; see also: Aiden McGrath, in *The Canon Law: Letter & Spirit*, ed. Gerard Sheehy et al. (Collegeville, MN: Liturgical Press, 1995) 66, par. 234.

21. Canon 113 §2.

22. See, for instance, canon 1296 with respect to an alienation of ecclesiastical property that is valid civilly but not canonically.

23. Canon 116 §2.

24. Canon 114 §3.

25. Canon 117.

26. Canon 532.

27. Ibid.

28. Here, “competent authority” is being used in a more general sense than in other parts of the chapter where it refers specifically to the diocesan

bishop or the Holy See, etc. Here it means whoever has the legal authority to act in a legally binding way on behalf of an entity.

29. Canon 532.

30. Canon 120.

31. Canons 121, 122, and 123.

32. Canon 798. The law actually directs parents to send their children to schools that provide a Catholic education, but not with the same force as the former law. It goes on to provide that if they are unable to do so (without specifying what causes would excuse them) they are to assure that their children receive a suitable Catholic education outside the schools.

33. Canon 797.

34. Canon 800.

35. Canon 801.

36. Canon 802 §1.

37. Canon 804 §1.

38. Canon 804 §2.

39. The law does not specify here the particular manner in which a local Ordinary might intervene, but it would certainly include all of the means available to him to inquire into and correct any lapses regarding doctrine, probity of life, or competence on the part of anyone in an ecclesially responsible position. This could range anywhere from mere inquiry and requests to discuss the situation, to withdrawing the canonical right to refer to oneself as a teacher of the Catholic religion, or withdrawal of the right to refer to a school as Catholic (c. 803 §3), to the utilization of penal precepts (c. 1319) in particularly egregious cases. In other words, canonically a diocesan bishop has broad powers to intervene, particularly with respect to the teaching of Christian doctrine and in particular in Catholic schools, whenever he perceives that something is out of order. This power to intervene exists in canon law above and beyond anything explicitly acknowledged or limited in the governing norms of any institution where religious instruction is provided.

40. Canon 806 §1, bearing in mind that “visitation” is a technical term in canon law that implies more than simply visiting an institution in the informal sense. Rather, a “right of visitation” in canon law includes the right to inquire into the proper functioning of the institution and even to inspect relevant records. A formal visitation can be carried out by the competent

authority personally or through a delegate. More often than not bishops will visit Catholic schools informally, satisfying themselves that everything is in order through a more casual experience of life of the school. However, those involved with Catholic schools should be aware that the bishop also has a canonical right to conduct a formal visitation, regardless of the governance structure and norms of the school, to assure that everything is in order doctrinally, in terms of teacher and administrative competence, and also with respect to the professional and personal moral and ethical probity of school personnel.

41. *Ibid.*

42. Canon 806 §2.

43. Canon 803 §2.

44. Canon 803 §3.

45. Canon 1284 §1, 2.