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NOTES

THE MANDATE TO TEACH THEOLOGICAL DISCIPLINES: GLOSSES ON CANON 812 OF THE NEW CODE

To explain a text by way of notes written on the margin or between the lines is an ancient tradition among canonists. It is a healthy tradition and quite convenient. The glossator is not content with merely stressing the letter of the law. As he reads it, he reflects on it, and without much ado he puts down his thoughts for posterity. Yet in this process he remains one step removed from any formal and final opinion; he is aware that he has no power to bind or to loose.

The very informality of reading and writing on the margin has given a freshness to the glossary tradition that cannot be found either in the carefully measured canons or in their interpretation by administrators and judges. Besides, there is an element of humility in any gloss. It can be erased or written over with some facility. Perhaps one reason why canon law has had such a bad press in these latter days is that we have had too many formal texts, too many solemn interpretations, but too few glosses to animate them.

The purpose of this note is to bring out some insights, old and new, from the treasury of our canonical tradition in order to find a critically well-grounded understanding of canon 812 in the new Code.[1] Let me introduce the canon:

Qui in studiorum institutis quibuslibet disciplinas tradunt theologicas, auctoritatis ecclesiasticae competentis mandatum habeant oportet.

Those who in any kind of institute of higher studies teach theological disciplines must have the mandate of the competent ecclesiastical authority.

I shall group my glosses under three headings: the context, the text, and the issues.

THE CONTEXT

While the full theological and canonical context is immense, in the new Code itself three major groups of canons can be singled out as being

[1] In this essay I am not concerned with the civil-law implications of canon 812, which can be momentous in the United States. The conditioning of a university appointment on the decision of an agency extraneous to the academic body may have very serious consequences. Ultimately, however, canon law cannot remain indifferent to rights and duties in civil law, because it would be extremely disadvantageous for the Church, through the operation of a canon, to deprive Catholic universities of their benefits and privileges in civil law.

directly relevant and helpful frames of reference for the understanding of our canon.[2] One group is in Book 3, "On the Teaching *Munus* of the Church," another in Book 2, "On the People of God," and still another in Book 1, "On General Norms." From each book I take what we need for our purposes.

1) Right in the center of Book 3 there is the title "On Catholic Education," composed of three chapters, "On Schools," "On Catholic Universities and Institutes of Higher Studies," and "On Ecclesiastical Universities and Faculties." The chapter "On Schools" refers to grade schools and high schools; it should not concern us here and now. The chapter "On Ecclesiastical Universities and Faculties" refers to those institutions which are more commonly known as pontifical faculties, concentrating on "sacred disciplines"—meaning theology and kindred subjects. That chapter does not concern us either. Our frame of reference is the chapter "On Catholic Universities and Institutes of Higher Studies."

The tone of this chapter is set by the first canon, 807. It states firmly that the Church has the right to establish, endow, and administer universities. The legislator has in mind *universitates studiorum*, universities proper, where a multiplicity of disciplines is taught. The purpose of such ecclesiastically chartered institutions is twofold: to promote human culture and to help the Church fulfil its mission.

An interesting distinction follows, in canon 808. No university, even if it is really Catholic (*etsi reapse Catholica*), should bear the name "Catholic" unless by the consent of the competent ecclesiastical authority. Thus the law truly (*reapse*) divides Catholic universities into two groups: those which have the name "Catholic" in their title and those which do not. Not to have the name is not to deny that they indeed can be Catholic.

The following three canons, 809, 810, and 811, give general directions how the Catholic character of these universities should be established and preserved through the ministry of the episcopal conferences and the bishops. Then follows our canon 812, with the precise direction that a mandate should be obtained to teach theology.

The chapter concludes by giving some directions in canon 813 about the pastoral care of the students and by stating in canon 814 that "universities" and "institutes of higher studies" are the same for the purposes of implementing the law.

[2] This canon has no history; hence it cannot be interpreted from a historical context. A remote analogy can be found in some concordats, concluded between the Holy See and some states, requiring a *missio canonica* for those who are teaching Catholic theology in a state university. Such concordats, however, are outside the scope of the Code (cf. canon 3); they should not be adduced as helpful for the understanding of our canon. Particular agreements should not be used to explain universal law.

