

April 2014

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Recommended Citation

Currie, Charles L. S.J. (2014) "Finding New Structures: Responsive Governance for a New Age," *Conversations on Jesuit Higher Education*: Vol. 45, Article 9.

Available at: <http://epublications.marquette.edu/conversations/vol45/iss1/9>

Finding New Structures

Responsive Governance for a New Age

By Charles L. Currie, S.J.

Colleges and universities are being challenged today to pursue what Clayton Christensen calls “disruptive innovations,” i.e., imaginative new solutions for higher education’s multidimensional problems. This would not be the first time higher education has been asked to respond creatively to new and demanding situations. Consider how Jesuit, Catholic higher education responded to the challenges it faced in the late sixties and early seventies.

After World War II, the GI Bill had led to an influx of veterans that both increased enrollment and diversified the student body. An infusion of federal dollars in the fifties and sixties spurred an explosive growth. In 1955, John Tracy Ellis asked, “Where are the Catholic intellectual leaders?” sparking a new quest for academic seriousness, if not excellence.

The Second Vatican Council (1962-65) opened up new horizons for a more dynamic Church with lay leadership at its core. The council’s document “The Church in the Modern World” would find its university parallel in “The Catholic University in the Modern World” (1972). The social unrest of the late sixties and early seventies raised new opportunities for social outreach by the university. The seventies brought double-digit inflation to already struggling budgets.

In the midst of these Church and societal upheavals, Jesuit, Catholic colleges and universities had to search for new ways of governing themselves, since the older ways were simply not up to the task. Until the mid-sixties, Jesuit and Catholic colleges and universities had often comingled their operation and resources with the operation and resources of the religious community, but this model became less and less effective as the institutions grew more and more complex. The institutions responded by: (1) staking out a claim to a necessary autonomy; (2) encouraging separate incorporation of the religious community and the college or

university in order to clarify the roles of each; (3) developing independent boards of trustees composed of both religious and lay members. These steps could have been and often were interpreted as lessening an interest in Catholic and Jesuit identity, but actually each step was taken with an explicit commitment to preserve that identity.

This essay briefly chronicles how Jesuit schools sought successful ways to be appropriately autonomous while remaining faithful to their Jesuit or Ignatian identity. That quest continues to this day, with many of the neuralgic issues still in play.

An Essential Autonomy

In 1967, as part of the preparation of a document on the distinctive character of a Catholic university in the light of the recently published Vatican II document “The Church in the Modern World,” Fr. Theodore Hesburgh hosted a meeting at the University of Notre Dame villa in Wisconsin, from which resulted the famous (or, to its critics, infamous) *Land O’Lakes Statement: The Nature of the Contemporary Catholic University*. This statement helped frame the issues that have been the basis for tensions between Church authorities and American Catholic higher education for nearly fifty years, especially when it insisted that “the Catholic university must be a university in the full modern sense of the word, with a strong commitment to and concern for academic freedom, and that this institutional autonomy and academic freedom are essential conditions of life and growth, and indeed of

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Loyola Marymount University.

survival for Catholic universities, as for all universities.”

Critics of this so-called “declaration of independence” often forget the distinguished composition of the group issuing the statement. It included two bishops, two high-ranking monsignors, one of whom became a cardinal, the superior general of the Congregation of the Holy Cross, the assistant superior general of the Society of Jesus, and the presidents of Notre Dame, Boston College, Fordham, Georgetown, and St. Louis. Also forgotten is that of the ten sections of the document only the first spoke of autonomy and academic freedom. The other nine sections were devoted to how Catholic universities could assure that Catholicism would be “perceptibly present and effectively operative” on Catholic campuses.

Henceforth, institutional autonomy and academic freedom would become essential to all descriptions of the Catholic university up to and including *Ex Corde Ecclesiae*, but with somewhat different interpretations of the terms.

The McGrath Thesis and Separate Incorporation.

Already in 1965, Fr. John McGrath, a canon lawyer at the Catholic University of America, had introduced what came to be known as the “McGrath Thesis,” arguing that if an institution had been civilly incorporated it was no longer a “juridic person,” i.e., subject to canon law. Thus the institution’s assets were no longer “ecclesiastical property” subject to canon law, and the religious community no longer owned them. Quickly, religious institutions sought to adjust governance to clarify the separate roles of religious community and institution. Religious communities incorporated themselves

civilly and separately from the college or university.

Following the McGrath thesis, there was no need to seek permission from the Church to “alienate” (transfer) ownership of property when the religious community incorporated separately from the institution and magnanimously relinquished institutional assets. As in the case of Land O’Lakes, McGrath, while arguing that colleges were not Church property, suggested various ways for keeping them “Catholic,” such as through charter and bylaw provisions.

In June 1966, Jesuit colleges and universities formally embraced the McGrath position. In 1967, reflecting both the McGrath thesis and Vatican II’s interest in lay leadership, Saint Louis University became the first major Catholic institu-

tion to vest legal ownership and control in a board composed of both laymen and clergy. Fr. Paul Reinert, the university’s president, had consulted widely in the United States and in Rome before receiving approval from Father General Pedro Arrupe for the move. Unlike Fr. Theodore Hesburgh at Notre Dame, who was pursuing the same course of action, Father Reinert did not take the added precaution of seeking permission from the Vatican to transfer the property of the university. Rather, he simply followed the McGrath thesis that held that such permission was not necessary

Soon after approving the St. Louis governance change, Father Arrupe commissioned the board of governors of the Jesuit Educational Association, who were the American provincials, to draw up a statement on ownership, separate incorporation, and freedom. The statement sought to “establish that our colleges and universities [and high schools, if they were civilly incorporated] are not ecclesiastical property, or if they were, were alienated upon becoming civilly incorporated.”

