

# THE JURIDICAL DETERMINATIONS OF MATERIAL AND FORMALLY CATHOLIC EDUCATIONAL INSTITUTIONS\*

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## INTRODUCTION

For a long time, something was considered «Catholic» if it was in the hands of Bishops, priests or religious. Now that works are being assumed more and more by the laity by virtue of their baptismal commitment, the criteria have

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to be examined. Changed times and situations must carry with them a deeper study of the norms for evaluating situations. The 1983 Code of Canon Law may provide several indications that can be fleshed out and applied —cautiously, of course— to new situations. It will also help dispel certain ambiguities regarding the Catholicity of a work. Indeed at times, an educational institution may state that it is not Catholic when it comes to government funding, but that it is so when it comes to dealing with alumni of the institution. While at times a certain ambiguity is helpful, more often it can also confuse the issue and muddy the waters, thus leaving everything in a state of concern or doubt.

The experience of the Church in transition presented new challenges and tensions that were crucial for the growth and development of its teaching mission. This was the climate within which the new Code of Canon Law developed in the period between the conclusion of the Second Vatican Council in 1965 and the promulgation of the Code in 1983. It is no wonder that the increased importance attached to the Church's teaching office, as well as the tensions experienced by the Church in this regard, are reflected in the Code's propositions.

This study attempts to consider various doctrinal and canonical issues raised by canon 803 on Catholic educational institutions, particularly on its juridical determinations with the purpose of distinguishing the various types of initiatives in the field of educational institutions. In a very particular manner, it hopes to clarify the notion of Catholic identity and the canonical criteria for determining such Catholicity and its application to contemporary situations.

While this study is essentially a juridical canonical analysis of Church Law, it draws upon various other disciplines in order to achieve a better understanding and greater appreciation on the issue. To gain depth and focus on the study, Catholic educational institutions will be interpreted in the context of its historical, theological and civil-legal circumstances.

To fulfill this objective, we have decided to take this path. In the first section, we will present a summary of the immediate historical context of canon 803 and its development throughout the revision process prior to its promulgation in 1983. In continuation, we will present an analysis of the various doctrinal and canonical issues raised in this canon giving way to further insight of a Catholic educational institution and its classification whether it is formal or materially Catholic. References will also be made to other canons including those on Catholic universities to further elucidate on the matter.

The second section focuses on some post Codicial considerations on Catholic educational institutions. We will present a brief study and overview of *Ex Corde Ecclesiae*, the Apostolic Constitution of the Supreme Pontiff John Paul II on Catholic universities. The document deals with a number of issues unresolved by the 1983 Code of Canon Law, and raises practical questions about the implication of the norms for the situation of Catholic universities in Canon Law and Civil Law. In continuation, we will present a systematic analy-

sis on some doctrinal and canonical issues raised by canon 803 and its application to material and formally Catholic educational institutions. In particular, we will be dealing with the juridical dimension of Catholic identity in educational institutions and some practical applications of the juridical dimensions of Catholic educational institutions.

As with any research and study, there are definite limitations in this undertaking. The first is with regard to canonical sources. It became apparent very early in the research process that little research and commentary have been undertaken in Book III in general and on the section on schools in particular. With regard to sources on general education, there is an availability of considerable literature but rarely do these avert to any canonical norms. Hence, much of that literature was not utilized in this research project.

The second limitation is in the area of application of the law. While those areas where local policies, criteria, guidelines and processes would seem appropriate are pointed out, only general suggestions are made regarding the form these might take. Local circumstances vary from diocese to diocese that the details of such practical matters are deemed more adequately handled on an individual diocesan basis. The universal law appears broad and general enough to allow for a very rich variety of such applications. While these limitations are real and obvious, at the same time I would hope that the issues raised in this study and the broad guidelines for application in practical matters proposed would be of some assistance to the efforts of the bishop and local churches in their teaching mission.

## I. CATHOLIC EDUCATIONAL INSTITUTIONS IN THE LIGHT OF THE 1983 CODE OF CANON LAW

### A. *Introduction*

This section aims to provide an insight on the development on the treatment of Catholic educational institutions in the 1983 Code of Canon Law, in particular, Title III (*Catholic Education*) of its Book III (*The Teaching Office of the Church*).

This section is divided into three parts. The first part deals on the context of the canons on educational institutions in the Code, particularly on schools. References to universities are given to further elucidate on the matter. The second part deals on the work of codification. Under this heading, the 1977 and the 1980 schemata on three special considerations on schools are presented together with the two tendencies in the work of reform: Catholic schools through the criteria of content and Catholic schools through their vinculation with the ecclesiastical authority. The third part deals particularly on canon 803, whose analy-

sis could provide us a juridical understanding of educational institutions that are material and formally Catholic. It also serves as basis for posterior development on the field of our study.

### B. *The context of the Canons on Educational Institutions*

An analysis of the first two chapters of Title III of Book III of the 1983 Code that deal with Catholic schools and universities respectively, could provide a juridical understanding of educational institutions that are formal and materially Catholic.

The 1983 Code of Canon Law makes a very important development in the treatment of Catholic educational institutions. It has for its title «Catholic Education», one that is thought to be broader and more conducive to a logical division in three chapters<sup>1</sup>. It gives us a clear distinction of the different educational institutions in the Church, Catholic schools, Catholic universities and ecclesiastical universities. This is indicative of the increased and distinctive importance that the Church attaches to her teaching office in the contemporary world. Montan makes a thorough analysis on the specific significance of the title «Catholic Education»<sup>2</sup>.

Book III contains three separate chapters on Catholic education. It dedicates 12 canons on schools, 8 canons on Catholic universities and Catholic superior institutes, and 7 canons on ecclesiastical universities and faculties. The term «school» acquired a definite and precise juridical significance and was dealt with greater amplitude. The separate treatment of schools from universities is a very significant development in the new Code. As Conn comments:

1. Cfr. «Communicationes» 7 (1975) 154.

2. «Educazione, in latino *educatio* (preferito a *institutio* = istruzione, insegnamento, istituzione: di uso frequente, ma con significato parziale, in quanto indica il primo grado di istruzione). Già in latino il termine ha un significato molto intenso: l'educazione dell'uomo è ad un tempo *cultus corporis quam formatio morum*, e riguarda perciò l'uomo nella sua totalità. Nella prospettiva dell'antropologia cristiana l'educazione considera la totalità della persona, integrando armonicamente tutte le sue dimensioni (biologica, psicologica, affettiva, intellettuale, sociale, morale). Secondo, la dichiarazione *Gravissimum educationis*, l'educazione è «sviluppo armonico delle capacità fisiche, morali e intellettuali» dei fanciulli e dei giovani (n. 1). La vera educazione include tanto la trasmissione del sapere intellettuale o tecnico, quanto lo sforzo per comunicare i valori e i conseguenti modelli di comportamento.

»*Cattolica*, e non semplicemente «cristiana», come si diceva nello *Schema canonum* del 1977. Il termine indica che si tratta di norme riguardanti i cattolici, cioè coloro che sono nella chiesa cattolica e sono sottomessi alle sue leggi (canon 11), ma segnala anche che si tratta di una educazione fondata e ispirata dalla visione antropologica cattolica. Così, è cattolica quell'educazione che si sforza di trasmettere una formazione integrale della persona, in ordine al suo fine ultimo, e quindi aperta a Dio e alla sua rivelazione»; A. MONTAN, *op. cit.*, pp. 76-77.

«This division precludes some of the ambiguity created in the old law where all educational institutions were gathered under one simple heading of *On Schools*»<sup>3</sup>. He adds further: «By virtue of that univocal grouping, what was legislated for an elementary school seemed also applicable to a university»<sup>4</sup>.

On the treatment of educational institutions in the 1983 Code, Cito says:

«The 1983 Code reorganizes the topic on educational institutions completely whose fundamental juridical nucleus is: The right of education where not only the juridical positions of the different subjects of education namely the family, civil society and the Church, are implicated but also the actual principal structures namely educational institutions in their different levels»<sup>5</sup>.

In the words of Hoffman, one could argue, that the 1917 Code of Canon Law did, in a certain sense, have a formal juridical definition on file insofar as it remitted the responsibility of canonical establishment to the Holy See<sup>6</sup>. The Holy See would have offered canonical establishment to those institutions, which fit the definition of a Catholic university<sup>7</sup>.

Several canons in Book II on the «People of God» could be relevant and serve as an orientation in our study of Catholic educational institutions: on the obligations and rights of all the Christian faithful (cc. 208-223) and the lay faithful in particular (cc. 224-231). We find here sections that contain canons on education: the right of the baptized to a Christian education (c. 217)<sup>8</sup>; obligation and the rights of parents to educate their children making sure that their Christian education is in accord with the teaching of the Church (c. 226 §2)<sup>9</sup>. While several canons in Book II speak of Christian education, the Code more often speaks of Catholic education.

The topic on schools are of great importance being one of the means, if not, the principal one of obtaining Catholic education. Canon 796 §1 of the 1983

3. J.J. CONN, *Catholic Universities in the United States of America and Ecclesiastical Authority*, Romae 1991, p. 244.

4. *Ibid.*

5. D. CITO, *Introduction to Title III, De Educatione Catholica*, in A. MARZOA, J. MIRAS, R. RODRÍGUEZ-OCAÑA (coords.), *Comentario Exegético al Código de Derecho Canónico*, vol. III, Pamplona 1996, p. 214.

6. F.J. HOFFMAN, *The Apostolic Constitution «Ex Corde Ecclesiae» and Catholic Universities in the United States of America*, Romae 1996, p. 63.

7. *Ibid.*

8. «Christifideles, quippe qui baptismo ad vitam doctrinae evangelicae congruentem ducendam vocentur, ius habent ad educationem christianam, qua ad maturitatem humanae personae prosequendam atque simul ad mysterium salutis cognoscendum et vivendum rite instruantur»; CIC 1983, c. 217.

9. «Parentes, cum vitam filiis contulerint, gravissima obligatione tenentur et iure gaudent eos educandi; ideo parentum christianorum imprimis est christianam filiorum educationem secundum doctrinam ab Ecclesia traditam curare»; c. 226 §2.

Code sets the setting on the importance of schools: they are one of the principal means of helping parents fulfill their role in education and formation<sup>10</sup>. Related to this topic are the canons on Church authority on the formation and education in the Catholic religion in any school (c. 804 §1)<sup>11</sup>; and the general goals of education are outlined without specifying the elements of Catholic education (c. 795)<sup>12</sup>. The Code also contains canons that are of great assistance to a fuller understanding of Catholic education: the maturity of a human person and knowing and living the mystery of salvation (c. 217)<sup>13</sup>; and the parents, obligation in ensuring the «physical, social, cultural, moral and religious upbringing of their children» (c. 1136)<sup>14</sup>.

### C. *The Work of the Reform*

The work of revision of the Code started with the establishment of the *Pontificia Commissio Codici Iuris Canonici recognoscendo*<sup>15</sup>. Forty cardinals were appointed to the said commission with Pietro Ciriaci as chairman and Giacomo Violardo as secretary<sup>16</sup>. Preliminary plans for the work that lay ahead were made. However, the commission decided that the actual process of the revision were to be done only after the conclusion of the Council<sup>17</sup>.

With the Solemn Session of 20 November 1965, in the presence of Pope Paul VI, the work of the commission officially started. Various committees reworked the entire Code and rewrote it canon by canon. After the celebration of

10. «Inter media ad excolendam educationem christifideles magni faciant scholas, quae quidem parentibus, in munere educationis implendo, praecipuo auxilio sunt»; c. 796 §1.

11. «Ecclesiae auctoritati subicitur institutio et educatio religiosa catholica quae in quibuslibet scholis impertitur aut variis communicationis socialis instrumentis procurator; Episcoporum conferentiae est de hoc actionis campo normas generales edicere, atque Episcopi dioecesani est eundem ordinare et in eum invigilare»; c. 804 §1.

12. «Cum vera educatio integram persequi debeat personae humanae formationem, spectantem ad finem eius ultimum et simul ad bonum commune societatum, pueri et iuvenes ita excolantur ut suas dotes physicas, morales, et intellectuales harmonice evolvere valeant, perfectionem responsabilitatis sensum libertatisque rectum usum acquirant et ad vitam socialem active participandam conformentur»; c. 795.

13. «Christifideles, quippe qui baptismo ad vitam doctrinae evangelicae congruentem ducendam vocentur, ius habent ad educationem christianam, qua ad maturitatem humanae personae prosequendam atque simul ad mysterium salutis cognoscendum et vivendum rite instruantur»; c. 217.

14. «Parentes officium gravissimum et ius primum habent proles educationem tum physicam, socialem et culturalem, tum moralem et religiosam pro viribus curandi»; c. 1136.

15. Pontifical Commission for the Revision of the Code of Canon Law.

16. C. VAN DE WIEL, *History of Canon Law*, in «Louvain Theological and Pastoral Monographs» 5 (1991) 175.

17. F.G. MORRISSEY, *The Revision of the Code of Canon Law*, in «Studia Canonica» 12 (1978) 178.

the Second Vatican Council and the period following it, the commission was given the task by the Pope to accommodate canon law to the new way of thinking of the Second Vatican Council. In his words:

«The new Code must be faithful to the Gospel message of Christ, and it must be faithful to the orientations of the Second Vatican Council»<sup>18</sup>.

Over the next ten years or so, the commission studied various issues and approved schemata or texts of the proposed canons. On the period between the years 1971 and 1977, these schemata were sent to the Pope, who ordered them forwarded for consultation to the bishops, the Roman Curia, the faculties of ecclesiastical universities, and the Union of Superiors General. Towards the end of 1978, all the official consultative bodies had completed their reviews of the initial schemata and had returned written comments to the commission. The revision of all the schemata led to the systematic arrangement of the Code in seven books by the secretariat of the commission and the consultors.

Numerous changes took place on the section on Catholic education and schools during the process of revision. Dunn notes:

«The group that was working on the section of the Church's teaching office was motivated by two fundamental principles, namely, that parents, who possess the first and inalienable obligation and right to educate their children ought to enjoy true liberty in establishing schools and that the faithful ought to be concerned that civil society recognize this freedom of parents»<sup>19</sup>.

### 1. *Preliminary Work*

Various study groups prepared drafts of particular sections of the Code in the work of codification<sup>20</sup>. From the 23<sup>rd</sup> to 28<sup>th</sup> of January 1967, the consultors and the other members of the group<sup>21</sup> that was tasked for the study of Ecclesiastical Magisterium met for the first session. Among the topics discussed were the

18. Cfr. «Communicationes» 1 (1969) 38-42.

19. B.J. DUNN, *Catholic Schools in Newfoundland: An Investigation into their Nature According to the Code of Canon Law*, Ottawa 1991, p. 90.

20. For a summary of the discussions, cfr. R.J. CASTILLO LARA, *Le Livre III du CIC de 1983: Histoire et Principes*, in «L'Année Canonique» 31 (1988) 23-27. For an outline of the various discussions, cfr. J. FOX, *A General Synthesis of the Work of the Pontifical Commission for the Revision of the Code of Canon Law*, in «The Jurist» 48 (1988) 800-840.

21. *Coetus Studiorum de Magisterio Ecclesiastico*. The group of consultors was composed by Exc.mi. Vincentius Enrique y Tarancon, Petrus Palazzini, Rev.mi Otto Semmelroth, Vincencius C.T. Che, P. Berutti, and Rev.mus W. Onclin, as the Associate Secretary of the Commission. Cfr. «Communicationes» 19 (1987) 211.

general norms of ecclesiastical magisterium (CIC 17, cc. 1322-1326) and the title of this part of the Code (CIC 17, cc. 1322-1324, 1322-1325, and 1326)<sup>22</sup>.

From the 13<sup>th</sup> to 17<sup>th</sup> of February 1968, Session II took place<sup>23</sup>. The norms concerning schools was examined. The first part of Session II dealt on the *Relatio* of Session I (CIC 17, cc. 1322, 1324, 1329, 1335, 1338, 1349, and 1350)<sup>24</sup>. The second part dealt on the preliminary work on schools (general questions, cc. 1-9; various questions: parents, schools in general, CIC 17 cc. 1375, 1379; questions about schools, c. 1381; various questions about universities, c. 1383).

A problem that took so long to discuss was on the delimitation of the notion «Catholic school». This problem seemed difficult, given the immense variety of schools that claim to be Catholic or are considered as such, and the elasticity of such a qualification<sup>25</sup>. This was considered: on the right of the laity and on the schools owned or operated by the Church. One consultor suggested the necessity of canonical mission for the teaching of Catholic doctrine by the laity. Without accepting or denying the necessity of such, the associate secretary expressed that this mission has at many times been given implicitly as seen in many regions in the teaching of religion in elementary schools. On the Church's ownership and operation of schools, it was suggested that its fundamentals be laid forth.

Several questions that were raised regarding the form of the schools of the Church<sup>26</sup>: Is the school totally under ecclesiastical authority? Is it a school under ecclesiastical authority but only on the level within its competence? If such, what is the limit of its competence? Is it a school founded and administered under common agreement with the State? Is it a school that officially professes to be completely Catholic in faith? Added to that, the principal question on nature of a Catholic school was centered between two tendencies: the first identified the Catholic school through the criteria of content —that which is animated by the Catholic spirit—; the other tendency identified the Catholic school through its vinculation to ecclesiastical authority —by its juridical character: foundation, responsibility, administration, etc.—. Cito says that this debate did not result in anything during the first phase of the reform of the Code<sup>27</sup>. As a matter of fact, he adds further that these two tendencies did not appear in the Schema of 1977<sup>28</sup>.

On the other hand, the associate secretary suggested that the Code needed to state the general principles that would essentially constitute a Catholic

22. J. FOX, *op. cit.*, p. 817.

23. «Communicationes» 20 (1988) 126-142.

24. J. FOX, *ibid.*

25. R. CASTILLO LARA, *op. cit.*, p. 24.

26. «Regarding Les écoles "propres" de l'Eglise».

27. D. CITO, *op. cit.*, p. 243.

28. *Ibid.*



school, without necessarily treating the diverse forms of schools<sup>29</sup>. Another Father stated that the specific note of a Catholic school would consist in its acceptance of vigilance from ecclesiastical authority. Another Father noted however, that the Italian bishops and priests had also the right of vigilance in the field of the teaching of catechism not only in Catholic schools but also in the schools of the state. Hence this peculiar note in the field of vigilance seemed insufficient.

Above all these discussions, everybody agreed that the legislation in schools needed to be profoundly reformed taking into consideration that the legislation of the 1917 Code could hardly serve as a minimum basis<sup>30</sup>. For this reason, the legislation on schools ought to be made up of two parts:

«The first point ought to follow the line of the Council that establishes: a) the right of the baptized to religious and moral education; b) the duty of the different people with responsibility (the parents in the first place); and c) the fundamental condition of such education. The second point ought to treat a) on the essential educational team: the family, the school (in the case of a Catholic school — its definition, laws, the right of the Church to found such schools—; or in the case of a non-Catholic school — under what conditions may Catholics attend such a school—) and the religious instruction that is to be given; and b) the other instruments of education»<sup>31</sup>.

The associate secretary read other suggestions that were presented which were derived mainly from the indications of *Gravissimum Educationis Momentum*.

Session III took place from 21<sup>st</sup> to 26<sup>th</sup> of October 1968<sup>32</sup>. The *Relatio* of Session II was read among which were on schools (cc. 1372-1383): definition of a Catholic school, revision of canons approved in preceding session (cc. 1-14) and discussion of universities in general (cc. 22-29). During the discussion on the definition of a Catholic school, the importance of approval or recognition and vigilance from the ecclesiastical authority was emphasized:

«The associate secretary acknowledged that to be Catholic, the school need to count on at least an implicit recognition or approval from the ecclesiastical authority aside from vigilance from the bishops. He judged that it could be founded either by the ecclesiastical authority or by the Catholic faithful»<sup>33</sup>.

29. «Communicationes» 20 (1988) 127.

30. «Communicationes» 20 (1988) 128.

31. *Ibid.*

32. «Communicationes» 20 (1988) 168.

33. «Rev.mus. Secretarius Ad. aestimat illas dici debere catholicas quae uti tales saltem implicite ab auctoritate ecclesiastica agnoscuntur atque sub vigilantia Episcoporum sunt»; «Communicationes» 1988 (1988) 171.

Another consultor added further that a Catholic school is defined by the direction of the school and its being imbued by the gospel:

Catholic schools are those founded by the Church and are governed according to the fundamental principles of education and are imbued in an atmosphere of the spirit of the gospel<sup>34</sup>.

On the other hand, one consultor judged that the said approval is not enough to define a Catholic school because there are non-Catholic schools that are also approved by bishops. Another expressed the impossibility of defining a Catholic school. The associate secretary responded that the truth is, Catholic schools exist and whose definition is in a consequence given in the Code or ought to be mentioned in canonical legislation<sup>35</sup>.

At this point, we could say that the tendency was twofold: a) a Catholic school is that which is governed under the vigilance and administration of the competent ecclesiastical authority, and b) a Catholic school is that which procure to transmit a Christian education. This tendency will characterize to a great extent and be a tone of the discussions that later took place in the reform of the Code.

## 2. *The 1977 and the 1980 Schemata on Schools*

The first draft of the canons on the teaching office of the Church (*Liber III, De Munere docendi*) was circulated for consultation and comments on 1977. There was a residual ambiguity in the published report of the 1977 schema. The ambiguity was centered on the analogous application on certain general points on the canon on schools to universities<sup>36</sup>.

On June of 1980, this worldwide consultation resulted in a one-volume draft of the entire Code. After having made written comments on this text, the Commission came up with the 1981 *Relatio*. The following year, at a plenary session, the members of the Commission studied both the 1980 Schema and the 1981 *Relatio*.

Our discussion of the 1977 and the 1980 Schemata will be focused on three special considerations that were given to Catholic schools: the title of the section, the role of Conferences of Bishops and the meaning of a Catholic school. These drafts circulated throughout the world in order to obtain the comments of numerous groups.

34. *Ibid.*

35. *Ibid.*

36. An example of this ambiguity on the 1977 schema is on the discussion of Chapter I regarding the right of the Church to find schools of any discipline, that is, elementary, intermediate and superior schools including universities and faculties.

### a) The Title of the Section

The first consideration concerned the title of the matter in question. The 1917 Code of Canon Law made use of «De Scholis» as Title XXII. There were changes in the context of one schema to another in the process of revision. The words of the title itself had differed slightly: while the 1977 schema uses «On Christian Education»<sup>37</sup> the 1980 text read «On Catholic Education»<sup>38</sup>, the same words used in the final text. The consultants, taking note from the material of Title XXII *De scholis* in the 1917 Code and under influence from the Council decided to change the title and to expand the material that included norms for the entire area of Christian education<sup>39</sup>. At the same time, they did not want to diminish the importance of Catholic schools. The change of the title resulted in an expansion on the introductory canons on Christian education.

Added to that, it also resulted in the treatment of the various kinds of schools in three separate chapters, namely *De scholis*, *De catholicas universitatibus aliisque studiorum superiorum institutis*, and *De universitatibus et facultatibus ecclesiasticis*.

The *coetus* acknowledged the ambiguity of the title «*De scholis*» in their study of schools in chapter one. They agreed, however, that the title referred only to primary, elementary and high schools and not to schools of higher learning<sup>40</sup>. In the schema of 1980, the consultants changed the title accordingly because of their focus on the rights and obligations that pertain specifically to Catholic education.

Added to that, there was a slight change of words in the headings of the second and third chapters. In the 1977 text, the titles of Chapters II and III were «On Institutes of Higher studies»<sup>41</sup> and «On Universities and Faculties of Ecclesiastical Studies»<sup>42</sup> respectively. As Conn observes, «there was a lack of clarity in that distinction since the latter could be understood as included among the former»<sup>43</sup>. In the text of 1980, a different distinction was introduced, that is, between «Catholic» and «Ecclesiastical» institutions. In that version, the second and third chapters had as title «On Catholic Universities and other Institutes of

37. *De educatione christiana*.

38. *De educatione catholica*.

39. «Communicationes» 22 (1988) 130.

40. «Notio *scholae* non est clara. In CIC sub titulo *De scholis* agitur de schola elementari, de schola media, de schola superiore, de Universitate Catholica, de Universitate Ecclesiastica. In novo schemate cum post Caput I *De scholis* agatur, de Universitate Catholica sub Capite II et de Universitate Ecclesiastica in Capite III, censendum est quod haec duo non comprehendantur termino *De scholis* in Capite II»; «Communicationes» 15 (1983) 100-101.

41. *De studiorum superiorum institutis*.

42. *De universitatibus et facultatibus studiorum ecclesiasticorum*.

43. J.J. CONN, *op. cit.*, p. 245.

Higher Learning»<sup>44</sup> and «On Ecclesiastical Universities and Faculties»<sup>45</sup>. The final text promulgated in 1983 made a further change by placing in the Latin title of Chapter II the word «*catholicis*» before «*universitatibus*». The order was less ambiguous stylistically and does not suggest the misconception that the «other institutes» to which the heading refers may be other than Catholic<sup>46</sup>.

## b) The Role of the Conferences of Bishops

The role of the Conferences of Bishops was the second point of consideration. These Conferences of Bishops had a significant authority over schools in the 1977 schema where eight references were given. Among these general norms were those that would assist parents in selecting the means to provide an education for their children (c. 43 §3<sup>47</sup>); recognizing certain schools as Catholic (c. 50 §1<sup>48</sup>); enacting norms that define the conditions whereby parents could send their children to non-Catholic schools (cc. 50 §3<sup>49</sup>; 53 §2<sup>50</sup>); exercising vigilance over the religious content and religious training in schools (cc. 54 §1<sup>51</sup>; 55 §1<sup>52</sup>); watching over the institutions involved in the education and for-

44. *De universitatibus catholicis aliisque studiorum superiorum institutis*.

45. *De Universitatibus et facultatibus ecclesiasticis*.

46. Cfr. «Communicationes» 15 (1983) 102.

47. «Parentibus christianis officium quoque et ius est, in exercendo hoc suo munere educationis eos participes facere quorum opera filiorum formationi providere valeant, ideoque et ea eligere media et instituta, quibus, iuxta locorum adiuncta et attentis normis ab Episcoporum Conferentia statutis, filiorum educationi christianae aptius prospicere queant». All citations of the canons under this heading were taken from PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Canonum Libri III De Ecclesiae Munere Docendi*, Roma 1977, pp. 22-27.

48. «Parentes, quantum id sinant adiuncta, filios concedant illis scholis quae uti reapse catholicae a Hierarchia sint agnitae; quae scholae si deficiant, filios concedant scholis in quibus institutioni doctrinae christianae providetur, praesertim iis quae iure particulari, sive per conventionem Ecclesiam inter et societatem civilem inducto sive ab Episcoporum Conferentia aut ab Episcopo diocesano statuto, declarantur a catholicis frequentari posse»; *Schema* 1977, c. 50 §1.

49. «Episcoporum Conferentiae, atque, eiusdem praescriptis attentis, Episcopo dioecesano competitis normas edicere, territorii sui condicionibus aptatas, ad officia definienda parentum quibus, certis in adiunctis, filios scholis non catholicis concedere licet»; *Schema* 1977, c. 50 §3.

50. «Ubi id expediat, Episcopi dioecesani est, attentis normis, si quae habeantur, ab Episcoporum Conferentia statutis, curare ut illae condantur scholae, spiritu christiano imbutae, quae pro temporis adiunctis peculiari ratione requiruntur, ut sunt scholae quas profesionales et technicas nuncupant»; *Schema* 1977, c. 53 §2.

51. «Curent scholarum catholicarum moderatores atque advigilent Episcoporum Conferentia et loci Ordinarius ut institutio quae in iisdem traditur pari saltem gradu ac in aliis scholis regionis ratione scientifica et paedagogica sit praestans»; *Schema* 1977, c. 54 §1.

52. «Ecclesiae auctoritati subiicitur institutio et educatio iuventutis religiosa catholica quae in quibuslibet scholis sicut et quae variis communicationis socialis instrumentis procuratur; in specie Episcoporum Conferentiae at loci Ordinarii est eandem ordinare atque in eandem invigilare»; *Schema* 1977, c. 55 §1.

mation of God's people (c. 55 §3<sup>53</sup>); and nominating, approving or removing teachers of religion in interdiocesan schools (c. 56 §1<sup>54</sup>). The 1983 Code on the other hand, guided by the principle of subsidiarity makes only one reference to the Conferences of Bishops, that is, their issuance of general norms on Catholic religious formation and education in schools. This is contained in canon 804 § 1 of the present code<sup>55</sup>.

### c) The Meaning of a Catholic School

The third and last point of consideration dealt on the meaning of a Catholic school<sup>56</sup>. In the first place, it is very significant that Catholic schools were treated separately from Catholic Universities in the new Code. This division precludes some of the ambiguity created in the old law where all educational institutions are gathered under one single heading of «On Schools». By virtue of the univocal grouping, what was legislated for an elementary school seemed also applicable to a university.

The consultants initially proposed that no definition of a school would be given after taking into account of the great variety of schools throughout the world. It was then decided that norms would be issued so parents may be guided in the choice of schools for their children. This brought about the formulation of canon 50 of the 1977 schema:

«§1: Insofar as circumstances allow, parents should entrust their children to schools that the Catholic hierarchy recognizes as really Catholic. If there be none, they should entrust them to schools where the teaching of Christian doctrine is provided, especially those that have been declared suitable for Catholics to attend by a particular law resulting from a concordat between the Church and State or enacted by the Conference of Bishops or the diocesan Bishop.

§2: In cases where they cannot send children to schools mentioned in paragraph 1, the parents are obliged themselves to take care that their Christian education is provided for according to norms issued by competent ecclesiastical authority.

53. «Episcoporum Conferentiae pro scholis interdiocesanis sui territorii, et loci Ordinario pro sua diocesi, ius est nominandi aut approbandi magistros religionis, itemque, si religionis morumve ratio id requirat, exigendi ut amoveantur»; *Schema 1977*, c. 55 §3.

54. «Episcoporum Conferentiae pro scholis interdiocesanis sui territorii, et loci Ordinario pro sua diocesi, ius est nominandi aut approbandi magistros religionis, itemque, si religionis morumve ratio id requirat, exigendi ut amoveantur»; *Schema 1977*, c. 56 §1.

55. «Ecclesiae auctoritati subicitur institutio et educatio religiosa catholica quae in quibuslibet scholis impertitur aut variis communicationis socialis instrumentis procuratur; Episcoporum conferentiae est de hoc actionis campo normas generales edicere, atque Episcopi dioecesani est eundem ordinare et in eum invigilare»; c. 804 §1.

56. «Communicationes» 20 (1988) 137-139, 171-176, 215-216, 223-224.

§3: It is within the competence of the Conference of Bishops and, in accord with its rules that the diocesan Bishop to enact norms, suited to local conditions, which define more precisely under what conditions parents may be permitted to send their children to non-Catholic schools»<sup>57</sup>.

The subsequent revision process became canon 753 of the 1980 schemata and eventually passing unchanged into canon 798 in the 1983 Code of Canon Law:

«Parents are to entrust their children to those schools in which Catholic education is provided; but if they are unable to do this, they are bound to provide for their suitable Catholic education outside the schools»<sup>58</sup>.

In rewording canon 50, the Commission focused on the responsibility of parents in providing Catholic education for their children, and eliminated any consideration of the meaning of a Catholic school. Canon 798 did not employ the term «Catholic school». Instead, a more generic name was used, that is, «a school where Catholic education is taught». This expression was preferred in a sense that it gave more importance of Catholic education above all other criteria, after a very tedious debate over the definition of Catholic school that took place during the work of the reform<sup>59</sup>.

This led to the addition of canon 758 of the 1980 schema that was later passed unchanged into canon 803 of the 1983 Code of Canon Law. This paved the way to a formal criterion that, as a consequence, restricted the technical concept of Catholic school. At the same time, it also recognized that other centers of education, although not fitting to the technical concept of the Catholic school, could be considered as effectively or in fact Catholic.

57. §1. «Parentes, quantum id sinant adiuncta, filios concredant illis scholis quae uti reapse catholicae a Hierarchia sint ignitae; quae scholae si deficiant, filios concredant scholis in quibus institutioni doctrinae christianae providetur, praesertim iis quae iure particulari, sive per conventionem Ecclesiam inter et societatem civilem inducto sive ab Episcoporum Conferentia aut ab Episcopo dioecesano statuto, declarantur a catholicis frequentari posse».

§2. «In casibus in quibus filios scholis de quibus in §1 concredere non possint, ipse parentes obligatione tenentur curandi, ut extra scholas debitae eorundem educationi christianae propisciantur, iuxta normas ab auctoritate ecclesiastica competenti latas».

§3. «Episcoporum Conferentiae, atque, eiusdem praescriptis attentis, Episcopo dioecesano competit normas edicere, territorii sui conditionibus aptatas, ad officia definienda parentum quibus, certis in adiunctis, filios scholis non catholicis concredere licet»; PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Canonum...*, cit., p. 25. The English translation of this book by Peter White was made possible under the auspices of the Canon Law Society of America.

58. «Parentes filios concredant illis scholis in quibus educationi catholicae provideatur; quod si facere non valeant, obligatione tenentur curandi, ut extra scholas debitae eorundem educationi catholicae prospiciatur»; c. 798.