2) A second frame of reference, of great importance for us, is in Book 2, "On the People of God." There the dignity of the faithful, *Christifideles* (impossible to translate into an ordinary English term; a paraphrase can better convey its meaning: "those incorporated into the Church of Christ," cf. canon 96), is described and their rights and duties stated in strong legal terms. The inspiration for these canons comes, of course, from the second chapter of *Lumen gentium.* There the doctrine is expounded; here the practical conclusions are drawn.

It would be too much to go through every canon, although it would make good reading. They bring a new spirit into the old corpus of canon law. But we must confine ourselves to those directly relevant for us. In canon 211 it is stated that all the faithful have the duty and the right to co-operate in the proclamation of the "divine news of salvation."[3] According to canon 216, all the faithful have the right to promote and to support apostolic movements, even those initiated by them, because they all participate in the mission of the Church. Canon 218 continues this recognition of rights; let us quote it nearly verbatim: "Those who cultivate the sacred disciplines have the just freedom of research and also of prudent speech concerning those subjects in which they are experts; they should do so with due regard for the magisterium of the Church."[4] To protect the "faithful" in all such activities, canon 220 says tersely that no one is permitted to hurt unjustly the good reputation enjoyed by another person, or violate his privacy—meaning clearly his right to personal initiatives. So far so good, but not enough. As everyone versed in legal history knows, it is never enough to define rights; there must also be an effective judicial machinery to uphold them. Indeed, canon 221 provides that all the faithful who enjoy certain rights in the Church have the power to initiate legal action before an ecclesiastical court, should their rights be disregarded or violated.[5]

The legal position and the rights and duties of the faithful who need the mandate can be seen now in a better light.

3) Our third frame of reference is in Book 1, "On General Norms," and the relevant canons are in its sixth title, "On Physical and Legal Persons." Our interest is now in legal persons, precisely because universities cannot be but legal persons—if they are persons at all in canon law.

Canon 113, #2 states that there are in the Church, apart from physical

[3] Canon 211: "Omnes Christifideles officium habent et ius adlaborandi ut divinum salutis nuntium ad universos homines omnium temporum ac totius orbis magis magisve perveniat."

[4] Canon 218: "Qui disciplinis sacris incumbunt iusta libertate fruuntur inquirendi necnon mentem suam prudenter in iis aperiendi, in quibus peritia gaudent, servato debito erga Ecclesiae magisterium obsequio."

[5] Canon 221, #1: "Christifidelibus competit ut iura, quibus in Ecclesia gaudent, legitime vindicent atque defendant in foro competenti ecclesiastico ad normam iuris."

persons, also legal persons, able to enjoy rights and carry obligations, each according to its nature. The reverse of this canon is, of course, that unless an institute is a legal person in the Church, it cannot have rights or duties in canon law. No one is likely to doubt that, even if the law does not say it explicitly.

The question is now how an institute can obtain the status of legal person. There are just two ways of acquiring it: (1) automatically, by the operation of the law—thus, a diocese cannot exist without being a legal person; (2) by concession, through the instrumentality of a formal decree by the competent ecclesiastical authority. Whenever an institution becomes an ecclesiastical legal person, it is somehow incorporated into the life of the Church, it receives a new *raison d'être*. Besides continuing to do what by its nature it is called to do, it participates also in the mission of the Church. Thus, a hospital besides healing becomes also a witness of Christian charity; thus, a school besides instructing becomes a "proclaimer" of the Good News (cf. canon 114).[6]

Our new law recognizes two types of legal persons in the Church, public and private. Canon 116 states the difference. The public ones are regarded as acting in the name of the Church; the private ones, though having a religious purpose, do not operate in the name of the Church.

Within these frames of reference Catholic universities should be considered. The time has come to turn to the text.

THE TEXT

Here the most sound methodological rule is to attach the glossary to each of the words, so that the ordinary legal meaning of every single term is clearly grasped, with nothing added to it, nothing taken away from it. Let us, then, move patiently through the canon, word by word.

