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EX CORDE ECCLESIAE: REFLECTIONS, PERSPECTIVES AND PROPOSALS

JOSEPH W. BELLACOSA*

As I return to my alma mater, St. John's University School of Law, to serve as its Dean following the completion of my judicial career, I *decided*¹ to share with the St. Francis College Community my still evolving impressions of the impact of the approximately ten year phenomenon, commonly encapsulated under the Holy Father's Apostolic Constitution, *Ex Corde Ecclesiae*.² My focus stems from my reading, conversations, and service in recent years as a member of the St. John's University Board of Trustees. It also includes my experience as a secular judge and Catholic layperson. The Pope's Document and the tennis lobs (if I may call them that)—back and forth across the Atlantic between the Vatican Congregations and the American Bishops—start to settle some threshold issues, and not surprisingly also pose new questions.³ Yet, this process is still

* Dean, St. John's University School of Law. This article was adapted from a speech given on May 5, 2000 at St. Francis College's Founders' Day Celebration in Brooklyn, New York.

¹ Note that I am still using quintessentially judicial words.

² See APOSTOLIC CONSTITUTION OF THE SUPREME PONTIFF JOHN PAUL II ON CATHOLIC UNIVERSITIES (1990) [hereinafter EX CORDE ECCLESIAE]. The Apostolic Constitution on Catholic Universities, promulgated by His Holiness John Paul II on August 15, 1990, begins, "Born from the heart of the Church, a Catholic University is located in that course of tradition which may be traced back to the very origin of the University as an institution." *Id.* ¶ 1, at 3.

³ Attempts to establish norms for implementation of *Ex Corde Ecclesiae* began in 1990. See NATIONAL CONFERENCE OF CATHOLIC BISHOPS & UNITED STATES CATHOLIC CONFERENCE, EX CORDE ECCLESIAE IMPLEMENTATION DRAFT: SUPPLEMENTAL INFORMATION (Nov. 1999) <<http://www.nccbuscc.org/education/highered/supplementary.htm>> [hereinafter SUPPLEMENTAL INFORMATION] ("The Apostolic Constitution . . . was promulgated by Pope John Paul II on August 15, 1990, after a process of consultation and drafting that lasted approximately a decade."). In the United States, the National Conference of Catholic Bishops worked with university leaders to draft a document for the application of *Ex Corde Ecclesiae*. See *id.* On November 13, 1996, a consensus draft was approved by the United States Bishops. See *id.* On April 23, 1997, the Vatican's *Observations of the*

early in Church terms and years. Two thousand years of Church history should teach one thing for sure—that “time will eventually tell.” The great virtue of patience is the standing order of the day, in this age of instantaneity and sound bytes!

In this progression of the unfolding and implementation of *Ex Corde Ecclesiae*, I wish to share my hope that the dialogue surrounding this significant document will eventually accomplish a working relationship between the universities and the Church community. Some themes I will touch on in this regard include: the Holy Father’s initiative on this subject; the Bishops’ consultative role; the flexibility and adjustment period of implementation; the university as a place of unity between preserving Catholic beliefs and pushing learning to its creative limits; academic freedom in a Catholic institution; tolerance of other faiths in university leadership; and the obligations of being a Catholic university. These particular themes are just some of the many that have caught my attention in the continuing dialogue and perspectives being exchanged on the subject of *Ex Corde Ecclesiae*. In this light, I tender for your thoughtful consideration at this stage some of my reflection on this important papal utterance.

First, I believe *Ex Corde Ecclesiae* is an inspired building block and an initiative from the Holy Father. I see the endeavor as a glass half full with promise and positive impulses. The preservation of a proud Catholic identity, among this Nation’s religiously affiliated schools of higher education, is a worthy objective, and should be a welcome goal.⁴ These institutions are jewels and oases amidst this country’s somewhat secularistic trend and tilt in so many respects. Catholic affiliated schools of higher education are needed for balance and the inculcation and

Congregation for Catholic Education on U.S. Bishops’ Application Document responded to the consensus draft by requesting a revision addressing “the necessary juridical elements for an effective functioning institutionally of Catholic Universities as university and as Catholic.” *Id.* After further consultation and years of drafting, the United States Bishops prepared a new draft for submission to the Vatican on November 18, 1999. *See id.* Many Catholic educators have thereafter proposed alternative provisions to the Bishops, including the Association of Catholic Colleges and Universities which sent its own set of proposed guidelines to the Vatican. *See Catholic Colleges Offer Alternative to Bishops’ Guidelines for ‘Ex Corde,’* CHRON. HIGHER EDUC., June 4, 1999, at A14.