59. Cfr. «Communicationes» 20 (1988) 171-176.

However, the Commission that was in charge of the redaction of the new Code after a large debate decided to come up with an alternative definition of a Catholic school that always implied a nexus with the Church as an institution. During their discussion on these norms that were to be issued, several ways were considered in their description of a Catholic school:

- at least, an implicit recognition from ecclesiastical authority;
- under vigilance from the bishop;
- establishment or direction by ecclesiastical authority or individual Catholics and whose direction is according to the fundamental principles of education and whose atmosphere is imbued with the spirit of the gospel;
- and cares for the passing on of Christian education<sup>60</sup>.

In summarizing the discussions, Castillo Lara reported that the Commission had lengthy discussions regarding the definition of Catholic school: on one hand, it is established by the Church; on the other hand, one in which *de facto* a Christian education is given<sup>61</sup>. Nevertheless, in the midst of these descriptions, the consultors expressed their awareness on several peculiar situations. For this reason, several distinctions were made on Catholic schools: Catholic schools in a broad and narrow sense, Catholic schools by fact and by law, optimal and minimal Catholic schools<sup>62</sup>.

In his comments on the consultors' early work on the chapter on schools, Onclin reported: «Norms are also handed down for schools that are really Catholic, those in which an education imbued with a Christian spirit is given»<sup>63</sup>. Such schools, he observed, can be established by private initiatives or by civil society itself<sup>64</sup>. In his comments of the 1977 schema's treatment on schools, Urritia noted the distinction between a juridically Catholic school and one that is in fact or really Catholic<sup>65</sup>. In the 1977 schema, however, that distinction was not

60. Cfr. «Communicationes» 20 (1988) 137-138.

61. Ultimately he alludes to two categories of Catholic schools: «Après une discussion plutôt longue, on en arriva à une solution de compromis, qui tenait compte des deux éléments fondamentaux ou mieux des deux situations existantes dans la réalité»; R.J. CASTILLO LARA, *op. cit.*, p. 25.

62. «Forma minimalis scholae catholicae est illa in qua maior pars sive discentium non est catholica et quae tamen a hierarchia catholica agnoscitur at approbatur, sicuti ex. gr. accidit in Algeria»; «Communicationes» 20 (1988) 216. These were referred to by the consultors as schools whose teaching is not Catholic and yet which the Catholic hierarchy has recognized and approved. This revolves on the concern to schools in missionary countries with the purpose of providing a basic education rather than giving a specifically Catholic education. This is in conformity with the indications of the document *The Catholic School* of the Sacred Congregation of Catholic Education, 19.III.1977, n. 77.

63. «De scholis quae reapse sint catholicae in quibus nempe educatio tradatur christiano spiritu imbuta, normae etiam traduntur»; «Communicationes» 7 (1975) 156.

64. *Ibid.*

65. F.J. URRITIA, *De Magisterio Ecclesiastico: Observationes Quaedam ad Propositam Reformationem Partis IV Libri III CIC*, in «Periodica» 68 (1979) 346.

specifically predicated of universities. This distinction will be the most appropriate official explanation of what is meant by the adverb «really» (*reapse*) when it refers to an educational institution. An educational institution that is «really Catholic» can be understood to include one, which, though founded by private or civil initiative, provides education that is imbued with a Christian spirit.

This matter is very important for the simple reason that Catholic education is not the monopoly of Catholic schools in the technical sense as we have just discussed above. Catholic education is also possible in schools that have as an institution an educative project of Catholic inspiration whether they are of public or private entities. Catholic education is also possible in schools, although these be pluralists and do not claim to be Catholic, but in fact give a Catholic education through the active presence of Catholic teachers and parents. Added to that, it is recognized that what is more basic or fundamental in reality is an education that is filled with a Catholic spirit. Nevertheless, it has to be recognized also as a fact that the hierarchy would recognize some concrete schools as Catholic in the technical or formal sense of the term.

For this matter, when the documents of the Congregation for Catholic Education speak of Catholic schools, it is logical that they adopt the technical sense of the Code of Canon Law, thereby offering a vision of the topic that is easily related with the action of the Church as an institution. Nevertheless, caution has to be exercised on documents from other sources, as they may not always adopt the same technical sense, that is, formally Catholic school. There are some exceptions. In the declarations of the Holy Father for example, when he speaks of Catholic schools, they have to be treated case by case. Sometimes, when referring to Catholic schools, this term is not restricted only to formally Catholic schools.

#### D. *The Promulgated Text: Canon 803*

This particular part attempts to answer the question: What makes a Catholic school? It proceeds to handle the issue of what schools are to be considered as fitting the category of «Catholic schools» either generally or technically. A Catholic school is such that, aside from its being a school, that is, a place of integral formation through systematic and critical assimilation of culture, it also includes a Christian concept of reality in its own educative project<sup>66</sup>. Canon 803 of the 1983 Code of Canon Law provides the formal and substantial elements and contains a legal criteria whether or not a school is Catholic:

66. SACRED CONGREGATION FOR CATHOLIC EDUCATION, *La Scuola Cattolica*, Instruction on 19-III-1977, n. 33.



§1: A Catholic school is understood to be one which is under the control of the competent ecclesiastical authority or of a public ecclesiastical person, or one which in a written document is acknowledged as Catholic by the competent ecclesiastical authority.

§2: Formation and education given in a Catholic school must be based on the principles of Catholic doctrine, and the teachers must be outstanding in true doctrine and uprightness of life.

§3: No school even if it is in fact Catholic may bear the title «Catholic school» except by the consent of the competent ecclesiastical authority<sup>67</sup>.

### 1. *Catholic Schools in a Formal Sense*

The new Code of Canon Law is a clear reflection of the theology of the Second Vatican Council on the particular Church and the diocesan Bishop. A renewed understanding of the role of the bishop as «the Vicar of Christ in the particular Church entrusted to his care»<sup>68</sup> shows us that the fundamental criterion of catholicity will be a relationship to the diocesan bishop or to some other competent ecclesiastical authority.

Canon 803 §1 gives us a formal perspective through which a school could be considered as Catholic, that is, Catholicity by reason of supervising authority. From the point of view of their canonical effects, a school acquires its juridical status as formally Catholic by virtue of a bond that links the entity to the ecclesiastical authority.

On the other hand, caution has to be exercised on the distinction of Catholic schools from schools that provide Catholic education as specified in canon 799<sup>69</sup>. The claim to catholicity in a formal sense according to canon 803 §1 arises from either control/supervision or approbation from an approved ecclesiastical source<sup>70</sup>. This would mean that educational institutions that claim to

67. «Schola catholica ea intellegitur quam auctoritas ecclesiastica competens aut persona iuridica ecclesiastica publica moderatur, aut auctoritas ecclesiastica documento scripto uti talem agnoscit».

«Institutio et educatio in schola catholica principiis doctrinae catholicae nitatur oportet; magistri recta doctrina et vitae probitate praestent».

«Nulla schola, etsi reapse catholica, nomen scholae catholicae generat, nisi de consensu competentis auctoritatis ecclesiasticae»; c. 803 §§1-3.

68. VATICAN II, *Lumen Gentium*, Dogmatic Constitution on the Church, 21-XI-1964, n. 27. From here onwards, the abbreviation *LG* will be used to refer to this document.

69. «Christifideles enitantur ut in societate civili leges quae iuvenum formationem ordinant, educationi eorum religiosae et morali quoque, iuxta parentum conscientiam, in ipsis scholis prospiciant»; c. 799.

70. Much more will be said of the term *moderatur* in our exposition of schools that are ipso facto formally Catholic in the next pages.

be formally Catholic retain an ecclesiastical identity through their relationship with ecclesiastical authority.

a) Schools that are «*ipso facto*» formally Catholic

Canon 800 says «the Church has the right to establish and to direct schools for any field of study or of any kind and grade»<sup>71</sup>. The Church in many of her documents has always affirmed this right<sup>72</sup>. The Church exercises this right either directly or indirectly. In pursuit of its teaching, missionary, and salvific goals, it must be free to launch educational efforts across a very broad spectrum, depending on the needs of the apostolate for which reason the Church has always promoted initiatives for the creation of Catholic schools<sup>73</sup>. For the interest of our study, we come up with two types of Catholic schools that will be dealt with in more detail under this section.

The first group of schools that are *ipso facto* Catholic are those under the control (*moderatur*) of the competent ecclesiastical authority or of a public ecclesiastical juridical person<sup>74</sup>. Commenting on this canon, Coriden says:

«Among the many possible criteria of a school's Catholicity, e.g., name, recognition, origin, stated purpose, ownership, operating authority, faith commitment of teachers and students, spirit and atmosphere, orthodox teaching, or actual inculcation of gospel values, the Code has chosen what is perhaps the simplest and most verifiable criterion: *operation or recognition by Church authority (either directly, or indirectly exercised in the establishment of a public juridical person)*. The canon rescues itself from pure extrinsicism by the addition of paragraph two, which declares that the formation (of character) and education in a Catholic school is to be grounded upon the basics of Catholic teaching, and that the teachers are to be outstanding for their correct teaching and moral probity»<sup>75</sup>.

The deponent verb *moderatur*, that is employed in §1 has a variety of meanings: control, supervision, to set bounds, to keep within bounds; to regulate, moderate, restrain; to direct, guide; to govern, rule. The code gives the

71. «Ecclesiae ius est scholas cuiusvis disciplinae, generis et gradus condendi ac moderandi», c. 800.

72. Cfr. VATICAN II, *Gravissimum Educationis*, Declaration on Christian Education, on 28-X-1965, n. 8; and c. 794 §1.

73. J. CORIDEN, *The Teaching Office of the Church (cc. 747-833)*, in J. CORIDEN-T. GREEN, D. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary*, New York 1985, p. 568.

74. «Schola catholica ea intellegitur quam auctoritas ecclesiastica competens aut persona iuridica ecclesiastica publica moderatur, aut auctoritas ecclesiasticadocumento scripto ati talem agnoscit»; c. 803 §1.

75. J. CORIDEN, *ibid.*

word *moderatur* a rather broad meaning and is employed sixteen times in the 1983 Code<sup>76</sup>.

Educational institutions that are under the control or direct supervision by the Church are denominated «Catholic» in general. The dimension of control or supervision can be exercised in many ways. But no matter which form is used, there is a direct reference to the authority of the Church. Speaking of authority of the Church in general, this includes the diocesan bishop, the Bishops' Conference, the Holy See or some other that have the authority to do so, such as a religious institute.

On the other hand, there is no norm that obliges these institutions to expressly carry the name «Catholic». This is just a question of names. Although Catholic schools may adopt many forms according to local circumstances, all schools that on a way depend on the Church have to conform to the image of a Catholic school. Since supervision is a function of ecclesiastical authority, the one in authority may exercise that supervision either personally or through others, the latter being the more probable case.

Schools that are *ipso facto* Catholic in juridical sense also include centers of learning that are directed by public ecclesiastical juridical persons<sup>77</sup>. In this type of schools, indirect control is exercised on the part of the competent ecclesiastical authority. To understand the indirect control in this latter situation, we must call to mind the legal requirements for an entity to be characterized as a public juridical person.

Canon 116<sup>78</sup> makes a distinction between public and private juridical persons. Public juridical persons are those constituted by ecclesiastical authority to

76. This verb describes the activity of juridical persons (c. 115), associations (c. 215), seminary teachers (c. 254 §1), priest moderators (c. 517 §2), pastors (c. 258 §2), chaplains (c. 567 §2), competent authority (c. 576), diocesan bishops (cc. 790 §1 & 1649 §1), Conferences of bishops (c. 1272), judges (c. 1346); cfr. J. ОСНОА, *Index Verborum ac Locutionem Codicis Iuris Canonici*, Citta del Vaticano 1984, pp. 280-281.

77. Canons 113-123 provide the norms by which an entity is recognized as having juridical personality. Juridical persons in canon law are groups of persons or things, bound together by law or concession of Church authority for a common purpose consonant with the mission of the Church. Their reason for being pertains to pious, apostolic, or charitable works of either a spiritual or temporal nature. They can be described as wholly artificial creations of law, distinct from the physical persons who constitute them, administer them, for whose sake they exist, with a capacity for a continuous existence at law. Some examples of public juridical persons are a public association of the faithful (c. 313), a diocese (c. 373), a parish (c. 515), an institute of consecrated life (c. 634) and a society of apostolic life (c. 741).

78. «Personae iuridicae publicae sunt universitates personarum aut rerum, quae ab ecclesiastica auctoritate competenti constituuntur ut intra fines sibi praestitutos nomine Ecclesiae, ad normam praescriptorum iuris, munus proprium intuitu boni publici ipsis commissum expleant; ceterae personae iuridicae sunt privatae»; c. 116 §1.

«Personae iuridicae publicae hac personalitate donantur sive ipso iure sive speciali competentis auctoritatis decreto eandem expresse concedenti; personae iuridicae privatae hac personalitate donantur tantum per speciale competentis auctoritatis decretum eandem personalitatem expresse concedens», c. 116 §2.

fulfill a proper function entrusted to them in view of the common good, within the limits that are set for them in the name of the Church and according to law<sup>79</sup>. On the other hand, private juridical persons are still juridically linked to ecclesiastical authority but less closely than their public counterparts and they are not subject to many of the canons, which expressly govern public juridical persons<sup>80</sup>.

The ends that are to be attained could serve as a conclusive element for the eventual clarification of the nature of the juridical person taking into account that there are ends that the ecclesiastical authority reserves for itself<sup>81</sup>. Nevertheless, this is not always the case. There could be ends that are not reserved to the ecclesiastical authority and they could also be pursued by private beings.

With respect to its constitution, we refer here to the substantial significance of the term to its material constitution. In reference to the modalities for the attainment of its ends, public juridical persons act *in nomine Ecclesiae*<sup>82</sup> always on the lookout for the common good while private juridical persons act in its own name under the responsibility of its members. Kneal adds that «those which are public act officially in behalf of the competent ecclesiastical authority by whom they are constituted, and in a larger sense, in behalf of the entire Church, although always of course within their own limits of competency»<sup>83</sup>.

Thus the establishment of a public juridical person always implies approval from the Church for the existence of that entity. In the case of those that acquire their personality by the law itself, the ecclesiastical approval is obvious. For others it arises from the special acknowledgment by ecclesiastical authority that this entity serves a purpose in the Church that is congruent with the mission of the Church itself and that it exercises its mission in the name of the Church.

79. F. COCCOPALMERO, *De Persona Iuridica Iuxta Schema Codicis Novi*, in «Periodica» 70 (1981) 372. Canon 114 §1 makes this point quite clear when it states that these juridical persons are «ordered towards a purpose congruent with the mission of the Church and which transcends the purpose of the individuals that make them up. Public juridical persons are created by the operation of the law itself or through the special decree of the competent ecclesiastical authority creating them. On the other hand, private juridical persons, although recommended by competent ecclesiastical authority, are not created to act in the name of the Church, even though they may be truly Catholic».

80. S.A. EUART, *Church-State Implications in the United States of Canon 812 of the 1983 Code of Canon Law*, in «Canon Law Studies», Washington 1988, pp. 63-64.

81. In his commentary of canon 116, Lo Castro says that «the distinction between public and private juridical persons makes reference to a triple criterion: with respect to its purpose or ends, to its constitution and to the modalities for the attainment of its purpose»; G. LO CASTRO, *Comentario on Canon 116*, in A. MARZOA, J. MIRAS, R. RODRÍGUEZ-OCAÑA (coords.), *Comentario Exegético an Código de Derecho Canónico*, vol. I, Pamplona 1996, pp. 793-797.

82. In the name of the Church.

83. E. KNEAL, *Commentary on canon 116*, in J. A. CORIDEN, et. al., *The Code of Canon Law...*, cit., p. 82.

On the other hand, we need also to direct our attention on schools that are established or founded and are under supervision or control by public associations of Christian faithful. In the first place, it is the ecclesiastical authority that has the sole right to establish public associations of Christian faithful. The type of public association determines the competent ecclesiastical authority<sup>84</sup>. By its very decree of erection a public association or a confederation of public associations becomes a public juridical person and receives a mission to pursue its ends in the name of the Church.

Canon 313 of the 1983 Code, which concerns the decree by which the competent ecclesiastical authorities erect public associations, corresponds to canon 687 of the 1917 Code. In continuity with the former code, the present law of the Church establishes a link between associations and juridical persons. In the new code however, there is a necessary link between the two. Under the old code, ecclesiastical associations became moral persons only when formally erected. To put this in another way, the new code eliminates the distinction (in terms used by the old code) between formally commended and erected ecclesiastical associations.

Canon 313 of the 1983 Code also differs from its counterpart in the old law by granting public associations canonical mission. Applying then these indications to the focus of our study, a legitimately erected public association of the faithful is an established public juridical person by the constituting authority. This entails, among other things, the possibility of acting in behalf of the Church, although within the area of the ends it proposes to attain. A school supervised by such group would also be considered Catholic.