Qui, "those," "they," in plural. It clearly refers to persons, men and women, not to institutions.

in studiorum superiorum institutis, "in institutes of higher studies." The translation is easy. The identification of such institutes is sometimes obvious, sometimes not. In the European educational system, highly specialized university studies follow immediately after high school. In the American educational system, there is the college, an intermediate institution between secondary schools and advanced university studies. Be that as it may, from the whole structure of the law in this chapter we must conclude that colleges fall under the scope of the canon. The only other alternative would be to list them with "schools," that is, with

[6] Canon 114, #1: "Personae iuridicae constituuntur aut ex ipso iuris praescripto aut ex speciali competentis auctoritatis concessione per decretum data, universitates sive personarum sive rerum in finem missioni Ecclesiae congruentem, qui singulorum finem transcendit, ordinatae."

secondary schools—which is absurd.

quibuslibet, "any kind," "of whatever kind." An all-embracing term. Yet, because it is found in the chapter on Catholic universities, it must mean "Catholic universities of any kind."

disciplinas tradunt theologicas, "teach theological disciplines." "Theology" is a broad term. It certainly includes biblical, historical, systematic, and moral theology. It can include canon law and Church history. It certainly does not include studies "about" religion in general; no one calls that "theology." Nor does it include philosophy, for the same reason.

Even if the dividing line between "theology" and other sciences is not always clear, that there is a dividing line should never be in doubt. As a kind of general guideline, we can say that the concern of the law is the teaching of the Christian mysteries in a Catholic university by someone who is *Christifidelis*.

auctoritatis ecclesiasticae competentis, "of the competent ecclesiastical authority." A puzzling expression. The meaning of it is not immediately clear. If the competent authority is the diocesan bishop, why does the canon not say so? If it is the Holy See, why does the canon not say so? Could the episcopal conference become the competent authority? The broader context can be our only guide in interpreting these terms.

mandatum, "mandate." A somewhat new term. It comes without the mantle of a definition, but it does not follow that its essential meaning cannot be grasped. The granting of a mandate is certainly an administrative act (cf. canon 35); it should be given in the form of a decree or a rescript. Its content must be explained according to the ordinary sense of the words and the common way of speech (cf. canon 36, #1). "Mandate," then, is a commission to teach. It is less weighty than a canonical mission, which is needed for obtaining an ecclesiastical office, but it is more than a mere permission, because "mandate" includes an element of acting in the name of someone else.

habeant oportet, "they must have." A duty is imposed by law. The right of doing the apostolic work of teaching should not be exercised without a duty being fulfilled previously: obtaining the mandate.

THE ISSUES

After the presentation of the context and the analysis of the text, let us turn now to the major issues in the interpretation of this canon.

1) *What type of text have we here*? The question is not an idle one. The Code of Canon Law is not a document with an even tenor. It contains doctrinal statements, exhortations, norms of action. Not everything in the Code is strictly legal, but this canon is. It sets up a typical right-and-duty situation. Its impact is in the legal world.

If so, the question immediately arises in the mind of a canonist: How

should it be interpreted, strictly or broadly? Strict interpretation means that the scope of the canon, the extent of its application, should be narrowed but without abandoning the ordinary meaning of the terms. Broad interpretation means that the scope of the canon, the extent of its application, should be stretched within the honesty of the terms. This technique is not an attempt to distort the meaning, or looking for loopholes; rather, it is a device that makes the law flexible. The legislator knows it well; he makes his laws accordingly. So we must interpret them accordingly.

Canon 18 among the general norms directs that whenever a law restricts the free exercise of a right, it should be interpreted strictly.[7] We have seen that the *Christifideles* have, indeed, a right to participate in the proclamation of the gospel and, if they happen to be experts in sacred sciences, they have a right to freedom in research. Clearly, a mandate introduces a restrictive element: if they occupy a university position, their overall right to proclaim the Christian message and to reflect on its implications is restricted by the fact that it should be done within the context of a mandate. It follows that the canon imposing the mandate should be strictly interpreted, that is, its scope should be narrowed as much as it can be within the ordinary meaning of the terms. This rule should be the guiding principle in solving cases which fall under this canon.

2) *Who is the person on whom the duty to have the mandate is imposed*? The text leaves no doubt about the subject of the duty, that is, about the persons on whom the law imposes the duty to have the mandate: "*they* who teach . . . ," that is, the individual faithful, *Christifideles*, baptized in the Catholic Church and in full communion with it. They alone are subject to canon law; they need the mandate if they wish to teach theological disciplines.[8]

At times this canon has been presented as if it were imposing a duty on the institutions themselves. The only argument that could be remotely adduced is that it appears in the chapter on Catholic universities. But in that very chapter there are canons addressed directly to the universities themselves, e.g., canons 808 and 811—which is not the case here. A fundamental rule of interpretation is that the legislator said what he meant. In this canon the legislator addresses himself to individual per-

[7] Canon 18: "Leges quae poenam statuunt aut liberum iurium exercitium coarctant aut exceptionem a lege continent, strictae subsunt interpretationi."

[8] At this point an important theological issue could be raised, and it certainly should be raised in future discussions concerning the theological background of canon 812: Just how far is a Christian mandated on the strength of the sacrament of baptism and confirmation to proclaim the good news? He is certainly entitled to be witness of God's mighty deeds without any mandate from the hierarchy. What are, then, the specific fields where the imposition of a mandate is justified by the common good?

sons; consequently *they* are bound. If the legislator wanted to bind the universities, he could have said so, as in the other canons. Any other interpretation would implicitly assume that the legislator either did not want to, or was unable to, say what he meant—which is absurd.

3) *Are the institutions bound indirectly to insure that only those who have the mandate will obtain or keep a position on the faculty*? As we have seen, the text offers no evidence for such interpretation. But we should still ask if the spirit of this new legislation can in fact impose such duty. Then a Catholic university should make an effort to employ only those who are known to have fully complied with the prescription of canon 812.

A caution is necessary. Here I am not inquiring if a *policy* of requiring the mandate would be wise on the part of the university. That is another issue, and most certainly every university is free to ponder and to decide what policy it should follow. My question is legal, and nothing but legal. I ask if a duty is imposed, by law, on the university, to employ only those who are mandated.

Canon 808 speaks of two types of Catholic university, one which is truly Catholic but does not have the name, the other which is truly Catholic and has been authorized to carry the name as well. There is a similar distinction which applies also to truly Catholic universities. Some are persons—legal persons, that is—in canon law, some are not. Those in the first category are subjects of rights and duties. Those in the second are not, and cannot be; canon 114 leaves no doubt about that. It follows, then, that those universities which are not legal persons in the Church cannot be bound by canon 812, because no obligation can ever be attached to a nonperson, physical or legal.

If a university has in the past been granted the status of an ecclesiastical legal person, there should be some evidence of such an act in the archives of the university or of the diocese or of the Holy See. If nothing is found, there are still ways of finding out about the character of the institution. If in the past its legitimate administrators regularly requested permission for the alienation of land and buildings, or for the conclusion of onerous contracts (e.g., mortgage or loan) from an ecclesiastical authority, then in fact the institution must have become an ecclesiastical legal person at some point of its history.

If it did not ever, or not for a reasonably long time, submit such requests to an ecclesiastical authority, and no protest was raised on the part of the Church, it is clear that neither the university nor the Church thought that the institution was an ecclesiastical legal person.[9]

[9] In the future the matters concerning juridical personalities in the Church will become more complex, since the new law distinguishes explicitly between public and private juridical persons. The canons concerning the administration of property will be attributable only to

There remains still the question, if out of the context and spirit of the new legislation a legal duty can be affirmed in the case of Catholic universities which are persons in canon law to appoint only teachers correctly "mandated." The fact is that no evidence can be found for the affirmation of such a duty. Of course, they may well decide to follow such a policy.

4) *What are the implications of the adjective "of any kind"*? We have seen that the duty to be in possession of the mandate is imposed on the individual who teaches theology. The canon indicates further that this duty binds him in any kind of university. Thus the question immediately arises, whether "any kind" includes totally secular universities as well where a chair of Catholic theology may exist.

Videtur quod non: it seems the answer must be that the canon does not go so far. The canon appears in the chapter on Catholic universities. We know they are of different kinds: some bear the title Catholic, some do not; some are legal persons, some are not. To teach theology at *any* of them requires a mandate. To explain the *quibuslibet*, we do not need to extend the scope of the canon to teachers at secular universities. This is not only a logically consistent construction; it corresponds also to the general character of the canon, which is that it should be strictly interpreted.

5) *Does the law impose the duty of obtaining the mandate on those who are presently engaged in teaching theology*? No duty is imposed on them, since the law is not retroactive. Besides, they have obtained their position through a formal legal transaction; therefore they have a "vested right," *ius acquisitum*. Such rights are not canceled out by the new Code (cf. canon 4). Thus they are exempt from the prescription of canon 812 under two solid titles. Those who will take up teaching after November 27, 1983, when the new Code comes into effect, will be bound by the canon.

6) *Who has the duty to receive requests for the mandate and the right to grant it*? The canon speaks of the "competent ecclesiastical authority," but it is not immediately clear which authority is the competent one. By the principle of subsidiarity, the first person to be approached should be the diocesan bishop in whose territory the university is located. He is the one who is commissioned to preach the Word in the diocese.

Problems, however, may arise. Theology today is a highly developed and sophisticated science with its own methodology and terminology. To teach theology competently at a university requires many years of laborious training. If the bishop himself is not acquainted with the latest advances in theological research, the harmony between the proclamation

public juridical persons. But this law is not retroactive. If the universities did not need permission for alienation in the past, they were simply not legal persons in canon law.

of the good news and the conclusions of theologians may not be immediately apparent to him, even if it is really there. One has to remember all the difficulties biblical scholars had to go through in this century, well into the time of Vatican Council II. With the best intentions in the world, misunderstandings can arise and competent scholars be paralyzed. How can this danger be avoided?

Such problems are not new; there are also well-tried solutions. The overall trend in our canonical traditions has been towards granting some exemptions to universities from the jurisdiction of the local bishop. Pontifical faculties owe their very existence to this trend. Some modern variation of this old institution of exemption could perhaps be worked out. Good theology may even demand this approach, because Catholic tradition has never held that the bishop of a particular church could be the last court of appeal in a matter of doctrine to be believed universally. It has happened often in the history of the Church that the bishop of the diocese regarded a point of doctrine as an article of faith, while the councils and the popes left the faithful free; or vice versa.

Nor can the possibility of fragmentation in discipline be excluded. If there are many dioceses in a country, as in the United States, the criteria of one bishop for granting the mandate can be quite different from the criteria of another. Most certainly, no one wants to revive the phenomenon of wandering scholars seeking places where their opinion is acceptable.

In the case of a large country, with one episcopal conference and many dioceses, the suggestion can be made that a particularly competent committee of the conference would be better suited than the diocesan bishop for granting the mandate. While the idea may appear attractive, it also has drawbacks. It may be an exercise in collegiality, but it may also generate a new bureaucratic structure with all that this entails. In practice, a central committee would regulate the teaching of theology in so many different institutions in the country. How would that be compatible with academic freedom?

Perhaps the competent ecclesiastical authority could be one of the offices of the Roman Curia. After all, the traditional court of appeal in doctrinal disputes has been the See of Rome. But to reserve the granting of the mandate to the See of Rome would go against the decentralizing effort introduced since Vatican II. Besides, the granting of the mandate would be still the fruit of a fallible human judgment; no pope would want to pronounce infallibly on that! It follows that to take the right of granting the mandate to the highest level would not necessarily protect us from mistakes.

There are difficulties, no matter which way we turn. Issues concerning doctrine have never admitted simple solutions. Never. Be that as it may,

unless other authentic interpretation is promulgated, the diocesan bishop should be approached for the mandate.

7) *Does the new system of canon law provide satisfactory means to resolve disputes should they arise in connection with the granting of the mandate, or to give redress should the mandate be unjustly denied?* About the principle that a *Christifidelis* has a right to "vindicate his rights" there is no doubt; it is stated in canon 221. Therefore, if a violation occurs, it is within his right to ask for arbitration or to demand redress. That much for the theory.

In the practical order, to obtain arbitration or a formal trial in case of alleged injustice is virtually impossible for a number of reasons. The issue of mandate, often enough, would involve some dispute about a point of doctrine. Our diocesan tribunals, totally immersed in adjudicating marriage cases, would not be competent to handle delicate questions about belief. Besides, most if not all bishops would be reluctant to have even the semblance of a heresy trial in their dioceses. To take the issue to Rome, even today, involves a diversion and expense that only a few could afford.

Here we are touching on a serious deficiency in our law. We have no speedy and efficient ways of handling judicially cases of alleged injustices. Since no solution can be expected from the quiet and forceful operation of the law, the cases are often agitated in the market place, a notoriously inept forum to judge issues of justice.

8) *Can the mandate be granted once for all, that is, for the life of the teacher?* There is nothing in the law that would forbid such a practice, provided the power of the granting authority extends to the territory where the teacher is functioning. Thus, if the grant comes from the See of Rome, it can certainly extend to any place in the universal Church. If it comes from a diocesan bishop, it cannot go beyond the limits of his diocese. In fact, a teacher who moves several times from one university to another could easily be exposed to unnecessary and prolonged investigations in each place. Such procedures should be avoided. Perhaps the granting of the mandate could be attached to the granting of an ecclesiastical degree; there is ample precedent for that. Originally, academic degrees were granted in view of teaching. To be "master of arts" meant to be *magister* in teaching. To be "licensed" meant to have permission to teach. To be a "doctor" meant to be regarded as qualified to teach.

9) *Could the present practice of not requesting or granting a mandate be regarded as a legitimate custom?* This is an interesting question. There is a strong tradition of freedom and autonomy in American academic life; such tradition can have the force of custom. Someone may object that there was no custom, just absence of regulations. But that is not quite the correct understanding of the facts. Anyone familiar with the

life of universities, including Catholic universities, knows that there has always been a persistent and strong insistence on academic freedom and autonomy of government. *That* can be custom.

But if it is recognized as custom, it is clearly against the present law. Canon 5 gives direction how to handle such conflict: if the custom is explicitly reprobated, it must cease forthwith; if not, it can be tolerated if it is "centenary and immemorial" and the Ordinary judges that in the circumstances it could not be prudently removed. Canon 812 includes no clause condemning contrary customs.[10]

10) *Can the "competent ecclesiastical authority," that is, the bishop of the diocese, delegate his power of granting the mandate to the administrators of the university*? He certainly can, according to his good pleasure. He can also withdraw the delegation, as he wishes. But there is a limit. The delegation cannot be given to an institution, as such, if it is not a legal person in canon law. The reason is obvious: the institution has no capacity to perform a juridical act.

11) *Should the danger arise that Catholic universities may lose their rights and/or equities in the civil forum due to the requirement of canon 812, what course of action can be taken in canon law to alleviate such danger*?

The question presents a hypothetical conflict situation. It is a *hypothetical* one at present, since canon 812 is not in force yet; no response to it has been formulated by courts, executive offices, or certain types of academic authorities. Once the canon enters into force, the hypothesis of danger may turn into real calamity in the form of litigations and various types of adversary actions. It is also a *conflict* situation in the field of canon law itself. On the one hand, the law intends to promote the cause of Catholic education; on the other hand, the Catholic institutions run the danger of losing their rights in the civil forum. Clearly, important values for the Church can be at stake.

Fortunately, our canonical traditions are rich enough to respond to such conflict situations. It is not the first time in the history of the Church that certain canonical prescriptions threaten to produce unwanted effects in the civil forum. As I mentioned earlier, my concern is not to describe the civil effects but to determine what the correct course of action should be in canon law.

The authority competent to act in this situation is the local bishop or

[10] Canon 5, #1: "Vigentes in praesens contra horum praescripta canonum consuetudines sive universales sive particulares, quae ipsis canonibus huius Codicis reprobantur, prorsus suppressae sunt, nec in posterum reviviscere sinantur; ceterae quoque suppressae habeantur, nisi expresse Codice aliud caveatur, aut centenariae sint vel immemorabiles, quae quidem, si de iudicio Ordinarii pro locorum ac personarum adiunctis submoveri nequeant, tolerari possunt."

the bishops' conference. They are the *economoi*, the local caretakers of God's household. If their judgment is that through the implementation of a universal law an important value is endangered, they have the power to delay imposition of a new norm. Such action is very much within our canonical traditions; canon law is concerned with living values, not with blind implementation.

In this context the doctrine of Vatican II may be recalled: diocesan bishops have been "appointed by the Holy Spirit," *positi a Spiritu Sancto*. They are not mere executors of universal laws; they are *economoi*, who must take into account the particular need of their own people too. The health of the Church depends often on a subtle play and conversation between the successor of Peter and the successors of James, John, Andrew, and others, Paul included.[11]

CONCLUSION

Canon 812 is a new canon, partly clear, partly to be clarified. Canon 812 is also an untried canon: the logic of the law contained in it has not as yet met the demands of life. Canon 27 tells us that "custom is the best interpreter of laws"; for *that* interpretation we must wait. Any other offered during that waiting period cannot but be less than the best. There is a counsel of humility for all glossators and commentators. At any rate, let us pull the threads together, as best we can at this point.

It is clear that canon 812 imposes a duty on those individual Catholics who are teaching theology in a truly Catholic university or institute of higher studies; they must be in possession of a mandate from the competent ecclesiastical authority.

There is no convincing evidence in the law to assert that a duty is imposed on the universities to appoint those teachers only who are in possession of the mandate. No such duty can be imposed on institutions which are not persons in canon law; no such duty is explicitly stated in the case of the others.

There is no firm evidence to prove that a Catholic who is teaching

[11] The venerable tradition of *epieikeia* and equity can be invoked also. *Epieikeia* is an eminently rational device, provided it is understood in the strict Aristotelian sense. Since laws are conceived to cover typical situations, a given law may not be suitable, it may even operate injustice, in a concrete case. Hence the virtue of justice itself postulates a corrective measure; that measure is *epieikeia*. It is nothing else than an unusual manifestation of justice itself. Equity is less definable, although it has been a most powerful force in shaping the development of classical Roman law and English (and American) law. In both systems equity was invoked when the existing laws were unable to offer a just solution. The judges simply went outside the legal system and appealed to higher values, such as the demands of natural justice, the needs of human nature, etc. Thus they infused a new spirit into the system of laws and found the ways and means to uphold genuine values not protected by the positive norms.

theology in a non-Catholic institution must obtain the mandate.

It is not clear at present who the competent authority entitled to grant the mandate is. In practice, the diocesan bishop should be assumed to have the duty and the right to handle the request.

As yet, the criteria for granting or denying the mandate are not formulated; in the case of alleged delays and/or injustice, no speedy and efficient judicial remedies are available. There is too much danger that the "rule of man" may prevail over the "rule of law."

There are good reasons to argue that in the United States there is an ancient custom of academic freedom and autonomy observed by Catholic universities as well as by others. If the existence of such custom is eventually proved to the satisfaction of the local Ordinary, he may tolerate its continued observance notwithstanding the fact that the old custom is in conflict with the new law.

Finally, let us add a cautionary note: there is no virtue in hasty action. Although the new Code comes into force on the first Sunday of Advent in 1983, canon 812 will not cause immediate changes in the world of law; it directs only some persons to act. There can be good reasons for both the petitioner and the grantor of the mandate to allow reasonable time for necessary clarifications. Besides, the episcopate of a given country may need time to work out a concerted policy. Prudent application of the laws is never against canon law.

More could be said, but the literary form of glosses has its own built-in limits: it cannot go beyond the size of the margin. I have certainly gone that far, perhaps further. Thus it is time to close my comments.

Catholic University of America LADISLAS ORSY, S.J.