

Who Owns Jesuit Colleges and Universities?

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This topic involves the obvious question of who is liable and accountable in a legal sense for a Jesuit college or university. It also involves the very pertinent question: Who is responsible for the school as a Jesuit institution of higher education in today's academic scene in the United States? Some knowledge of historical development is required to understand our present position. Such knowledge will also provide enlightenment on the control structures and leadership in these Jesuit institutions.

Prior to the 1960s the situation of Jesuit colleges and universities in the United States was quite clear. The educational institution was identified with the religious congregation, in this case the Society of Jesus. A Jesuit college or university meant one corporate body, and the Society of Jesus owned and operated the entire establishment. Jesuits spoke of their institutions as "ours." The Jesuit community and the Jesuit institution were one and the same entity. The sole ownership of the entire complex was vested in the *domus religiosa*, the religious house or community. Ownership here meant Jesuit control, and this was exercised in deciding academic, religious and financial practices and policy. But it also

meant ownership in a legal sense, since all Jesuit institutions were legally incorporated in the United States, and members of the Society of Jesus formed the legal corporations as trustees and officers.

The operation of the educational institution was carried out within the traditional religious order framework of priorities, administrative procedures, and structures of authority. The key players were numerous. There were, first, the superior general of the order and the provincial superiors. (The superior general has authority over the worldwide Society. "General" here is not a military term but refers to a universal authority. A provincial superior has authority over a specific geographical and administrative unit called a "province," and thus is distinguished

from the "general" or universal superior. There are ten provincial superiors in the United States).

Other key players were the presidents of the Jesuit colleges and universities, and the province prefects of studies. (The presidents for a long period of time were also the rectors, i.e., the local superiors of the Jesuit religious community. "Local" meant they were the religious superiors of a single house or community in a province and thus distinguished from the general and the provincial superior. The province prefects functioned as aides to the provincials during a certain period of this history.)

For a time there was also a national secretary of education

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and the Jesuit Educational Association (with its president), later to be replaced by the current Association of Jesuit Colleges and Universities (with its president). The key players here were all Jesuits.

The best and most complete treatment of the way in which the Jesuit institutions of higher education were conducted between 1920 and 1970 is to be found in *The Governance of Jesuit Colleges in the United States, 1920-1970* by the late Father Paul A. FitzGerald SJ. He traces the valiant efforts of Jesuit educators, beginning in 1920, to adapt what was a European Jesuit model of administration to the colleges and universities in the United States where the needs and challenges were so different. In his documented study, Father FitzGerald shows how an initial governing body, called “The Inter-province Committee” evolved into the Jesuit Educational Association (JEA) in 1934, which was eventually reorganized as the Association of Jesuit Colleges and Universities (AJCU) in 1970. This is by no means a bloodless account of facts and figures. To be met throughout the book are many interesting and colorful personages who played major roles in the development of Catholic higher education.

Until the 1960s the United States provincials, acting as the Board of Governors of the Jesuit Educational Association, were the key figures in the governance of Jesuit colleges and universities. They had to apply to the superior general in Rome for a variety of permissions (for instance, naming the Jesuit rector/president and other major officials, initiating or eliminating academic programs, changing admission requirements, introducing co-education, building and construction programs, etc.). In addition, as an intermediary between the presidents of the institutions and the provincials, there was also a president of the Jesuit

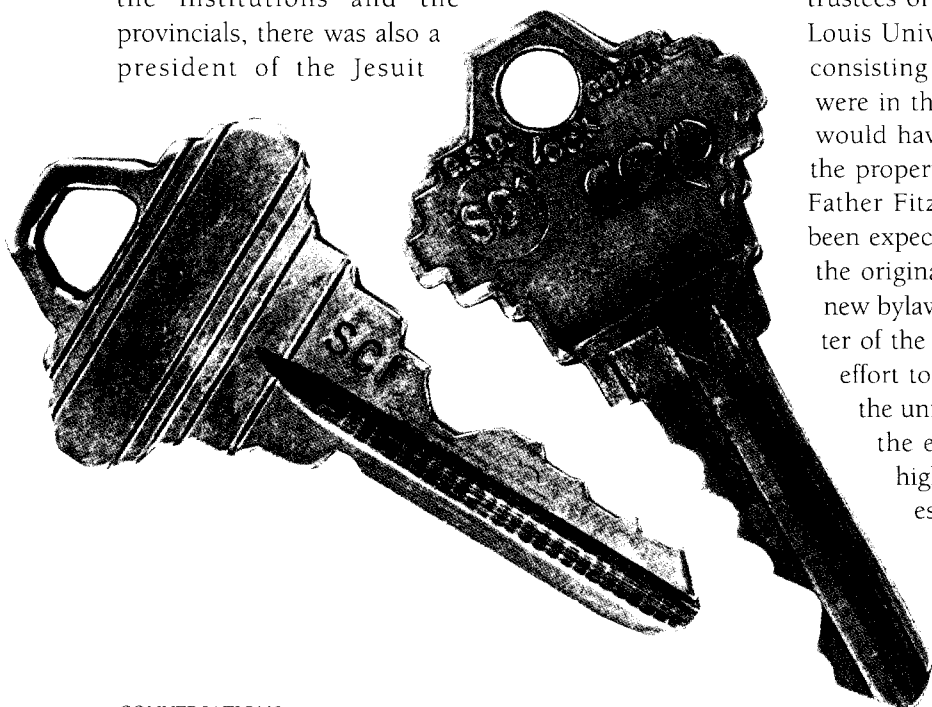
Educational Association. The rector/president was limited in what he could do on his own.

As the Jesuit schools grew and became more complex, and as the Jesuit presidents became more and more involved in the national educational scene, it became clearer and clearer that some changes had to be made. Fortunately, the context in the United States and on the world scene was one conducive to major changes. The Second Vatican Council (1962-1965) and the Thirty-First General Congregation (the legislative body) of the Society of Jesus (1965-1966) opened the way for such changes in the field of Jesuit higher education.

Three changes had particular significance for the ownership and governance of Jesuit institutions. In the first of them, the Jesuit presidents took over from the provincials as the board of directors of Jesuit higher education. Father FitzGerald describes this process in detail, and as one might suspect, it was not “a piece of cake.”

The second major change was the separation of Jesuit communities, through legal incorporation, from the colleges/universities. Saint Louis University was the first to do this. In 1967 it created a separate corporation embodying the Jesuit community which thus became legally distinct from the university. The assets of the community included simply its residence and the facilities connected with it. All of the other assets of the previously single community/university corporation were left with the university alone. As administrators and faculty members the Jesuits would contract with the university for their services and receive compensation according to their academic rank or position. That compensation would go directly to the Jesuit community for its ongoing support.

The third major change affected the boards of trustees of the Jesuit institutions. Again in 1967, Saint Louis University instituted a newly constituted board consisting of Jesuits and lay people. The lay members were in the majority and the board was assured that it would have true legal control of and responsibility for the properties and policies of Saint Louis University. As Father FitzGerald says, “Contrary to what might have been expected, this unusual move involved no change in the original charter of Saint Louis University, although new bylaws were formulated to ensure the Jesuit character of the university. Basically, the new structure was an effort to make the board and its actions better reflect the university’s several constituencies; to capitalize on the emergence of lay people (after Vatican II) in highly responsible positions in Catholic enterprises; and to separate the policy-making function from the internal administration of the university, ‘in keeping with modern university practice.’ [When the board was composed



of Jesuits only, both the policy making body and those in charge of the internal administration were the same people.] In approving this arrangement, the General [Father Pedro Arrupe] pointed out 'that the change was in line with a decree on education which was adopted...by the 31st General Congregation'.¹

Saint Louis University had initiated these changes on an experimental basis. After their approval the United States provincials in 1968 asked Father Arrupe to allow other Jesuit institutions of higher education to introduce similar changes. This would permit Jesuit communities whose primary work was higher education to establish a corporation that would be separate and distinct from the educational institution while still cooperating with it. It would also permit the revision of the corporate structure of the educational institution so that lay people could be added to the board of trustees or directors in whatever proportion was decided upon.

The superior general accepted these proposals, but it was up to the individual institution to submit its requests to him through the provincial superior of the province in which it was located. Approval was given to these requests, so that now it is the board of trustees or directors which is legally responsible for these institutions. This was a long and difficult process which engendered passionate debate and left many scars.

Today all of the Jesuit institutions have such a board, but for precise details the individual charters and bylaws have to be consulted. Although all but one institution provide for a majority of lay members, some specify certain percentages of lay and Jesuit members. In addition to the board of trustees or directors, some few institutions have a board of members whose prime responsibility is to elect the members of the board of trustees or directors. Most of the Jesuit communities are separately incorporated and some have a sustaining agreement which defines the relationship between the community corporation and the corporation of the college or university. So much for a brief account of the legal niceties of corporate ownership in response to the first meaning for Jesuit schools of that term "own."



The second question on ownership asked at the beginning of this essay refers to the responsibility for the well-being of the school as a Jesuit college or university in the United States today. In so many ways it is a much more important question and has more serious implications than the first one. The responsibility involved here looks to the identity and quality of the institution as a Jesuit college or university. This should be the concern of the whole college or university community, but it is obvious that the faculty, the president and his administrative team, and the board of trustees or directors have a special role to play here. Only if together in concert they all "own" the school can it continue to have such an identity and quality as a Jesuit institution. Their endeavor to meet this responsibility is, of necessity, a continuing and cooperative effort. It is a part of the ongoing conversation that builds a college or university, that helps the community which constitutes that school to understand its Jesuit character. It is such conversation that this journal wants to foster and the varying implications of that ownership are spread throughout the other essays of this first issue of *Conversations*.

¹ Paul A. FitzGerald SJ, *The Governance of Jesuit Colleges in the United States, 1920-1970*, Notre Dame: University of Notre Dame Press, 1984, p. 202.