Religious communities that have been approved by the Holy See or by a diocesan bishop are public juridical persons by the law itself; hence given the prescriptions of canon 803 §1, schools that are operated or supervised by them are considered Catholic schools. The Catholic identity of these religious orders was clear to all, and as a consequence, so was the Catholic identity of their institutions. The same principle also applies to a legitimately erected public asso-

84. «Ad erigendas consociationes publicas auctoritas competens est: 1.º pro consociationibus universalibus atque internationalibus, Sancta Sedes; 2.º pro consociationibus nationalibus, quae scilicet ex ipsa erectione destinantur ad actionem in tota natione exercendam, Episcoporum conferentia in suo territorio; 3.º pro consociationibus dioecesanis, Episcopus dioecesanus in suo cuiusque territorio, non vero Administrator dioecesanus, iis tamen consociationibus exceptis quarum erigendarum ius ex apostolico privilegio aliis reservatum est»; CIC 1983, c. 312 §1. This canon concerns the authority competent to erect public associations. It corresponds to canon 686 of the 1917 Code. The Holy See has the right to erect universal and international associations. The Conferences of Bishops can erect national associations within its territory. The diocesan bishop can erect diocesan associations within its territory. Within this territory, however, apostolic privilege reserves to others the right to erect certain associations. The valid erection of associations within a diocese, even by apostolic privilege, requires the written consent of the diocesan bishop.

ciation of the faithful that is established as a public juridical person. Added to that, a parochial school, supervised by the pastor as the one to whom the care of the parish is entrusted, would also be considered Catholic<sup>85</sup>.

On the establishment of schools in the diocese, there should be a prior consultation between the bishops and the religious superiors. This is a reflection of the indications contained in *Ecclesiae Sanctae*:

The general order of the Catholic schools of Religious Institutes carries with it — while maintaining their right in the management and the observance of the norms indicated in number 35.5 on the previous mutual concordance between the bishops and the religious superiors— the general distribution of all Catholic schools in the Diocese, their mutual cooperation and vigilance for their adaptation, not lesser than any other school, for the promotion of cultural and social ends<sup>86</sup>.

*Christus Dominus* on the other hand states:

«Catholic schools conducted by religious are also subject to the local Ordinaries with regards their general policy and supervision without prejudice, however, to the right of the religious to manage them»<sup>87</sup>.

Canon 806 §1 attributes to the diocesan Bishop the requisites that are to be fulfilled by the schools for their posterior recognition as Catholic educational institutions<sup>88</sup>. Cito says that the application of this norm is limited to those schools that are indicated in canon 803 §1<sup>89</sup>. The norm does not apply to educational institutions that, although imparting Catholic education, are not Catholic schools in technical canonical sense<sup>90</sup>. Nevertheless, there should be certain homogeneity of criteria with the indications of the Episcopal Conference in the territory where the school is situated.

#### b) *Schools recognized in writing as Catholic by a Church authority*

The ecclesiastical authority has always a role to play in schools that are considered Catholic. The second group includes schools that are recognized in

85. «Paroecia legitime erecta personalitate iuridica ipso iure gaudet»; c. 515 §3.

86. PAUL VI, *Ecclesiae Sanctae*, Motu Proprio on 6 August 1966, n. 39 §1, in P. GALINDO, *Colección de Encíclicas y Documentos Pontificios*, vol. II, Madrid 1967, p. 3065.

87. VATICAN II, *Christus Dominus*, Decree on the Pastoral Office of Bishops in the Church, 28 October 1965, n. 35.

88. «Episcopo dioecesano competit ius invigilandi et invisendi scholas catholicas in suo territorio sitas, eas etiam quae ab institutorum religiosorum sodalibus conditae sint aut dirigantur; eidem item competit praescripta edere quae ad generalem attinent ordinationem scholarum catholicarum: quae praescripta valent de scholis quoque quae ab iisdem sodalibus diriguntur, salva quidem eorundem quoad internum earum scholarum moderamen autonomia»; c. 806 §1.

89. D. CITO, *op. cit.*, p. 259.

90. *Ibid.*

writing as Catholic by a Church authority. This group includes schools that are founded or directed by private associations of the faithful or by public or private civil entities or by group of faithful that do not have public juridical personality provided that these have applied and obtained the juridical recognition as a Catholic school<sup>91</sup>.

The Second Vatican Council in its decree on the Apostolate of the Laity recognized this fact, and stipulated that «no undertaking could claim the name “Catholic” unless it obtained the consent of the legitimate authority»<sup>92</sup>. This is applied several times in the 1983 Code. In fact, aside from the requirement that calls for the consent of the competent ecclesiastical authority to bear the name or title Catholic on schools in canon 803 §3, the same requirement is also mentioned in four other canons: cc. 216 (apostolate), 300 (associations), and 808 (universities). Regardless of the internal atmosphere and doctrinal content of a school, regardless of its supervising authority or its written recognition by ecclesiastical authority, in order for the school to take on the formal title of «Catholic school», an additional action is required. Canon 803 §3 sets forth this condition: «No school, even if it is in fact Catholic, may bear the title “Catholic school” except by the consent of the competent ecclesiastical authority»<sup>93</sup>. This is a formal juridical requirement.

Mindful of the official and public presence of the Church in the field of education through Catholic schools (GS 6), Cito adds that the recognition of a school as «Catholic» is subordinated not only to its internal features —that it ought to fulfill all the requisites of §2— but that the ecclesiastical authority have the possibility to effectively interfere directly over the school when there is a necessity in the assurance of its Catholic identity<sup>94</sup>. This Catholic identity can be claimed by the very fact of using the name Catholic. In terms of schools that are to be considered Catholic, Coriden has this to say:

«A positive interpretation of this situation suggests that this law is to prevent confusion and assure the faithful that a particular institution has official approbation»<sup>95</sup>.

The public use of the title «Catholic» can only be granted to an institution by ecclesiastical authority. This cautionary note in the use of the title «Catholic»

91. *Ibid.*, p. 244.

92. VATICAN II, *Apostolicam Actuositatem*, Decree on the Apostolate of the Laity, on 18-XI-1965, n. 24. From here onwards, the abbreviation AA will be used to refer to this document.

93. «Nulla schola, etsi reapse Catholica gerat, nisi de consensu competentis auctoritatis ecclesiasticae»; c. 803 §3.

94. *Ibid.*

95. J. CORIDEN, *The Teaching Mission of the Church, a Commentary*, in «The Living Light» 20 (1984) 144-145.

is not only peculiar to canon 803. It is a consistent concern in the 1983 Code of Canon Law. The concern on the use of the title «Catholic» also appears in canon 216: «Since they share the Church's mission, all Christ's faithful have the right to promote and support apostolic action, by their own initiative, undertaken according to their state and condition. No initiative, however, can lay claim to the title "Catholic" without the consent of the competent ecclesiastical authority»<sup>96</sup>.

In devising criteria for the recognition of a Catholic school, perhaps the criterion of ecclesiality suggested by Pope John Paul II for discerning and recognizing lay associations could provide some basic principles. This criterion includes: the primacy given to the call of every Christian to holiness, the responsibility of professing the Catholic faith, the witness to a strong and authentic communion in relationship with the Pope and the local bishop, conformity to and participation in the Church's apostolic goals, and commitment to a presence in human society<sup>97</sup>.

The next question is who is the competent ecclesiastical authority whose consent is required for a school to call itself Catholic. It must be noted that in each instance the same action is required: consent. In each instance the source of consent is the same: competent ecclesiastical authority. In each instance the same issue is at stake: formal use of the title «Catholic». However, it is specifically consent that is required. The law does not make provision for another form of approbation for the use of the title «Catholic». It must again be pointed out that the law is not retroactive. Therefore, schools that were already established prior to the promulgation of this law and which have the title «Catholic» prior to the promulgation of this law retain that title. Nevertheless, caution has to be exercised on this matter because the competent ecclesiastical authority can also withdraw such the title of Catholic to those institutions that had this title for verifiable and justifiable reasons.

The term «competent ecclesiastical authority» appears many times in the Code, but only once is its meaning specified. Canon 312 states that the authority competent to erect public associations is determined by the scope of the association: the Holy See for universal and international ones; the Bishops' Conference for national ones; the diocesan bishop for associations whose founding purpose is directed toward work within the diocese but not nationally.

The same requirement is attached to associations of the Christian faithful in canon 300: «No association may call itself "Catholic" except with the con-

96. «Christifideles cuncti, quippe qui Ecclesiae missionem participant, ius habent ut propriis quoque inceptis, secundum suum quisque statum et condicionem, apostolicam actionem promoveant vel sustineant; nullum tamen inceptum nomen catholicum sibi vindicet, nisi consensus accesserit competentis auctoritatis ecclesiasticae»; CIC 1983, c. 216.

97. JOHN PAUL II, *Christifidelis Laici*, Apostolic Exhortation on 30 December 1988, AAS 81 (1989) 446-448.



sent of the ecclesiastical authority, in accordance with canon 312»<sup>98</sup>. In establishing the same requirement for instructions of higher learning, canon 808 states: «No university, even if it is in fact Catholic, may bear the title “Catholic university” except by the consent of the competent authority»<sup>99</sup>. This canon repeats literally the disposition of canon 808 §3 on Catholic schools.

In none of the canons does the law specify who is the competent ecclesiastical authority whose permission is required for a school to call itself Catholic. Certainly the Holy See, diocesan bishops, and other local ordinaries (cfr. canon 134<sup>100</sup>); nothing prevents the authority from being delegated, that is, to a superintendent of schools (cfr. canon 137<sup>101</sup>)<sup>102</sup>. It appears therefore that these are the same authorities whose consent is required for associations to use the name «Catholic» according to canon 300. Since all the canons that were just cited above including canon 803, appear to be parallel passages, in accord with the norm for interpretation in canon 17<sup>103</sup>, the same authorities would be competent to give consent for the use of the title «Catholic».

The competent ecclesiastical authority in question here would be the Congregation for Catholic Education for all Catholic Universities. Through the Constitution *Regimini Ecclesiae Universae*, the reorganization of the Roman Curia in 1967 reassigned to the Sacred Congregation for Catholic Education competence to moderate all universities that were honored with the name Catholic and in any way depending on ecclesiastical authority, not excluding those governed by lay people or religious<sup>104</sup>. In another reorganization of the

98. «Nulla consociatio nomen “catholicae” sibi assumat, nisi de consensu competentis auctoritatis ecclesiasticae, ad normam can. 312»; c. 300.

99. «Nulla studiorum universitas, etsi reapse catholica, titulum seu nomen universitatis catholicae gerat, nisi de consensu competentis auctoritatis ecclesiasticae»; c. 808.

100. «Nomine Ordinarii in iure intelleguntur, praeter Romanum Pontificem, Episcopi dioecisani aliique qui, etsi ad interim tantum, praepositi sunt alicui Ecclesiae particulari vel communitati eidem aequiparate ad normam can. 368, necnon qui in iisdem generali gaudent potestate executiva ordinaria, nempe Vicarii generales et episcopales; itemque, pro suis sodalibus, Superiores maiores clericalium societatum vitae apostolicae iuris pontificii, qui ordinaria saltem potestate executiva pollent». «Nomine Ordinarii loci intelleguntur omnes qui in §1 recensentur, exceptis Superioribus institutorum religiosorum et societatum vitae apostolicae». «Quae in canonicis nominatim Episcopo dioecisano, in ambitu potestatis executivae tribuuntur, intelleguntur competere dumtaxat Episcopo dioecisano aliisque ipsi in can. 381 §2 aequiparatis, exclusis Vicario generali et episcopali, nisi de speciali mandato»; c. 134 §§1-3.

101. «Potestas executiva ordinaria delegari potest tum ad actum tum ad universitatem causam, nisi aliud iure expresse caveatur»; c. 137.

102. J. CORIDEN, *op. cit.*, p. 568.

103. «Leges ecclesiasticae intellegendae sunt secundum propriam verborum significationem in textu et contextu consideratam; quae si dubia et obscura manserit, ad locos parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum»; CIC 1983, c. 17.

104. «Per secundum officium moderantur Universitates... quae catholico nomine rite ornentur, quatenus ab Ecclesiae auctoritate quomodocumque dependant, haud exclusis iis quae a reli-

Roman Curia, this time effected by the Apostolic Constitution *Pastor Bonus*, the Congregation for Catholic Education was given the competence over Catholic universities in those matters in which the Holy See had competence<sup>105</sup>.

It would also include the local Ordinaries in so far as the institution is open to the faithful under his jurisdiction, regardless of whether it is governed by exempt Religious of Pontifical right. In the case of schools that are owned and operated by clerical religious communities, it can be argued that the major religious superiors of those groups as possessors of ordinary power are also competent authorities for their own schools. However, the Bishop, as coordinator of apostolic works within each diocese, is the higher authority<sup>106</sup>.

On 15 August 1990, *Ex Corde Ecclesiae*<sup>107</sup>, an Apostolic Constitution of the Supreme Pontiff John Paul II on Catholic universities was promulgated. This document is of great importance because it deals with a number of issues that were unresolved in the 1983 Code of Canon Law. It also raises a number of questions about the application of the norms for the situation of Catholic universities in Canon Law and in Civil Law. However, this document will be discussed in full in the first part of Chapter IV.

Prior to a school's recognition in writing as Catholic by a Church authority, there has to be externally verifiable conditions that point to the Catholicity of a certain school. The second paragraph of canon 803 describes the more intangible criteria of an institution's having the character and nature of a Catholic school. While not as measurable as were the conditions set forth in the first paragraph, these are, nonetheless, important characteristics. It also sets that the

giosis reguntur vel a laicis; ...»; PAUL VI, *Regimini Ecclesiae Universae (REU)*, Apostolic Constitution on the Roman Curia, 15 August 1967, AAS 59 (1967) 914.

105. «Ad Universitates Catholicas quod attinet, ea agit quae Sanctae Sedi competunt» (Art. 11 §3); JOHN PAUL II, *Pastor Bonus (PB)*, Apostolic Constitution, 28 June 1988, AAS 80 (1988) 841-912. This norm however did not clarify all the outstanding juridical questions, and perhaps that was the intention. Nonetheless, *PB* did charge the Congregation with the power and responsibility to be on guard lest the sacred sciences in any Catholic institution of higher education, be it a Catholic university or an Ecclesiastical university, fail to be illumined by reason of Christian truth. The official directory of the Holy See lists this Congregation as competent over «...all universities, faculties, institutes and superior schools of ecclesiastical or civil studies depending on physical or moral ecclesiastical persons, and also associations and institutions having a scientific scope». (*Anuario Pontificio per l'anno 1991*, Città del Vaticano 1991, p. 1693.) Substantially, *PB* is a confirmation to the competence entrusted to the Congregation for Catholic Education by *REU*, which also did the same with respect to *Sapienti Consilio*.

106. Cfr. VATICAN II, *Christus Dominus*, Decree on the Pastoral Office of Bishops in the Church, on 28-X-1965, nn. 17 and 35; PAUL VI, *Ecclesiae Sanctae, Motu Proprio on 6-VIII-1966*, n. 39. From here onwards, the abbreviations *CD* and *ES* will be used to refer to the documents respectively.

107. JOHN PAUL II, *Ex Corde Ecclesiae*, Apostolic Constitution on 15 August 1990, AAS 82 (1990) 1475-1509.

juridical status of a Catholic school ought to correspond to a substantial reality of an educative Christian community. It deals on the content, the environment and the personnel of a Catholic school. It reads: «Formation and education in a Catholic school must be based on the principles of Catholic doctrine, and the teachers must be outstanding in true doctrine and uprightness of life»<sup>108</sup>.

However, in the words of Coriden, «this is clearly neither a part of the legal criterion of Catholicity nor a requisite for the use of the name “Catholic school”; it is an expectation, a characteristic that should not be absent»<sup>109</sup>. Cito says, «to the juridical status of a Catholic school ought to correspond a substantial reality of a Christian educative community»<sup>110</sup>. Cusack adds that in this case «Catholicity is recognized from within the school rather from outside supervision and approbation»<sup>111</sup>. She adds further: «the supervising authority maintains an interest in perpetuating this Catholic atmosphere and education in the school»<sup>112</sup>.

Going back to the canon that was just mentioned, it points out the essential requisites as to the orientation of the background in education: the two dimensions of instruction and formation and the personal qualities of the professors that ought to be distinguished through their right doctrine and integrity of life<sup>113</sup>.

With reference to the first requisite, Cito says that there is a notable progress with respect to canon 1373<sup>114</sup> of the 1917 Code whose prescription is limited to the existence of religious instruction in the elementary and intermediate schools<sup>115</sup>. He reasons out that a Catholic school goes beyond the teaching of the Catholic religion; it is a global educational project that is founded, in the light of the gospel, cultural knowledge and the life of the diverse components of the educational community: the professors, the non-teaching personnel, the parents and the students<sup>116</sup>. Indeed, this is a reflection of the indications of *Gravissimum Educationis*:

108. «Institutio et educatio in schola catholica principiis doctrinae catholicae nitatur oportet; magistri recta doctrina et vitae probitate praestent»; c. 803 §2.