⁴ *See EX CORDE ECCLESIAE, supra* note 2, ¶ 1, at 3–4 (stating that “[a] Catholic University’s privileged task is ‘to unite existentially by intellectual effort two orders of reality that too frequently tend to be placed in opposition as though they were antithetical: the search for truth, and the certainty of already knowing the fount of truth’ ”).

preservation of certain immutable societal and spiritual values. They function as a counter-cultural voice, as it were, in the wilderness against narcissistic materialism, but do so equally with the Church's strong endorsement of vital ecumenism and respectful tolerance of diversity.⁵

An example may be taken from Pope John Paul II's historic, cogent and visionary voice before the fall of Communism in Eastern Europe—he was prophetic, instrumental and successful! A powerful lesson unfolded there, from which all can learn something about what the Holy Father is doing and saying on the subject of worldwide Catholic education and why he considers it so important. He is determined to maintain and improve something worth saving that he views as having transcendent, not just transitory or parochial value. The importance of Catholic higher education, especially seen in the goals of Catholic law schools, is intertwined with the global view of religious freedom.⁶

Second, the process of give-and-take exploration and implementation of *Ex Corde Ecclesiae* has been very illuminating and remains instructive. Both the short and long-term process should be remembered by those of us fortunate enough to share the Catholic Faith. We should be mindful of the spiritually guided mission of the Holy Spirit, who uses the instrumental voices of the Pontiff and the teaching magisterium of the Bishops in union with the Pope.⁷ These ordained leaders of the church are spiritually invested with the authority they exert. They are not weak sheep, but strong shepherds of the Church and the

⁵ See *id.* ¶ 26, at 22 (acknowledging the valuable contributions of “members of other Churches, ecclesial communities and religions, and also those who profess no religious belief” in the life of Catholic universities).

⁶ See, e.g., John T. Noonan, Jr., *The Heart of a Catholic Law School*, 23 U. DAYTON L. REV. 7, 8 (1997) (“The very term ‘Catholic’ is a commitment to the community of the globe that now suffers at the most fundamental level of free response to God.”).

⁷ See EX CORDE ECCLESIAE, *supra* note 2, pt. II, art. 5, § 1, at 43 (requiring “[e]very Catholic University . . . to maintain communion with the universal Church and the Holy See; it is to be in close communion with the local Church and in particular with the diocesan Bishops of the region or nation in which it is located”); see *id.* pt. I(B)(3), ¶ 43, at 32 (calling the Catholic university “a primary and privileged place for a *fruitful dialogue between the Gospel and culture.*”); see also NATIONAL CONFERENCE OF CATHOLIC BISHOPS & UNITED STATES CATHOLIC CONFERENCE, *EX CORDE ECCLESIAE: THE APPLICATION TO THE UNITED STATES* (visited Feb. 27, 2001) <<http://www.nccbuscc.org/education/bishops/excorde.htm> [hereinafter APPLICATION TO THE UNITED STATES] (noting the collaborative effort between Church hierarchy and Catholic universities envisioned by *Ex Corde Ecclesiae*).

Laities who also constitute the Church in a special sense. Therefore, these leaders are entitled, at least, to a presumption of respect for intellectual, honest and conscientious exertion in the *fulfillment* of their responsibilities and ministries. I personally distrust and dislike attacks on the Pope and Bishops' motives or goals as to the manner they have so far proceeded on the subject of *Ex Corde Ecclesiae*.

Third, the November 1999 action of the American bishops, by an overwhelming vote of approval and confidence as to where the Holy Spirit had prayerfully led them⁸ suggests to me a thoughtful, strongly debated, widely consultative movement of the process.⁹ Often overlooked is a key fact about the few bishops who did not join the over two hundred that voted for approval. The dissenters did not vote disapproval, but rather, for an adjournment, urging more consultation and deliberation time.¹⁰

Fourth, major steps still lie ahead. For example, Vatican consideration of the American Bishops' November 1999 approved application and a lengthy, phased-in implementation with more adjustments, all capable of "nuanced" course corrections. That may eventuate so long as everyone remains open to learn from experience and time, *in good faith*, from all angles of debate.

Fifth, Catholics should be content and confident to be somewhat counter-cultural to the American phenomenon of overarching individuality. Catholics should be glad to cherish the common good while we praise, pursue and protect individual rights. There must be some balance. Individuality (the "My Way" song and syndrome) is exalted a bit too much over community in our society. That is our constitutional bent and our civic culture. But, to the extent individuality is considered paramount or exclusive, it may unduly subordinate common

⁸ Some have tried to mischaracterize the process claiming that the Vatican "shoved" the bishops.

⁹ The 1999 application was approved 223 to 31 by the United States Bishops. See Larry Witham, *Catholic Bishops Adopt College Norms: Document Focuses on Teaching at Schools, Protects Academic Freedom*, WASH. TIMES, Nov. 18, 1999, at A3 ("The nation's Catholic Bishops . . . adopted norms to enforce church teaching at its 235 colleges and universities, adding assurances that academic freedom and the secular credibility of the schools are protected.").

¹⁰ See Ann Rodgers-Melnick, *Bishops Tighten College Controls: New Rule Requires Theology Professors to Teach Authentic Catholic Doctrine*, PITTSBURGH POST-GAZETTE, Nov. 18, 1999, at A1 (noting certain bishops' suggestion for more conversation and deliberation, especially on the requirement for Catholic theologians to obtain a "mandatum or a somewhat similar 'oath of fidelity' that is required of Catholic university presidents").

values and goals. Catholics, on the other hand, as part of the People of God, should recognize that we have been given life and transcendent rights as human beings in communion with, and service of, others. Our individual gifts should also make us witnesses and advocated in *The City of God*, in the Augustinian common good sense.¹¹

Thus, I do not agree with outspoken critics of *Ex Corde Ecclesiae* who proclaim “Chicken Little doomsday scenarios” about the application and consequences of this long-term process, as applied to the American-Catholic experience in higher education—or its very continued existence as some have complained with Cassandra-like warnings.¹² While critical views are entitled to respect, they must also be answered with firm conviction within the spirit and virtue of Hope. This is necessary in order not to sacrifice Holy Mother Church’s well-founded, right-minded principles and beliefs in the quest of religious liberty with truth and in the protection of academic freedom, too.

My Franciscan friend Fr. William McConville, O.F.M., the former president of Siena College, wrote in *Spirit and Life* that “churches and colleges should be places of unity and coherence, of reconciliation.”¹³ This is certainly true for a college, which seeks to preserve valuable traditions and beliefs while pushing teaching and learning to their creative limits. The role, after all, of Catholic institutions of higher learning is to educate and prepare students/learners to live and work in their secular society and world, while holding onto and appreciating their Faith-based spiritual values and identity.¹⁴

Father McConville also posed a hard question: whether it is possible that the liberal arts college in the Franciscan tradition can assist its students in the cultivation of an angle of vision that

¹¹ See generally ST. AUGUSTINE, *The City of God*, in 6–8 WRITINGS OF ST. AUGUSTINE (Gerald G. Walsh et. al. trans., 1954) (setting forth a philosophical theory that aims to advance the common good).

¹² See, e.g., Daniel Gordon, *Ex Corde Ecclesiae: The Conflict Created for American Catholic Law Schools*, 34 GONZ. L. REV. 125, 154 (1998–99) (discussing the tension between teaching students the laws they need to be competent and the moral requirements of the Catholic Church).

¹³ WILLIAM E. MCCONVILLE, *Franciscan Tradition, the Liberal Arts College, and Society*, in 2 SPIRIT AND LIFE 129, 142 (1992).

¹⁴ See generally Noonan, *supra* note 6, at 7–8, 14 (describing the business of humanity as kindness, the heart of Catholic law schools as producing such kind lawyers, and noting “if a law school does not prepare its students to serve [the poor or disadvantaged] with kindness, it does not deserve to be called a Catholic law school”).

moves beyond self-interest to the public common good?¹⁵ My answer to his query is that it is possible. I believe, in that context, the *Ex Corde Ecclesiae* is designed to bring about that union and coalescence, among other goals.

Sixth, the requirement of a “mandatum” for professors who teach theology and its related disciplines presents a unique and challenging aspect of *Ex Corde Ecclesiae*, especially in the American experience that so exalts academic freedom and so loathes oaths.¹⁶ This is, in my respectful opinion, an overspun type of reportage, founded on extrapolated portions from *Ex Corde Ecclesiae*. Reading the full text of *Ex Corde Ecclesiae* and related documentation has demonstrated to me the extraordinary suppleness and respect for competing values contained within its four corners.¹⁷ There are many varied and harmonized aspects of emphasis, instead of the selective lift-outs that have generated polarized or polarizing criticism.

There are, to be sure, controversial juridical features and norms, but they are expressed with balanced qualifications and significant facets of aspiration that have not been publicized and have received very little attention or credit. My training and teaching has always taken me back to original and full texts.

Seventh, there is the tricky and misunderstood facet dealing with Catholic identity and faithfulness among mixed membership Boards, Faculties and the like. Largely overlooked has been an explicit and embracive tolerance feature built into these qualified preferences for Catholics to serve and to be sought. Preferential options simultaneously command that diversity should be valued, honored and respected, as well as the gift of those who do not share the Catholic Faith, but who choose

¹⁵ McCONVILLE, *supra* note 13.

¹⁶ Let us recall St. Thomas More’s experience with dangerous and tricky oaths to the secular kin and with its classic potential for semantical manipulation, as dramatically presented in the dialogue of the Robert Bolt play—“A Man for All Seasons.” See ROBERT BOLT, *A MAN FOR ALL SEASONS: A PLAY IN TWO ACTS* 140 (1962). In this play, St. Thomas More, emphasizing the importance of personal integrity, states “[w]hen a man takes an oath . . . he’s holding his own self in his hands. Like water. (*He cups his hands*) And if he opens his fingers *then*—he needn’t hope to find himself again.” *Id.*

¹⁷ With respect to the *mandatum* mentioned in *Ex Corde Ecclesiae*, the Supplemental material accompanying the November 1999 implementation draft prepared by the United States Bishops, explains the *mandatum* as “essentially a *personal obligation* of a professor of one of the theological disciplines” which serves as an “‘acknowledgement’ that a Catholic teacher of a theological discipline is in communion with the Church” and does not impose hierarchical obligations. SUPPLEMENTAL INFORMATION, *supra* note 3.

freely to work with Catholic institutions of higher learning for a host of wonderful reasons.¹⁸ Similar flexibility appears in the use of phrases like “to the extent possible” in the norms calling for the majority of a university’s Faculty and Board to be practicing, faithful Catholics.¹⁹

Ex Corde Ecclesiae contains a recognition that those of other faiths can make valuable contributions to universities and should be welcomed as “partners” in the campus community and purposes.²⁰ These features and commentaries should be put in capital letters on a marquee to advertise and proclaim an accurate and plenary appreciation of *Ex Corde Ecclesiae*. That understanding fairly projects a fair and correct catholic (small “c”) implementation, over extended periods of time, towards the goal of respectfully and tolerantly doing the job of preserving the Catholic identity of Church affiliated, sponsored, and founded schools of higher education. The effects vary in a number of respects, including with respect to professional schools, like law schools. There, the principles play special roles and have important meaning because these schools train licensed fiduciaries that serve people’s most critical needs and protect their most cherished rights. Ethics and moral principles are necessarily implicated.

Eighth, the concerns and danger to academic freedom, including freedom of conscience, are real and must be dealt with honestly and forthrightly. There will be differences of view and varied applications of *Ex Corde Ecclesiae*, but they can be accommodated and corrected when erroneous applications pop up. The academic freedom of a Catholic institution to be true to itself is concomitantly valuable and worthy of respect and preservation, along with that of its constituent members and individual professors. Be mindful that academic freedom does not exist in a vacuum. It is tied to and indeed springs from the voluntary acceptance of the duty to teach responsibly and with as much faithfulness to the epistemology of truth as is humanly and

¹⁸ See APPLICATION TO THE UNITED STATES, *supra* note 7, pt. II, art. 4, ¶ 1 (“Men and women of religious faith other than Catholic, on the board of trustees, on the faculty, and in other positions, can make a valuable contribution to the university.”).

¹⁹ *Id.* pt. II, art. 4, ¶ 2(b) (“To the extent possible, the majority of the board should be Catholics committed to the Church.”).

²⁰ *Id.* pt. II, art. 4, ¶ 1 (“The university should welcome them as full partners in the campus community.”).

institutionally possible. There is a real bond between the freedom and the duty, and a quid pro quo as well.

In this connection, I also want to point out what I see as a false premise about bishops being “external” agents barging into University life, as it were. Their role is different under *Ex Corde Ecclesiae* as contemplated, to be sure, and that may require some adjustments in attitude and interrelationships.²¹ But they are entitled to be viewed as collaborators with legitimate interests in University objectives, and in actuality are far less of an externality than accreditors and other outside regulators and influences on academic life and practices. They should be reasonably accorded hospitality and respect, rather than treated as intruders or adversaries. With a wise and reasonable balance, the Bishops are also instructively directed by *Ex Corde Ecclesiae* toward principles of due process and mutually respectful procedures and attitudes and methods in their dealings with the Universities.²² Thus, reciprocity and collaborative encouragement are melded in the document and in the envisioned process and implementation.²³

Ninth, I hope, will pray, and work to avoid extremism on all sides of this *Ex Corde Ecclesiae* issue and its long hard road ahead. Zeal can be a marvelous virtue. Excessive zealotry, on the other hand, had contributed to major misguided adventures by some in Church history. The Holy Father has even seen fit in this Jubilee Year to call specific attention to and beg forgiveness for many such failings rooted in blind, ignorant zeal: the blood shed and conquests of the Crusades, done in the name of religion (fervently masking a fiery quest for greater secular power); the Inquisition and other terrible acts of bigotry (now a declared sin); oppression of and coerced conversion of Jews, heretics and others who believe differently from Catholics; the trial and suppression of Galileo and the scientific methods; and other events of like concern.²⁴

²¹ See *id.* pt. II, art. 5, ¶ 2 (explaining the multi-faceted role of local Bishops).

²² See *id.* pt. II, art 5, ¶ 2(d) (“University authorities and the local diocesan bishop should develop practical methods of collaboration that are harmonious with the university’s structure and statutes.”).

²³ See *id.*

²⁴ See *Signs of the Times: Examination of Conscience Culminates in Pope’s Mea Culpa: Pope John Paul II Apologizes for Sins Committed by Catholic Church*, AMERICA, Mar. 25, 2000, at 4 (noting the Pope’s plea for forgiveness for past wrongs committed by the church).

Tenth, to be entitled to the Catholic identity—for whatever transcendent and traditional values, or for marketing and fiscal benefits that accrue—obligations beyond superficial affiliation accrue, e.g., fidelity to essence and mission. Catholics should not and need not be ambiguous or blandly assimilative here. They should proudly proclaim who they really are and why.

So, where does this personal list of observations and thoughts leave my conversation with you? The simplicity, humility of life and spirit, and gentleness of the message of St. Francis, certainly offer a helpful first step. This model can be wonderfully compatible—or it can be made so or understood to be so—with the intellectual life, including Catholic academic pursuits of the highest order and attainment. Catholics have wonderfully matured, with the lessons of John Courtney Murray,²⁵ John Henry Cardinal Newman,²⁶ and Vatican II.

Catholics have emerged from perceived attitudes of anti-intellectualism, many of which are misplaced. The reason is because they choose freely to be firmly and proudly religious and Catholic, to boot, in their identity and goals of their higher educational institutions. These complementary pursuits are not only possible, within the elasticity and generosity of spirit expressed and woven into *Ex Corde Ecclesiae*—they are, in my opinion and experience, more likely attainable at a purer and higher level, precisely because of what *Ex Corde Ecclesiae* aspires

²⁵ See, e.g., JOHN COURTNEY MURRAY, *On the Future of Humanistic Education, in BRIDGING THE SACRED AND THE SECULAR* 161–69 (1994) (discussing the tradition of humanistic education).

²⁶ See generally JOHN HENRY CARDINAL NEWMAN, *THE IDEA OF A UNIVERSITY* (1947). Newman, a mid-nineteenth century author, aptly described the purpose and power of higher education as follows:

[A] University is not a birthplace of poets or of immortal authors, of founders of schools, leaders of colonies, or conquerors of nations. It does not promise a generation of Aristotles or Newtons, of Napoleons or Washingtons, of Raphaels or Shakespeares, though such miracles of nature it has before now contained within its precincts. Nor is it content on the other hand with forming the critic or the experimentalist, the economist or the engineer, though such too it includes within its scope. But a University training is the great ordinary means to a great but ordinary end; it aims at raising the intellectual tone of society, at cultivating the public mind, at purifying the national taste, at supplying true principles to popular enthusiasm and fixed aims to popular aspiration, at giving enlargement and sobriety to the ideas of the age, at facilitating the exercise of political power, and refining the intercourse of private life.

Id. at 157.

to accomplish, if people but cooperatively and prayerfully let it do its work.

My preparation materials brought a St. Bonaventure's prayer to my attention, which offers a relevant reflection and apt closing:

This is the fruit of all the sciences, that in all things
faith will be built up,
God will be honored,
the moral life will be ordered,
and peace will be found
in the union of the Spouse [i.e.: the Creator]
with His beloved [i.e.: creation].
This union takes place through charity.
The entire point of the Scriptures
and of every illumination that comes down from above
is the building up of this union through charity.
And without this, all knowledge is vain.²⁷

Ex Corde Ecclesiae is an answer to that prayer.

²⁷ ZACHARY HAYES, O.F.M., *Reflection on a Franciscan University*, in 2 SPIRIT AND LIFE 96, 109 (1992) (quoting ST. BONAVENTURE, *On Retracing the Arts to Theology (De Reductione Artium ad Theologiam)*, n. 26), in THE WORKS OF BONAVENTURE III: OPUSCULA SECOND SERIES (Jose de Vinck, trans., Paterson, New Jersey: St. Anthony's Guild, 1966).