By November 1967, Father Arrupe was beginning to worry about the “identity of an institution as Jesuit, if the responsible superiors of the Society could exercise no authority in it.” But American Jesuit presidents pointed out that the Society had often had its name associated with apostolic causes without owning or controlling them. The crucial element was not structure but rather the extent of the commitment of the Society to a particular work as a corporate apostolic activity.

In 1968, Father Arrupe, apparently having resolved his doubts, gave his general approval for separate incorporation of communities from institutions. Within a few years most Jesuit schools moved in the direction of separate incorporation, but none asked permission to alienate property.

Father McGrath's sudden death in 1970 meant that he was not around to defend his thesis when Fr. (later Cardinal) Adam Maida published his opposing view in 1973, arguing that civil incorporation does not destroy the canon law status of Catholic institutions or their nature as ecclesiastical goods. By the time Maida's critique of the McGrath thesis appeared, 20 of the 28 Jesuit colleges and universities had undergone separate incorporation.

In December 1974, the National Council of Catholic Bishops' committee on law and public policy found that the McGrath thesis had "achieved acceptance far beyond its merits" and recommended a comprehensive study. Several studies were begun, but nothing of substance emerged.

In April 1975, Cardinal Gabriel-Marie Garrone, prefect of the Sacred Congregation on Catholic Education, wrote to Father Arrupe asking him to inform "appropriate Jesuit authorities in the U.S." that the McGrath thesis has "never been considered valid by our congregations, and has never been accepted." Referring to the study by the U.S. bishops conference, Cardinal Garrone asked Father Arrupe not to allow further action on the basis of the McGrath thesis and to ask "all those responsible to prepare to rescind any possibly invalid actions on this basis that have been made in the past." Father Arrupe wrote to the president of the Jesuit Conference asking him to communicate with the president of the Association of Jesuit Colleges and Universities (AJCU) and ask for comments, but no action was taken.

In 1976, the National Catholic Educational Association produced a document, "Relations of American Catholic Colleges and Universities with the Church," seeking to combine affiliation with the Church and institutional autonomy. The document asserts that a juridical relationship between the Church and the university is neither desirable nor possible in the American context. It sought "both healthy distance and needed closeness."

Despite the insistence on autonomy, relationships between American Catholic colleges and universities and American bishops remained healthy. A committee of bishops and presidents was established in 1974 to deal with the possible tension between the rights of ecclesiastical teaching authority and the rights related to academic freedom. The same spirit of cooperation was found in the U.S. bishops' 1980 pastoral letter, *Catholic Higher Education and the Pastoral Mission of the Church*.

In the meetings considering the draft of *Ex Corde Ecclesiae*, the vast majority of participants recognized the importance of providing language for a model of a Catholic university that would be Catholic by reason of its institutional commitment but independent of ecclesiastical jurisdiction.

In 1990, canonist Fr. Robert Kennedy published an

article critical of both the McGrath and the Maida positions. He noted that McGrath had overlooked the case of an institution that had canonical status prior to civil incorporation and that Maida's argument that subsequent incorporation does nothing canonically was oversimplified. Canonist James Conn, S.J., argues that changes in governance of Catholic universities did not alter their status as juridic persons subject to rights and obligations in the Church but holds that an institution with two-tiered governance (one board for ownership and one for management) does not have the problem of invalidly alienating property. Only four of the 28 AJCU institutions have two-tiered governance.

The lack of action by the U.S. bishops' committee, by Father Arrupe, and by even the Vatican itself in the years after McGrath suggests the difficulty of resolving the tensions between canon and civil law. When the Congregation for Catholic Education ruled in 1997 that the properties of our universities were "ecclesiastical goods" and that our universities were "owned by the Society of Jesus," the AJCU insisted that such a position was simply not workable in the United States. Two cases involving the sale of university property were handled quietly in a way that protected both the Church and the universities involved, but the tension between two points of view remains unresolved.

Independent Boards of Trustees

The third step taken to adjust governance to the actual needs of colleges and universities was the development of boards of trustees independent of the sponsoring congregation and including both lay and religious members. Lay advisory boards had long been common with all-religious boards of trustees, but now lay men (and soon lay women) became members of the governing board with full authority for the institution. Lay members today comprise the majority of boards, and the chair is most often a lay man or lay woman.

Each of the above steps was taken with no little hesitation and often with opposition because of fears that Jesuit, Catholic identity would suffer. In actual fact, our colleges and universities under the new dispensation have not only made major strides in increased strength, quality, professionalism, and respect among peers but have arguably become more intentionally Jesuit and Catholic because of the many and varied steps taken to foster that identity.

There is still much to do and the task is not easy. We are trying to create what has never existed before: a Jesuit, Catholic identity combining Ignatian spirituality, the Catholic intellectual tradition, and Catholic social teaching – all forged with diverse colleagues in a pluralistic, postmodern university setting while facing scarce resources and the challenges of a globalizing world. ■