109. J. CORIDEN, *op. cit.*, p. 568.

110. D. CITO, *op. cit.*, p. 244.

111. B.A. CUSACK, *A Study of the Relationship between the Diocesan Bishop and Schools below the level of Higher Education in the United States: Canons 801-806 of the 1983 Code of Canon Law*, Washington DC, 1988, p. 166.

112. *Ibid.*

113. D. CITO, *op. cit.*, p. 245.

114. «In quilibet elementaria schola, pueris pro eorum aetate tradenda est institutio religionis». «Juventus, quae medias vel superiores scholas frequentat, pleniore religionis doctrina excolatur, et locorum Ordinarii curent ut id fiat per sacerdotes zelo et doctrina praestantes»; CIC 1917, c. 1372 §§1-2.

115. D. CITO, *op. cit.*, p. 245.

116. *Ibid.*

«The Catholic school aims for the promotion of culture and the human formation of young people. It is however the special function of the Catholic school to develop in the school community an atmosphere animated by the spirit of liberty and charity based on the Gospel. It enables young people, while developing their own personality, to grow at the same time in that new life which has been given them in baptism. Finally, it so orients the whole of human culture to the message of salvation that the knowledge which the pupils acquire of the world, of life and of men is illumined by faith»<sup>117</sup>.

With reference to the second requisite, the professors need to possess certain qualities: professional competence and good moral character. A special requisite is contained in canon 804 §2 with regard to professors of religion; they ought to be distinguished for their right doctrine, testimony of life and pedagogical aptitude<sup>118</sup>. In the words of Benlloch Poveda, «The professors ought to be, not only in their manner of teaching but also in their lifestyle, coherent with the faith and norms of the Church»<sup>119</sup>.

## 2. *Catholic Schools in fact (reapse catholica)*

The third paragraph of the canon confronts two problems that are intimately related: the name Catholic school and the distinction of Catholic schools in fact (*reapse Catholica*) and those that are juridically Catholic. The title «Catholic school» is a protected canon. Gonzalez Del Valle, commenting on this canon, says: «Schools that are founded by the State, by public civil corporations, or by private persons —even if these are Catholic— are not Catholic schools, strictly speaking, even though their education conforms to Catholic doctrine»<sup>120</sup>. Hence the right to operate under the title or name is not actualized according to the substance of the educational institution (*reapse Catholica*), although the right must be founded upon its real identity, but rather depend upon the will of the competent ecclesiastical authority.

A simple clarification has to be made on the word *reapse Catholica* that could be translated as «Catholic schools in fact» or «even if these are Catholic».

117. *Gravissimum Educationis*, n. 8.

118. «Loci Ordinarius sollicitus sit, ut qui ad religionis institutionem in scholis, etiam non catholicis, deputentur magistri recta doctrina, vitae christianae testimonio atque arte paedagogica sint praestantes»; c. 804 §2.

119. A. BENLLOCH POVEDA, *Commentary on can. 803*, in *Código de Derecho Canónico*, Valencia 1993, p. 374.

120. J.M. GONZALEZ DEL VALLE, *Commentary on canon 803*, in *Code of Canon Law Annotated* (Latin English edition of the Code of Canon Law and English-language translation of the commentary prepared under the responsibility of the Instituto Martin Azpilcueta of the University of Navarre), Montreal 1993, p. 253.

These words have not been understood univocally. When the Code mentions the reality of Catholic schools in fact (*reapse catholica*), the question arises whether or not these words merely refer to the schools of canon 803 §1 or to other schools as well. After considering several arguments on the meaning of the word *reapse* in the other parts of the Code<sup>121</sup>, it seems that canon 803 §3 refers not only to schools mentioned in canon 803 §1 but also to other schools which might not come within the provisions of canon 803 §1. For some, it implies fidelity to revelation and magisterium, while for others, it has been understood more of an ethnic identity<sup>122</sup>. Nevertheless, the phrase in canon 803 §3 is commonly referred to schools that are materially Catholic education and not to a formal technical sense.

From the point of view of institutions, the 1983 Code of Canon Law recognizes the existence of initiatives, that being really Catholic<sup>123</sup>, they could not use the name «Catholic» without the consent of the ecclesiastical authority. These initiatives could be a form of apostolic action that is promoted and supported through the initiative of Christ's faithful undertaken according to their state and condition as contained in canon 216 according which: «Since they

121. For example, canon 812 §2 refers to two ways of acquiring a quasi-domicile: residing in a place with the intention of remaining at least three months or staying in fact (*reapse*) in a place for three months; canon 166 §3 speaks of an election that is invalid in virtue of the law itself if more than one third of the electors were overlooked, unless all those overlooked were in fact (*reapse*) present. Thus, it seems that the Code uses the word *reapse* when it wishes to recognize a *de facto* situation. See also cc. 170 and 1743. On the other hand, cc. 216 (on associations) and 300 (on associations) do not contain the phrase «*etsi reapse Catholica*» while it is mentioned in cc. 803 §3 (on schools) and 808 (on universities). Perhaps, the fact that the law gives recognition to *de facto* apostolic action (c. 216) and *de facto* associations (c. 300) made it necessary to add the phrase «*etsi reapse Catholica*» to canon 803 §3 in order to acknowledge *de facto* Catholic schools. Moreover, the Oriental Code does not have a canon comparable to canon 803 §3 of the Latin Code. However, in its canon which parallels canon 803 §1 of the Latin Code, the phrase «in law» has been added: «*schola in iure non reputatur Catholica*» (c. 632), thus giving rise to distinction between Catholic schools in law and Catholic laws in fact.

122. T.M. HESBURGH, *Catholic Education in America*, in «America» 155 (1986) 160-164. Hesburgh enumerates several elements that signify Catholicity: a) heritage; b) the percentage of Catholic students; c) attendance at Mass; d) social outreach; e) cultic symbols on campus (statues, chapels, etc.); f) existence of a theology department; and g) single-sex dormitories. These elements enumerated by Hesburgh merit some comments. In the first place, Catholicity is not just a mere question of ethnic identity. It goes beyond these elements enumerated. As we have discussed earlier, what is primordial for a school to be considered as Catholic is its fulfillment of the juridical requirement, that is its recognition in writing as such by an ecclesiastical authority on one hand and its adherence to Catholic doctrine and having Catholic teachers. Added to that, some of these elements enumerated by Hesburgh are in force at present, like for example as seen in territories of mission where the Catholic religion is just a minority. Some other elements enumerated by Hesburgh are nevertheless to be expected in the Catholic school.

123. In the 1983 Code, the expression «*reapse catholica*» is used in the field of schools (cfr. c. 803 §3) as well as universities (cfr. c. 808).

share the Church's mission, all Christ's faithful have the right to promote and support apostolic action, by their own initiative, undertaken according to their state and condition. No initiative, however, can lay claim "Catholic" without the consent of the competent ecclesiastical authority»<sup>124</sup>. Cenalmor comments:

«The faithful, to whom there is true equality with regard to the dignity and to the activity (...) for the building up of the Body of Christ (LG 32c) have responded with frequency to their vocation to the apostolate realizing in the course of history, countless evangelization initiatives of different kinds»<sup>125</sup>.

In continuation, he says that these initiatives for the apostolate have been proposed by Vatican II as «concrete modes of participation in the mission of the Church that is open to all the People of God» and at the same time, are manifestations of an exercise of a true right of the baptized<sup>126</sup>.

The right of the faithful to promote some initiatives in the field of education has its base in the Code itself. As a point of departure, the Code first speaks of the duty and the right of the parents to educate their offspring as contained in canon 793 §1<sup>127</sup>. This canon makes a distinction of the exercise of this duty and right on two levels: the natural level that is proper to all parents and the supernatural level that is proper to Christian parents. It shows the continuity and the harmony between the two juridical situations of both levels. Errázuriz comments that the second phrase speaks of the duty and the right to educate the offspring in a Christian way that is further formalized in canons 226§2, 774 §2 and 1136 from a particular point of view, that is, the election of the means and institutions that would provide the Catholic education of the offspring<sup>128</sup>. A very close relation exists between the school — the principal means of education — and the duty of the parents as evident in canon 796 §1<sup>129</sup>.

124. «Christifideles cuncti, quippe qui Ecclesiae missionem participant, ius habent ut propriis quoque inceptis, secundum suum quisque statum et conditionem, apostolicam actionem promoveant vel sustineant; nullum tamen inceptum nomen catholicum sibi vindicet, nisi consensus accesserit competentis auctoritatis ecclesiasticae»; c. 216.

125. D. CENALMOR, *Commentary on canon 216*, in A. MARZOA, J. MIRAS, R. RODRÍGUEZ-OCAÑA (coords.), *Comentario Exegético al Código de Derecho Canónico*, vol. II, Pamplona 1996, p. 118.

126. *Ibid.*, cfr. PO, 9b; PC, 20; AA, 24; AG, 6c.

127. «Parentes, necnon qui eorum locum tenent, obligatione adstringuntur et iure gaudent prolem educandi; parentes catholici officium quoque et ius habent ea eligendi media et instituta quibus, iuxta locorum adiuncta, catholicae filiorum educationi aptius prospicere queant»; c. 793 §1.

128. C.J. ERRÁZURIZ, *Las iniciativas de los fieles en el ámbito de la educación*, in «Romana» VI/11 (1990) 122.

129. «Inter media ad excolendam educationem christifideles magni faciant scholas, quae quidem parentibus, in munere educationis implendo, praecipuo auxilio sunt»; c. 796 §1.

On the other hand, the right to participate in the field of education is not limited only to parents and to those who act on their behalf. It is not only limited to schools but also to universities. Participation in the task of education in the Church is open to all the faithful that has as its base the natural right to education.

These initiatives of the faithful for the apostolate in the field of education could be undertaken personally or in union with other faithful in the form of private associations. Canon 215 guarantees this right of the faithful to freely found and direct associations<sup>130</sup>. As Cenalmor quotes Manzanares' commentary on canon 215 in the Code of Canon Law edited in Salamanca, «private associations in particular, where there is a wider space of initiative, are without doubt, direct applications of this right of the faithful»<sup>131</sup>. Taking into account canon 321<sup>132</sup>, the faithful manage and govern these private associations, in accordance with the prescriptions of their statutes. Fuentes comments that these private associations ought to submit their statutes for revision by the authority (c. 299 §3<sup>133</sup>) and need approval for the said statutes (c. 322 §2<sup>134</sup>) if they desire to obtain juridical personality<sup>135</sup>. Canon 322 twice refers to the ecclesiastical authority mentioned in canon 312 to designate those who can erect private associations into private juridical persons and those who can approve the statutes of private associations<sup>136</sup>.

This canon shows that in the Church, the Christian faithful enjoy the same civil liberties as all citizens enjoy. However, the use of this freedom is always

130. «Integrum est christifidelibus, ut libere condant atque moderentur consociationes ad fines caritatis vel pietatis, aut ad vocationem christianam in mundo fovendam, utque conventus habeant ad eosdem fines in communi persequendos»; c. 215.

131. D. CENALMOR, *Commentary on canon 215*, in A. MARZOA, J. MIRAS, R. RODRÍGUEZ-OCAÑA (coords.), *Comentario Exegético al Código de Derecho Canónico*, vol. II, Pamplona 1996, p. 116.

132. «Consociationes privatas christifideles secundum statutorum praescripta dirigunt et moderantur»; c. 321.

133. «Nulla christifidelium consociatio privata in Ecclesia agnoscitur, nisi de consensu competentis auctoritatis ecclesiasticae, ad normam can. 312»; c. 299 §3.

134. «Nulla christifidelium consociatio privata personalitatem iuridicam acquirere potest, nisi eius statuta ab auctoritate ecclesiastica, de qua in can. 312, §1, sint probata, statutorum vero probatio consociationis naturam privatam non immutat»; c. 322 §2.

135. J.A. FUENTES, *Commentary on Canon 321*, A. MARZOA, J. MIRAS, R. RODRÍGUEZ-OCAÑA (coords.), *Comentario Exegético al Código de Derecho Canónico*, vol. II, Pamplona 1996, p. 503.

136. As a result, canon 322 literally asserts there are four authorities competent to erect private associations into private juridical persons and to approve their statutes. The Holy See erects and approves statutes for universal or international private associations. The conference of bishops does so for national private associations within its territory. The diocesan bishop does so for diocesan private associations within his territory, and within this same territory those with the apostolic privilege of erecting certain public associations can approve the statutes for private associations and erect them into private juridical persons.

as Christians: it is to be imbued with the spirit of the gospel and attentive to the teaching of the Church. For this matter, we could find direct applications in the field of education, particularly in the creation and supervision of schools.

Schools that are founded by the lay faithful in their capacity as private citizens do not depend on the institutional Church for their government but nonetheless, they can make a valuable contribution in the mission of the Church, that is, the work of evangelization and help promote the deeper culture and fuller development of the human person. Still, these types of schools ought not to be considered Catholic schools in canon law unless they seek and receive such recognition from the competent ecclesiastical authority.

### E. *Conclusions*

The prescriptions of the 1983 Code of Canon Law on Catholic educational institutions are very useful in the field of our study. As we have discussed earlier, the Church's teaching on Catholic educational institutions is innovative in a sense that it distinguishes Catholic universities from Catholic schools in one hand, and from ecclesiastical universities on the other. The 1983 Code contains prescriptions that are peculiar and particular to each of them. On the other hand, we could see a clear indication of the Commission's fidelity to the sources during the revision process.

A great part of the prescriptions of the 1983 Code contains clear reflections of the orientations of the Second Vatican Council, particularly of the conciliar documents *Gravissimum Educationis*, *Apostolicam Actuositatem* and *Lumen Gentium*. It is quite evident that the 1983 Code has been an effort to translate the conciliar teaching into canonical language. In a way, there has been an effort to retain a balance between the pastoral emphasis of the Council and the necessary juridical quality of the Code. As an example of this, we may consider the elements involved in a Catholic school as seen in canon 803 §2, namely, education based on Catholic doctrine and good teachers. While these two elements are easily verifiable, nevertheless, they seem to give little consideration to the conciliar teaching on the purposes of a Catholic school as taught in article eight of *Gravissimum Educationis*.

This section acknowledged in a variety of ways in which educational institutions, particularly schools, could be considered Catholic with canon 803 as our point of departure. It dealt to a great extent the legitimate role of the ecclesiastical authority in fostering the integrity of Catholic teaching in Catholic schools and universities. Canon 803 in a way defined what is a Catholic school. On the other hand, such definition is not given to Catholic universities. Perhaps, this was purposely omitted for many reasons. The Code did not say what act or condition constitutes a Catholic university. Taking this into consideration, it



seems to suggest that there are many ways in which a Catholic university can be Catholic.

With canon 803 as our base, we distinguished Catholic schools *ipso iure* from Catholic schools *in fact*. Paragraph one of canon 803 provides the «formal» element whereby a particular school is considered Catholic. The distinguishing factor centers on the fact that a Catholic school either comes under the direction or supervision of church authority, or under that of a public juridical person, or is recognized in writing as such by an ecclesiastical authority. Due to this requirement, schools that are established by the State, or by civil juridical persons, that is, by an association, or by private persons, even if they teach Catholic doctrine and have Catholic teachers, and are not subsequently recognized, do not fulfill the juridical requirement necessary to be considered a Catholic school according to canon 803 §1.

Furthermore, this «formal» element as such does not expressly include those elements mentioned in canon 803 §2. However, as we have mentioned above, those elements of canon 803 §2 are to be considered as a kind of «material» criterion to gauge the Catholicity of a school: an education based on the principles of Catholic doctrine and with teachers outstanding in true doctrine and uprightness of life. They serve as verifiable conditions that are to be present in a school prior to the school's recognition in writing as Catholic by the ecclesiastical authority. Therefore although canon 803 §1 does not include this material criterion in its formal element for a school to be considered Catholic, those supervising Catholic schools as well as those with the authority to recognize a school as Catholic have the obligation of giving some consideration to this material criterion. Perhaps, the «material» criterion of the Catholic school ought to reflect the purposes of article eight of *Gravissimum Educationis*, namely, the Gospel atmosphere in the school, the growth of life of baptism, and knowledge illumined by faith.

On the other hand, the canonical provision in Canon 803 §3 regarding the requirement that «no school may bear the title “Catholic school” without the consent of the competent ecclesiastical authority» helps prevent confusion and assure the faithful that a particular institution has an official seal of approval.

## II. POST CODICIAL CONSIDERATIONS ON CATHOLIC EDUCATIONAL INSTITUTIONS

### A. Introduction

This chapter has two parts. The first part is a study of *Ex Corde Ecclesiae*, an Apostolic Constitution of the Supreme Pontiff John Paul II on Catholic universities. This document is of great importance to our study for several reasons. The document deals with a number of issues unresolved by the 1983 Code of

Canon Law. It raises practical questions about the implication of the norms for the situation of Catholic universities in Canon Law and Civil Law. It also serves as guide for its implementation in various parts of the world.

The second part deals on canonical issues raised by canon 803 and its application to material and formally Catholic educational institutions. It has as its first section an analysis of the juridical dimension of Catholic identity. The second section deals on practical applications of the juridical determinations of material and formally Catholic educational institutions. We will also include some references as to how this matter is treated by commentators of the present Code.

## B. *Post-Codicial Magisterium: The Apostolic Constitution Ex Corde Ecclesiae by Pope John Paul II*

### 1. *An Overview*

The topic on Catholic universities is by nature complex and delicate. For this reason, it is obvious that the Code of Canon Law is not the most appropriate place to treat this topic, even if it is universal in scope. This topic then was treated apart from the Code, but within the law of the Church, in settings that are conducive for its more profound and conducive treatment.

The Apostolic Constitution *Ex Corde Ecclesiae*<sup>137</sup> is the first pontifical document in the history of the Church that has as its object the Catholic University. It brought to an end the complex and long legislative process on the Church's doctrine on Catholic educational institutions particularly on Catholic universities. This Apostolic Constitution was signed into law by Pope John Paul II on 15 August 1990, Solemnity of the Assumption of the Blessed Virgin Mary and was announced to the world by Monsignor Pio Laghi, then Pro-Prefect of the Congregation for Catholic Education in a press conference on 25 September 1990<sup>138</sup>.

A close reading of the sessions of the Second Vatican Council reveals that this document was a matter of unfinished business and that the Fathers of the Council left a number of unresolved issues to be addressed by the new Code of Canon Law or other documents of the Holy See<sup>139</sup>. On March 1981, a plenary

137. JOHN PAUL II, *Ex Corde Ecclesiae*, Apostolic Constitution on 15 August 1990, AAS 82 (1990) 1475-1509. English Translation, *Apostolic Constitution of the Supreme Pontiff John Paul II on Catholic Universities*, Vatican City 1990. From here onwards, the abbreviation *ECE* will be employed to refer to this document.

138. Cfr. PIO LAGHI, *Norms for Universities Issued*, in «L'Osservatore Romano» weekly edition in English (1 October 1990) 1ff.

139. Cfr. *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II*, vol. III, pars VII, Romae 1970-1978, pp. 185-222.

meeting of the Sacred Congregation for Catholic Education was held. In that meeting, the Holy Father Pope John Paul II encouraged the participants to be diligent in their work to prepare a document that would serve as a *magna carta* for Catholic universities<sup>140</sup>. Indeed, this document serves as Magna Carta to the 935 institutes of superior studies that can be qualified as Catholic in the whole world<sup>141</sup>.

The document is a fruit of a long process of consultation involving bishops, officials of Catholic higher education worldwide and various experts<sup>142</sup>. The constitution is directed toward a specific topic, Catholic universities. It locates them generally within the setting of universities, upholds their rights within this setting, and addresses the specifically «Catholic» dimension of Catholic universities. Thus the academic world provides a context within which this particular document is to be interpreted.

Several points were debated on during the process of elaboration of the document especially on the motives and convenience of such a document. The debate was motivated to respond to the preoccupations of the different sectors in the Church<sup>143</sup>. In a press conference on 25 September 1990, the pro-Prefect of the Congregation for Catholic Education, the Apostolic Constitution was announced to the world.

## 2. Key Provisions

The document consists of four sections. 1) An Introduction; 2) Part I that explains the Identity and Mission of a Catholic University; 3) Part II that contains the legal norms; and 4) the Conclusions. The Introduction and Part I contain forty-nine points while Part II contains twenty-eight legal points in eight articles. The Introduction and Part I offer a rich exposition on the role of the

140. JOHN PAUL II, Allocution to the Sacred Congregation for Catholic Education, 26 March 1981, AAS 73 (1981) 273-276, n. 3. This description of the Constitution as *magna carta* for Catholic universities has been expressly contained in the document. In the words of the Holy Father: «Having already dedicated the Apostolic Constitution *Sapientia Christiana* to ecclesiastical faculties and universities, I then felt obliged to propose an analogous document for Catholic universities as a sort of “magna carta”, enriched by the long and fruitful experience of the Church in the realm of universities and open to the promise of future achievements that will require courageous creativity and rigorous fidelity»; *ECE*, n. 8.

141. A. PELAYO, *Primer Documento Pontificio sobre las Universidades Católicas*, in «*Ecclesia*» 2496 (1990) 1464.

142. A. GALLIN, *On the Road: Toward a Definition of a Catholic University*, in «*The Jurist*» 48 (1988) 536-558. The author traces this matter through the November 1988 revised draft.

143. Cfr. G. RODRÍGUEZ-IZQUIERDO ZABALA, *La Constitución Apostólica «Ex Corde Ecclesiae»*, in J.M. URTEAGA (ed.), *La Misión docente de la Iglesia*, Salamanca 1992, pp. 200-201.

Catholic university in contemporary society. Part II includes only the norms that are considered essential to help achieve the purpose of the Apostolic Constitution. On the other hand, the specific application of these general norms in the various geographical regions of the world is left to the determination of the Episcopal conferences.

From here onwards, we will be pointing out salient points that bear great transcendence on the object of our study.

#### a) Relationship to Existing Law and Extent of its Application

The norms contained in the document are divided into seven general norms, each with several sections, and four transitional norms that are much shorter. The general norms are based in and provide further explicitation to the canons of the 1983 Code of Canon Law. They do not replace these canons nor do they contain all the matter contained in the canons. They are also said to be rooted in and provide further explicitation to complementary Church legislation.

As to the extent of application of these norms, they apply to all Catholic universities and Catholic institutes of higher studies throughout the world<sup>144</sup>. This norm however does not determine which institutions of higher learning are included as «Catholic universities» and «Catholic institutes of higher learning». It only asserts that whatever institutions fall within these categories are bound by these norms<sup>145</sup>.

#### b) Episcopal Conferences: Ordinationes

In continuation, the document contains directions as to the application of the general norms to various localities in the hands of the Episcopal conferences<sup>146</sup>. This is a practical recognition that the «situation of Catholic universi-

144. *ECE*, art. 1 §1. When *Ex Corde Ecclesiae* was promulgated, the Code of Canons of the Eastern Churches had not yet appeared; it was promulgated two years later. The Eastern Code contains six canons on Catholic universities. These are not the same as those in the 1983 Code for the Latin Church, they more explicitly reflect Vatican II texts, and they are more restrictive in their understanding of a Catholic university. *Ex Corde Ecclesiae* is explicitly related to the Code for the Latin Church, although when the apostolic constitution was promulgated, the Latin Code's provisions did provide suppletory law for Eastern Churches as needed. The two codes are distinct but they do have some relationship to each other. The applicability of *Ex Corde Ecclesiae* to Catholic universities in Eastern Catholic Churches remains an issue to be explored. Cfr. J. ABBASS, *Canonical Interpretation by Recourse to «Parallel Passages»: A Comparative Study of the Latin and Eastern Codes*, in «The Jurist» 51 (1991) 293-310; and J. PROVOST, *Some Practical Issues for Latin Canon Lawyers from the Code of Canons of Eastern Churches*, in «The Jurist» 51 (1991) 38-66.

145. *Ibid.*

146. *ECE*, art. 1 §2.

ties differs from region to region», and that «in such diversity of situation a precise law for application to all Catholic universities appears impossible»<sup>147</sup>. This provision is a clear example of healthy subsidiarity within the Church, as desired in the principles for the revision of Church law and as encouraged by various scholars<sup>148</sup>. This implies that the *ordinationes* will be more than a repetition of existing canon law or the general norms themselves but will genuinely address the application of the law to local circumstances. However, several restrictions apply to the episcopal conferences as to the application of the law to local circumstances<sup>149</sup>.

### c) Application to Universities

Under art. 1 §3 section, two different classifications of Catholic universities are presented when it comes to the application of the *ordinationes* to existing Catholic universities<sup>150</sup>. The first classification includes those universities constituted by the Holy See, an Episcopal conference, or a diocesan bishop. All other Catholic universities are in the second classification.

The distinction is based on the authority that constituted (established, founded) the institution or that has given its formal *approbatio*. While all Catholic universities have some bond with the Church, those for whom this was done by a competent ecclesiastical authority within the hierarchical structure of the Church are considered to have a closer bond. They are more immediately subject to competent Church authority, and therefore are required to incorporate the general norms and the *ordinationes* into their governing documents and conform their existing statutes to these.

147. CONGREGATION FOR CATHOLIC EDUCATION, *Proposed Schema (Draft) for a Pontifical Document on Catholic Universities*, 15 April 1985, nn. 46 & 48, in «Origins» 15, 43 (10 April 1986) 708.

148. «Communicationes» 1 (1969) 80-82. This principle was approved by the 1967 Synod of Bishops; *ibid.*, p. 100.

149. Among these are: 1) Respect to the existing statutes of various universities and institutes; 2) Insofar as this is possible and to the extent that it is opportune, the *ordinationes* are to respect civil laws; 3) The bishops are not to act entirely on their own; 4) The Bishops are not authorized to adopt *ordinationes* affecting ecclesiastical universities or faculties; CONGREGATION FOR CATHOLIC EDUCATION, *Proposed Schema...*, *cit.*, nn. 46-47.

150. «Universitates, constituta vel approbata a Sancta Sede, a Conferentia Episcopali vel ab alio Consilio Hierarchiae Catholicae, vel ab Episcopo diocesano, has Normas generales earumque applicationes, locales et regionales, inserere debet instrumentis ad suum regimen pertinentibus suaque vigentia statuta tum ad Normas Generales accomodare tum ad earum applicationes et legitimae Auctoritatis ecclesiasticae approbanda proponere. Ceterae quoque Universitates Catholicae, quae videlicet non sunt memoratis formis institutae, concorditer cum loci Auctoritate ecclesiastica, has Normas Generales, earumque locales et regionales applicationes in usum suum convertent et instrumentis inserent ad suum regimen attinentibus et — quantum fieri poterit — sua vigentia Statuta tum his Normis Generalibus, tum earum applicationibus accommodabunt»; *ECE* art. 1, §3.

The other classification of Catholic universities includes those that were not founded by or have not received formal *approbatio* by the hierarchical authority. While they may have some bond with the Church, it is not so close as the previous classification, nor are they so tightly bound to incorporate the general norms or ordinationes. They are clearly expected to take these documents seriously in reference to their governing documents. The requirement to adjust their statutes is less stringent —it is to be done «as far as possible»—. They are not required to submit any of this for the *approbatio* of any ecclesiastical authority, but they are expected to carry out any adjustments in agreement with the local Church authority.

#### d) The Nature of a Catholic University

*Ex Corde Ecclesiae* devotes a major portion of its Part I to the nature of a Catholic University as a university and as Catholic. Section 1 of article 2 enumerates four elements that identify an entity as a university<sup>151</sup>. There are two aspects of Catholic identity for a university: 1) *being* Catholic in terms of implementing Catholic ideals, principles and values in its research, teaching and service; and 2) *committing* itself to some relationship with the Catholic Church. Provost calls it the two dimensions of Catholic identity: the internal dimension and the external dimension, respectively<sup>152</sup>.

Part I focuses primarily on the internal dimension: the search for truth characteristic of a Catholic university; its fidelity to Church teaching, the dialogue between faith and reason, its mission of service to the Church and society, the university's pastoral ministry, cultural dialogue, and evangelization. Under this aspect, the main focus is on being Catholic, and not on its public image or its formal or external ties with Church authorities. These internal characteristics must be safeguarded, but this is primarily the job of the institution itself through its own institutional commitment, the commitment of its members, and the expression of this in its statutes<sup>153</sup>.

The norms contained in Part II however, present details about the external dimension of the Catholic identity in three different places. They can be described as dealing with the need for some linkage with the Church, the establishment of new Catholic universities, and the relationship of the norms of the

151. These four elements are: 1) It is a community of scholars: faculty, students and administrators; 2) These scholars investigate various branches of human knowledge in distinct disciplines; 3) Universities are engaged in a variety of activities: research, teaching, and service; and 4) the cultural mission is something part 1 considers crucial for any university, and in a special way for a Catholic university; *ECE* art. 2, §1.

152. J.H. PROVOST, *The Canonical Aspects of Catholic Identity in the light of Ex Corde Ecclesiae*, in «*Studia Canonica*» 25 (1991) 159-163.

153. *ECE*, part I, arts. 14 & 17.

Apostolic Constitution to existing Catholic universities. A university may be linked with the Catholic Church in two ways according to the norms of the *Ex Corde Ecclesiae*: either through a certain constitutive and legitimate bond or through an institutional commitment made by those responsible for it:

«A Catholic university, as Catholic, informs and carries out its research, teaching and all other activities with Catholic ideals, principles and attitudes. It is linked with the Church either by a formal, constitutive and statutory bond or by reason of an institutional commitment made by those responsible for it»<sup>154</sup>.

The first type of linkage entails a commitment by both Church authorities and the institution to maintain a formal linkage, recognized legally, and constitutive of the institution as such. Commitment to the Catholic Church is presented as involving two distinct approaches. The first consists in certain, constitutive, and legal bonds that appear to be bilateral<sup>155</sup>.

The second approach is a commitment from within the constitution but not entailing a corresponding commitment from Church authorities. Those who sponsor the university make this commitment indicating a basic commitment by those who are competent to commit the institution as such. These would include those universities that are referred as truly Catholic (*reapse Catholica*) in canon 808 even though the word «Catholic» does not appear in their name. It could also include those universities that include «Catholic» in their name or title since the «consent» of competent ecclesiastical authority does not necessarily involve that certain, constitutive, and legal bond that the first approach involves<sup>156</sup>.

In the light of *Ex Corde Ecclesiae* art. 1 §3, all existing Catholic universities except those founded by or approved by competent ecclesiastical authority are included in this second category. Thus those already founded by a public juridical person such as a religious institute or a public association in the Church

154. «Universitas Catholica, qua catholica, suam per investigationem, institutionem ceteraque opera propositis, principiis et moribus catholicis perfundit et exsequitur. Est Ecclesiae coniuncta aut certo vinculo constitutivo et legitimo, aut ex officio institutionaliter ab eius sponsoribus sumptis»; *ECE*, part II art. 2 §2.

155. This means that the commitment is not only expressed in the governing documents of the institution. It also entails that these have been accepted and approved by the competent ecclesiastical authority. This makes the bond certain and legal and is constitutive of this kind of university as Catholic.

156. That is, there is a difference between giving consent to use «Catholic» in the title of an organization and giving formal approval to that organization. For a parallel that clearly shows the different degrees of involvement by competent ecclesiastical authority, cfr. c. 299 §3 (*recognitio* of statutes for an association to be recognized in the Church); c. 300 (*consensus* to use the title «Catholic»); c. 322 §2 (*approbatio* of statutes for a private association to become a private juridical person).

as well as universities founded by clergy or laity as individuals or in private associations, come under this category. These educational institutions to being Catholic, they are to make an institutional commitment to the Catholic Church.

#### e) Other Key Provisions

As to the expression of Catholic character, two actions are required. The first looks to the public articulation of their character in some document while the second looks to developing effective means to assure that the Catholic character is realized in practice. In the first place, the commitment of the institution to being Catholic and to a relationship with the Church in some public document that may take many forms depending on the two approaches discussed in art. 2, section 2. To those institutions that maintain a certain, constitutive and legal bond, the public articulation of their Catholic character is found in their governing document or other instruments approved by the competent ecclesiastical authority. For other types, it may take the form of a mission statement, a statement of their identity or a charter of the institution as approved by the proper authority. Exceptions to this general law may be permitted<sup>157</sup>.

In the second place, practical means are to be provided for the guarantee of expression and preservation of its Catholic identity in the institution's research, teaching and service. This may be done through many forms, given the diversity among Catholic universities. The norm suggests institutional structure and inner regulations among many others. Nevertheless, practical details for this are left to each institution. The Constitution in its article 3 proposes three possible ways to the establishment of a Catholic university. Accordingly, if a university were not established according to what is set forth in this article, it could be concluded that the institution is not a Catholic university. The first is erection or approval by the Holy See:

«A Catholic university can be erected or approved by the Holy See, by an Episcopal Conference or another assembly of Catholic hierarchy, or by a diocesan bishop»<sup>158</sup>.

These three levels of authority are not given mutually exclusive roles such as they have in canon 312. For this reason, the Holy See could establish a Catholic university for a particular place, but so could the Episcopal Conference, or even the diocesan bishop for the same place. These institutions are there-

157. Among the situations where exceptions may be permitted are in areas where the Church is being persecuted or any mention of Catholic identity in a public document would result to the detriment of the institution. Exception may also be appropriate in situations where financial support for the institution may be seriously affected.

158. *ECE* art. 3 §1.



fore erected by them. On the other hand others may take the initiative in which case the authorities «approve» what others have begun. This approval or erection is a manifestation that an institution is closely tied to the Catholic Church. This implies that the norms of *Ex Corde Ecclesiae* need to be incorporated into the institution's statutes<sup>159</sup>. The competent ecclesiastical authority approves these statutes<sup>160</sup>. Added to that, regular reports are to be submitted by the institution to the competent ecclesiastical authority<sup>161</sup>.

Other possibilities for the erection of a Catholic university exist. The first is erection by a public juridical person:

«With the consent of the diocesan bishop, a Catholic university can be erected by a religious institute or by other juridic person»<sup>162</sup>.

The diocesan bishop's consent to establish a Catholic university does not make the institution a public juridical person; that would require a specific decree for this purpose from the bishop. On the other hand, the constitution does not address the question whether a work belonging to public juridical person shares in its juridical status, the question remains open to further study. The bishop's consent is necessary for the coordination of all the apostolic works in the diocese, paving way for the institution's special close relationship with the bishop's office. In the case of universities under the care of Religious of Pontifical Right, the issue would be more complex —whether it is or is not limited to matters pertaining only to faith and morals—<sup>163</sup>.

The other possibility is erection by other persons:

«A Catholic university can be erected by other ecclesiastical persons or by laity. Universities of this type can be considered Catholic universities only with the approval of competent ecclesiastical authority, according to conditions upon which the parties will have agreed»<sup>164</sup>.

Both the erection of these universities and the conditions according to which they can be considered Catholic must respond to the directive norms pre-

159. *ECE* art. 1 §3.

160. *ECE* art. 3 §4.

161. *ECE* art. 5 §3.

162. *ECE* art. 3 §2.

163. Cfr. canons 673-683. With respect to the local Ordinary's jurisdiction over this type of university, the Pontifical Commission for the Authentic Interpretation on canon 1263 dealing with the passive subjects of the ordinary diocesan tax, and the question in particular regards the competence of the local bishop over external schools of religious pontifical right (cfr. J.T. MARTÍN DE AGAR, *Risposte del 24 Gennaio 1989*, in «Ius Ecclesiae» II/I [1990] 349-351).

164. *ECE* art. 3 §3.

scribed by the Holy See, by the Episcopal Conference, or by other assembly of Catholic hierarchy. The constitution makes a direct affirmation that Catholic universities may be founded by private initiative, either of clergy or of lay persons. This is a form of an apostolic action that may be promoted and sustained by the Christian faithful by virtue of their participation in the mission of the Church<sup>165</sup>.

*C. Doctrinal and Canonical Issues raised by Canon 803 and its application to materially and formally Catholic educational institutions*

Catholic educational institution is a denomination that may refer to schools and universities. This denomination may have a material and formal sense. At this point of our study, we can come up with the principal distinction between a material and formally Catholic educational institution taking into account what we have discussed in our analysis of canon 803. An educational institution that is materially Catholic is that which has a Catholic set of ideals (*ideario*). On the other hand, a formally Catholic educational institution is the specific name of that which aside from its having a Catholic set of ideals, it is publicly recognized as such by the competent ecclesiastical authority. This part makes a systematic analysis of the juridical determinations that make up an educational institution that is either material or formally Catholic.

*1. The Juridical Dimension of Catholic Identity of Educational Institutions*

Much has been written about Catholic institutions especially on higher education. This discussion has raised significant contemporary questions about the Catholic identity of such institutions and about developing strategies for preserving Catholic identity in the future<sup>166</sup>. In the words of Curran, «both internal Church factors and external social factors have brought to a head the question of Catholic identity of educational institutions»<sup>167</sup>. The topic of Catholic identity has many aspects. It may refer to three things: the actual transmission

165. Cfr. c. 216.

166. Fordham University's Catholic identity project has sponsored two conferences discussing the Catholic identity of such institutions. For the findings and papers of the first conference, cfr. C.J. FAHLEY, M.A. LEWIS (eds.), *The Future of Catholic Institutional Ministries: A Continuing Conversation*, New York 1996.

167. C. CURRAN, *The Catholic Identity of Catholic Institutions*, in «Theological Studies» 58 (1997) 90.

of Catholic values in and by an educational institution; a public perception that an educational institution is truly «Catholic»; or an official commitment of an educational institution to the Catholic Church<sup>168</sup>. The transmission of values has always been considered an integral part of Christian education that according to canon 217, «it genuinely teaches man to strive for the maturity of the human person and to know and live the mystery of salvation»<sup>169</sup>. At the same time, canon 795 adds that it strives for the integral formation of the human person, a formation that looks toward the person's final end and at the same time strives toward the common good of societies<sup>170</sup>. For this matter, Catholic educational institutions are expected to contribute to a higher level of human culture, fuller advancement of the human person, and at the same time, to the fulfillment of Christ's teaching office.

Catholic identity can be claimed by the very fact of using the name «Catholic» that refers to communion with Rome. This fact is recognized in Vatican II as discussed earlier: «No undertaking could claim the name “Catholic” unless it obtained the consent of legitimate Church authority»<sup>171</sup>. This has also been discussed earlier in our study of canon 216 in reference to «the apostolic initiatives of the faithful»; canon 300 that states «no association shall assume the name Catholic without the consent of the competent ecclesiastical authority»; canon 803 §3 that states «no school, even if it is in fact Catholic may bear the title “Catholic school” except by the consent of the competent ecclesiastical authority»; and canon 808 that states «no university even if it be in fact Catholic, may bear the title “Catholic” university except by the consent of the competent ecclesiastical authority».

The above-mentioned canons regulate the use of the term «Catholic» that needs authorization from the competent Church authority. This is made more specific when it concerns to educational institutions like schools, colleges and universities. The law refers to using the term Catholic expressly in the title or name of the educational institution.

However, numerous educational institutions are considered really Catholic (*reapse Catholica*) even though they do not carry the name or the title «Catholic

168. J.H. PROVOST, *The Canonical Aspects...*, *cit.*, p. 156.

169. «Christifideles, quippe qui baptismo ad vitam doctrinae evangelicae congruentem duccendam vocentur, ius habent ad educationem christianam, qua ad maturitatem humanae personae prosequendam atque simul ad mysterium salutis cognoscendum et vivendum rite instruantur»; c. 217.

170. «Cum vera educatione integram persequi debeat personae humanae formationem, spectantem ad finem eius ultimum et simul ad bonum commune societatum, pueri et iuvenes ita excolantur ut suas dotes physicas, morales et intellectuales harmonice evolvere valeant, perfectiorem responsabilitatis sensum libertatisque rectum usum acquirant et ad vitam sociale active participandam conformentur»; c. 795.

171. *Apostolicam actuositatem*, n. 24.

school» or «Catholic university». Are these institutions required to obtain consent just to describe themselves as «Catholic» or «of Catholic inspiration or set of ideals»?

Canon 808 may help clarify the matter as it expressly specifies that consent is only needed when using the term «Catholic» the name or title of the institution. For this matter, I do not see any inconvenience of applying the same concession when referring to schools and colleges. Added to that, Catholic identity is not just limited to the consent given by the competent Church authority. Experience tells us that institutions can be really Catholic even without necessarily or expressly carrying the name. It could even be a genuine Catholic identity without any need of involvement of Church authorities unless the term «Catholic» is used in its name or title. What matters more is that the educational institution is living out values with which the Catholic Church is identified in its program, curriculum and activities.

The Catholic identity of an educational institution is essentially linked to the quality of its teachers and to respect for Christian doctrine. In the schools, the teaching personnel must be outstanding in true doctrine and uprightness of life<sup>172</sup>. In the universities, there is a very slight difference in the choice of term: they are to be outstanding in the integrity of their doctrine and uprightness of life<sup>173</sup>. The teaching personnel are to be informed of the educational institution's commitment from the moment they are hired or appointed. Respect for Catholic doctrine means that the institution and its program follow the principles of Catholic doctrine particularly the teachings of the Second Vatican Council<sup>174</sup>.

On the other hand, when an approval or recognition is sought for by the educational institution from the competent Church authority, there has to be a set of guarantees. As contained in canon 807, the Church has the right to establish and to govern universities as complement to her own teaching office. However, as Hervada has clearly pointed out, Catholic universities in a formal sense are not limited to those that were erected by the Holy See<sup>175</sup>. In the first place, the Code does not make a limit as it does to ecclesiastical universities and faculties<sup>176</sup>. In the second place, we may take into account canon 808 on the prohibition of the use of the title «Catholic» to any university although it may be *in*

172. Cfr. c. 803 §2.

173. Cfr. c. 810.

174. This entails respect for the teachings of on the Church's relationship to the world, on human dignity, culture, ecumenism; implementing the Church's teaching on just wages and other aspects of labor relations, etc.

175. J. HERVADA, *Sobre el Estatuto de las Universidades Católicas y Eclesiásticas*, in *Raccolta di Scritti in Onore de Pio Fidele*, Perugia 1984, p. 969.

176. «Universitates et facultates ecclesiasticae constitui tantum possunt erectione ab Apostolica Sede facta aut approbatione ab eadem concessa; eidem competit etiam earundem superius moderamen»; c. 816.

*fact* Catholic, without the consent of the competent ecclesiastical authority. That means that with the consent of the competent ecclesiastical authority, the university may call itself Catholic.

Taking into account our discussion on canon 803 on Catholic schools, canon 808 is fundamental when referring to Catholic universities because the Holy See need not necessarily erect them and recognition in writing would be enough. Hervada classifies universities that have a Catholic inspiration into three: those that are erected by the competent ecclesiastical authority — the Holy See —, those that are not canonically erected but recognized as Catholic and, those that are of Catholic inspiration but not canonically erected nor recognized as such. Only the first two could be officially called Catholic universities<sup>177</sup>. He adds that this is an application of the conciliar dispositions that are recollected in canon 216, whose redaction is in concordance with canon 808<sup>178</sup>.

## 2. *Practical Applications of the Juridical Determinations of Catholic Educational Institutions*

The term «Catholic» as it applies to educational institutions describes an identity and a reality that is multi-dimensional. Pope John Paul II has stated that the Catholic identity of educational institutions is more than a mere label and qualifies it as a specific mode of being of every educational institution that lays claim to it:

«This is your identity. This is your vocation. Every university or college is qualified by a specific mode of being. Yours is the qualification of being Catholic, of affirming God, his revelation and the Catholic Church as the guardian and interpreter of that revelation. The term “Catholic” will never be a mere label, either added or dropped according to the pressures of varying factors»<sup>179</sup>.

The discussion we have made on Catholic identity of educational institutions earlier has revealed the broader doctrinal and pastoral dimensions of that

177. J. HERVADA, *op cit.*, p. 970.

178. Catholic inspiration in the pursuit and teaching of civil sciences is a task that is proper to the faithful. Although these pertain within the ambit of earthly realities and given a legitimate autonomy as recognized in canon 227 and 809, Christian inspiration is not something that is added or superimposed to earthly realities. They have an essential relation with God for which reason the laity have the task to Christianize the temporal structures. This task is not only a natural right but also a divine positive right of the laity.

179. JOHN PAUL II, *Ad prope et exstantes aedes Studiorum Universitatis Catholicae profectus hanc allocutionem fecit ad moderatores et doctores eiusdem Athenei atque ad legatos Collegiorum Universitatumque catholicarum totius Nationibus*, Address on 6 October 1979, AAS 71 (1979) 1260.

specific mode of being from the perspective of the Catholic educational institutions and the competent ecclesiastical authority. What has emerged as a common denominator in our reflections concerning the question of catholicity is that some specific relationship to Church's official teaching and official teaching authority is a fundamental criterion for any institutional claim to Catholic character and identity. Under this section, we will categorize the necessary substantial and juridical elements that respectively make up the two distinct and independent models of educational institutions: material and formally Catholic educational institutions. As such, those educational institutions with the substantial elements would be considered *de facto* Catholic or *materially* Catholic while those who educational institutions with the juridical elements would be *de iure* Catholic or *formally* Catholic.

#### a) Formally Catholic Educational Institutions

The necessary juridical element that has to be present for an educational institution to be formally Catholic is its link with the Church either by a formal, constitutive and statutory. It is true that the individual Catholics who, by virtue of their baptism maintains a sacramental and ontological bond with the mystical body of Christ. But this is not enough. The link has to exist between the educational institution as such and the Catholic Church. This link is in a form of a statutory bond that would subject the educational institution to the will of the corresponding authority. This type of link is appropriate for those educational institutions founded by organs of the institutional Church or at least by the Holy See and other ecclesiastical authorities.

The constitutive bond in this kind of educational institution appears to be bilateral in the sense that not only is this commitment expressed in the governing documents of the institution but that this bond has been accepted and approved by competent ecclesiastical authority. Therefore this makes the bond certain and legal and constitutive of this kind of educational institution as formally Catholic. This would be the result of the founding or *approbatio* of an educational institution by competent ecclesiastical authority, or the *approbatio* of their governing documents and statutes<sup>180</sup>.

Canon 803 §1 provides the formal element whereby a particular school is considered Catholic<sup>181</sup>. We have pointed out that the formal element that makes

180. Cfr. *ECE*, art, 1 §3.

181. Several authors follow this interpretation: J. CORIDEN, *The Teaching Ministry of the Church-A Commentary*, in «Living Light» 20 (1983-1984) 134-135; L. DE ECHEVERRÍA (dir.), *Código de Derecho Canónico*, Edición bilingüe comentada por los profesores de la Facultad de Derecho Canónico de la Universidad Pontificia de Salamanca, IV ed., Madrid 1984, p. 499; T. PAZHAYAMPALLIL, *A Commentary on the New Code of Canon Law*, Bangalore 1985, pp. 528-530; P.

an educational institution is centered on the fact that the institution comes under the supervision (*moderari*<sup>182</sup>) of ecclesiastical authority, or under that of public ecclesiastical person<sup>183</sup> or is recognized (*agnoscere*) in writing as such by an ecclesiastical authority.

The necessary conditions that include the juridical link with the Catholic Church are decisive factors in these types of institutions as the Legislator has clearly exposed his prerogatives of establishing several conditions by which an educational institution may be considered Catholic, especially on the level of university education. The juridical link with the Catholic Church, as a principal condition is not arbitrary or solely prudential. It has to be remembered that the Church has the obligation to safeguard the rights and interests of the Church.

Due to the above requirements, those educational institutions that were established by the State or by civil juridical persons or by private persons even if they teach Catholic doctrine and have Catholic teachers, and are not subsequently recognized in writing do not fulfill the juridical requirement necessary to be considered as formally Catholic, in accordance with the prescriptions of canon 803 §1. The previous existence of the substantial or material element, which we will be discussing in the next part, is presupposed in this type of educational institution. In other words, an educational institution that has the juridical element but lacking the substantial or material element is not truly a Catholic educational institution.

In devising criteria for the recognition of a Catholic school, perhaps the criterion of ecclesiality suggested by Pope John Paul II for discerning and recognizing lay associations could provide some principles<sup>184</sup>. This criterion includes: the primacy given to the call of every Christian to holiness, the responsibility of professing the Catholic faith, the witness to a strong and authentic

VALDRINI, et al., *Droit Canonique*, Paris 1990, p. 286. On the other hand, the Oriental Code succinctly summarizes the juridical criterion in canon 632 when it says that a school is not considered Catholic in law unless it has been erected as such by the eparchial Bishop or by a superior of ecclesiastical authority or has been recognized as such by a superior authority or has been recognized as such by them: «Schola in iure non reputatur catholica, nisi ut talis erecta est ab Episcopo eparchiali vel ab Episcopo eparchiali vel ab auctoritate superiore ecclesiastica aut ab eisdem ut talis agnita»; CCEO 1990, c. 632.

182. This deponent verb has a lot of meanings: to set bounds, to keep within bounds; to regulate, to restrain; to direct, to guide; to govern, to rule, to regulate (cfr. J. OCHOA, *op. cit.*, pp. 280-281).

183. The canon intends to stress the ecclesiastical dimension. Accordingly, a civilly incorporated school has legal standing in secular law, but does not have juridical personality in canon law unless that personality has been given by the law itself or by a special decree of the component authority (c. 114). Furthermore, the juridical person becomes a public person by the law itself or by a special decree of the component authority, and thus acts in the name of the Church (c. 116).

184. JOHN PAUL II, *Christifideles Laici*, Apostolic Exhortation on 30 December 1988, n. 30, AAS 81 (1989) 446-448.

communion in relationship with the Pope and the local bishop, conformity and participation in the Church's apostolic goals, and the commitment to a presence in human society<sup>185</sup>. In the words of Orsy: «these formally Catholic educational institutions relate to the Church with a bond of communion as seen in its firm dedication to unity that inspires appropriate actions on the part of all»<sup>186</sup>. Byron adds that this communion calls for dialogue wherein the Bishop and the institution engage in conversation on a regular, structures and face-to-face basis<sup>187</sup>.

According to Cito, the name of «Catholic school is not a criterion that serves to distinguish between schools that are juridically Catholic and schools that are in fact (*reapse*) Catholic, taking into consideration that these are two distinct questions that refer to two different aspects of the juridical reality of schools»<sup>188</sup>. He reasons out that the name signifies the external aspect through which an educational institution that proposes a Catholic educational project acts. Above all, the adoption of the name *Catholic school*, with previous consent of the competent authority does not signify the granting of the juridical status of Catholic schools in the context of canon 803 §1. This is because the first and third paragraphs of canon 803 refer to two different procedures: a *recognition through written document* is required in canon 803 §1 while a mere *consent* would be enough when referring to canon 803 §3. Aside from that, Catholic educational institutions that are juridically Catholic are neither required to carry or to adopt always the denomination Catholic.

#### b) Materially Catholic Educational Institutions

The necessary substantial or material element that has to be present for an educational institution to be materially Catholic is its link with the Church by reason of an institutional commitment made by those responsible for it. This institutional commitment is no less juridical than a statutory bond, but the scope of subjection to ecclesiastical authority could be considerably reduced for institutions with this type of link. In this type of link, the educational institution would be subject to the ecclesiastical authority only on those matters that are of its exclusive competence. This type of link is appropriate for those educational institutions that are the result of the spontaneous initiative of the faithful and which choose to be considered Catholic and linked with the institutional Church.

For an educational institution to be considered materially Catholic, it must have the substantial elements to inform and carry out with Catholic ideals, prin-

185. *Ibid.*

186. L. ORSY, *The Church Learning and Teaching*, Wilmington, Delaware 1987, p. 85.

187. W. BYRON, *A Catholic Reflection on Academic Freedom*, in «Origins» 18 (16 February 1989) 597.

188. D. CITO, *op. cit.*, p. 246.



ciples and attitudes whatever it does. Fidelity to the Magisterium is a Catholic ideal but not the only one and therefore would be a part of the necessary substantial element.

In our earlier discussion of the Apostolic Constitution *Ex Corde Ecclesiae*<sup>189</sup>, this type of educational institution would certainly include those universities that canon 808 refers to as «truly or in fact Catholic» (*reapse Catholica*) even though «Catholic» does not appear in their name or title. It could also include those universities that do include «Catholic» in their name or title, since the «consent» of the competent ecclesiastical authority required to do this does not necessarily involve a certain, constitutive and legal bond that the first approach involves<sup>190</sup>.

A great number of educational institutions are initiatives of the lay faithful that may truly contribute to the mission of the Church. Nevertheless, such contribution does not make them automatically Catholic, and given the specifications of the Code and further developments of *Ex Corde Ecclesiae*, nor would they be considered «*reapse Catholica*» without the consent of the competent ecclesiastical authority. The truth is, there is no canonical obligation that requires all educational initiatives that are promoted by the faithful become Catholic educational institutions in a formal sense.

Worth noting is a reflection made by Blessed Josemaría Escrivá de Balaguer:

«On the other hand, I must confess that I do not like the expressions Catholic schools, Church schools, etc., even though I respect those who think differently. I prefer to see things distinguished by their results and not by their names. A school is really Christian when it strives for excellence, and gives a complete education — which includes Catholic ideals — at the same time respecting personal freedom and earnestly furthering social justice. If this is accomplished, then the name is of little importance. Personally I repeat, I prefer to avoid those adjectives»<sup>191</sup>.

As discussed in Chapter III, we have pointed out that the material criterion includes both a formation based on the principles of Catholic doctrine, as well as teachers who are outstanding for their correct doctrine and integrity of life as contained in canon 803 §2. It is interesting to note that canon 803 §1 does not expressly or explicitly include this «material» criterion in its formal el-

189. *ECE*, Art. 2 §2.

190. There is a difference between giving consent to use «Catholic» in the title of an organization and giving formal approval to that organization. Certainly, there are different degrees of involvement by the competent ecclesiastical authority. See for example canon 299 §3 (*recognitio* of statutes for an association to be recognized in the Church) and canon 322 §2 (*approbatio* of statutes for a private association to become a private juridic person).

191. J.M. ESCRIVÁ DE BALAGUER, *The University at the service of Contemporary Society*, an interview by Andrés Garrigo in *Conversations with Monsignor Escrivá de Balaguer*, Dublin 1968, p. 94.

ement for a school to be considered Catholic, those supervising Catholic schools as well as those with the authority to recognize a school as Catholic must give a definite consideration of this «material» criterion.

Interestingly, the Oriental Code contains a broader view of this material criterion. It acknowledges the importance of Catholic instruction and the character and competence of teachers, it also implies that the «material» criterion of the Catholic school ought to reflect the purposes of article eight of *Gravissimum Educationis*, namely, the Gospel atmosphere in the school, the growth in the life of baptism, and knowledge illuminated by faith<sup>192</sup>.

The Church has definitely acknowledged the importance of teachers in its documents since the 1960s by putting emphasis on the place of the teacher in the educational institution and in the mission of the Church. We have pointed out that the achievement of the purpose of the educational institution depends to a great extent on the teachers and that their service constitutes an active apostolate<sup>193</sup>. A document issued by the Congregation for Catholic Education focused on the identity of the lay Catholic educator in the Church and the school:

The lay educator is a person who exercises a specific mission within the Church by living in a faith, a secular vocation in the communitarian structure of the school; with the best possible professional qualifications, with an apostolic intention inspired by faith, for the integral formation of the human person, in a communication of culture, in an exercise of that pedagogy which will give emphasis to direct and personal contact with students, giving spiritual inspiration to the educational community of which he or she is a member, as well as to all the different persons related to the educational community<sup>194</sup>.

As contained in canon 803 §2, teachers are to be outstanding for their correct doctrine and integrity of life. This correct doctrine refers not just to the «instruction based on Holy Scripture, tradition and liturgy and on the teaching authority and life of the Church»<sup>195</sup> but also includes a «certain vision of the world and of education»<sup>196</sup> and implies that the Catholic teacher must «share in, and

192. «Scholae catholicae est obligatio propria communitatis scholaris ambitum spiritu evangelico libertatis et caritatis animatum creare, adulescentes adiuvaré, ut in propria persona evolvenda una simul crescant secundum novam creaturam, quae per baptismum effecti sunt, atque universam culturam humanam ad nuntium salutis ordinare ita, ut cognitio, quam alumni de mundo, vita et homine gradatim acquirunt, fide illuminetur»; CCEO 90, c. 634 §1.

193. Cfr. *Gravissimum educationis*, n. 8 and SACRED CONGREGATION FOR CATHOLIC EDUCATION, *La Scuola Cattolica*, Instruction on 19-III-1997, n. 78.

194. SACRED CONGREGATION FOR CATHOLIC EDUCATION, *Lay Catholics in Schools: Witnesses to Faith (LCS)*, Document on 15 October 1982, n. 24, in A. FLANNERY (ed.), *Vatican Council II, More Post Conciliar Documents*, vol. II, Northport, New York 1992.

195. *CD*, n. 14.

196. SACRED CONGREGATION FOR CATHOLIC EDUCATION, *La Scuola Cattolica*, Instruction on 19-III-1997, n. 78.

make one's own, the statements that the Church, enlightened by Divine Revelation, has made about the identity of an educator»<sup>197</sup>. The reference to an integrity of life describes a characteristic which the Code frequently requires for offices in the Church and involves honesty, sincerity and uprightness of life as well as uncompromising adherence to the highest principles and ideals.

Concerning the qualities of teachers in reference to canon 803 §2, two questions arise: Are all Catholic schools included in the reference to Catholic schools and are all teachers in Catholic schools included in the reference to teachers?

Since the three paragraphs of canon 803 provide a context which refers specifically to the Catholic schools of canon 803 §1 and to those «in fact» of canon 803 §3, the canon probably intends to include any Catholic school, especially in the light of its concern for the internal element of the Catholic school. Accordingly, while canon 803 §1 are legally bound by canon 803 §2, those Catholic schools *in fact* are at least doctrinally and morally bound by the standards of the same paragraph. The answer to the second question must consider the fact that the canons sometimes focus on specific teachers, like for example, canon 804 §2 that speaks only of teachers of religion. However, canon 803 §2 makes no such specification. Therefore, it may include all teachers in Catholic schools, especially since the canon's purpose centers on a description of some of the internal elements required if a Catholic school is to achieve its aims. While some people raise questions about a Catholic approach to mathematics and sciences, many writers acknowledge that underneath all curricula, explicit or implicit, lie basic moral beliefs. As Kohlberg says:

«What matters in the hidden curriculum is the moral character and ideology of the teachers as these are translated into a working social atmosphere which influences that atmosphere of the children»<sup>198</sup>.

The requirement of «correct doctrine» conceivably applies to both Catholic as well as non-Catholic teachers especially regarding the teaching of values that make up the curriculum of the school. The necessity of «integrity of life» also applies to non-Catholic teachers, for in deciding to teach in a Catholic school, they commit themselves, without violating their religious convictions, to the elements which contribute to the fulfillment of the aims of a Catholic school: assisting the students to acquire knowledge, values and attitudes and behavior fully integrated with faith. Therefore, it seems most reasonable to conclude that canon 803 §2 refers to all teachers in all Catholic schools.

197. *Ibidem*, n. 26.

198. L. KOHLBERG, *The Moral Atmosphere of the School*, in H. GIROUX and D. PURPEL (eds.), *The Hidden Curriculum and Moral Education*, Berkeley 1983, p. 75

#### D. *Chapter Conclusions*

*Ex Corde Ecclesiae* was an attempt to answer unresolved questions as to what constitutes a Catholic university by providing both the necessary juridical and substantial elements. It pointed out that lacking any of these two elements, the institution is not Catholic. Unlike in the 1983 Code, this document provided a clear definition of a Catholic university and established various regulations by which these institutions are to abide. Nevertheless, it maintains a wide margin of operational autonomy and self-determination. It only insists on the competence of the Church authority on matters of faith and morals resulting to the protection of the common good and the fundamental rights of the faithful.

The issue of Catholic identity focuses mainly on the internal dimension of a Catholic university: the search for truth that is characteristic of a Catholic university, its fidelity to Church teaching, the dialogue between faith and reason, its mission of service to Church and society, the university's pastoral ministry, cultural dialogue and evangelization. As such, it primarily focuses the educational institution on being Catholic, and not so much on its public image or its formal or external ties with Church authorities. These characteristics that make up the internal dimension has to be safeguarded by the institution through its commitment as an institution and those who make up this institutions that is expressed through its statutes. Nevertheless, the constitution has provided some details regarding the external dimension of Catholic identity in three aspects: the need for some linkage with the Church, the establishment of Catholic universities and the constitution's relationship to existing universities.

This document is of great importance to our study due to the distinction it makes on educational institutions: those that were founded or approved by the competent ecclesiastical authority on one hand and all other educational institutions on the other. It makes a further distinction not on their being juridic persons but more on the nature of the person or entity that founded or approved them. As we have pointed out, the diocesan bishop's consent to establish a Catholic university does not make the institution a public juridical person; that would require a specific decree for this purpose from the bishop. On the other hand, the constitution does not address the question whether a work belonging to public juridical person shares in its juridical status, the question remains open to further study. The bishop's consent is necessary for the coordination of all the apostolic works in the diocese, paving way for the institution's special close relationship with the bishop's office. In the case of universities under the care of Religious of Pontifical Right, the issue would be more complex —whether it is or is not limited to matters pertaining only to faith and morals—.

On the identity of formally Catholic educational institutions, this identity does not only spring from their juridical configurations. In the first place, this identity must be based on a faithful response to Magisterium. The lack of this

response means that research and teaching will not be done in the light of Catholic doctrine no matter what juridical-canonical configuration the institution has. In this case, the Catholicity of the undertaking would just result to mere formalism and ecclesiastical authorities might have to be satisfied to have formally Catholic institutions substantially or materially not so.

Both material and formally Catholic educational institutions must be distinguished from all other institutions in the way they carry out their Catholic ideals, principles and attitudes whatever they do. Very often, the «crisis of Catholic educational institutions» is not so much organizational as «spiritual and cultural, not so much a crisis of means as of identity, ends and values».

## GENERAL CONCLUSIONS

The 1983 Code of Canon Law contains the universal and binding legislation of the Latin Church. The context in which Canon 803 appears in Chapter II (Schools) of Title III (Catholic Education) of Book III (The Teaching Office of the Church) seeks to point out the juridical determinations of the different types of initiatives that take place in the Church, particularly in the field of educational institutions. This study has attempted to examine the text and context of canon 803 by investigating certain doctrinal and canonical issues raised by the canon's provisions and by considering its application into the contemporary world of education. In the course of study, we present the following conclusions derived from our analysis.

The 1983 Code of Canon Law made a very important development on the treatment of Catholic educational institutions. Unlike the 1917 Code of Canon Law, the 1983 Code made a clear distinction and separate treatment of the different educational institutions of the Church: schools, universities and ecclesiastical faculties and universities. This is indicative of the increased and distinctive importance that the Church attaches to her teaching office in the contemporary world. It precluded the ambiguity created in the old law where all educational institutions were gathered under one simple heading on schools and by virtue of this univocal grouping, what was legislated for an elementary school seemed also applicable to a university.

Despite the variety of Catholic educational institutions that existed within the Church and society at large, and despite that these institutions maintained a demonstrable relationship with the Church, its teaching and its authorities, they emerged as means whereby they could identify themselves as Catholic and realize their mission within the Church, within the academic society and within the community. Given their variety and in the light of this relationship with the Church, these Catholic educational institutions are to maintain and develop their own provisions for self-regulation for the fulfillment of their mission as Catholic institutions.

The support of the ecclesiastical authorities for these educational institutions through the provision of Episcopal duty and right of vigilance over their operation should not be construed as inappropriate external intervention, governance or control and need not compromise in a way the institutional autonomy. Instead, it is an expression of the duty and right of the Church to exercise a supervisory pastoral watchfulness over those institutions that claim Catholic identity and mission and manifest that Catholic identity and mission in the service these educational institutions perform within the broader enterprise of education.

It is ultimately the responsibility of the ecclesiastical authority to preserve ecclesiastical communion and to determine and proclaim where communion exists and where it does not. Such assurance is necessary for the well-being of the faithful as the faithful themselves are obliged to maintain communion with the Church even in their own patterns of activity. Catholic educational institutions —whether they were established by the Church and in possession of a canonical charter, or whether they merely maintain an institutional commitment to Catholic ideals but without a charter from the Church or those institutions that are nourished by Catholic tradition but with no formal institutional commitment— are to relate to the Church by a bond of communion, that is, with a firm dedication to unity that inspires appropriate actions on the part of all and to hold in respect whatever the magisterium may declare for the whole Church.

The Church's concern and interests, in such a relationship of respect and trust would call from a response from Catholic educational institutions. Communion requires relationship, conversation, respect, trust and love. To exclude such a relationship between an educational institution and the Church and its pastors is to exclude communion and the right of an institution to call itself Catholic.

Educational institutions that have been traditionally considered Catholic will have to consider whether they want to be members of the ecclesial community; if they wish so, then they must be in relationship with the ecclesiastical authority, and where there are juridical ties, subject to its laws. If they want to be secular, that is to say, not part of the ecclesial authority and not in communion with the Church's pastors, then they cannot justly use the name «Catholic». While the meaning of the term «secular» may be open to debate, any dispute over the meaning of the term «Catholic» must be finally resolved by Church authority.

On the other hand, the manner in which the ecclesiastical authority exercises its responsibilities should always be prudently chosen, and limits should not be exceeded. The ecclesiastical authority are not competent for example, to become involved in matters of scientific, pedagogical, or administrative consequences in Catholic educational institutions, but they can never renounce or overlook their obligations in matters of faith and morals. Added to that they can

never renounce their responsibility in regulating the use of the term «Catholic» or of any other term that would identify any initiative to the Catholic Church. An atmosphere of trust and respect that is characteristic of communion with the Church, rather than professional distance and suspicion, will contribute to the discovery of creative ways for the educational institutions and the hierarchy to exercise their proper function and to contribute to the fruitfulness of the other's work.

Finally, we can come out with a classification of educational initiatives in the field of educational institutions taking into account the juridical determinations of canon 803 §1 and §3: educational institutions that are material and formally Catholic. This canon permits us in sustaining a classification that we consider fundamental. This distinction is of very great utility although such a distinction as material or formally Catholic does not appear expressly in canon 803. The distinction is only implicit but then, it is necessary. Catholic educational institutions are direct undertakings of the Church and where the Church is fully engaged —these institutions are under the control of the competent ecclesiastical authority or of a public ecclesiastical person on one hand—, and those where there is only a public recognition of its Catholic character, permitting the utilization of the name Catholic as a formal element —those where in a written document are acknowledged as Catholic by the competent ecclesiastical authority—.

Aside from the formally Catholic educational institutions that we have just discussed, there are also educational institutions that are materially Catholic that choose to retain their Catholic identity but then lack a formal recognition but nevertheless have an obligation to be in relationship with the Church's hierarchy and to accept the Church's responsibility of special vigilance of faith and morals. These educational institutions, although not professing publicly as Catholic ought to procure that they manifest Church values, particularly with respect to Catholic doctrine and morals, and so with communion with the ecclesiastical authority.

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