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THE ALIENATION OF TEMPORAL GOODS  
IN CLERICAL RELIGIOUS INSTITUTES

by  
Douglas P. STAMP, C.Ss.R.

A dissertation submitted to the Faculty of Canon  
Law, Saint Paul University, Ottawa, Canada, in partial  
fulfillment of the requirements for the degree of  
Doctor of Canon Law

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## ABBREVIATIONS

<i>AAS</i>	Acta Apostolicae Sedis
<i>CCEO</i>	Code of Canons of the Eastern Churches
<i>CLD</i>	Canon Law Digest
<i>CLSA</i>	Canon Law Society of America

## INTRODUCTION

Many religious institutes have found it necessary to discontinue some of their apostolic works because of declining membership or new situations in ministry. The closing of various apostolates has often led to the sale of related property. The frequency of these sales or alienations raises questions about how to protect temporal goods which belong to the Church.

Since the promulgation of the *Code of Canon Law* in 1983, some articles but few books, if any, have been written exclusively on the alienation of temporal goods with particular application to clerical religious institutes. One of the major differences between the 1917 Code and the present one, as regards the alienation of temporal goods, is that the new Code does not establish concrete universal laws for every situation, but rather it is satisfied with suggesting broad norms.

The 1983 Code places upon religious institutes the responsibility of devising proper law to determine the limits of ordinary administration and those elements necessary for acts of extraordinary administration. In spite of clear distinctions now made in the legislation, some institutes

still consider alienation as an act of extraordinary administration. Of particular concern in this study, then, is the alienation of temporal goods and the norms which different institutes have established for this process.

The purpose of this work, therefore, is to ask whether or not sufficient norms and policies have been put in place to protect the financial security of clerical religious institutes. I also wish to propose certain practical measures to address any void in the proper legislation. The study consists of four chapters. Chapter one provides a series of definitions and asks what is the canonical understanding of alienation as distinct from an act of ordinary or extraordinary administration.

Chapter two provides an overview of the legislation on alienation. I briefly trace its development from the time of the early Church to the 1917 Code of Canon Law where canons 534 and 1530-1533 defined what constituted alienation and under which conditions it could take place within religious institutes. The legislation of the Vatican II period set the stage for the revised Code promulgated in 1983.

Chapter three begins with an analysis of the revision process. It then follows with a study of the two canons central to our thesis, canons 638 and 1292, and examines what is required for an alienation to be both valid and licit and how one is to dispose of the proceeds received.

Since the term alienation applies not only to the transfer of property already owned, but also, to any transaction in which the patrimonial condition of a juridic person can be affected adversely, it will be necessary to determine which potentially jeopardizing acts are subject to the procedures for alienation and which ones are not. The chapter concludes with an examination of new situations that will eventually need to be addressed.

Since the present Code places upon religious institutes the responsibility of determining proper norms to govern their temporal affairs, chapter four examines the constitutions, statutes, and financial directories (where applicable) of ten clerical religious institutes (monastic, mendicant, and congregations with simple vows) having houses in Canada, regarding the administration of their temporal goods. An analysis of these documents attempts to determine whether or not, in matters relating to alienation of ecclesiastical property, these institutes have adequate norms in place to carry out their roles as canonical stewards. The chapter will indicate trends in the legislation of the various institutes and note areas of concern which appear to have received little attention. Finally some recommendations will be made regarding the necessity of appropriate norms for alienation and how financial directories can serve as a means of clarifying these norms in order to protect the temporal goods of an institute.

As new situations continue to arise and as more and more church property becomes liable for sale or transfer, this study, hopefully, will help us grasp more clearly the significance of the canons and the need for proper management of ecclesiastical goods so that the Church will continue to have available for its mission and needs those means which are so often essential for these purposes.

## CHAPTER ONE

### THE CONCEPT OF ALIENATION

A jigsaw puzzle is a "set of irregularly cut pieces of pasteboard, wood, or the like that forms a picture or design when fitted together."<sup>1</sup> When we open a jigsaw puzzle we first see the irregularly cut pieces. On first glance the contents do not resemble the city of Rome that the box's front cover brightly displays. It is only after meticulously connecting one irregular piece to another that the picture begins to take form and shape. When all is completed, we see the various landmarks that leave little doubt that this is indeed a picture of Rome.

The image of a jigsaw puzzle aptly applies to the notion of alienation of temporal goods within the Catholic Church. Much of the terminology represents concepts akin to the various irregularly shaped pieces of a jigsaw puzzle. These concepts must be examined and understood in their proper context if we are to view with clarity the whole picture called "alienation".

This chapter will provide, then, the framework for an examination of the alienation of temporal goods in clerical, religious institutes. Four points need to be examined and

---

<sup>1</sup> R. Costello, ed., *Webster's College Dictionary*, New York, Random House, 1991, pp. 726-727.

clarified. First, a definition or description of alienation itself, including the two-fold perspective of the transfer of ownership and of any act that jeopardizes the patrimonial condition of a juridic person, is needed. Secondly, because alienation of goods within the Church often has consequences in civil society, the relationship between canon law and civil law will be explored. Thirdly, several juridical expressions relating to alienation will be defined. Fourthly, because the right to acquire and possess property carries with it the task of administration, the relationship between administration and alienation will be explored.

This preliminary identification of the major parts of our canonical puzzle will provide the necessary foundation to enable us to examine legislation governing the alienation of temporal goods in clerical religious institutes from the 1917 Code to the present one, and eventually to present a coherent picture not immediately visible in each of the separate parts.

## I. ALIENATION

Canon 638, §3 of the 1983 Code of Canon Law provides for religious the legislation governing the alienation of temporal goods and other transactions in which the patrimonial condition of a juridic person can be adversely affected:

For validity of alienation and any other business transaction in which the patrimonial condition of a juridic person can be affected adversely, there is required the written permission

of the competent superior with the consent of the council. If, moreover, it concerns a business transaction which exceeds the highest amount defined for a given region by the Holy See, or items given to the Church in virtue of a vow, or items of precious art or of historical value, the permission of the Holy See is also required.<sup>2</sup>

Alienation then has two distinct connotations.<sup>3</sup> What are

---

<sup>2</sup> Canon 638, §3, "Ad validitatem alienationis et cuiuslibet negotii in quo condicio patrimonialis personae iuridicae peior fieri potest, requiritur licentia in scripto data Superioris competentis cum consensu sui consilii. Si tamen agatur de negotio quod summam a Sancta Sede pro cuiusque regione definitam superet, itemque de rebus ex voto Ecclesiae donatis aut de rebus pretiosis artis vel historiae causa, requiritur insuper ipsius Sanctae Sedis licentia." *Code of Canon Law*, Latin-English edition, translation prepared under the auspices of the Canon Law Society of America, Washington, DC, Canon Law Society of America, 1983, xlii-668p (hereafter cited as 1983 Code).

Canons from the 1917 Code will be identified with that year in parenthesis.

<sup>3</sup> For an analysis of the term "alienation", see J. Cleary, *Canonical Limitations on the Alienation of Church Property*, Washington, DC, The Catholic University of America, 1936, pp. 2-5; M. Conte a Coronata, *Institutiones iuris canonici*, vol. II, *De Rebus*, editio altera aucta et emendata, Taurini, Romae, Marietti, 1939, no. 1070, pp. 481-488 (hereafter cited as Coronata); A. Couly, art. "Aliénation", in *Dictionnaire de droit canonique*, R. Naz (ed.), Paris, Letouzey et Ané, 1935, vol. 1, pp. 403-415; W. Doheny, *Practical Problems in Church Finances*, Milwaukee, The Bruce Publishing Company, 1941, pp. 21-22 (hereafter cited as Doheny); E. L. Heston, *The Alienation of Church Property in the United States*, Washington, DC, The Catholic University of America, 1941, pp. 69-71 (hereafter cited as Heston); J. McManus, *The Administration of Temporal Goods in Religious Institutes*, Washington, DC, The Catholic University of America, 1937, pp. 119-120 (hereafter cited as McManus); A. Maida and N. Cafardi, *Church Property, Church Finances, and Church-Related Corporations*, St. Louis, MO, The Catholic Health Association of the United States, 1984, pp. 85-91 (hereafter cited as Maida and Cafardi); F. G. Morrisey, "The Conveyance of Ecclesiastical Goods", in *Proceedings of the CLSA*, 38(1976), pp. 123-137; J. B. Stenger, *The Mortgaging of Church Property*,

they? First, it implies a transfer of property already owned.<sup>4</sup> This may take place through sale, exchange, or donation. In its strict sense, then, it is the conveyance to another party of all or part of a public juridic person's stable patrimony.<sup>5</sup>

Second, in its broad sense, alienation may refer to any transaction whereby the *dominium*<sup>6</sup> of property is diminished without necessarily being entirely surrendered.<sup>7</sup>

Thus we can see that what began as the direct transfer of

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Washington, DC, The Catholic University of America, 1942, pp. 75-89 (hereafter cited as Stenger).

<sup>4</sup> See Heston, p. 69.

<sup>5</sup> See F. G. Morrissey, "Juridic Status: Canonical Provisions, Possible Applications", in *Health Progress*, 67(1986), no. 7, p. 45.

<sup>6</sup> The term *dominium* was an expression contained in private law and it characterized the relationship between the person and his goods. J. A. Doyle, in *Civil Incorporation of Ecclesiastical Institutions: A Canonical Perspective*, JCD diss., Ottawa, Saint Paul University, 1989, pp. 111-113 (hereafter cited as Doyle, *Civil Incorporation*), states that the Roman law concept of *dominium* is not entirely transferable to the canonical notion of ownership because of the developments that have taken place in the legal sciences and in the life of the Church. T. Vowell summarizes Doyle's comments by stating that "'ownership' in its canonical tradition involves the presence of three elements: (1) the juridical capacity of subjects, acquired or created by law, to acquire, retain, administer and alienate goods; (2) the exercise of rights, granted by a higher authority; (3) and the use of those rights in relation to a specific purpose of the Church", in T. Vowell, *The Acts of Financial Administration by Diocesan Bishops According to the Norms of Canon 1277*, JCD diss., Ottawa, Saint Paul University, 1991, p. 10.

<sup>7</sup> See F. L. Demers, *The Temporal Administration of the Religious House of a Non-Exempt, Clerical, Pontifical, Institute*, Washington, DC, The Catholic University of America, 1961, p. 66.

ownership from one to another gradually assumed a wider significance to include any contract by which the patrimonial condition of the Church was worsened:

In canonical terminology, therefore, alienation refers not only to sale, exchange, donation but even to mortgages, leases, rentals, loans, easements, surety for others, the contracting of debt, yielding lawsuits and pawning.<sup>8</sup>

For, as E. Heston explains:

the language of the Code applies the term "alienation" to *mortgages*, which confer on another a conditional right and title to church property; to *leases* and *rentals* extending for a period of time longer than nine years, since complete ownership of property is thus hampered by another's legal right to its use; to the negotiation of *loans*, because another party thereby acquires a conditional right to a part of ecclesiastical property corresponding to the amount of the loan; to the allowing of passive *easements* or *servitudes* or the renunciation of active easements and servitudes, since the former bestow on another the right to use of church property and the latter deprive the church body of a right already acquired.<sup>9</sup>

Alienation, understood in the broad sense, also includes a number of other transactions. Again, as Heston outlines,

there are classified *surety for others*, since this implies an added liability burdening church goods; the *contracting of debts* because ecclesiastical administrators are thereby decidedly restricted in the use of the rights consequent on the ownership of their property; *compromise* and *yielding lawsuits*, whereby the Church consents to a real diminution of her objective rights for the sake of

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<sup>8</sup> M. de Witt, "The Alienation of Church Property", in *The Jurist*, 14(1954), p. 395.

<sup>9</sup> Heston, p. 70.

preserving or establishing harmony or concord; pawning of ecclesiastical goods, since this puts such goods in the custody and under the partial ownership of the person advancing the money. In a word, alienation understood in this very wide sense, includes any and all contracts whereby the condition of the Church is legally jeopardized.<sup>10</sup>

In 1936 the apostolic delegate to the United States wrote to the religious superiors of the country listing the formalities required for the alienation of property and the contracting of debt. He stated that

the term *alienation* includes not only purchases or transfers of property, but includes as well any contract, debt, or obligation. The Canon Law regards all transactions, which may render the financial condition of the Institute, Province, or religious house less secure, as alienations.<sup>11</sup>

In this study we shall be using the term in the broad sense, unless it is otherwise clear from the context.

## II. CANON LAW AND CIVIL LAW

Because alienation involves such matters as mortgages and sale of property we must be cognizant of civil law as well as of canon law. Nevertheless, in both the 1917 and the 1983 Codes

the Church has claimed a certain independence from the civil power. Canon (1917) 1495 states that

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<sup>10</sup> Ibid.

<sup>11</sup> A. Cicognani, Apostolic Delegate's letter to the religious superiors in the United States, Nov. 13, 1936, in *CLD*, 2(1935), pp. 161-166.

the Catholic Church and the Apostolic See have an inherent right, without restriction and independent of civil authority, to acquire, own and administer temporal property in the prosecution of the ends for which they were established.<sup>12</sup>

This same canon is repeated in the 1983 Code, canon 1254, with two slight changes. First, the words "Apostolic See" are dropped,<sup>13</sup> and second, in addition to the right to acquire, own and administer temporal goods, the right to alienate is also added.<sup>14</sup>

Despite these claims to independence from civil authority, the Catholic Church recognizes that its institutions are creatures of two worlds, church and state. They are born in both and exist in both; they have responsibilities to the Church and the State and are governed by both.<sup>15</sup> The Church states that religious bodies have the

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<sup>12</sup> Canon 1495 §1: "Ecclesia catholica et Apostolica Sedes nativum ius habent libere et independenter a civili potestate acquirendi, retinendi et administrandi bona temporalia ad fines sibi proprios prosequendos." For an analysis of the implications of the Church's right to acquire temporal goods, see: J. Goodwine, *The Right of the Church to Acquire Temporal Goods*, Washington, DC, The Catholic University of America, 1941, viii-119p.

<sup>13</sup> Canon 113 defines the Catholic Church and the Apostolic See as having the nature of moral persons. Both possess all of the rights of a juridic person.

<sup>14</sup> Canon 1254 §1: "Ecclesia catholica bona temporalia iure nativo, independenter a civili potestate, acquirere, retinere, administrare et alienare valet ad fines sibi proprios prosequendos."

<sup>15</sup> See A. Maida, "Canonical and Legal Fallacies of the McGrath Thesis on Reorganization of Church Entities", in *The Catholic Lawyer*, 19(1973), p. 283 (hereafter cited as Maida,

right to govern themselves according to their own norms. However, even in the eyes of the Church this right is not absolute but is acknowledged, provided that the just requirements of public order are observed.<sup>16</sup> The conciliar declaration on religious freedom states that

the right to religious freedom is exercised in human society; hence its exercise is subject to certain regulatory norms. In the use of all freedoms, the moral principle of personal and social responsibility is to be observed. In the exercise of their rights, individual men and social groups are bound by the moral law to have respect both for the rights of others and for their own duties toward others and for the common welfare of all. Men are to deal with their fellows in justice and civility.

Furthermore, society has the right to defend itself against possible abuses committed on the pretext of freedom of religion. It is the special duty of government to provide this protection. However, government is not to act in arbitrary fashion or in an unfair spirit of partisanship. Its action is to be controlled by juridical norms which are in conformity with the objective moral order.

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"McGrath Thesis"); see also R. T. Kennedy, "McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil-Law Status of Church-Related Institutions in the United States", in *The Jurist*, 50(1990), pp. 351-401 (hereafter cited as Kennedy).

<sup>16</sup> "His igitur communitatibus, dummodo iustae exigentiae ordinis publici non violentur, iure debetur immunitas, ut secundum proprias normas sese regant, Numen supremum cultu publico honorent, membra sua in vita religiosa exercenda adiuvent et doctrina sustentent atque eas institutiones promoveant, in quibus membra cooperentur ad vitam propriam secundum sua principia religiosa ordinandam" (Second Vatican Council, Declaration on religious freedom, *Dignitatis Humanae*, in *AAS*, 58(1966), para 4, p. 932, translated in W. Abbott (ed.), *The Documents of Vatican II*, J. Gallagher, trans. ed., New York, Guild Press, 1966, p. 682 [hereafter cited as Abbott]).

These norms arise out of the need for effective safeguard of the rights of all citizens and for peaceful settlement of conflicts of rights.<sup>17</sup>

In paragraph 13 of this same document the Church states a two-fold basis for having religious freedom. The first is the God-given freedom to extend to people the care necessary for the salvation of souls. Second, the Church claims for its members the freedom, based on civil rights, not to be hindered in leading their lives in accordance with their conscience.<sup>18</sup> A harmony exists, the document maintains, between the freedom of the Church and the religious freedom which is to be recognized as the right of all and sanctioned by

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<sup>17</sup> "Ius ad libertatem in re religiosa exercetur in societate humana, ideoque eius usus quibusdam normis moderantibus obnoxius est.

"In usu omnium libertatum observandum est principium morale responsabilitatis personalis et socialis: in iuribus suis exercendis singuli homines coetusque sociales lege morali obligantur rationem habere et iurium aliorum et suorum erga alios officiorum et boni omnium communis. Cum omnibus secundum iustitiam et humanitatem agendum est.

"Praeterea cum societas civilis ius habet sese protegendi contra abusus qui haberi possint sub praetextu libertatis religiosae, praecipue ad potestatem civilem pertinet huiusmodi protectionem praestare; quod tamen fieri debet non modo arbitrario aut uni parti iniquo favendo, sed secundum normas iuridicas, ordini morali obiectivo conformes, quae postulantur ab efficaci iurium tutela pro omnibus civibus eorumque pacifica compositione..." (*Dignitatis humanae*, no. 7, p. 934, translation from Abbott, pp. 686-687).

<sup>18</sup> See Abbott, pp. 693-694.

constitutional law.<sup>19</sup> In recognizing this right of all people, the Church is acknowledging that its freedom may be limited, once again, for the good of social order. This restriction can, by extension, be applied to the temporal order. For although canon 1254 claims the Church has complete independence from civil authority, at least one of its conciliar documents and several other canons of the Code not only recognize the civil authority but incorporate the norms of civil law into its own system, that is, making them equivalent to ecclesiastical norms.<sup>20</sup> As L. Orsy points out, this is more than a mere recognition of civil law; it is civil law made into canon law.<sup>21</sup> This "canonization" of civil law is clearly articulated in canon 22 which states:

Civil laws to which the law of the Church defers should be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless it is provided otherwise in

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<sup>19</sup> "Simulque Christifideles, sicut et ceteri homines, iure civili gaudent ne impediuntur in vita sua iuxta conscientiam agenda. Concordia igitur viget inter libertatem Ecclesiae et libertatem illam religiosam, quae omnibus hominibus et communitatibus est tamquam ius agnoscenda et in ordinatione iuridica sancienda." (*Dignitatis humanae*, no. 13, p. 939).

<sup>20</sup> We are using the expression "civil law" in the broad sense of the term, referring to legislation passed by civil authority for the well-being of society. Thus, we are not limiting ourselves to the concept of "civil law" as found, for example, in the province of Québec.

<sup>21</sup> See L. Orsy, "General Norms", in J. A. Coriden, T. J. Green, and D. E. Heintschel (eds.), *The Code of Canon Law: A Text and Commentary*, New York, Mahwah, NJ, Paulist Press, 1985, p. 38.

canon law.<sup>22</sup>

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<sup>22</sup> Canon 22: "Leges civiles ad quas ius Ecclesiae remittit, in iure canonico iisdem cum effectibus servantur, quatenus iuri divino non sint contrariae et nisi aliud iure canonico caveatur."

*The Code of Canon Law* specifies several instances where civil law is to be observed unless, as canon 22 suggests, it is contrary to divine law or canon law provides otherwise. For instance, canon 98 states that in order to designate a guardian for a minor, civil law should be followed unless there are special circumstances. Canon 110 recognizes legally adopted children as equivalent to natural children. Canon 197 states the Church accepts prescription as it exists in civil legislation as a means of acquiring or losing a subjective right; or freeing oneself from an obligation. Canon 877 provides that in case of adoption the names of natural parents are to be included in the baptismal record if such is prescribed in the civil law. Canon 1284 §2, 2° states that administrators are to ensure that the ownership of ecclesiastical goods is safeguarded through civilly valid methods. Canon 1286, 1° states that administrators are to observe meticulously the civil laws pertaining to labour and social policy according to Church principles in the employment of workers. Canon 1290 states that, unless otherwise provided, regulations on contracts and payments that are determined in civil law for a given territory are to be observed in canon law with the same effects in a matter which is subject to the governing power of the Church. Canon 1500 calls for observance of the civil law in regard to a possessory action for an object whose possession is in question.

Other canons simply suggest one be attentive to what civil law says on a particular matter without canonizing the civil law. For example, canon 231 states that lay people should receive remuneration for work they do with due regard to the prescriptions of civil law. Canon 668 requires individuals to make a will before their perpetual profession in an institute of consecrated life, that is, if possible, civilly valid. Canon 1062 gives conferences of bishops the power to regulate promises of marriage; they, however, must take into consideration not only existing customs but also existing civil laws. Canon 1071, except in cases of necessity, prohibits anyone from assisting without permission of the local ordinary at a marriage that cannot be recognized or celebrated in accord with the norm of civil law. However, while such a marriage might not be civilly valid, it could take place despite the civil law and if all is in order it

A further specification of civil law's becoming canon law is evident in canon 1290 regarding contracts. It states:

Whatever general and specific regulations on contracts and payments are determined in civil law for a given territory are to be observed in canon law with the same effects in a matter which is subject to the governing power of the Church, unless the civil regulations are contrary to divine law or canon law makes some other provision, with due regard for the prescription of canon 1547.<sup>23</sup>

While the Church acknowledges a relationship with civil law, it maintains its independence also. Obviously this right to acquire, retain, and administer property independent of civil authority as stated in canon (1917) 1495 and canon 1254 needs to be nuanced in light of other Church statements.

In 1968, John McGrath questioned the Church's right to own property and at the same time have it civilly incorporated. He maintained that catholic institutions

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would be canonically valid. Canon 1105 §2 permits a marriage by proxy if the mandate has been signed by the person who gave it as well as by the pastor or the local ordinary where the mandate was issued, or by a priest delegated by either of these, or at least by two witnesses, or it must be arranged by means of a document which is authentic according to civil law. Canon 1274 §5 states that, if possible, institutes established for the support of clergy and others who serve the Church are to be so established that they are recognized under civil law. Canon 1299 states that if possible, the formalities of civil law are to be observed in making a will. Canon 1479 states that an ecclesiastical judge can admit into a trial a guardian or curator appointed by civil authorities.

<sup>23</sup> Canon 1290: "Quae ius civile in territorio statuit de contractibus tam in genere, quam in specie et de solutionibus, eadem iure canonico quoad res potestati regiminis Ecclesiae subiectas iisdem cum effectibus servantur, nisi iuri divino contraria sint aut aliud iure canonico caveatur, et firmo praescripto can. 1547."

chartered as corporations under American law were not owned by the sponsoring body. The legal title to the real and personal property became vested in the corporation itself.<sup>24</sup> And since, according to him, the charitable corporation was created to serve the general public, the equitable title was vested in the general public.<sup>25</sup> He stated:

If anyone owns the assets of the charitable or educational institutions, it is the general public. Failure to appreciate this fact has led to the mistaken idea that the property of the institutions is the property of the sponsoring body. <sup>26</sup>

Despite the repercussions of McGrath's thesis, there was little immediate response from either the Holy See or from canon lawyers.<sup>27</sup> It was a full five years before Adam Maida responded in an address published in *The Catholic Lawyer* in 1973 and another year before any response to the McGrath thesis came from the Holy See. By this time millions of dollars worth of church property had for all practical purposes been lost.<sup>28</sup>

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<sup>24</sup> See J. McGrath, *Catholic Institutions in the United States: Canonical and Civil Law Status*, Washington, DC, The Catholic University of America, 1968, p. 33 (hereafter cited as McGrath).

<sup>25</sup> See *ibid.*, p. 9.

<sup>26</sup> *Ibid.*, p. 33.

<sup>27</sup> The work was favorably reviewed by J.R. Schmidt in *The Jurist*, 28(1968), pp. 228-235.

<sup>28</sup> See letter of the Congregation for Catholic Education to the Apostolic Delegate of the United States, Jan. 2, 1974, in *CLD*, 9(1983), pp. 367-369.

McGrath's thesis centered on two fundamental points. First, he maintained, and probably rightly so, that the majority of catholic hospitals and colleges had not been canonically erected as moral or juridical persons by a formal decree. He concluded that they were therefore not moral persons in the Church and hence their properties were not ecclesiastical properties.<sup>29</sup> Secondly, McGrath held that by virtue of becoming civilly incorporated the sponsoring diocese or religious institute no longer owned the property which had become incorporated. He stated:

The property, real and personal, of Catholic hospitals and educational institutions which have been incorporated as American law corporations is the property of the corporate entity and not the property of the sponsoring body or individuals who conduct the institution.<sup>30</sup>

Maida's response was unequivocal. He maintained that while individual institutions may not have been formally erected as moral persons ("juridic persons" under the present Code), these institutions were operated by dioceses or religious institutes that were moral persons. Thus the property was, and continues to be, ecclesiastical property, despite the fact that some institutions may have been civilly incorporated.<sup>31</sup>

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<sup>29</sup> See McGrath, p. 24. See also Maida, "McGrath Thesis", p. 277.

<sup>30</sup> McGrath, p. 24.

<sup>31</sup> R. T. Kennedy offers a valuable insight into the positions of both authors. For him McGrath overlooked the possibility that educational and charitable institutions had

As Maida himself stated,

the civil law incorporation does not destroy our institutions as moral persons and does not expropriate the ecclesiastical goods of the Church... Canon law is clear that the property owned by a moral person is ecclesiastical property or ecclesiastical goods.<sup>32</sup>

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acquired canonical status prior to civil incorporation of the institution. Maida, on the other hand, argued that there could be no doubt that separately incorporated Catholic institutions are part and parcel of the moral persons which brought them into existence (see A. Maida, *Ownership, Control and Sponsorship of Catholic Institutions: A Practical Guide*, p. 37). Kennedy shows that Maida's remarks are also an oversimplification, failing to take into account charitable and educational institutions, administered by religious institutes, but from the moment of their inception, having been

"established as a civil corporation with all assets, real and personal, being conveyed by benefactors, donors, and constituents directly to the civil corporation without ever having been conveyed to the religious corporation or the religious institutes it represents." (Kennedy, p. 375).

Kennedy further states:

"It does not seem accurate to say, as did McGrath, that virtually no catholic educational, health-care, or other charitable institution which had been civilly incorporated in the United States partakes of juridic personality under the law of the Church. On the other hand, neither does it seem accurate to maintain, as did Maida ... that all such institutions partake of canonical juridic personality through the juridic personality of their sponsors. The present canonical status of institutions established while the 1917 code was in effect seems far more complicated than either McGrath or Maida appeared to realize, and requires, in each instance, detailed study of the facts surrounding the establishment and continued governance of the institution." (Kennedy, p. 400).

<sup>32</sup> Maida, "McGrath Thesis", pp. 277-278. See also J. J. Conn, *Catholic Universities in the United States and Ecclesiastical Authority*, Roma, Editrice Pontificia Universitas Gregoriana, 1991, pp. 194-211.

Working from the premise that the principles of sound administration dictates that ecclesiastical administrators take all reasonable care to protect that which is owned by the Church, Maida encourage<sup>2</sup> the incorporation of a hospital or college. He writes:

Because the Church avails herself of these legal mechanisms to protect her assets and facilitate the administration of her institutions in a complex society, is in no way to be construed as a waiver of her claim over these goods and properties as ecclesiastical. At the same time, the Church recognizes that the moment she avails herself of these civil law devices, she in some way surrenders some of her autonomy in the ownership, government and control of these properties.<sup>33</sup>

Maida's position regarding civil incorporation is more tenable than that of McGrath. Maida recommends that every religious institute and even its institutions be civilly incorporated.<sup>34</sup> When first proposing his position, he suggested that religious institutes protect themselves by including in the charter of the corporation the following points: a) the religious institute is an instrumentality of the Roman Catholic Church and subject to all the doctrines, disciplines, laws, rules, and regulations of the Catholic Church, b) reference is to be made to the constitutions and

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<sup>33</sup> Maida, "McGrath Thesis", pp. 278-279.

<sup>34</sup> The present Code also recommends that administrators safeguard, through civilly valid methods, the ownership of goods. Canon 1284, §2, 2°: "exinde debent: curare ut proprietates bonorum ecclesiasticorum modis civiliter validis in tuto ponatur."

statutes of the religious institute, and c) a dissolution clause should provide for the disposition of assets according to *The Code of Canon Law* of the Roman Catholic Church when and if the religious institute should cease to exist.<sup>35</sup> In Maida's view it was not only possible to spell out the above points in the charter of the corporation, but it was necessary to protect civilly incorporated ecclesiastical property from being lost forever. Later on, it became recognized that it was simply not adequate enough to refer to constitutions and statutes in the corporate documents. Rather, it is now generally held that only certain specific points taken from these documents are to be included in the civil documents to avoid undue intervention of the secular courts in interpreting constitutions and statutes.

McGrath may have been correct when he stated that through civil incorporation some ecclesiastical property was indeed alienated and is now no longer Church property. But Maida's point is that if one civilly incorporates with the necessary protective clauses in the charter of the corporation, it is possible to have both the civil corporation and retain the goods as Church property at the same time.

A juridic person would normally incorporate in order to give a legal civil form to one or more of its activities. In the act of incorporation, mention is to be made of how and by

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See Maida, "McGrath Thesis", p. 283.

whom the corporation is to be controlled. The corporation is used simply as a means for the juridic person to act before the civil law. While an act of incorporation can result in the alienation of temporal goods, it does not do so automatically in every case.<sup>36</sup>

The reaction from the Holy See to the McGrath thesis was first expressed in a private letter from the Congregation for Catholic Education to the then apostolic delegate to the United States. The Congregation's letter raised several points:

- 1) there is a tendency of moral persons who own and operate various colleges and universities to alienate these institutes from ecclesiastical control and ownership without ecclesiastical approbation (often citing the McGrath thesis as justification for their action);
- 2) these alienations are probably invalid both civilly and canonically;
- 3) this represents a loss of millions of dollars as well as the catholic character of these institutions, by the passivity and often tacit approval of Church superiors.

The letter proposed the possibility of a joint letter from the Congregation for Catholic Education and the Congregation for Religious and Secular Institutes stating:

- a) all colleges and universities that are considered Catholic

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<sup>36</sup> See Doyle, *Civil Incorporation*, p. 190.

should not be further alienated through civil corporate structural changes without reference first to the Holy See;

b) the "McGrath thesis" is not to be used as a pretext for any action in this regard;

c) each Bishop and major superior responsible in any way for an institution of higher learning is to send appropriate information on how the Catholic character of the institution is being maintained and guaranteed and the exact civil and canonical status of the institutions.

Ten months later a letter was jointly issued by the Congregation for Catholic Education and the Congregation for Religious and Secular Institutes. It was addressed to Cardinal John Krol, then President of the National Conference of Catholic Bishops.<sup>37</sup>

This letter called upon the National Conference of Catholic Bishops and the Conferences of Major Superiors, both men and women, to form a joint commission to study the matter of changes in the ownership of Catholic colleges and universities in the United States. The commission was to study this problem in depth and make recommendations to the two Congregations.

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<sup>37</sup> Letter from the Congregation for Catholic Education and the Congregation for Religious and Secular Institutes, Oct. 7, 1974, in *CLD*, 9(1983), pp. 369-371. According to R. Kennedy the editorial note in *CLD* erroneously states that this letter was addressed to the President (at the time) of the Conference of Major Superiors of Men's Institutes (See Kennedy, pp. 364-365).

The same letter went on to ask the commission to consider the advisability of contacting all such institutions asking them not to make any changes (or further changes where some had already been initiated) in their administrative structure or corporate status, without first informing the two congregations, and where necessary, obtaining approval from them.

Regarding the McGrath thesis the letter stated:

We know that in the course of the study, the influence of the so-called "McGrath thesis" will emerge as one of the principal bases for the action of some institutions in regard to alienation, etc. We wish to make it clear that this thesis has never been considered valid by our Congregations and has never been accepted.<sup>38</sup>

Regretfully, the responses of Maida and the Holy See to the McGrath thesis were too late to save some catholic institutions.<sup>39</sup> Nevertheless, they halted the process. While

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<sup>38</sup> Ibid., pp. 369-371.

<sup>39</sup> See J. M. Fitzgerald, "The Official Catholic Directory: Civil and Canon Law Requirements", in *The Catholic Lawyer*, 30(1986), pp. 108-109.

In retrospect it is difficult to understand how some catholic institutions allowed themselves, on the advice of their lawyers, to relinquish ownership of some of their properties through civil incorporation. Doyle states that in response to the "McGrath Thesis" a brief was prepared for the University of San Francisco by an attorney, R. Cessna. This brief concluded that "institutional property of the Church has the form of a trust and any other title of use or administration cannot change this fact. And it is from this trust concept that use of the goods, as well as control, remain with the Church. Consequently, the presidents of fifteen Jesuit universities and colleges submitted both "the McGrath Thesis" and the paper prepared by R. Cessna to their

there was never much support, within canonical circles, for the McGrath thesis, the fallout is still visible today where some administrators have a tendency to observe the civil law, while remaining ignorant of the canon law prescriptions.

The McGrath thesis raises several questions germane to our topic. What constitutes ecclesiastical goods? What is a juridic person and how does one obtain juridic personality within the Church? Canon 638 makes reference to "juridic persons", "patrimony", and "temporal goods". An understanding of the terminology is essential for a clear understanding of the concept of alienation. Several other canonical expressions, such as "temporal goods", "ecclesiastical goods", "stable patrimony", "free capital" and "fixed capital" must now also be defined.

### III. TERMS

#### A. Moral and juridical persons

The 1917 Code used the term "moral persons" to refer to those subjects who were capable, among other things, of being

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respective legal counsel for opinions. In all fifteen responses the attorneys expressed an opinion which indicated that they accepted the conclusions of "the McGrath Thesis" in favour of corporate ownership and the absence of Church control over such corporations which are creations of the State" (Doyle, p. 173).

owners of ecclesiastical goods.<sup>40</sup> In the present Code they are generally called "juridical persons"<sup>41</sup>. The expressions were used interchangeably in the 1917 Code but have different meanings in the present law. Canon (1917) 99 said that besides physical persons there are also in the Church moral persons constituted by public authority. Canon (1917) 100 said the Catholic Church and the Apostolic See have by divine ordinance the nature of a moral person. Other moral persons derived their personality either from the law itself or by a concession of the competent ecclesiastical superior. While the 1917 Code does not give a precise definition, G. Michiels, drawing from canons (1917) 87, 99 and 100, §1, arrives at the following definition:

A moral person is anything in the Church, distinct from a physical person (material cause: can. 99), which, for a religious or charitable purpose (final cause: can. 100 §1) has been constituted by public authority (efficient cause: can. 99) into a subject capable of rights and obligations (formal cause: can. 99 together with

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<sup>40</sup> Canon (1917) 1497, §1: "Bona temporalia, sive corporalia, tum immobilia tum mobilia, sive incorporalia, quae vel ad Ecclesiam universam et ad Apostolicam Sedem vel ad aliam in Ecclesia personam moralem pertineant, sunt bona ecclesiastica."

<sup>41</sup> Canon 1257 §1: "Bona temporalia omnia quae ad Ecclesiam universam, Apostolicam Sedem aliasve in Ecclesia personas iuridicas publicas pertinent, sunt bona ecclesiastica et reguntur canonibus qui sequuntur, necnon propriis statutis."

can. 87).<sup>42</sup>

The 1983 Code does not give a definition of a moral person or of a juridic person, but it distinguishes between the two terms in a way that the 1917 Code didn't. It can be said now that a moral person is one that comes into existence without the intervention of any legislation. Thus, canon 113, §1 states that the Catholic Church and the Apostolic See have the nature of a moral person by divine law itself.<sup>43</sup> Canon 113, §2 and canon 114 state that aside from physical persons there are juridic persons. While the Code does not give a precise definition of what constitutes a juridic person, canons 113, §2<sup>44</sup> and 114<sup>45</sup> describe 7 elements of such a

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<sup>42</sup> "Persona moralis scilicet est illud omne in Ecclesia, a persona physica distinctum (causa materialis: can. 99), quod in finem religiosum vel caritativum (causa finalis: can. 100 §1) publica auctoritate constitutum est (causa efficiens: can. 99) in subjectum capax iurium et obligationum (causa formalis: can. 99, coll. can. 87)", in G. Michiels, *Principia generalia de personis in Ecclesia: commentarius libri I Codicis iuris canonici, canones praeliminares 87-106*, ed. alt., Tornaci, Desclée, 1955, p. 347.

<sup>43</sup> Canon 113, §1: "Catholica Ecclesia et Apostolica Sedes, moralis personae rationem habent ex ipsa ordinatione divina."

<sup>44</sup> Canon 113, §2: "Sunt etiam in Ecclesia, praeter personas physicas, personae iuridicae, subiecta scilicet in iure canonico obligationum et iurium quae ipsarum indoli congruunt."

<sup>45</sup> 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. §2. Fines, de quibus in §1, intelleguntur qui ad opera pietatis, apostolatus

personality. A juridic person is 1) an artificial person; 2) distinct from natural persons; 3) it is established by ecclesiastical authority; 4) with an apostolic purpose; 5) it has the capacity for continuous existence; 6) with canonical rights and obligations; and 7) it is subject to the canon law under which it was created.

Canon 116, §1 then distinguishes between public and private juridic persons.<sup>46</sup> Public and private juridic persons are similar in that they are a) established by ecclesiastical authority, and b) their statutes are approved by ecclesiastical authority. They differ in that the public juridic person is governed by ecclesiastical authority as well as its statutes and also has a mission to act in the name of the Church, while the private juridic person is governed by

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vel caritatis sive spiritualis sive temporalis attinent. §3. Auctoritas Ecclesiae competens personalitatem iuridicam ne conferat nisi iis personarum aut rerum universitatibus, quae finem persequuntur reapse utilem atque, omnibus perpensis, mediis gaudent quae sufficere posse praevidentur ad finem praestitutum assequendum."

<sup>46</sup> Canon 116, §1: "Personae iuridicae publicae sunt universitates personarum seu rerum, quae ab ecclesiastica auctoritate competenti constituuntur ut intra fines sibi praestitutos nomine Ecclesiae, ad normam praescriptorum iuris, munus proprium intuitu boni publici ipsis commissum expleant; ceterae personae iuridicae sunt privatae.

§2. "Personae iuridicae publicae hac personalitate donantur sive ipso iure sive speciali competentis auctoritatis decreto eandem expresse concedenti; personae iuridicae privatae hac personalitate donantur tantum per speciale competentis auctoritatis decretum eandem personalitatem expresse concedens."

its statutes alone and does not have a mission to act in the name of the Church. An essential difference is in regard to temporal goods. The temporal goods of the private juridic person are generally regulated by the statutes of that person.<sup>47</sup> Goods of the public juridic person are considered ecclesiastical goods. They are owned by the juridic person (canon 1255), but governed by canon law and the approved statutes.<sup>48</sup>

B. Material goods

1. Temporal goods

Temporal goods may be defined as all material things which possess an economic value, that is to say, a value which can be calculated in terms of money, as for example vehicles, land, furniture, stocks, bonds, and buildings.

2. Ecclesiastical goods

In the 1917 Code, ecclesiastical goods were understood to be all temporal goods which belonged either to the entire Church or to the Holy See, or to any other moral person which had a legal existence in the Church:

According to the accepted concept of property in the 1917 Code, church goods may be classified

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<sup>47</sup> Canon 1257, §2.

<sup>48</sup> Canon 1257, §1.

first into corporeal or incorporeal property. The former consisting of those possessions having an individual existence, clear and determined, such as a building or a piece of land, and susceptible of a *jus in re*. Corporeal property may be regarded as movable and immovable according to whether the objects are immovable by nature, destination, or determination by the law, or whether they are essentially transportable with no fixed abode... Church property likewise consists of incorporeal goods such as the rights and credits of one physical or moral person over another.<sup>49</sup>

A. Maida, taking into consideration the terminology of the 1983 Code, defines ecclesiastical property as all temporal goods that belong to a public juridic person. This is sometimes referred to as "Church property".<sup>50</sup>

C. Patrimony

The word "patrimony" has a variety of meanings in canon law.

1. Spiritual patrimony

The term "spiritual patrimony" may refer to the purpose or character of an institute according to the intent of the founder or foundress as well as the institute's sound

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<sup>49</sup> See Cleary, pp. 5-6. See also S. Woywod, "The Law of the Code: Temporal Goods of the Church", *Homiletic and Pastoral Review*, 29(1929), p. 978.

<sup>50</sup> See Maida and Cafardi, p. 312.

traditions.<sup>51</sup> The decree, *Perfectae caritatis*,<sup>52</sup> referring to the spiritual patrimony of institutes stated in paragraph 2b that:

it serves the best interests of the Church for communities to have their own special character and purpose. Therefore loyal recognition and safekeeping should be accorded to the spirit of founders, as also to all the particular goals and wholesome traditions which constitute the heritage [patrimony] of each community.<sup>53</sup>

This notion has been incorporated into the present Code. Canon 578 states:

The intention of the founders and their determination concerning the nature, purpose, spirit, and character of the institute which have been ratified by competent ecclesiastical authority as well as its wholesome traditions, all of which constitute the patrimony of the institute itself, are to be observed faithfully by all.<sup>54</sup>

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<sup>51</sup> See J. Hite et al., *A Handbook on Canons 573-746*, Collegeville, The Liturgical Press, 1985, p. 335. See also cc. 578, 586, and 631 (hereafter cited as Hite et al.).

<sup>52</sup> Paul VI, Decree, *Prefectae caritatis*, in *AAS* 58(1966) pp. 702-712. English translation in *The Documents of Vatican II*, W. Abbott, ed., J. Gallagher, trans. ed., New York, Guild Press, 1966, pp. 466-482 (hereafter cited as Abbott).

<sup>53</sup> "In ipsum Ecclesiae bonum cedit ut instituta peculiarem suam indolem ac munus habeant. Ideo fideliter agnoscantur et servantur Fundatorum spiritus propriaque proposita, necnon sanae traditiones, quae omnia cuiusque instituti patrimonium constituunt". (Paul VI, Decree, *Prefectae caritatis* in *AAS*, 58((1966) p. 703. English translation in Abbott, p. 468.

<sup>54</sup> Canon 578: "Fundatorum mens atque proposita a competenti auctoritate ecclesiastica sancita circa naturam, finem, spiritum et indolem instituti, necnon eius sanae traditiones, quae omnia patrimonium eiusdem instituti constituunt, ab omnibus fideliter servanda sunt."

## 2. Personal patrimony

We may also speak of "personal patrimony" which includes all of the goods in funds, properties, securities or in any form, which belong to an individual.

## 3. Temporal patrimony of an institute

Then we may speak of an institute's "temporal patrimony" -- all of the goods in funds, properties, securities of any form, which belong to the institute.<sup>55</sup> Since not all the goods of an institute are governed by the laws on alienation, it is necessary to distinguish between its patrimony in general and its stable patrimony.

## 4. Stable patrimony

Stable patrimony is normally the immovable property and fixed capital of a public juridic person. Immovable property generally consists first of property that cannot be moved, e.g., land and buildings. Other property may be made stable by an act of the competent ecclesiastical authority or by the donor who has dedicated the property to a particular purpose. Property that is part of the stable patrimony, will be subject to the canonical procedures for alienation if such an act were

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<sup>55</sup> Hite et al., p. 335.

to take place.<sup>56</sup>

D. Capital

Stable patrimony often comprises what is known as fixed or stable capital, although the patrimony is usually more extensive than capital because it also includes rights which cannot be readily translated into terms of monetary value.

1. Free capital

Capital is understood to be the accumulated goods, possessions, and assets of a business or other group. Free capital<sup>57</sup> according to F. Morrisey, is cash on hand or money temporarily invested or put aside for future needs.<sup>58</sup> It is a capital asset to which no specific purpose has been attached, either by the donor or by a competent ecclesiastical authority. Free capital normally exists as cash or items easily converted to cash, e.g. stocks, bonds.

Morrisey also explains that

if a donor, in making a gift, specified a determined period in which the principal fund must be maintained and the income applied to a specific purpose, upon the expiration of the time specified and the fulfilment of the terms imposed, the fund

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<sup>56</sup> Maida and Cafardi, p. 337.

<sup>57</sup> Also sometimes referred to as unstable or working capital.

<sup>58</sup> See F. G. Morrisey, "Conveyance", p. 125.

then becomes free capital.<sup>59</sup>

Under the heading of free capital we can also include endowment funds that a diocese or religious institute may be using for general operating purposes.<sup>60</sup>

## 2. Stable or fixed capital

Fixed capital,<sup>61</sup> on the other hand, includes all those assets which are not in ordinary circulation. This capital constitutes the permanent basis of a diocese, religious institute or other juridic persons' financial security:

It is that sum which has been legitimately set aside to remain intact and be a source of regular income. This stable capital may consist of actual cash deposited at interest in a bank; in securities which bring in income either in interest or in dividends; or in real estate which is rented or leased, etc., as a means of procuring steady income. All these categories of assets constitute stable capital or patrimony.<sup>62</sup>

An institute, by an act of the competent authority, may choose to immobilize some of its free capital, that is, turn it into fixed capital. Such a decision should be clearly recorded in the appropriate minutes or elsewhere. To use these funds for some other purpose than that for which they were immobilized would be an act of alienation.

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<sup>59</sup> Ibid., p. 125.

<sup>60</sup> See *ibid.*, p. 126.

<sup>61</sup> Also referred to as stable capital.

<sup>62</sup> Heston, pp. 72-73.

It can be noted that money is usually seen as a perishable object. As a medium of exchange, it has no stability in itself. However, money becomes stable in the eyes of the Church once it has been stabilized by an act of a competent ecclesiastical authority according to the norms of canon law.<sup>63</sup> Through permanent or long-term investment it becomes a tangible asset of the corporation. Thus, a second and derived concept of money as working capital must be considered, as distinct from idle money, solely used as a medium of exchange. To express this two-fold consideration, the terminology of "stable" and "non-stable" capital is often used.<sup>64</sup>

At the time of the promulgation of the 1917 Code there was more emphasis placed on land and property which constituted most of the stable patrimony of religious institutes than there is today. Money was considered less secure and less valuable at that time. However, today's economic situation seems to provide just the opposite: for many institutes huge buildings have become a liability in light of maintenance costs and heavy taxation. Today the investment of money has become a more stable means of

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<sup>63</sup> See Doheny, p. 43.

<sup>64</sup> See Cleary, pp. 7-8.

acquiring revenues.<sup>65</sup>

Heston maintains that income or possessions do not become stable capital upon acquisition. Rather it is the competent superiors, working within the framework of their constitutions and statutes, who determine what becomes part of the stable patrimony. For example, surplus funds laid aside for some future project do not automatically become part of the stable capital or stable patrimony. As well, money received from the sale of something not regulated by the laws on alienation does not automatically become part of the stable capital or stable patrimony.<sup>66</sup> Money received from wills (provided that no obligations remain to be acquitted), surplus funds which have been temporarily invested, funds which are used to meet current expenses, do not generally belong to stable patrimony.

In the case of doubt, the presumption favours not regarding it as being part of the fixed capital since to do so restricts superiors in their use of this money and that which is odious should not be imposed except when the existence of the obligation is certain (see canon 18).

It can therefore be said that stable capital consist of:  
a) all funds that have been specifically incorporated into the stable capital of a juridic person;

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<sup>65</sup> See F. Testera, "Ecclesiastical Financial Management", in *Philippiniana sacra*, 18 (1983), p. 495.

<sup>66</sup> See Heston, pp. 73-74.

- b) funds or securities received under annuity agreements, since the principal must remain intact as long as there are regular payments to be made;
- c) funds received from the sale of property which belongs to the stable capital of a public juridic person;
- d) funds or investments withdrawn from the fixed capital of the public juridic person;
- e) money or securities set aside by legitimate authority for the construction of buildings or for the purchase of other immovable property;
- f) money or securities from pious foundations.<sup>67</sup>

There are several instances in which free money in its various forms might not be subject to the restrictions affecting alienation. For instance,

- a) money employed in meeting day-to-day expenses;
- b) money used for the ordinary repair of existing buildings;
- c) resources changed from securities to simple bank deposits at interest;
- d) funds used for the purchase or construction of buildings when this money is already available;
- e) free capital used for the construction of ecclesiastical residences;
- f) funds borrowed without explicit contractual obligations, even though a nominal rate of interest be paid;

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<sup>67</sup> See *ibid.*, p. 75.

- g) income received from the sale of old church furnishings which will be used to purchase new furnishings;
- h) money obtained by mortgage contract in order to construct church buildings, with the express understanding that the mortgage is on the *buildings to be constructed*, not on the *actual* stable capital of the institute;
- i) property willed to an institute which is incapable of possessing;
- j) portions of capital transferred to safer investments, which generate an equivalent income;
- k) funds given for specific purposes;
- l) the refusal of legacies or donations.<sup>68</sup>

Aware of the need to provide financial security for an institute, those in authority must establish norms for the investment of funds, keeping in mind that the poverty appropriate to the institute is to be fostered, protected, and expressed.<sup>69</sup> An institute would also want to be cognizant of its responsibility to invest its funds in companies that are

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<sup>68</sup> See *ibid.*, pp. 77-78. Heston's list of instances not subject to the restrictions affecting alienation also included withdrawals from the investments pertaining to stable capital for the purpose of purchasing or constructing buildings which will produce income. This opinion might be questionable although some simply consider the transaction to be a conversion of capital assets.

<sup>69</sup> See Canon 635 §2.

not insensitive to christian values.<sup>70</sup>

Having defined those terms, one final piece of the puzzle to be considered in laying the foundation for an examination of the alienation of temporal goods in clerical religious institutes is the relationship between alienation and administration.

#### IV. ADMINISTRATION AS DISTINCT FROM ALIENATION

The Code of Canon Law provides no formal definition of alienation. But, having placed the term in the section on contracts, the Code attributes to alienation the concept of contract requiring the consent of the parties expressed according to law.<sup>71</sup> As has already been suggested, alienation in its broad sense is understood according to the present Code as both the transfer of ownership and any act whereby the patrimonial condition of the public juridic person is weakened. The present Code leaves little doubt that alienation is not presented as an act of administration but rather as a contract. Yet, to sell, mortgage, lease, or rent a piece of

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<sup>70</sup> See G. Sales, "La responsabilité des religieux dans les placements d'argent", in *Vie consacrée*, 45(1973), pp. 174-181.

<sup>71</sup> "Contractus definitur duorum vel plurium in idem placitum iuris consensus", in *Epitome iuris canonici*, A. Vermeersch and J. Creusen, vol. 2, 7th ed., Parisiis-Brugis, Desclée de Brouern, 1954, p. 596, no. 849 (hereafter cited as Vermeersch-Creusen).

property, or enter into any contract obviously involves administrative activity. But what form of administration? And who can exercise this power of administration within a clerical, religious institute?

The management of the temporal patrimony of a religious institute is governed partly by canons 634-640. But a full understanding of the administration of religious institutes necessitates going beyond Book II of the Code.

Canon 635 states that the temporal goods of religious institutes, since they are ecclesiastical goods, are regulated by the prescriptions of Book V, *The Temporal Goods of the Church*, unless it is expressly stated otherwise;<sup>72</sup> canon 1258 clarifies the point further, stating that the term "Church" in Book V applies not only to the entire Church and the Apostolic See but also to any public juridic person (such as a religious institute) unless it is otherwise apparent from the context of what is written or from the nature of the matter.<sup>73</sup> Thus an

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<sup>72</sup> Canon 635 §1: "Bona temporalia institutorum religiosorum, utpote ecclesiastica, reguntur praescriptis Libri V 'De bonis Ecclesiae temporalibus,' nisi aliud expresse caveatur. §2. Quodlibet tamen institutum aptas normas statuatur de usu et administratione bonorum, quibus paupertas sibi propria foveatur, defendatur et exprimatur." See also canon 1257 §1: "Bona temporalia omnia quae ad Ecclesiam universam, Apostolicam Sedem aliasve in Ecclesia personas iuridicas publicas pertinent, sunt bona ecclesiastica et reguntur canonibus qui sequuntur, necnon propriis statutis."

<sup>73</sup> Canon 1258: "In canonibus qui sequuntur nomine Ecclesiae significatur non solum Ecclesia universa aut Sedes Apostolica, sed etiam quaelibet persona iuridica publica in Ecclesia, nisi ex contextu sermonis vel ex natura rei aliud

understanding of administration within religious institutes demands a close examination of the canons of Book V as well as those of Book II.

Canon 634 gives religious institutes the right to acquire and possess property unless such is restricted by their own constitutions.<sup>74</sup> Flowing from this right to acquire and possess property is the right to administer it and to alienate it.<sup>75</sup> The administration of property entails three functions:

- 1) the maintenance and improvement of the goods already acquired;
- 2) the natural or artificial production and preservation of that which has been derived from such property;
- 3) the application of the income or other benefits to the proper objectives.<sup>76</sup>

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appareat."

<sup>74</sup> See also canon (1917) 531.

<sup>75</sup> See canon (1917) 532 and canon 634.

<sup>76</sup> See F. Testera, ed., *Religious Men and Women in the New Code of Canon Law*, Manila, University of Santo Tomas, 1984, p. 53. See also Vowell, pp. 149-150; see also G. Vromant, ed., *De bonis Ecclesiae temporalibus ad usum praesertim missionariorum et religiosorum*, Bruxelles, L'edition universelle, 1927-1938, vol. 6, no. 172, p. 195: "Administratio proprie et stricte dicta propterea complectitur actus quibus: 1) res acquisitae conservantur; 2) fructus illarum rerum gignuntur: omnes actus scilicet quibus res acquisitae meliores atque utiliores fiunt vel fecundiores; actus quoque quibus fructus tempore debito percipiuntur; necnon personis convenienter applicantur. See also Vermeersch-Creusen, vol. 2, p. 595. See also F. Wernz and P. Vidal, *Ius canonicum*, Romae, Apud Aedes Universitatis Gregoriana, 1935, vol. 4-2, pp. 211-212.

A. Ordinary and extraordinary administration

Canon 638 §1 makes a distinction between ordinary and extraordinary administration. What is required for either form is to be spelled out in the proper law of the institute, while at the same time taking the universal law into account.

1. Ordinary administration

Ordinary administration applies to the normal business practices carried out by legitimately authorized persons acting on behalf of a public juridic person. Ordinary administration normally includes such acts as:

- a) the collection and banking of funds that have been acquired;
- b) the collection of money owed from creditors;
- c) the collection of annual income from stocks, bonds, or other sources;
- d) the purchase and sale of what is required for the day-to-day life of the institute;
- e) the repair of any damages done to property;
- f) the administration of money and goods belonging to the juridic person;
- g) the acceptance of gifts;

h) certain minor leases to be entered into by the institute.<sup>77</sup>

## 2. Extraordinary administration

According to canon 638 §1, that which exceeds the limit and manner of ordinary administration is termed "extraordinary administration", an expression which was indirectly defined on July 21, 1856 by the Congregation for the Propagation of the Faith when it published, for the Netherlands, a list of general transactions that would exceed the category of "ordinary administration".<sup>78</sup> Today, Maida defines

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<sup>77</sup> See F. G. Morrisey, "Ordinary and Extraordinary Administration: Canon 1277," in *The Jurist*, 48 (1988), p. 711.

<sup>78</sup> "Concilium praedictum non potest, nisi obtenta in scriptis facultate ab Episcopo, quidquam facere, quot fines ordinariae administrationis transgreditur. Itaque non potest, nisi eadem facultate obtenta:

- a) Hereditatem, legata, donationes (solemniter factas) vel fundationes acceptare, aut iisdem renunciare;
  - b) Bona immobilia emere;
  - c) Vendere, permutare, hypothecae subiicere, oppignorare, servitute aliove modo onerare, aut ultra trium annorum spatium locare res Ecclesiae immobiles;
  - d) Vendere, permutare, oppignorare vel alio quovis modo a destinatione sua avertere obiecta artificiosa, monumenta historica, aliave mobilia alicuius magni momenti;
  - e) Magnas pecuniae summas mutuo accipere, transactiones aliosque contractus onerosos facere;
  - f) Aedes ecclesiasticas excitare, diruere, aut nova forma induere, et reparationes extraordinarias facere;
  - g) Coemeteria condere;
  - h) Facere aut supprimere parochiales, sive ad rem ecclesiasticam parochiae pertinentes, institutiones;
  - i) Imponere capitationem, collectas inducere, aut eas, quas habet ecclesia, aliis donare;
  - j) Litigare sive tamquam actor, sive tamquam reus."
- Congregation for the Propagation of the Faith, 21, July, 1856,

extraordinary administration as

activities by the canonical steward of a public juridic person that do not occur regularly or routinely, are of major import, and are not covered within the meaning of "ordinary administration". Under Pio-Benedictine jurisprudence, these included alienations, acceptance or rejection of major gifts, the purchase of land, the construction of new buildings, the opening of cemeteries, the opening of schools or other institutions, and the taking of special collections. Under the 1983 code, acts of extraordinary administration are those which are so defined by the code of canon law (e.g., alienations) or by the National Bishops' Conference or by applicable statute.<sup>79</sup>

Comparing the 1856 list with Maida's 1984 enumeration we see that the earlier listing is still applicable in many ways, although some of the points noted in the 1856 list might simply be placed today under the title of *alienation*.

F. Demers in his doctoral dissertation, offers a practical but somewhat difficult criterions for distinguishing between acts of ordinary and of extraordinary administration: he refers to the *object* or purpose and the mode of administration, an expression used in canon 638, §1. The *object* is the end or purpose of a particular act. The *mode* is the method followed in performing the act. Thus the object of

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*Codicis iuris canonici fontes*, I. Serédi, ed., vol. 7 no. 4841, Romae, Typis Polyglottis Vaticanis, 1926-1939.

<sup>79</sup> Maida and Cafardi, p. 301.

The use of "alienations" as an example of acts of extraordinary administration under the 1983 Code obviously needs to be nuanced, since, as noted, alienation is in a different legal category.

ordinary administration is to carry out those acts necessary for the day-to-day maintenance of property and people. Constitutions would determine the mode of administration and this may be further specified by major superiors. Extraordinary administration would involve those acts that go beyond routine maintenance. What constitutes ordinary and extraordinary administration may differ from institute to institute depending on the limits the constitutions place on each kind of administrative act, although as Demers suggests, proper law may determine that certain acts, because of their nature, are subject to the norms governing extraordinary administration.<sup>80</sup>

C. Acts of major importance

While canon 638 §1 distinguishes between "ordinary" and "extraordinary administration", canon 1277 introduces another form of administration under the title of "acts of major importance". Such acts were obliquely referred to in the 1917 Code, although it did not provide a method to determine which ones were to be placed under this title. The present Code, in canon 1277, clarifies this issue by stating that more important acts of administration will be determined in light of the economic situation of a diocese.

Thus the Code envisions a three-tiered system. First,

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<sup>80</sup> See Demers, pp. 57-58.

ordinary administration is comprised of acts which may be carried out by administrators in virtue of their office or of the delegated powers which they possess. It also consists in doing whatever is necessary for the day-to-day preservation of Church property.<sup>81</sup>

Secondly, acts of "major importance" are those determined according to the financial condition of the diocese. The Code provides no method whereby each diocesan bishop comes to this determination. A clear understanding of what constitutes an act of major importance is significant because of the juridic consequences. If the bishop fails to consult his finance council and college of consultors in such matters, his actions are invalid.

Thirdly, an act of extraordinary administration is that which requires the consent of the competent ecclesiastical authorities because it goes beyond the limits of ordinary administration. Such acts are extraordinary because they are not usually part of the daily responsibilities of administrators.

It can be asked whether the concept "acts of major importance" applies to religious institutes. And are these institutes bound by the norms established by the conference of

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<sup>81</sup> See A. McKeivitt, "The Canons on Alienation of Book V of The 1983 Code of Canon Law", JCL Dissertation, Washington, DC, The Catholic University of America, 1984, p. 21; see also Wernz and Vidal, vol. 4, no. 754, p. 221; Demers, p. 51.

bishops? Canon 638 says that it is for the proper law, within the scope of universal law, to determine acts which exceed the limit and manner of ordinary administration and to determine those things which are necessary to place an act of extraordinary administration validly. No reference is made to the third category of "acts of major importance". Given then the fact that this is an issue of internal governance, it seems that canons 586 and 593 of the universal law apply and that institutes are not directly bound by this third category or by the norms of the conference determining what constitutes acts of extraordinary administration. However, where an institute has not spelled out norms within its proper law, it seems it is bound by the universal and the particular law of the territory.<sup>82</sup> Perhaps not everyone will agree with this interpretation, but it seems logical in light of the canons on autonomy.

Another point must now be examined. What individuals or groups have authority over the administration of the public juridic person known as the "religious institute"? How far does their authority extend?

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<sup>82</sup> See Morrisey, "Ordinary and Extraordinary Administration: Canon 1277", pp. 723-725.

## B. Administrators of religious property

1. The Roman Pontiff

Canon 1273 states that

by virtue of his primacy in governance the Roman Pontiff is the supreme administrator and steward of all ecclesiastical goods.<sup>83</sup>

This canon does not assert that the pope is the owner of all ecclesiastical goods, although canon 1256 addresses this point in very nuanced language. Nor does it say that he personally administers these goods. Rather, the intent of the canon is to make clear that as supreme administrator he has authority to demand that the temporalities of the Church follow certain general laws and statutes if he determines that these are necessary for the good of the Church. He can also correct abuses that arise.<sup>84</sup>

2. Major superiors

Major superiors of pontifical clerical institutes (who

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<sup>83</sup> Canon 1273. For an analysis of the role of the pope as the administrator of ecclesiastical property, see J. J. Comyns, *Papal and Episcopal Administration of Church Property*, Washington, DC, The Catholic University of America, 1942, pp. 57-64; see also A. Couly, "Les biens temporels de l'Église", in *Le Canoniste contemporain*, 45(1922), especially pp. 306-308; Vromant, pp. 166-167; M. Coronata, vol. 2, no. 1059, pp. 471-472.

<sup>84</sup> J. Myers, "The Temporal Goods of the Church", in *The Code of Canon Law: A Text and Commentary*, pp. 870-871 (hereafter cited as Myers).

are defined in canon law as "Ordinaries"<sup>85</sup>) have the responsibility of carefully supervising the administration of all the goods which belong to the public juridic persons subject to them, respecting the autonomy of the local houses.<sup>86</sup> For while the local superior is the "hands-on" administrator with direct power of governance,<sup>87</sup> the major superior has important supervisory powers. These normally include the rights of visitation, of inspection, and of receiving a financial report<sup>88</sup> on a regular basis.<sup>89</sup> It is normally expected that major superiors (with their councils) will provide more detailed directives for the orderly administration of ecclesiastical goods under their supervision. However rules that are conducive to good administration, e.g., the manner of making bank deposits and withdrawals, preparation of inventories, having two signatures on cheques, etc., are well within the authority of the major superior's supervisory role.<sup>90</sup> Should there be an instance of negligence on the part of the immediate administrator or finance officer, the superior can intervene and take direct

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<sup>85</sup> See Canon 134, §1.

<sup>86</sup> See Canon 1276.

<sup>87</sup> See Canon 1279.

<sup>88</sup> See Canon 636, §2.

<sup>89</sup> See Myers, p. 873.

<sup>90</sup> See Testera, *Religious Men and Women*, p. 55.

control of the patrimony of the entity concerned.<sup>91</sup>

### 3. Superiors and their councils

Superiors of religious institutes are, according to the norms of their constitutions, to have their own council, whose assistance they are to use in carrying out their office.<sup>92</sup> The proper law of the institute is to determine cases in which consent or advice of the council is required in order for the superior to act validly. This must be in accord with the norms established in canons 127 and 627.<sup>93</sup> Since alienation can, by analogy, be considered similar to an act of extraordinary administration, it is the council that normally helps oversee such an action. Indeed, canon 638, §3 states that the written permission of the competent superior, with the consent of the council, is necessary for acts of alienation.<sup>94</sup> Should the action, though, exceed the highest amount defined by the Holy See for a given region, its permission is also required. Or, if the items in question have been given to the Church in

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<sup>91</sup> See Canon 1279, §1.

<sup>92</sup> See Canon 627 §1. See also J. Moncion, "L'institut religieux et les biens temporels", in *Studia canonica*, 20(1986) p. 363 (hereafter cited as Moncion).

<sup>93</sup> See especially Canon 627, §2.

<sup>94</sup> What constitutes consent is governed by canon 127. It would especially be important to be cognizant of an interpretation of this canon by the then Pontifical Commission for the Authentic Interpretation of the Code of Canon Law, in *AAS*, 77(1985), p. 771.

virtue of a vow, or are precious, or of historical value, the permission of the Holy See is also required.<sup>95</sup>

#### 4. Procurators or treasurers

Each institute and each province governed by a major superior is also to have a procurator or treasurer distinct from the major superior. The treasurer is responsible for administering the goods of the institute under the direction of the superior.<sup>96</sup> Where possible, there is to be a local treasurer also distinct from the local superior.<sup>97</sup> The treasurer and other administrators are to make reports of their administrative activities to the competent authority.<sup>98</sup>

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<sup>95</sup> See Canon 638, §3. The implications of this canon will be further explored in chapter 3.

<sup>96</sup> See Moncion, p. 362.

<sup>97</sup> See Canon 636, §1. The canon is clear in stating that on the provincial level there is to be a finance officer distinct from the major superior. However, when speaking of local communities, the term "where possible" allows for two interpretations. Is the Code suggesting that with respect to local communities, "where possible" a treasurer should be appointed? Or is it that a treasurer is to be appointed and "where possible" he or she should be distinct from the superior? Obviously in every community someone must assume responsibility for paying the bills and signing the cheques. This author would interpret the canon as suggesting that a treasurer be appointed, and, where possible, it be someone distinct from the local superior.

<sup>98</sup> See Canon 636, §2.

## 5. Finance council

Each religious institute is also to have its own finance council. If this is not feasible there must be at least two advisors who assist the administrator in accordance with the statutes of the institute.<sup>99</sup> In most institutes the role of the finance council is assumed by an already existing general, provincial or local council; this is especially true in smaller institutes.

### C. Duties of administrators

Administrators of juridic persons, not necessarily related to religious institutes, are bound to fulfil their duties in the name of the Church, in accord with the norm of law.<sup>100</sup> Their duties are concisely listed in canon 1284 §2 which states that they must:

- 1) ensure that the goods entrusted to them are not lost or damaged; they are advised to take out insurance policies for this purpose;
- 2) use civilly valid methods to safeguard ownership of ecclesiastical goods;
- 3) observe the prescriptions of both canon and civil law as well as those imposed by the donor, or some other legitimate

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<sup>99</sup> See Canon 1280.

<sup>100</sup> See Canon 1282.

authority;

4) accurately collect the revenues, safeguard them once collected and apply them according to the intention of the founder or according to legitimate norms;

5) pay the interest on a loan or mortgage and repay the capital debt in due time;

6) invest the money which is left over after expenses and which can be profitably allocated for the goals of the juridic person;

7) keep well ordered books of receipts and expenditures;

8) present a yearly report on their administration;

9) keep in a suitable and safe place the documents and deeds upon which are based the rights of the Church or the institution to its goods; deposit authentic copies of them in the archive of the curia when it can be done conveniently.<sup>101</sup>

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<sup>101</sup> See canon 1284 §2: "Exinde debent: (1) vigilare ne bona suae curae concredita quoquo modo pereant aut detrimentum capiant, initis in hunc finem, quatenus opus sit, contractibus assecurationis; (2) curare ut proprietates bonorum ecclesiasticorum modis civiliter validis in tuto ponatur; (3) praescripta servare iuris tam canonici quam civilis, aut quae a fundatore vel donatore vel legitima auctoritate imposita sint, ac praesertim cavere ne ex legum civilium inobservantia damnum Ecclesiae obveniat; (4) redditus bonorum ac proventus accurate et iusto tempore exigere exactosque tuto servare et secundum fundatoris mentem aut legitimas normas impendere; (5) foenus vel mutui vel hypothecae causa solvendum, statuto tempore solvere, ipsamque debiti summam capitalem opportune reddendam curare; (6) pecuniam, quae de expensis supersit et utiliter collocari possit, de consensu Ordinarii in fines personae iuridicae occupare; (7) accepti et expensi libros bene ordinatos habere; (8) rationem administrationis singulis exeuntibus annis componere; (9) documenta et instrumenta, quibus Ecclesiae aut instituti iura in bona nituntur, rite

The role of administrators is one of trust. They obviously have the responsibility of familiarizing themselves with the regulations listed above. These are not meant to tie their hands so much as to provide a framework within which they can carry out their responsibilities in a manner that will safeguard the patrimony of the institute:

All of the above canonical duties and recommendations represent sound business practices and impose no obligations that prudent administrators would not implement in caring for and using property.<sup>102</sup>

Canons 1285 to 1289 further specify the responsibilities of the administrator with respect to charitable donations, social justice in labor relations, civil suits and accountability both to the local ordinary in particular and to the faithful in general.

#### SUMMARY

We began this chapter with the image of a jigsaw puzzle. The concept of alienation, it was suggested, can not be adequately understood without examining its various parts. This includes the relationship between canon law and civil law, the defining of several juridical expressions relating to

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ordinare et in archivo convenienti et apto custodire; authentica vero eorum exemplaria, ubi commode fieri potest, in archivo curiae deponere."

<sup>102</sup> J. Hite, "Church Law on Property and Contracts", in *The Jurist*, 44(1984), p. 123.

alienation, and an examination of the relationship between alienation and administration.

We have seen that the Church, although existing independently of a secular society, nevertheless lives within it. The Church claims, in canon 1254, independence from civil power but acknowledges that society may at times limit the exercise of this freedom. The Church also, to provide harmony between civil law and canon law, canonizes the civil law of a given territory with regard to contracts, provided that this law is not contrary to divine law or that canon law has made no other provision.

The Church proclaims its right to acquire, retain, administer, and alienate temporal goods. It distinguishes between ordinary administration, which involves the normal day-to-day business practices, and extraordinary administration, which involves those matters that exceed ordinary administration. The present Code has introduced the term "acts of major importance" which we have shown applies to diocesan administration but not necessarily to religious institutes. Finally we have attempted to list the individuals or groups who have authority over the administration of religious institutes, ranging from the Roman Pontiff to treasurers and finance councils.

But our jigsaw puzzle is not complete. This puzzle called "alienation" is dynamic, not static. The concept of alienation

has evolved over the centuries as the Church itself has evolved. Each of the four elements we have examined in this chapter -- the definition of alienation, the relationship between canon law and civil law, the juridical expressions relating to alienation and the relationship between administration and alienation -- have all evolved to their present meaning through an historical process. The developments that have taken place between 1917 and 1983 with respect to the alienation of temporal goods indicate a theological shift with regard to the Church's understanding of such institutes and how they should function. This is true of both lay and clerical religious institutes as we shall see in our examination of *Cum admotae*<sup>103</sup> and *Religionum laicalium*<sup>104</sup> in the next chapter.

But there has also been an economic shift. The norms which preceded the 1917 Code and the 1917 Code itself generally viewed land and buildings as the prime source of stable patrimony. The economic climate changed between the first and second world wars and placed a greater emphasis on investments in the form of stocks, securities, and bonds. Chapter II will trace the development of the legislation that

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<sup>103</sup> Secretary of State, Rescript, *Cum admotae*, Nov. 6, 1964, in AAS, 59(1967) pp. 374-378: English translation in CLD, 6(1969), pp. 147-152.

<sup>104</sup> Congregation for Religious, *Religionum laicalium*, in AAS, 59(1967) pp. 362-364. English translation in CLD, 6(1969), pp. 153-156.

was a consequence of these shifts.

CHAPTER TWO  
THE PRE-1983 LEGISLATION RELATING TO THE  
ALIENATION OF ECCLESIASTICAL GOODS

The 1983 Code states that in case of doubt the revocation of a pre-existent law is not presumed, but later laws are to be related to earlier ones and, insofar as is possible, harmonized with them.<sup>1</sup> While we are not necessarily dealing here with a case of doubt, nevertheless a full appreciation of the method for interpreting a law is best brought about by an understanding of how the law itself has developed. The laws governing alienation are no exception. Although much work has already been accomplished by authors to provide an historical synopsis of early church law on alienation,<sup>2</sup> some initial remarks are necessary here as background information.

Thus we intend in this chapter to examine in three phases the legislation relating to the alienation of ecclesiastical goods. First, we shall offer a synopsis of early church law on alienation. Secondly, we intend to review the general legislation on alienation, from the mid XIXth century to

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<sup>1</sup> See Canon 21.

<sup>2</sup> See, for example, J. Cleary, *Canonical Limitations on the Alienation of Church Property*, Washington, DC, The Catholic University of America, 1936, pp. 23-57 (hereafter cited as Cleary); J. J. Comyns, *Papal And Episcopal Administration of Church Property*, Washington, DC, The Catholic University of America, 1942, xiv-155 pp. (hereafter cited as Comyns).

Vatican II. Thirdly, we shall survey the legislation of the Vatican II period that established the basis for changes in the Code.

### I. HISTORICAL SYNOPSIS

In the Acts of the Apostles we find members of the Christian community placing their goods in common. Certain individuals were prepared to sell their property and goods, donating them to the community or dividing the proceeds on the basis of each one's need.<sup>3</sup>

As the community began to acquire property, it obviously wished to protect and even retain it, and consequently its alienation was frowned upon. Pope Lucius I (253-254) likened those who unlawfully alienated church property to those who committed murder.<sup>4</sup> Yet, for just causes, when necessity demanded it, for example, in time of war or famine, alienation was permitted. In these situations the bishop could authorize certain alienations upon the advice of his consultors.<sup>5</sup>

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<sup>3</sup> See Acts 2:44-46.

<sup>4</sup> See J. Hardouin, *Acta conciliorum et epistolae decretales ac constitutiones summorum pontificum*, vol.1, Parisiis, ex Typographia Regia, 1714-1715, cols. 139-140. (hereafter cited as Hardouin). See also Cleary, p. 23.

<sup>5</sup> See Cleary, p. 24. See P. Fourneret, "Biens ecclésiastiques", in *Dictionnaire de théologie catholique*, A. Vacant and E. Manenot, eds., Paris, Letouzey et Ané, 1905, vol. 2, cols. 843-878; A. Couly, "Alienation", in *Dictionnaire de droit canonique*, R. Naz, ed., Paris, Letouzey et Ané, vol.

The earliest extant record of conciliar legislation dates from 314 when the Council of Ancyra legislated that if the bishop was absent or the see vacant, no priest could sell church property.<sup>6</sup> Later, the Council of Hippo in 393 forbade priests to sell parochial property without the knowledge of the bishop, while leaving unanswered the question as to whether or not his consent was required.<sup>7</sup>

In the year 447, Pope Leo the Great reminded bishops that not only the alienation of property, but also the exchange and donation of property were forbidden. He did, however, permit alienation if it was to the advantage of the Church, provided that bishops first discussed the matter with the clergy of the diocese and obtained their consent. Pope Leo also instituted penalties against clerics for wrongful alienation, including deprivation of orders and excommunication.<sup>8</sup> Pope Hilary, twenty years later, extended the same penalties to those

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1, 1935, cols. 403-415.

<sup>6</sup> See Hardouin, vol. 1, col. 278. See also J. D. Mansi, *Sacrorum conciliorum nova et amplissima collectio*, Parisiis, H. Welter, 1901-1927, vol. 2, col. 525, (hereafter referred to as Mansi); and Cleary, p. 25.

<sup>7</sup> See Hardouin, vol. 1, col. 879. See also Cleary, p. 25.

<sup>8</sup> See P. J. Migne, *Patrologiae cursus completus*, Series Latina, Parisiis, Garnier, Ep. XVII, vol. LIV, colls. 705-706, 1844-1855 (hereafter cited as Migne). See also Cleary, p. 27.

bishops who were involved in wrongful alienations.<sup>9</sup>

Alienation continued to be a concern through later centuries. The second Council of Nice in 787 forbade bishops from giving over to civil powers benefices or property on which the Church depended for support.<sup>10</sup> Later, the sixth council of Paris in 829 forbade bishops from alienating church property to their relatives and friends.<sup>11</sup> And forty years later, the fourth council of Constantinople, in 869, forbade church property to be given by means of a perpetual lease of *emphytheusis*.<sup>12</sup>

Gratian, writing somewhere between 1139 and 1159, produced his *Decretum*.<sup>13</sup> It offered the most complete collection to date of conciliar and papal legislation concerning alienation.<sup>14</sup>

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<sup>9</sup> See Migne, Ep., VIII, vol. LVIII, col. 27. See also Cleary, p. 27-28.

<sup>10</sup> See Mansi, vol. XIII, col. 752. See also Hardouin, vol. 4, col. 494.

<sup>11</sup> See Mansi, vol. XIV, col. 550. See also Cleary, pp. 34-35.

<sup>12</sup> See Mansi, vol. XVI, colls. 168-169. See also Cleary, p. 34.

<sup>13</sup> *Decretum Gratiani emendatum et notationibus illustratum una cum glossis, Gregorii XIII, Pont. Max. iussu editum*, Romae, 1582, 2 vols.

<sup>14</sup> For example:

C. 1, C. XVII, q. 4: those who alienate property illicitly, whether bishop, priest, or deacon, are to be deprived of

In 1234 Pope Gregory IX promulgated his Decretals in which, among many other things, he decreed that a prelate who mortgaged church property to pay off debts was suspended from the administration of both temporal and spiritual affairs.<sup>15</sup> The Council of Avignon in 1326 set a limit with respect to \_\_\_\_\_ office.

C. 8, C. X, q. 2; c. 42, C. XII, q. 2: no church property is to be sold, donated or exchanged while the See is vacant;

C. 13, C. XII, q. 2: restrictions are placed on the bishop against alienating by perpetual lease of *emphyteusis* any property upon which the church relies, nor is he to worsen the patrimonial condition of the diocese;

C. 13, 14, C. XII, q. 2; c. 70, C. XII, q.2 (Dictum Gratiani): the alienation of sacred vessels for the redemption of captives may be authorized;

C. 15, C. XII, q. 2: church property can be alienated for the redemption of captives;

C. 19, C. XII, q. 2: contracts which worsen the patrimonial condition of the diocese and the alienation of property considered necessary for the upkeep of the diocese are considered null and void;

C. 20, C. XII, q. 2: restrictions are placed on the bishop with regard to alienating very valuable church property;

C. 20, C. XII, q. 2: property in cities may be alienated when it is too costly to maintain it;

C. 52, C. XII, q. 2: certain alienations are permitted by sale, donation or exchange provided the bishop has consulted his counsellors and the clergy and such alienation would be advantageous for the Church;

An even more comprehensive list can be found in Cleary, pp. 39-41.

<sup>15</sup> See C. 2, X, *de solutionibus* III, 23. See also Cleary, p. 43.

mortgages: church property could not be indebted beyond one hundred *solidi* without the prior permission of the bishop.<sup>16</sup>

It was the Hungarian synod of 1279 which decreed that

no prelate, whether superior or inferior, was to alienate church property, either immovable or movable, especially *mobilia pretiosa*, unless for evident utility of the church, and with the assent of the representatives of the ecclesiastical establishment concerned. Except in the cases permitted by law, immovable property was not to be alienated by inferior prelates without the special permission of the bishop, nor by the latter without that of the archbishop, nor by the metropolitan without the special permission of the Holy See.<sup>17</sup>

The XVth century saw continued abuses regarding alienation. Thus, Pope Paul II (1446-1471), in an attempt to deal forcefully with the matter, issued on March 1, 1467, the constitution *Ambitiosae* by which he forbade the sale, donation, or obligation in any way of churches, immovable and precious movable ecclesiastical property and their revenues, unless the consent of the Holy See had been obtained beforehand.<sup>18</sup>

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<sup>16</sup> See Hardouin, vol. 7, col., 1512. See also Cleary, p. 47.

<sup>17</sup> Cleary, p. 47. See also Hardouin, "Council of Buda", vol. 7, col. 799; and Mansi, vol. XXIV, col. 284.

<sup>18</sup> See Pope Paul II, Apostolic Constitution, *Ambitiosae*, 1 March, 1467, in *Bullarium diplomatum et privilegiorum sanctorum romanum pontificum*, S. Franco and H. Dalmazzo, eds., Romae, Taurinensis editio, vol. 5, 1860, pp. 194-195 (hereafter cited as *Bullarium*). See also Comyns, p. 40; W.F. Cahill, "The Dedication of Property to the Fixed Patrimony of a Church", in *The Jurist*, 17(1957), pp. 139-141; T. Lynch, *Contracts Between Bishops and Religious*

The constitution states in part:

In virtue of the present constitution, which shall remain perpetually valid, and in the light of other constitutions, prohibitions and decrees of our predecessors on this matter which are hereby renewed, we prohibit anyone -- who while engaged in divine and human works, is lead primarily by ambitious greed, disregards damnation, and acts to his own detriment and to that of divine worship -- from applying to profane uses, any immovable and precious movable goods which have been dedicated to God, and whereby churches, monasteries and pious places are governed and made beautiful, and from which their ministers claim a living for themselves. We likewise prohibit anyone from entering into an agreement whereby the ownership of these goods is transferred, from making any grant, mortgage, renting or leasing beyond three years, and from entering into contracts of trust or perpetual lease, except in those cases permitted by law or in those instances where objects and goods have through custom been ceded into perpetual lease for the evident utility of the churches, or when dealing with fruits and produce which cannot be preserved.

If anyone, contrary to our prohibitions, presumes to alienate in favour of someone else, goods and objects, either by act of alienation, mortgage, concession, leasing, conveyance or similar trust, such acts are of no effect or consequence, and both the person who alienates, as well as the one who receives the alienated goods and objects, incur excommunication. Furthermore, if the person who alienates the goods of churches, monasteries or other pious places, without having previously consulted the Roman Pontiff, or contrary to the tenor of the present constitution, is endowed with pontifical or abbatial dignity, such a person shall be interdicted from entry into a

church.<sup>19</sup>

The constitution outlined various penalties that could be imposed on those involved in illegal alienations and concluded by stating that alienated property and goods of this kind are to be returned to the churches, monasteries, and holy places to which they belonged before the alienation.

*Ambitiosae* was to remain an important church document. Throughout the following centuries several succeeding popes

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<sup>19</sup> "Ambitiosae cupiditati, illorum praecipue, qui divinis et humanis affectati, damnatione postposita, immobilia et pretiosa mobilia Deo dicata, ex quibus Ecclesiae, monasteria et pia loca reguntur illustranturque, et eorum ministri sibi alimoniam vindicant, profanis usibus applicare, aut cum maximo illorum ac divini cultus detrimento exquisitis mediis usurpare praesumunt, occurrere cupientes, omnium rerum et bonorum ecclesiasticorum alienationem, omneque pactum, per quod ipsorum dominium transfertur, concessionem, hypothecam, locationem, et conductionem ultra triennium, nec non infeudationem vel contractum emphyteuticum, praeterquam in casibus a iure permissis, ac de rebus et bonis in emphytheusim ab antiquo concedi solitis, et tunc ecclesiarum evidenti utilitate, ac de fructibus et bonis, quae servando servari non possint, pro instantis temporis exigentia, hac perpetuo valitura constitutione fieri prohibemus, praedecessorum nostrorum constitutionibus, prohibitionibus et decretis aliis super hoc editis, quae tenore praesentium innovamus, in suo nihilominus robore permansuris.

"Si quis autem contra huius nostrae prohibitionis seriem de bonis et rebus eisdem quicquam alienare praesumpserit: alienatio, hypotheca, concessio locatio, conductio, et infeudatio huiusmodi, nullius omnino sint roboris vel momenti, et tam qui alienat, quam is, qui alienatas res et bona praedicta receperit, sententiam excommunicationis incurrat. Alienanti vero bona ecclesiarum, monasteriorum locorumque piorum quorumlibet, inconsulto Romano Pontifice aut contra praesentis constitutionis tenorem, si pontificali vel abbatiali praefulgeat dignitate, ingressus ecclesiae sit penitus interdictus." Pope Paul II, Apostolic Constitution, *Ambitiosae*, 1, Mar., 1467, in *Bullarium*, 5(1860), pp. 194-195.

reaffirmed its basic principles.<sup>20</sup>

Alienations had long been permitted by the Church but were considered null and void if made without one of the following causes: *necessitas Ecclesiae, utilitas Ecclesiae, pietas, incommoditas*.<sup>21</sup> They were also considered null and void if they took place without the necessary deliberation and consent. Deliberation was normally to take place with the cathedral chapter or equivalent body, and the consent of the ordinary or the Roman Pontiff was required, depending on what was being alienated.

## II. GENERAL LEGISLATION PRIOR TO VATICAN II

### A. Pre-code norms

#### 1. Apostolicae sedis

Pope Pius IX, in the Apostolic Constitution *Apostolicae*

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<sup>20</sup> See, for example, during the pontificate of Paul IV, Const. *Iniunctum nobis*, 14, July, 1555 - *Fontes*, n. 88; Pius V, Const. *Admonet nos*, 29 Mart., 1567 - *Fontes*, n. 120; Gregory XIII, Const. *Inter caetera*, 26 Maii, 1572 - *Fontes*, 142; Sixtus V, Const. *Quanta apostolicae*, 18 Mart., 1586 - *Fontes*, n. 158; Paul V, Const. *Inter caetera*, 30 Dec., 1605 - *Fontes*, n. 193; Urban VIII, S. C. Conc., decr. 7 Sept., 1624 - *Fontes*, n. 2453 in P. Gasparri, *Codicis iuris canonici fontes*, Romae, Typis Polyglottis Vaticanis, 9 vols., 1926-1939 (hereafter cited as Gasparri).

<sup>21</sup> See Cleary, p. 51.

*sedis*<sup>22</sup> (1869) reaffirmed *Ambitiosae. Apostolicae sedis*, which reorganized penal law in the Church, dealt with excommunications, suspensions and interdictions arising from a variety of crimes. An excerpt from this constitution on the subject of alienation state that

those presuming to alienate and receive ecclesiastical goods without papal permission in the manner prescribed in the [Constitution] *Ambitiosae*, on ecclesiastical goods which are not to be alienated [incur a *latae sententiae* excommunication not reserved to anyone].<sup>23</sup>

This remained the Church's stand on alienation until the promulgation of the 1917 Code.

## 2. Inter ea

On July 30, 1909 the Congregation for Religious issued the Instruction, *Inter ea*, limiting the amount of debt into which superiors could enter without the previous consent of their council or higher superiors. The instruction states that moderators of religious congregations, whether at the general, provincial, or local levels, are not to assume notable debts or obligations, either formally, by trust, or by mortgage, or

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<sup>22</sup> See Pope Pius IX, Apostolic Constitution, *Apostolicae sedis*, in Gasparri, vol. 3, no. 552. For a brief commentary, see Lynch, p. 35-36.

<sup>23</sup> "Alienantes et recipere praesumentes bona ecclesiastica absque Beneplacito Apostolico, ad formam Extravagantis *Ambitiosae*, De Reb. Ecc. non alienandis...", *Apostolicae sedis*, para. 4, n. 3, in Gasparri, v. 3, p. 28.

through a public or a private document, by word of mouth or otherwise, without the consent of the appropriate council. The instruction defined *notable debt* as five hundred to one thousand lire for a local house; one to five thousand lire for a province, and five to ten thousand lire for the general curia. Moreover, debts in excess of ten thousand lire required the permission of the Holy See, in addition to the consent of the respective councils.<sup>24</sup>

The instruction also states that it was not permitted to exceed the total sum by a series of debts or obligations, no matter how they had been contracted or were now being incurred. Each debt and all obligations were to be added together no matter how they had been contracted. No permissions were to be given for contracting new debts or assuming new obligations unless the previous debts or obligations had been paid off.

The instruction further states that no Apostolic permission for contracting new debts or obligations exceeding a value of 10,000 lire will be granted, if the house, province, or general curia, in making the request, fails to mention other debts and obligations whereby it was still

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<sup>24</sup> See S. Congr. de Religiosis, "Inter ea" in AAS, 1(1909) pp. 695-699. See also F. Demers, *The Temporal Administration of the Religious House of a Non-Exempt, Clerical, Pontifical Institute*, Washington, DC, The Catholic University of America, 1961, p. 33 (hereafter cited as Demers); Lynch, pp. 36-37.

burdened.

B. The 1917 legislation

*Apostolicae sedis* and *Inter ea* served as the more immediate foundation stones for legislation governing the alienation of temporal goods of clerical religious institutes. The relevant canons were found in two separate sections of the 1917 Code: the more general ones (cc. 1530-33) in Book III, under the title of Ecclesiastical Property; the more specific canon (c. 534) for religious in Book II. Moving from the general to the specific, we shall first with the relevant canons of Book III and conclude this section with an examination of canon 534, §1 from Book II.

1. Canon (1917) 1530

Canon 1530 stated:

§1 Saving the ruling of canon 1281 §1, to alienate imperishable ecclesiastical property, whether movable or immovable, there is required:

1° A written appraisal of the property made by reliable experts;

2° A justifying reason, i.e., urgent need, the evident advantage of the church, or piety;

3° The permission of the legitimate superior, in the absence of which the alienation is invalid.

§2 Other opportune precautions needed to prevent injury to the church shall not be overlooked but shall be specified by the respective superior according to the

circumstances of the case.<sup>25</sup>

Paragraph 1 broadened the previous law by including under the umbrella of alienation both immovable and movable goods, provided that the latter were not perishable. The previous law applied to immovable goods only.<sup>26</sup> Three requirements are specified: written appraisals, a justifying reason, and permission of the legitimate superior.

a) Written appraisal by reliable experts

It was clear that religious superiors were not free of their own accord to determine the value of something to be alienated. The sense of the canon was that at least two appraisals were required, though more than two could be used.

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<sup>25</sup> Canon 1530, §1: "Salvo praescripto c. 1281, §1, ad alienandas res ecclesiasticas immobiles aut mobiles, quae servando servari possunt, requiritur:

1° Aestimatio rei a probis peritis scripto facta;

2° Iusta causa, idest urgens necessitas, vel evidens utilitas Ecclesiae, vel pietas;

3° Licentia legitimi Superioris, sine qua alienatio invalida est.

§2: "Aliae quoque opportuna cautela, ab ipsomet Superiore pro diversis adiunctis praescribenda, ne omittantur, ut Ecclesiae damnum vitetur." English translation, J. A. Abbo and J. D. Hannan, *The Sacred Canons*, St. Louis, B. Herder Book Co., 1960, vol. 2, p. 735 (hereafter cited as Abbo and Hannan).

<sup>26</sup> See J. Landázuri, *De alienatione bonorum temporalium religiosorum*, Romae, Desclée, 1950, p. 77. See also A. Larraona, "Commentarium Codicis", in *Commentarium pro Religiosis*, 13(1932), pp. 353-357 (hereafter cited as Larraona).

The object to be alienated was to be valued according to existing market-value. The appraisals had to be submitted in writing. The religious superior, conscious of canon 1795, §1, was to be convinced of the honesty of the experts he had chosen.<sup>27</sup>

b) A justifying reason

Alienation could take place if there was a just cause: a reason for selling proportionate to the importance of the proposed transaction. This may have been one of urgent necessity, evident utility of the church, or charity. Urgent necessity might include, for example, the paying off of a mortgage to prevent further loss of ecclesiastical property.

Evident utility of the church can include, for example, the sale of property that was costing too much to maintain. The emphasis was placed on the fact that the value to the church was evident, not probable.

From the earliest centuries, the church had recognized its responsibility to care for the poor and the needy. If alienation of ecclesiastical property was to take place because of a charitable need, then that need had to be evident, urgent, and one that could not be satisfied by

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<sup>27</sup> See J. McManus, *The Administration of Temporal Goods in Religious Institutes*, Washington, DC, The Catholic University of America, 1937, p. 135.

ordinary measures.

While pre-code legislation had required a just cause for the validity of an alienation, the 1917 Code required it for liceity only.<sup>28</sup>

c) Permission of the legitimate superior

The permission of the legitimate superior was necessary for the act of alienation to be valid. This requirement flowed naturally from canon 100, §3 which stated that moral persons, whether collegiate or non-collegiate, were considered minors. Thus only the legitimate superior was in a position, akin to that of a guardian, to act legitimately.<sup>29</sup>

Since all circumstances relating to alienation can not be foreseen, paragraph 2 of canon 1530 provided legitimate superiors with the authority to take additional measures to prevent injury or loss to the Church. The regulations which a bishop or religious superior can impose depends on the circumstances of the case:

These regulations may prescribe the manner of asking for the permission, the formalities to be followed in recording the grant of the authorization, special procedure to be followed in a case where a building project is under

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<sup>28</sup> See E. L. Heston, *The Alienation of Church Property in the United States: An Historical Synopsis and Commentary*, Washington, DC, The Catholic University of America, 1941, pp. 84-86.

<sup>29</sup> Abbo and Hannan, vol. 1, p. 147.

consideration, and in general any other details which in the judgment of the competent Superior are important for the welfare of the ecclesiastical organization entrusted to his care and vigilance.<sup>30</sup>

2. Canon (1917) 1531

Canon 1531 stated that:

§1 A thing shall not be alienated for a price less than that specified in the estimate.

§2 The alienation shall be carried out by public auction or at least it should be advertised, unless circumstances suggest a different course; and the thing shall be awarded to him who, all things considered, put in the higher bid.

§3 The cash received from the alienation shall be carefully, securely, and advantageously invested for the benefit of the Church.<sup>31</sup>

a) The selling price of an object to be alienated

It would appear on first reading that according to canon 1531, §1 an object can not have been sold for a price lower than that fixed by the appraisers. This position was held by

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<sup>30</sup> Heston, p. 91.

<sup>31</sup> Canon 1531, §1. "Res alienari minore pretio non debet quam quod in aestimatione indicatur.

§2. "Alienatio fiat per publicam licitationem aut saltem nota reddatur, nisi aliud circumstantiae suadeant; et res ei concedatur qui, omnibus perpensis, plus obtulerit.

§3. "Pecunia ex alienatione percepta caute, tuto et utiliter in commodum Ecclesiae collectetur." (English translation, Abbo and Hannan, vol. 2, p. 736).

Cleary.<sup>32</sup> On the other hand, McManus maintained that the superior can have the object reappraised to see if under the circumstances it can be sold for less than the former appraised price. For McManus the value of an object was market-value, not absolute value. Thus if there were no buyers at the higher price, McManus envisioned a reevaluation on the part of the appraiser.<sup>33</sup>

Heston, however, maintained that while every effort must be made to sell an object at its appraised price, urgent necessity such as a pressing need for money was sufficient reason for departing from the prescription. For Heston, it was a question of weighing which move would do more harm to the Church: selling something below market-value or holding on to it while the Church remained in financial need.<sup>34</sup>

Furthermore, the wording of the canon was not absolute; it presented a direction, not necessarily a procedure to be observed in every case.

b) Public auction

The hope of any alienation is that it will ultimately be beneficial to the Church. Thus a public auction will normally

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<sup>32</sup> See Cleary, p. 67.

<sup>33</sup> See McManus, pp. 135-136. See also A. Larraona, pp. 357-362.

<sup>34</sup> See Heston, pp. 92-93.

appear as the best approach to attract the highest number of interested parties. The canon, however, allowed for the possibility of a different course of action: it may be easier to advertise and simply examine all the bids received. Or another approach may need to be followed depending on the circumstances.

Normally, the Church would accept the highest bid offered. However, as the canon suggested, "all things considered", the Church may accept a lower bid under extenuating circumstances.<sup>35</sup>

c) Investment of proceeds

The cash received from an alienation was to be invested for the good of the Church. Permission to alienate granted by the Holy See did not automatically bring with it permission to dispose of funds received from the alienation.

According to McManus, however, it was the practice of the Congregation for Religious, in granting permission to alienate something, to grant permission to the religious institute to spend the money received. In other instances, it reminded the institute of its responsibility to invest carefully the funds

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<sup>35</sup> For instance, the Church may prefer to sell a vacant lot adjacent to one of its buildings to a group planning to build a nursing home as opposed to a group planning on building something less reputable, despite the higher offer made by the latter group. For an explanation of *omnibus perpensis*, see Vromant, p. 253; see also Heston, pp. 94-95.

received, according to the prescription of canon 1531, §3.<sup>36</sup>

Shortly after the promulgation of the Code, a question arose as to whether a superior, who within the limits of his authority gave permission for alienation, could also give permission to spend the money received. In 1919 the Congregation of the Council responded that canon 1531, §3 allowed for no exceptions: only a dispensation from the Holy See could permit the spending of money obtained by alienation.<sup>37</sup> While Cleary supported this stance,<sup>38</sup> as did Heston,<sup>39</sup> McManus held a somewhat differing view.

Basing his views on the writings of Larraona,<sup>40</sup> he supported the argument that the statement of the Holy See dealt with money received from the alienation of votive offerings. Canon 1532, §1, 1° stated that the lawful superior, in cases where precious objects were involved, was the Holy See. According to the Congregation of the Council, votive offerings were analogous to precious objects;<sup>41</sup> they needed

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<sup>36</sup> See McManus, p. 138.

<sup>37</sup> Congregation of the Council, response, *Dioecesis N., Donariorum votivorum*, 12 July, 1919, in AAS, 11(1919), p. 418.

<sup>38</sup> See Cleary, pp. 70-71.

<sup>39</sup> See Heston, pp. 97-98.

<sup>40</sup> See Larraona, pp. 359-361.

<sup>41</sup> See Congregation of the Council, response, 14 January, 1922, in AAS, 14(1922), p. 160. See also Abbo and Hannan, vol. 2, p. 737.

permission of the Holy See to be alienated. Thus all the 1919 comments of the Congregation of the Council were saying was that even though the permission of the Holy See was required to alienate certain goods, another permission was also required to spend the money received. Larraona maintained that the Holy See was aware of the fact that proceeds from numerous alienations were being spent. Since the Holy See was aware, yet offered no instructions in the matter, this amounted to its tacit approval.<sup>42</sup>

3. Canon (1917) 1532

Canon 1532 stated that:

§1 The lawful superior mentioned in c. 1530, §1, 3°, is the Apostolic See if the property involved is:

1° A precious object;

2° Objects whose value exceeds 30,000 lire or francs.

§2 But if the value of the objects involved does not exceed a thousand lire or francs, it is the local ordinary, after he has heard the council of administration, unless the object is of very slight value, and with the consent of interested parties.

§3 Finally, if the value of the objects involved lies between a thousand lire and thirty thousand lire, it is the local ordinary, provided he has obtained the consent of the cathedral chapter, of the council of administration, and of interested parties.

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<sup>42</sup> See McManus, pp. 137-140.

§4 If the object to be alienated is divisible, the petition for permission or consent must specify the portions of it already alienated; otherwise the permission is invalid.<sup>43</sup>

Canon 1530, §1, 3° stated that valid alienation took place only when authorized by the lawful superior. Canon 1532 determined who was the lawful superior on the basis of either the object to be alienated (i.e. a precious object) or its

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<sup>43</sup> Canon 1532, §1. "Legitimus Superior de quo in c. 1530, n. 3, est Sedes Apostolica, si agatur:

1° "De rebus pretiosis;

2° "De rebus quae valorem excedunt triginta millium libellarum seu francorum.

§2. "Si vero agatur de rebus quae valorem non excedunt mille libellarum seu francorum, est loci Ordinarius, audito administrationis Consilio, nisi res minimi momenti sit, et cum eorum consensu quorum interest.

§3. "Si denique de rebus quarum pretium continetur intra mille libellas, et triginta millia libellarum seu francorum, est loci Ordinarius, dummodo accesserit consensus tum Capituli cathedralis, tum Consilii administrationis, tum eorum quorum interest.

§4. "Si agatur de alienanda re divisibili, in petenda licentia aut consensu exprimi debent partes antea alienatae; secus licentia irrita est." (English translation, Abbo and Hannan, vol. 2, pp. 737-739).

Regarding the value of the lire and the franc it could be noted that in 1865, Belgium, France, Italy and Switzerland agreed to have a gold coin of equal weight, size and gold content. These coins were interchangeable among the four countries. In 1914, 30,000 lire or francs was approximately equivalent to 6,000 Canadian or United States dollars ( see T. Bouscaren, A. Ellis, and N. Korth, *Canon Law: A Text and Commentary*, 4th revised edition, Milwaukee, Bruce Publishing Company, 1966, pp. 841-842 (hereafter cited as Bouscaren, Ellis and Korth)).

value (i.e. the Holy See was the lawful superior in the case of all objects worth over 30,000 lire). Canon 1532, §2 and 3, dealing with objects valued at less than 30,000 lire, applied to goods owned by the diocese or subject to it. At the same time, canon 534 regulated this matter for religious institutes and will be dealt with below.

Canon 1532, §4 attempted to forestall the loss of property by its being sold in a piecemeal fashion. One can presume that the Holy See had had the sad experience of seeing valuable property being sold in sections, each one worth slightly less than the amount requiring papal approval. Thus canon 1532, §4 required, for validity, that the Holy See be made aware of any portion of a divisible object that had already been alienated before consent was given when the combined totals equalled 30,000 lire or more.

#### 4. Canon (1917) 1533

Canon 1533 states that:

The formalities required under the rules of cc. 1530-1532 must be observed not only in the making of alienation in the restricted sense, but also in the making of any contract by which the condition of the Church may be endangered.<sup>44</sup>

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<sup>44</sup> Canon 1533: "Solemnitates ad normam cc. 1530-1532 requiruntur non solum in alienatione proprie dicta, sed etiam in quolibet contractu quo conditio Ecclesiae peior fieri possit." (English translation in Abbo and Hannan, vol. 2, p. 739).

While canons 1530-1532 dealt with the question of alienation in a strict sense, canon 1533 did so in a broad sense: that is, it applied to those situations whereby the patrimonial condition of the Church could have been endangered or weakened:

The Church can suffer harm not only from contracts which deprive her entirely of property rights, but also from contracts which, while not suppressing her ownership completely and radically, nevertheless diminish or restrict the rights attendant upon ownership.<sup>45</sup>

Contracts found under the umbrella of canon 1533 include: contracting debts and mortgages (specifically mentioned in canon 1538), acting as a security for others, assuming annuity obligations, entering into compromise or arbitration in financial matters, renouncing active easements, allowing passive easements, and entering into any contracts of a similar nature.<sup>46</sup>

Having examined these general canons on alienation, we now turn to Book II to examine the specific canon which governed the alienation of temporal goods in religious institutes.

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<sup>45</sup> Heston, p. 117-118.

<sup>46</sup> See Bouscaren, Ellis and Korth, p. 845; see also Heston, pp. 117-124 for an extended discussion of why the contract must be civilly binding to invoke canon 1533; also pp. 124-131 for a discussion of which contracts can put the patrimonial condition of the Church in jeopardy.

5. Canon (1917) 534

Canon 534, §1 stated:

Without prejudice to the regulations of canon 1531, for the alienation of precious objects or of other property the valuation of which exceeds 30,000 lire, and for debts or obligations contracted in excess of this sum, an Apostolic indult must previously be obtained; otherwise the contract is void. The written permission of the superior, given according to the constitutions and with the consent of his chapter or council expressed by secret ballot, is required and is sufficient. But in the case of nuns or sisters of an institute of diocesan approval, the written consent of the local ordinary is also necessary, as well as that of the regular superior if the monastery of nuns is subject to regulars.

§2 In the petition for permission to contract debts or obligations, there must be stated the total amount of other debts or obligations currently binding the moral person, the institute, the province, or the house; otherwise the permission obtained is void.<sup>47</sup>

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<sup>47</sup> "Firmo praescripto can. 1531, si agatur de alienandis rebus pretiosis aliisve bonis quorum valor superet summam triginta millium francorum seu libellarum, vel de contrahendis debitis et obligationibus ultra indicatam summam, contractus vi caret, nisi beneplacitum apostolicum antecesserit; secus, requiritur et sufficit licentia, in scriptis data, Superioris ad normam constitutionum cum consensu sui Capituli seu Consilii per secreta suffragia manifestato; sed si agatur de monialibus aut sororibus iuris dioecesani, accedat necesse est consensus, in scriptis praestitus, Ordinarii loci, necnon Superioris regularis, si monialium monasterium eidem subiectum sit.

§2 In precibus pro obtinendo consensu ad contrahenda debita vel obligationes, exprimi debent alia debita vel obligationes, quibus ipsa persona moralis, religio vel provincia vel domus, ad eum diem gravatur, secus obtenta venia invalida est." (English translation in Abbo and Hannan, vol. 1, pp. 549-551).

The intention of canon 534 was to state the conditions under which church property belonging to religious institutes could be alienated or obligated. In its attempt to protect the interests of the moral person, the Church was rigorous and exacting in its demands. The Church has generally held that the following transactions were governed by this canon:

- a) the granting or the removal of a servitude or easement;
- b) a contract in which the property of an institute was used as security as in the case of a pledge or mortgage;
- c) entering into a perpetual or quasi-perpetual lease;
- d) the rental of church property for a period longer than nine years;
- e) any action by which the property may be lost or rendered less secure.<sup>48</sup>

Many activities, although similar to alienation, were not forbidden by this canon. Examples of such activities are the following:

- a) borrowing money as long as the institute was not required to make contractual obligations to repay it;
- b) acquiring property where a mortgage was placed on the property itself and not against the institute;
- c) withdrawing investments to purchase immovable property;
- d) purchasing or constructing a residence for members of the

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<sup>48</sup> See McManus, p. 123-124. See also Larraona, pp. 184-195.

- institute or repairing such buildings using fixed capital;
- e) paying debts or making expenditures with funds that were not part of the fixed capital or the institute;
  - f) refusing to accept a donation;
  - g) changing of stocks and bonds, etc., into other equally safe investments, or withdrawing investments to purchase immovable property;
  - h) selling old church furnishings in order to purchase new ones;
  - i) returning property to its former owner if it was purchased with the seller having an option to buy it back.<sup>49</sup>

Once it was clear that a certain act fell under the realm of alienation, the religious institute had also to be cognizant of three specific requirements of canon 534. First, the superior had to obtain the consent of the chapter or council expressed by secret ballot. The constitutions would have determined whether it was the chapter or the council that had to give its consent before the alienation took place. The constitutions could have placed further demands upon the superior or council. Secondly, the alienation could not take place without the written permission of the superior determined in the constitutions. Thirdly, if the property or object to be alienated had a value of 30,000 lire or more, an

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<sup>49</sup> See McManus, pp. 124-125.

indult of the Holy See was also required. Without this indult the action would have been invalid. A fourth point, not relevant to our discussion concerning clerical religious institutes, stated that a monastery of nuns or sisters of diocesan right would also require the written permission of the local ordinary before proceeding with an act of alienation.

Again, to protect the interests of the moral person, the Holy See desired, in virtue of canon 534, §2 to be made aware of the total amount of debts or obligations binding the moral person before giving its permission to enter into further debt. In this instance the Holy See acted as a court of sober second thought to ensure that an institute did not take on more obligations than it could reasonably handle.

#### C. Post 1917 legislation

Following the promulgation of the 1917 Code, Pope Benedict XV established the Commission for the interpretation of the canons of the Code. This body was charged with the responsibility of interpreting the canons if and when doubts arose. As well, various dicasteries, from time to time, issued instructions which elucidated how certain canons were to be applied in particular situations. Between the promulgation of the 1917 Code and John XXIII's call for a revision of the Code, a number of pronouncements affecting alienation were

made.

Nevertheless, during the sixty-six year period during which the 1917 Code was in effect, there was a relatively small amount of legislation touching on canons 534 and 1530-33. The replies might more properly be called "clarifications"; they were complemented by a number of private declarations which, in effect, helped to apply the canons.

1. Coalescence of partial sales

In a declaration issued July 10, 1920 the Congregation for the Propagation of the Faith tried to clarify the issue of coalescence of partial sales. It declared that with respect to canon 1532, a parcel of land intentionally sold in piecemeal fashion constituted one sale, while land sold in piecemeal fashion unintentionally, did not coalesce.<sup>50</sup> While this reply of the Congregation did not apply outside of missionary countries, it did give an indication of the mind of the curia on the matter.

2. Several pieces of property owned by one person

The Code Commission was asked in 1929

whether in virtue of c. 1532, §1, 2°, the permission

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<sup>50</sup> Congregation for the Propagation of the Faith, private reply, July 10, 1920, in *CLD* 2(1943), pp. 447-448.

of the Holy See is required in order to alienate at one transaction several articles of ecclesiastical property belonging to the same person when the value of the articles taken together is in excess of 30,000 francs.<sup>51</sup>

The Code Commission responded in the affirmative. Thus individual pieces of property belonging to the same moral person were to be considered as one if they were being alienated in the same transaction. Bouscaren and Ellis interpreted this to mean that pieces of property must be taken together when they coalesce for the purpose of alienation in virtue of a) time, b) intention, or c) purpose. Thus, several pieces of property alienated within a short space of time were morally considered as one. Or, if the intention to alienate several pieces of property was made at one particular meeting, then regardless of the time interval between the sales this was to be considered as one act of alienation. Finally if the purpose for alienating several pieces of property was for an individual purpose (i.e. to raise money to erect a building), then this was again to be considered as one act of alienation. Thus if the value of the property related by time, intention or purpose was more than 30,000 lire, the permission of the

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<sup>51</sup> "An vi canonis 1532, §1, 2° requiratur licentia S. Sedis ad alienandas per modum unius plures res ecclesiasticas eiusdem personae, quae simul sumptae valorem excedunt triginta millium libellarum seu francorum", in *AAS*, 21(1929), p. 574; translation in *CLD*, 1(1934), p. 731.

Holy See was required.<sup>52</sup>

3. 1936 letter from the Apostolic Delegate

The 1936 letter of the Apostolic Delegate to the religious superiors of the United States called for an exact compliance with all the requirements of canon law in regard to the administration of temporal goods and demanded greater prudence in every financial transaction. It also called for a proper and exact observance of canons 534, §1 and 1533, and was sub-divided into five sections, each raising a particular area of concern.

Section one focused on the issuance of bonds and debentures by religious institutes and the sale of the same either to private investors or on the public market. Included under this heading was the soliciting or acceptance of funds through annuity agreements. Religious were reminded that both these systems fell within the provisions of canon 534. Any attempt by religious to issue bonds or to accept annuities exceeding six thousand dollars was both unlawful and invalid

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<sup>52</sup> See Bouscaren, Ellis and Korth, pp. 844-845. This author can appreciate the logic of the authors' argument regarding intention and purpose. However, their argument regarding time is too narrow. If an institute decided within a two month period to alienate two unrelated pieces of property and their purpose and intention for alienation was unrelated, then it seems well within the spirit of the canon and the Code Commission's response to treat the two matters separately.

if made without a papal indult.

Section two noted that the sum of six thousand dollars was established in relation to thirty thousand lire or francs, based upon gold coinage as the true unit of value as distinct from other currencies.

In section three the reader was reminded that an indult was needed not only for single transactions beyond six thousand dollars, but also at any time where a coalescence of debts or obligations exceeded six thousand dollars.

Section four outlined the information to be included with the petition when requesting an indult.

Finally, section five forbade the use of all or any part of the capital annuity fund while the annuitant was still living.<sup>53</sup>

In 1956, the same apostolic delegate wrote to local ordinaries in the United States to reaffirm the content of his earlier letter with the one exception that the limit requiring a papal indult was now reduced to five thousand dollars.<sup>54</sup> This letter remained the last major statement on the general subject of alienation for religious institutes until the time

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<sup>53</sup> A. Cicognani, Apostolic Delegate's private letter to the religious superiors in the United States, Nov. 13, 1936, in *CLD*, 2(1943), pp. 161-166. For a commentary on this letter, see Demers, pp. 78-83.

<sup>54</sup> A. Cicognani, Apostolic Delegate's private letter to the local ordinaries in the United States, Feb. 15, 1956, in *CLD*, 4(1958), pp. 204-205.

of the Second Vatican Council.

4. The value of money

From the promulgation of the 1917 Code to 1983 a two-fold issue seems to have demanded intermittent attention from the Holy See. The first was the value of money in a changing economy.<sup>55</sup> And second was the determination of a reasonable maximum limit beyond which an indult from the Holy See should be required for valid alienation. The first became an issue within a few years of the 1917 Code's having been promulgated. The latter became more of an issue following the Second World War.

As has already been mentioned, the drafters of the 1917 Code adopted the norms of the Latin Monetary Union (LMU) to determine money values. At the time of the promulgation of the 1917 Code, writers evaluated 30,000 lire or francs as equivalent to \$6,000 in gold.<sup>56</sup> However, within a few years of the promulgation of the 1917 Code, the Congregation for the Propagation of the Faith felt it necessary to offer a

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<sup>55</sup> The issue was first raised in a private response of the Congregation for the Propagation of the Faith, July 10, 1920. English translation in *CLD*, 2(1943), pp. 447-448.

<sup>56</sup> "A gold franc or gold lira was equivalent to .193 of a gold dollar (30,000 x .193 equals \$5,790, absolute equivalent). In everyday life, however, the dollar was considered equivalent to five francs or lire, hence to \$6,000 (popular estimate)", see Bouscaren, Ellis and Korth, p. 842.

clarification regarding the value of the franc. In a private declaration it stated simply that the value of the franc was to be judged according to the normal value of the currency, and not according to the fluctuations of exchange.<sup>57</sup>

The monetary systems of the world were further affected by the Second World War. In Europe, in particular, currency lost its prewar value. It became difficult to determine what the equivalent of 30,000 francs or lire was in paper money of the day in various countries.<sup>58</sup> For example, by 1951, the American gold dollar was devalued from 100 cents to .5906 cents. It was estimated that 30,000 lire or francs corresponded to 10,000 American dollars of that day, and that one needed permission from the Holy See for alienations and loans only when the transaction exceeded that amount.<sup>59</sup>

The Holy See attempted to regulate the situation through a series of decrees issued in the 1950s and 1960s. However, before we examine these decrees, a 1947 letter from the Congregation for Religious to the Apostolic Delegate of the United States is worthy of examination.

Although the letter dealt primarily with dispensations

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<sup>57</sup> See Congregation for the Propagation of the Faith, response, July 10, 1920, see *CLD*, 2(1943), pp. 447-448.

<sup>58</sup> See Bouscaren, Ellis and Korth, p. 842.

<sup>59</sup> See A. Ellis, "10,000 Gold Francs or Lire", in *Review for Religious*, 11(1952), p. 302.

from the eucharistic fast for religious,<sup>60</sup> a portion of the letter addressed the issue of alienation. It states:

I am also pleased to inform Your Excellency that the Sacred Congregation has granted faculties to this Apostolic Delegation:

a) To permit the contraction of loans, sales, and alienations of property belonging to a religious institute, when the sum involved does not exceed a half a million gold dollars, provided that there is observance of the norms which were made known to the Most Reverend Ordinaries and to the religious Superiors by this Apostolic Delegation on November 13, 1936...<sup>61</sup>

The letter to the apostolic delegate is important. It represented, on the Holy See's part, a willingness to relax its first hand control of some decisions regarding alienations, at least in the U.S.A. The concession was not granted because of difficulties in contacting the Holy See since communications between Europe and North America had improved significantly following the Second World War. Rather there may have been some notion of subsidiarity suggesting that decisions regarding alienations could be made more

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<sup>60</sup> According to the letter, the Sacred Congregation imposed a tax of five dollars on each diocese taking advantage of the dispensation.

<sup>61</sup> A private letter from the Congregation for Religious to the Apostolic Delegate of the United States, April 3, 1947, in *CLD*, 3(1954), pp. 368-369.

effectively closer to home.<sup>62</sup> The period was also one marked by spiraling inflation thus making it necessary to provide more flexible norms.

On July 13, 1951, the Consistorial Congregation issued a decree stating that recourse was to be had to the Apostolic See whenever the sum of money involved exceeded ten thousand gold francs or lire.<sup>63</sup>

On October 18, 1952, the Consistorial Congregation stated that in applying the decree of July 13, 1951, the sums of money listed in the accompanying table were to be considered for the respective countries as the limits beyond which the permission of the Holy See was required. The various amounts were listed in the currencies of the countries named. Canada's limit was 5,000 Canadian dollars while the U.S. limit was 5,000 American dollars.<sup>64</sup> Countries not listed were to

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<sup>62</sup> For an analysis of the subject of "subsidiarity", see J. Komonchak, "Subsidiarity in the Church: The State of the Question", in *The Jurist*, 48(1988), pp. 298-349.

<sup>63</sup> Consistorial Congregation, response, July 13, 1951, in *AAS*, 43(1951), p. 602. English translation in *CLD*, 3(1954), p. 212.

<sup>64</sup> Consistorial Congregation, "Alienations and Debts: Amounts in Actual Currency for Which Permission of Holy See Is Required", issued in a private document dated Oct. 18, 1952, in *CLD*, 4(1958), pp. 391-393. In the index of faculties for nuncios, internuncios and apostolic delegates issued on the same day by the Consistorial Congregation, nuncios and apostolic delegates were given the faculty to permit alienations where the amount did not exceed triple the sum mentioned in the Notification in cases of urgent necessity, evident utility and where there was danger in delay. The

determine the amount of the limit based on the value of nearby countries where similar conditions existed.

The document noted that the limits for alienation applied to all ecclesiastical bodies existing in each territory, whatever be the congregation of the Roman Curia on which they depended. Thus the limits applied to religious institutes as well as to dioceses.

This fact was confirmed in another private letter sent by the Congregation for Religious in which the same amounts for Canada and the United States were once again noted.<sup>65</sup>

On June 30, 1962 the Congregation for Religious sent a private notification to the Superiors of all institutes, increasing the amounts to approximately three times the previous limit. Thus the new limit for Canada and the United States was 15,000 American dollars.<sup>66</sup>

Even though they bring us into the Vatican II period, we can note for purposes of continuity a number of other decrees

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following year, April 27, 1953, the same congregation issued a new formula permitting nuncios and apostolic delegates to allow alienation of goods whose value did not exceed double (rather than three times) the increased amount fixed by the Notification of Oct. 18, 1952. See *CLD*, 4(1958) p. 393.

<sup>65</sup> Congregation of Religious, "Alienations and Debts: Temporary Limit-Values in Various Currencies", Jan. 29, 1953, in *CLD*, 4(1958), pp. 203-204.

<sup>66</sup> Congregation of Religious, "Alienations and Debts: New Temporary Limit-Values for Religious", in *CLD*, 5(1963), p. 376-377.

determining the limits. Thus, on July 13, 1963 the Consistorial Congregation issued another decree on this subject.<sup>67</sup> It desired to have one world-wide uniform standard with regard to the monetary limit established with respect to canons 534 and 1532. Henceforth, the 30,000 francs mentioned in canons 534 and 1532 were to be understood as 66,000 Swiss francs. One thousand francs was thus equivalent to 2,200 Swiss francs. Bishops throughout the world were to determine what this amount would be equivalent to in their local currency and notify the Holy See of the amounts. Under the above procedure, the limit for Canada and the United States remained approximately the same as had been established under the earlier decree of June 30, 1962.

Likewise, as will be seen later, on November 6, 1964, the rescript *Cum admotae*<sup>68</sup> issued by the Secretary of State allowed for Superiors General of pontifical clerical religious institutes, with the consent of their council, to alienate and contract debts up to the sum of money determined by the national or regional Conference of Bishops for the respective countries and approved by the Holy See. Those limits, given

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<sup>67</sup> Consistorial Congregation, Decree, "*Cum rationes*", in *AAS*, 55(1963), p. 656; English translation in *CLD*, 6(1969), pp. 822-823.

<sup>68</sup> Secretary of State, Rescript, *Cum admotae*, Nov. 6, 1964, in *AAS*, 59(1967) pp. 374-378; English translation in *CLD*, 6(1969), pp. 147-152.

privately, and reported in *Commentarium pro religiosis* did not include amounts either for Canada or for the United States. The limits were as low as 15,000 U. S. dollars for Bolivia and Brazil and as high as 100,000 U. S. dollars for Puerto Rico.<sup>69</sup> It is also interesting to note that in the limits established for Germany, a distinction was made between the maximum for alienation (DM 500,000) and that established for loans (DM 1,000,000).

A further list of limit values for alienations and debts was reported in 1968 in *Monitor ecclesiasticus*.<sup>70</sup> This list set 300,000 Canadian dollars as the limit for Canada but did not include an amount for the United States.<sup>71</sup>

The next list of values is dated 1974. Again it was distributed privately. There is no substantial difference between the 1974 list of values and the 1968 one. However, it mentions that for countries not listed, the amount for all without distinction was 15,000 American dollars. This also

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<sup>69</sup> These amounts appear in *Commentarium pro religiosis*, 45(1966), pp. 255-256 but are not attributed to any source. An English version is found in *CLD*, 6(1969), pp. 156-157, but once again is not attributed to any source.

<sup>70</sup> See F. Romita, "De summa limite in bonis ecclesiasticis alienandis", in *Monitor ecclesiasticus*, 93(1968), pp. 353-356.

<sup>71</sup> See *ibid.* p. 354.

included the United States itself.<sup>72</sup>

In 1981 the limit for religious institutes and dioceses of the United States was established at one million dollars.<sup>73</sup> A similar limit (in Canadian dollars) was established for the Canadian Conference of Catholic Bishops as well as for religious institutes within the country. To date, this limit has remained in effect for Canada, though a recent change has been made for the conference of bishops<sup>74</sup> and the

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<sup>72</sup> See Secretary for the Congregation for Religious and Secular Institutes, "Pecuniae summae a Sancta Sede probatae pro bonorum alienatione", *Commentarium pro Religiosis*, 55(1974), pp. 363-364. Another list of limit values was privately distributed in 1978. While the limits for Canada did not change and no new limit was established for the United States, there were significant changes for some countries. Chile's limit was doubled, Austria's limit was increased by two and a half times and Columbia's was increased by five times the previous limit. See *CLD*, 9(1981), p. 45.

<sup>73</sup> A private letter from the Cardinal Prefect of the Sacred Congregation for the Clergy to Archbishop J. Roach, then president of the National Conference of Catholic Bishops, in *CLD*, 9(1981), pp. 44-45 established the limit for the Conference of bishops as well as the religious institutes of the United States. It is interesting to note that for many years the National Conference of Catholic Bishops refused to request a limit for alienation. However, when the Religious of the United States desired to have their limit raised they were required to send their request to the Holy See through the episcopal conference. When Archbishop Roach, writing "on behalf of the Episcopal Conference as well as the Conferences of Major Superiors of the U. S." requested the limit be increased for religious, the Holy See responded by establishing a ceiling both for religious as well as for the dioceses of the U. S., as if Roach's letter had requested a limit for both bodies. See *CLD*, 9(1981), pp. 42-45.

<sup>74</sup> The National Conference of Catholic Bishops in 1986 proposed that the maximum limit for alienation of church property be \$1,000,000 or \$5.00 per capita of the Catholic

religious institutes<sup>75</sup> in the United States granting them an upper limit of three million dollars.

### III. LEGISLATION OF THE VATICAN II PERIOD

We turn now to examine the legislation of the Vatican II period regarding alienation. However, a few words must first be said about the revival of the biblical notion of "stewardship" as evidenced in some conciliar and post-conciliar documents. While the Second Vatican Council does not focus specifically on the stewardship role of those in administration, a number of conciliar documents speak to the theme of both clergy and lay involvement in temporal affairs.

*Presbyterorum ordinis*<sup>76</sup> refers to the responsible management of ecclesiastical property by priests.<sup>77</sup> Ad

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population, up to a ceiling of \$5,000,000. However this was not approved by the Holy See. The maximum limit of \$3,000,000 was established as an interim provision in a letter from Cardinal A. Innocenti, April 16, 1991: see *Implementation of the 1983 Code of Canon Law*, National Conference of Catholic Bishops, Washington, DC, United States Catholic Conference, Inc., 1991, pp. 22-24.

<sup>75</sup> CLSA, "CLSA Newsletter", Washington, DC, June 1992, p. 4.

<sup>76</sup> See *Presbyterorum ordinis*, Dec. 7, 1966, in AAS, 58(1966) pp.991-1024. Translation in A. Flannery, ed., *Vatican Council II, The Conciliar and Post Conciliar Documents*, New York, Costello, pp. 863-902 (hereafter cited as Flannery).

<sup>77</sup> See *ibid.*, para. 17, pp. 1017-1018. