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William J. Wagner and Denise M. Ryan, *The Catholic Sponsorship of Legal Education: A Bibliography*, 78 Marq. L. Rev. 507 (1995).
Available at: <http://scholarship.law.marquette.edu/mulr/vol78/iss2/19>

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THE CATHOLIC SPONSORSHIP OF LEGAL EDUCATION: A BIBLIOGRAPHY

WILLIAM J. WAGNER*
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The Catholic vision of the world discovers and appreciates common meanings and values.¹ In some respects, cognitive insight arises for Catholics within the community of faith by common appropriation of revealed knowledge.² In others, it is encountered by them within a community of reasoned discourse on truths constitutive of the world and human nature and accessible to all.³ According to Catholicism, both forms of knowledge—that of faith and of reason—exist within communities dedicated to a common search to know and understand.

Authentically Catholic legal education is oriented to a common understanding of realities giving it essential content, realities summarily identifiable through concepts of Catholicism, Law, Legal Profession, and University. Catholic legal education adequately reflects the tradition of thought and praxis it aims to represent only when it reaches its basic stance by common reflection on the meanings and values attached to these concepts within intersecting communities of faith, reason, and responsibility.

The unaided intuition accompanying participants' immediate religious inspirations cannot alone ground Catholic legal education, any

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** B.A., 1980, J.D., 1993, The Catholic University of America; Research Assistant to Professor William Wagner, 1993-1994.

1. St. Thomas Aquinas, *Summa Theologica I.Q.16*. (New York: Benziger Brothers, Inc., 1948; repr. Westminster, Maryland: Christian Classics, 1981), 89-90.

2. *Dogmatic Constitution on Divine Revelation* § 23-24, in *The Documents of Vatican II*, eds. Walter M. Abbott and Joseph Gallagher (Chicago: Follett Publishing Company, 1966), 126-27.

3. John Courtney Murray, S.J., *We Hold These Truths: Catholic Reflections on the American Proposition* (New York: Sheed and Ward, 1960), 10.

more than can the general, often uncritical, opinion of legal educators. Cataloguing denominational interests in order to advance these interests instrumentally will, for its part, engender a program unworthy of the Catholic tradition, where pursued without substantive knowledge of the elements constitutive of the Catholic law school.

Each Catholic law school appropriately frames its own purposes regarding Catholicism, the Law, the Legal Profession and the University in the light of some unique philosophy. But, in this respect, too, a school's Catholic character will manifest itself in a route, leading to that philosophy via reflection on a common fund of knowledge. A Catholic philosophy of legal education presupposes research into, and documentation of, the philosophical directions which the concepts and realities of Catholicism, the Law, the Legal Profession, and the University suggest, and it assumes, as well, acquaintanceship with options for a philosophy of Catholic legal education, already proposed by others.

The present bibliography offers access to the base of knowledge that is essential to the Catholic sponsorship of legal education. It references information on the nature and history of Catholicism, the Law, the Legal Profession, and the University, as these four elements relate to formulating a philosophy of Catholic legal education, and to designing and putting into effect a program of legal education suited to a Catholic school. As further general categories suited to analyzing the requisites of these tasks, the bibliography employs the following headings: 1) philosophical issues; 2) historical issues; 3) academic policies and oversight; and 4) government regulation.

Introducing the user to the significance of the material under each heading, as it is developed under each subheading, will aid in a more fully satisfactory use of the document. The first two headings relate to issues of identity and purpose, arising *internally*. These concern Catholic philosophies of legal education and the task of selecting the subject matter of Catholic legal education. More specifically, the first heading adopts a theoretical or philosophical perspective, the second an historical vantage.

The third and fourth headings concern issues of identity and purpose encountered *externally*. These concern accountability to outside groups and agencies. In particular, the third heading covers the Catholic law school's response to the demands of what are, in each case, effectively, relationships of accreditation. The fourth, and last, treats issues of legal regulation.

Further explanation of the bibliography's content follows.

I. PHILOSOPHICAL ISSUES

The section on "philosophical issues" lists materials valuable for formulating: a) a basic philosophy of Catholic-sponsored legal education; b) a Catholic approach to law and public policy issues; c) a response to the Catholic tradition of jurisprudence; and d) a method for coordinating dialogue with the law school's secular counterpart.

A. *Basic Philosophy*

The bibliography seeks to assist users who wish to draft a philosophy of Catholic legal education. Correspondingly, Subsection I.A. collects existing statements of such philosophies. Those cited vary in the degree of their fragmentariness or completeness. The most fundamentally important thing about them are the principles of integration around which they build their positions. Entries can be drawn on for other content as well. They may suggest relevant Catholic ideals, themes, or imperatives. They may set out methodologies for planning or administering programs consonant with the envisioned philosophy.

This first subsection includes materials treating the crucial question of the theological principles properly informing the Catholic law school's philosophy, its sense of purpose, its motivation, its spirituality, and its programmatic offerings. Entries offer models mediating the dichotomies of faith and reason, church and society, and tradition and change, among others basic to a Catholic orientation. They implement these latter distinctions in connection with curricular and research agendas; relations among faculty and students; institutional governance; ecclesial affiliation; and ties within the profession.

Entries can be studied for cues as to the marks or characteristics of the authentically Catholic school. At the same time, they catalogue the diversity of charisms or vocations which are to be found in Catholic, Christian, or generically religious legal education, allowing the user to identify his or her more particular tradition. They allow, for example, a contrast of Jesuit with Holy Cross philosophies, and of Catholic with Jewish or Protestant approaches.

The subheading is further divided into entries specifically on legal education (I.A.1) and ones generally on the university (I.A.2). Entries on the university provide an essential complement to entries dealing only with legal education. Philosophers and theologians are more likely to have written the former, and they are more likely to treat, and to treat well, as a matter of underpinnings, generic issues of faith's relation to the pursuit of knowledge and service. Materials specifically on legal educa-

tion explore concrete challenges in the domain of the law and legal education.

B. Law and Public Policy Issues

Within the frame of its own philosophy, each Catholic law school seeks, in one way or another, to enlist the law in service of values in ways attuned to contemporary problems and yet recognizably Catholic, engaging, accordingly, in law and public policy analysis from a Catholic perspective. Section I.B. treats "Law and Public Policy Issues of Interest to Catholic Law Schools."

The literature listed under this subheading illustrates law and public policy approaches of interest to Catholic schools. Some entries relate legal problems the Catholic Church and other religious bodies face as actors within civil society. Examples include employment regulation, tort liability, clerical malpractice, property disputes, and tax immunity. Other entries concern the needs of religiously affiliated groups seeking to participate in public debate, community service, and governmental programs. Still others touch on the relevance of Christian or Catholic values to the theoretical clarification or resolution of social problems, or the free exercise of religion.

Overall, entries in this subsection offer models of policy analysis from the religious perspective. They assist in identifying the distinctive challenges in the contemporary American context for religious participation in public policy debate. Although they constitute a small sample of the applicable literature, they may be used to draw up a list of the concrete issues of law and public policy of contemporary interest to Catholicism.

C. Selected Works in Jurisprudence Reflective of Roman Catholicism

Whatever particular emphasis its chosen philosophy may have, the Catholic law school will seek to apply, enrich, and transmit the Catholic intellectual tradition. Materials mediating this tradition are twice relevant. They are a mainstay of the library and curriculum of the Catholic law school. They contribute ideas, values, and approaches to a Catholic philosophy of legal education, and Catholic law-and-public-policy analysis. Subheading I.C. lists "Selected Works in Jurisprudence Reflective of Roman Catholicism."

Cited materials fall into three categories: classical texts; papal teaching and conciliar documents; and twentieth-century works by Catholics. A body of writings on law and human values, coming into being between about the late fourth and the early seventeenth centuries, comprise the classical texts mentioned. Comprising the "canon" of relevant Catholic

thought, these works form a measure of whether a contemporary law school credibly claims to participate in the tradition of Catholic thought.

At a minimum, jurisprudence at the Catholic law school must account for similarity and difference with this body of ideas. Preferably, it will embody motifs taken from the "canon" to which it accounts. Because these classic works also define the Western tradition itself during much of the period they cover, the Catholic law school may properly engage in legal history, relating these same works to the civil and canon law emerging contemporaneously.

A second category of work, within Catholicism, relating to jurisprudence, is that of papal teaching and conciliar documents. Doctrinal authority within the Catholic religion extends not only to faith, but to morals, and authoritative Catholic teaching on morals has some import for civil law. The tradition of Catholicism cannot be reduced to magisterial pronouncements, but it does not stand independent of them.

The portion of ecclesial doctrine principally relevant to the Catholic law school is found in the body of papal and conciliar teaching on social justice, beginning in 1891 with Leo XIII's *Rerum Novarum*.⁴ Regardless of specific philosophy, a Catholic law school will wish to have expertise in these documents. The philosophy of Catholic clinical legal education will draw on them in a special way.

The final category of jurisprudence reflective of Catholicism relevant here is that of works by Catholics, authored in the less remote past and the present. These writings dialogue with the classical canon of Catholic thought, as well as with teachings of popes and councils. They also engage with contemporary trends. They serve to illustrate how the tradition of Catholicism responds to changing circumstances. The Catholic law school should be conscious that it is an important audience of contemporary Catholic writers on law and human values. As such, it is called to archive their works and to test their authenticity and value in relation to tradition and to contemporary need.

D. *Encounter with the Secular Academy: Legal Education and Ethical Values*

The legal profession is a principal context, obviously, for American legal education. The profession advances a system of laws which, as a matter of First Amendment principle, does not have religious content. Its membership is religiously pluralistic. A second principal context of

4. In *Two Basic Social Encyclicals* (New York: Benzinger Brothers, 1943).

the Catholic law school is the university. Most American universities have no religious affiliation. However the Catholic law school chooses to interpret its activities in Catholic terms, it must also make its contribution intelligible to the larger professional and academic community. It must do the same with respect to the school's faculty and students not sharing the Catholic tradition. The issue that has secular meaning, but to which Catholicism can, at the same time, be understood as answering, is that of human values. "Values" provides a common term of exchange facilitating dialogue between Catholic and secular legal education. Subheading I.D. addresses "Legal Education and Ethical Values: The Current Discussion."

Selections under this subheading introduce the topic of values and legal education and scholarship. Some raise the more specific issue of the relationship of values and religion, in the context of legal education. Entries represent diverse perspectives appearing at a respected level of discourse within the secular academy. From these materials, ideas may be derived for an effective "apologetics" of Catholic legal education. The user may also find here generic paradigms for weaving human values into legal education in ways enriching to existing Catholic approaches.

II. HISTORICAL PERSPECTIVES

In ascending order of scope, the section on "historical perspectives" lists materials on: a) the history of religiously affiliated law schools in the United States; b) the history of legal education in the United States; and c) the history of religion's influence, in the West and in America, on Law, Legal Education, and the University.

A. *Histories of Religiously Affiliated Law Schools*

The Catholic sponsorship of legal education in the United States has a history of significant duration. It is a history of influence within American Catholicism and American society. Because it is a history of conscious participation in a common enterprise, it can be considered a tradition. Those advancing the Catholic sponsorship of legal education find that knowing its history sustains their faith in their work as the tradition's further outgrowth. While the American tradition of law schools belonging to nonCatholic traditions may not be as extensive or as long-standing as that of the Catholic schools, this last point is equally true of it. Subheading II.A. concerns the "Histories of Religiously Affiliated Legal Education."

Works under this subheading will offer access to the histories of one or more schools of interest to the user. Entries, largely drawn from a series of articles in *The Catholic Lawyer*, invite comparisons among schools. No general history of American Catholic or religiously affiliated legal education exists, but an outline of that history can be read from the individual entries in this subsection taken together.

From these materials, the user can gain insight into the ways in which the diverse principles and resources, considered as distinctive of the Catholic tradition, under the major heading of "philosophical issues" above, have actually been received by Catholic law schools under concrete conditions. This knowledge may allow a conclusion as to the charism or form of call a particular school or tradition within Catholic legal education represents. Note can be taken of failure, where histories depart from the higher standards and ideals of the Catholic tradition.

Entries in this subsection begin to disclose political, social, economic, and other trends conditioning the pursuit of Catholic legal education in the past. One may study them, then, for instances of creativity in exploiting passing circumstances more fully to fulfill a school's religious mission, and also for cases where extrinsic causes have been allowed to dominate or betray religious purposes and values. They may be examined for a "shadow side," or sin, in order to assist in a more adequate response to the ongoing call to moral, spiritual, and intellectual conversion.

B. The History of American Legal Education

Historically, leading trends in the Catholic sponsorship of legal education in the United States have begun, beyond doubt, in secular legal education. The history of Catholic legal education can be reliably read only against the backdrop of a general history of American legal education. Entries under Subheading II.B. concern the "History of American Legal Education."

These materials explore the origins and history of the American law school. They provide access to the generic character of legal education in the United States, as it relates to the American university and the fortunes of the legal profession. They set out the ideals and aspirations, and challenges and problems defining American legal education, as such. Through them, one can explore where the generic purposes of, and the conditions established by, secular legal education, in place of Catholic doctrine, account for the course of Catholic-sponsored legal education in the United States.

C. *History of the Contributions of Religion to the Western and American Institutions of Law, University, and Legal Education*

Historically speaking, the religious sponsorship of legal education does not represent a novel synthesis of two otherwise unconnected activities. Religion, specifically Catholicism, has shaped Western institutions of Law and University. Religion has contributed to the history of legal education itself. This combined history means that the religious sponsorship of legal education can discover resonances in its subject matter with its own higher purpose. Subheading II.C. lists entries relating to the "History of Religious Contributions to Western and American Universities, Law, and Legal Education."

The materials cited offer insights into parallel and overlapping traditions of Religion, University, and Law. The narrower tradition of the Catholic sponsorship of legal education interacts with these three broad traditions. Some entries focus, in one respect or another, on this interaction. By studying these entries, one uncovers basic values common to the Rule of Law, University, and Religion. One also learns to understand the nature of the conflicts arising at points between religion and the ideals of Law and University.

The origins and history of the University and Western law supply background relevant to the rise of American legal education, as it is considered under II.B., above. They complement materials discussed on "basic philosophy" under I.A., and on the "classical canon" of Catholic works in jurisprudence, under I.C., above.

III. ACADEMIC POLICIES AND OVERSIGHT

The third section of the bibliography directs the user's attention away from the internal task of identity arrived at within a tradition, and towards that of accounting externally to the expectations of others. Its listings explore accountability to constituencies or agencies other than the state, including the general public, the Church, accrediting agencies, and the Association of American University Professors ("AAUP").

A. *Policies of Religiously Affiliated Law Schools*

The Catholic law school will, like other law schools, communicate its philosophy and concrete program to the general public by means of a published "statement of purpose." Such statements provide a rule by which constituencies and regulators measure a law school's purposes and performance. Because of its formality, objectivity, and relative perma-

nence, the statement of purpose also establishes a benchmark for the law school's internal consciousness of its mission and purpose. Subheading III.A. lists published "Policies of Religiously Affiliated Schools."

The statements of purpose which are referenced permit the user to compare the public account diverse Catholic law schools give of themselves. They enable, as well, a comparison of Catholic statements of purpose and those of religiously affiliated institutions which are not Catholic. Statements can profitably be studied for their formats, styles of codification, and divergent underlying philosophies.

Michael Buckley notes that Catholic institutions of higher learning may draft their statements of purpose to avoid controversy rather than take meaningful positions on identity. Buckley calls attention to the drawbacks of this approach.⁵ The statements of purpose listed may, then, be examined, not only for good qualities, but also for pathology.

B. Regulation under Canon Law

The law school with a viable philosophy of Catholic sponsorship is conscious of belonging to the community of Christian faith. Any Catholic law school participating in the Church's intellectual tradition has recourse to authoritative Church doctrines on social justice, as noted in the discussion of Subheading I.C. above. Catholicism, though, is a religion whose ecclesiology entails hierarchical authority, so that the Catholic law school encounters the Church, not merely in strictly voluntary appropriation, but also through Church law. Relevant norms are found in the Code of Canon Law, and in the documents of the Second Vatican Council, the Papacy, and the American Bishops. Entries under Subheading III.B. deal with "Regulation of Religiously Affiliated Law Schools under Canon Law."

The relevant documents and canons appear in this subsection both separately and in anthology. Secondary literature cited provides leads on principles and standards bearing on the interpretation of canon law. The Catholic law school could benefit from general expertise in this area for the sake of assisting the university of which it is a part in making sense of the Church's legal directives where and as when applicable. It will, in any event, require sufficient expertise to evaluate the meaning of Church law for its own program. Beyond their relevance for questions of compliance, these materials identify ideals and principles implicit in

5. Michael J. Buckley, S.J., "The Catholic University and the Promise Inherent in Its Identity," in *Catholic Universities in Church and Society: A Dialogue on "Ex Corde Ecclesiae"*, ed. John P. Langen (Washington, D.C.: Georgetown University Press, 1993).

ecclesial sources of law, properly serving to unify Catholic law schools with their diverse individual philosophies.

C. Oversight by Accreditation Bodies

Oversight by the American Bar Association ("ABA") and Association of American Law Schools ("AALS") has historically been of influence on American law schools, both religiously affiliated and others. The oversight of these agencies is ongoing. They effect their wishes through the power of accreditation. Their oversight offers a mixed prospect for Catholic law schools. On the one side, it stimulates improvement according to objective standards. On the other, it may be a goad to heteronomy, which is violative of Catholic principles. Subheading III.C. sets out materials on the "Regulation of Religiously Affiliated Law Schools under Accreditation Bodies."

Relevant norms of the ABA and AALS are cited, as is secondary literature in the form of articles and books discussing accreditation both in general terms and in the terms specific to religiously affiliated schools. The present issue of the Marquette Law Review adds significantly to this literature.

Entries under this subheading offer knowledge about accreditation as a technical matter. Such knowledge can be used for unproblematic compliance, or for creative and reasoned opposition. Listed materials help ascertain differences in philosophical orientation, where they exist, between Catholic law schools and the contemporary bureaucracy of legal education. The materials under I.D. on "Legal Education and Ethical Values: The Current Discussion" lend themselves to parallel reflection.

D. The Promotion of Academic Freedom by the AAUP

The commitment of the religiously affiliated university, and with it, the religiously affiliated law school, to foundational values beyond open inquiry, sometimes places it at odds with the concept of the university underlying the AAUP's notion of academic freedom. In fact, accountability of faculty members respecting their fidelity to religious ideals, and accountability of academic institutions, in turn, to Church authorities, may occasion a form of heteronomy, violative of the academic character of the institution by any defensible concept of academic freedom.

The tensions existing for the Catholic University between values of fidelity and freedom and between accountability to ecclesial critics and to the watchdogs of academe directly affects the discipline of theology far more than that of law. Religiously sponsored law schools do not, as a rule, teach, but rather apply, the tenets of religion. Judgments about the

applications of religious tenets under concrete circumstances involve an ambiguity making it unlikely that the school or university administration will take exception to the choices of faculty, or that the AAUP will have occasion to object to many of the specific policies of law school or university.

Still, room exists for conflict, either directly with the AAUP, or, more likely, with accrediting bodies which apply AAUP policies and standards. Subheading III.D. entries deal with "Relevant Policies on Academic Freedom of the American Association of University Professors."

Entries include relevant AAUP statements of principle and rulings. Also listed are federal and state court opinions in cases involving university assertions of contract rights over academic freedom of faculty in contexts implicating religion or morality. Some referenced opinions touch on Title VII of the Civil Rights Act of 1964⁶ or the free exercise clause of the First Amendment to the United States Constitution. Secondary literature in this subsection deals with the current status of academic freedom requirements both generally and as applied to religiously affiliated institutions.

Entries provide a technical analysis of AAUP standards and procedures and of legal contract disputes involving academic-freedom claims and defenses. These materials yield matter for philosophical reflection on the extent and meaning of the gap between the AAUP's vision of the university and the value and tradition-based idea of the Catholic law school. As such, they complement those of Subheading I.D. on "Legal Education and Ethical Values: The Current Discussion." They develop a flip-side of the issues encountered under III.B., on the "Regulation of Religiously Affiliated Law Schools under Canon Law."

IV. GOVERNMENT REGULATION

It will, of course, not be forgotten for long that the law school not only teaches law, but is also subject to its demands. Like other institutions, the Catholic law school incurs benefits and burdens under the law's scheme of inducements. Such inducements advance a set of values. From one perspective, they encourage a law school to adopt a stance in conformity with important public values. From another, they may induce it to violate its understanding of equally important public values to which it is committed under its charter. The fourth and last heading in the bibliography regards "Government Regulation." Materials under

6. 42 U.S.C.A. § 2000e-1(a) and -2(e).

this heading cover the two areas of primary legal concern for religiously affiliated schools, both First Amendment issues, "Eligibility for Government Funding" and "Religiously-Based Exemptions from General Legal Duties."

A. *Eligibility for Government Funding*

Government spending affects the fiscal wellbeing of religiously affiliated higher education, through the eligibility of the school's students for governmental tuition assistance, and through its own eligibility for state aid. The Constitution's establishment clause restricts financial contributions by government to religiously sponsored activities. A competitive market and non religious schools' freedom from such restrictions mean that line-drawing by courts in this area may affect the solvency of Catholic and other religiously affiliated law schools. Undue effort by the religious law school to qualify for funding may, however, undermine its fidelity to its values. Subheading III.A. cites materials on "Eligibility for Government Funding."

The judicial opinions which are listed set out the relevant jurisprudence of the federal courts. The secondary literature provided offers commentary on the cases. Entries map the consequences for government funding flowing from inclusion of overtly religious elements in the law school's program. These materials will be of interest to schools desirous of ensuring eligibility for government funds, as well as those schools wishing to press the limits of current law for the sake of renewing their religious identity.

The Supreme Court's establishment clause jurisprudence forms the central focus of these entries. They invite the user to reflect on the public role which the contemporary Court accords to religion, and to consider the implications of that role for the religiously affiliated law school's mission and circumstances. The line of inquiry made possible here complements that envisioned under I.D. on "Legal Education and Ethical Values: The Current Discussion."

B. *Religiously Based Exemptions from General Legal Duties*

The nondiscrimination principle has fundamentally contributed to the legal regulation of even private American associations since the civil-rights enactments of the 1960's. This principle ordinarily excludes religious differences from consideration in the context of transactions by private institutions and businesses. A conflict thus arises for religious groups undertaking social activities of a corporate nature. If no exemption at all were granted from the nondiscrimination principle, religious

institutions would be able to continue their activities only to the degree that their evasion and subterfuge stayed ahead of enforcement.

Exemptions do exist under Title VII of the Civil Rights Act of 1964⁷ and under the Religious Freedom Restoration Act.⁸ Some element of support for the concept of exemption exists under the free exercise clause of the First Amendment to the United States Constitution. The very survival of a religiously sponsored institution such as a law school or university depends on the continuation of the exemption, making this topic even more critical than that of eligibility for government funding. The bibliography's final subheading, IV.B., references materials on "Religiously-based Exemptions from General Legal Duties."

Entries under this last subheading include relevant judicial opinions, and extend, as well, to commentary in the form of books and articles (some of which are also listed under the last subheading, for it also deals with aspects of the first amendment). Primary and secondary materials alike assist in ascertaining the scope of the prerogative of religiously sponsored law schools to treat religion as a criterion of selection in filling faculty and administrative posts. They are of use, as well, in analyzing essentially the same question in the setting of admissions policies, resource allocation, and policies on campus speakers and the posting and distribution of student and other literature.

This final set of materials stimulates reflection on the relation between religious and merit-based criteria of hiring and admission. It can contribute to insight into methods by which the Catholic law school can incorporate the nondiscrimination principle into its own policies, while doing so on terms compatible with its identity. The inquiry here envisioned intersects with those projected in connection with the subheadings on "Legal Education and Ethical Values: the Current Discussion," (I.D.); "Regulation of Religiously Affiliated Law Schools Under Accreditation Bodies," (III.C.); and "Relevant Policies on Academic Freedom of the American Association of University Professors," (III.D.).

7. *Id.*

8. 42 U.S.C.A. § 2000bb.

I. PHILOSOPHICAL ISSUES

A. *Basic Philosophy*

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III. ACADEMIC POLICIES AND OVERSIGHT

A. Policies of Religiously Affiliated Law Schools

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Judicial Opinions:

Bishop v. Aronov, 926 F.2d 105 (11th Cir. 1991) *cert. denied*, 112 S.Ct. 3026 (1992).

State university may prohibit instructor from religious expression in the classroom without violating either free exercise or establishment clauses.

Board of Trustees v. Stubblefield, 16 Cal. App. 3d 820 1 (Cal. App. 2d 1971).

Sexual behavior constituting immoral conduct is grounds for terminating junior college instructor.

Curran v. Catholic University of America, Daily Washington Law Reporter 117 No. 62, 653 (April 3, 1989)

Disapproval by ecclesiastical authority is grounds for restricting departmental affiliation and teaching assignment at church-sponsored university.

Lehmann v. Board of Trustees, 576 P.2d 397 (Wash. 1978).

Sexual misconduct is grounds for dismissal of tenured college instructor.

Little v. Wuerl, 929 F.2d 944 (3d Cir. 1991).

Religiously affiliated elementary school's policy against retaining a divorced and remarried employee is exempt under Title VII.

McConnell v. Howard University, 818 F.2d 58 (D.C. Cir. 1987).

Tenured instructor may be dismissed if a failure to teach assigned classes equals neglect of professional duty.

Vigars v. Valley Christian Center, 805 F. Supp. 802 (N.D. Cal. 1992).

Title VII exemption for discrimination based on religious grounds may not be pretext for discrimination based on race, sex, or national origin.

Welter v. Seton Hall University, 608 A.2d 206 (N.J. 1992).

Contract rights are enforceable by university instructor without regard to canonical limitations affecting clerics.

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IV. GOVERNMENT REGULATION

A. *Eligibility for Government Funding*

Judicial Opinions:

- Aguilar v. Felton*, 473 U.S. 402 (1985)
State monitoring of religious content in elementary and secondary school programs funded by the state violates the establishment clause through of excessive entanglement.
- Americans United v. Blanton*, 433 F. Supp. 97 (M.D. Tenn. 1977), *aff'd*, 434 U.S. 803 (1977)
Governmental tuition grants for students in religiously affiliated institutions of higher learning does not violate the establishment clause.
- Americans United for the Separation of Church and State v. Bubb*, 379 F. Supp. 872 (D. Kan. 1974).
Governmental tuition grants for students in religiously affiliated institutions of higher learning pursuing sectarian policies violates the establishment clause.
- Bradfield v. Roberts*, 175 U.S. 291 (1899).
Grant to religiously affiliated hospital for state-sponsored health program does not violate the establishment clause.
- Bowen v. Kendrick*, 487 U.S. 589 (1988)
State funding of sex education by religiously affiliated groups does not violate the establishment clause, unless the program's primary effect is found to advance religion.
- Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973).

“Seriously divisive political consequences” may be taken into account in deciding whether government funding of religiously affiliated education violates the establishment clause.

Hunt v. McNair, 413 U.S. 734 (1973).

State issuance of revenue bonds benefitting a Baptist-controlled college does not violate the establishment clause.

Fordham University v. Brown, 856 F. Supp. 684 (D.D.C. 1994).

Funding for radio equipment to be used in University’s broadcasting of religious services violated establishment clause.

Lemon v. Kurtzman, 403 U.S. 602 (1971).

State funding of salary subsidies for teachers in religiously affiliated elementary schools conducting state-sponsored programs violates the establishment clause.

Roemer v. Board of Public Works, 426 U.S. 736 (1976).

State grants to religiously affiliated colleges do not violate the establishment clause when grants are restricted to secular uses.

Rosenberger v. Rector and Visitors of University of Virginia, 115 S. Ct. 2510 (1995).

Denying state university funds to religiously oriented student-run publication was unconstitutional because the governmental program at issue was neutral toward religion and therefore the funding did not violate the establishment clause.

School District of Grand Rapids v. Ball, 473 U.S. 373 (1985).

Aid to religiously affiliated elementary schools violates the establishment clause, where it serves as symbolic union of church and state conveying a message of support for religion.

Tilton v. Richardson, 403 U.S. 672 (1971).

Construction grants to religiously affiliated institutions of higher learning do not violate the establishment clause, where they are conditioned on the permanent restriction of the use of the building to secular purposes.

Widmar v. Vincent, 454 U.S. 263 (1981).

A state university’s denial of access by religious groups to facilities generally available to others violates the constitutional guarantee of free speech; allowing such access does not violate the establishment clause.

Walz v. Tax Commission, 397 U.S. 664 (1970).

Property tax exemptions for religious organizations do not violate the establishment clause.

Witters v. Washington Department of Services to the Blind, 474 U.S. 481, *reh’g denied*, 475 U.S. 1091 (1986).

Governmental grants of tuition assistance to students at religiously affiliated colleges do not violate the establishment clause.

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- Comment. "Having One's Cake and Eating it Too: Government Funding and Religiously Affiliated Colleges and Universities." 1989 *Wisconsin Law Review* (Sept.-Oct. 1989): 1061-1138. (Authored by Marjorie Reiley Maguire).
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B. Religiously-Based Exemptions from General Legal Duties

Judicial Opinions:

- Bob Jones University v. United States*, 461 U.S. 574 (1983).

Denial of tax exempt status to religiously affiliated university engaging in racial discrimination does not violate either the free exercise or establishment clauses.

Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327 (1987).

Title VII exemption for religious organization's secular activities does not violate the establishment clause.

EEOC v. Kamehameha Schools/Bishop Estate, 990 F.2d 458 (9th Cir.), cert. denied, 114 S. Ct. 439 (1993).

Title VII exemptions not applicable to a religious school which is found to have become "primarily secular".

EEOC v. Southwestern Baptist Theological Seminary, 651 F.2d 277 (5th Cir. 1981), cert. denied, 456 U.S. 905 (1982).

Title VII exemption for seminary in regard to faculty does not violate the establishment clause.

Gay Rights Coalition v. Georgetown University, 536 A.2d 1 (D.C. App. 1987).

University had free exercise right to withhold official recognition from homosexual rights group, notwithstanding interpretation of local statute to the contrary, but it had no such right under the same circumstances to deny tangible benefits to the group.

Maguire v. Marquette University, 627 F. Supp. 1499 (E.D. Wis. 1986), aff'd on other grounds, 814 F.2d 1213 (7th Cir. 1987).

Title VII exemption exists for religiously affiliated university denying employment based on candidate's moral positions.

Miami Herald Publishing Company v. Tornillo, 418 U.S. 241 (1974).

Statute requiring that newspapers give "equal time" to opposing editorial views violates constitutional guarantee of free speech.

Pime v. Loyola University of Chicago, 803 F.2d 351 (7th Cir. 1986).

Title VII exemption to a religiously affiliated university's reservation of three vacancies in tenure-track positions to members of sponsoring religious order does not violate the establishment clause.

State v. Schmid, 423 A.2d 615 (N.J. 1980).

University may condition on-campus distribution of printed materials on prior university permission without violating the right of free speech.

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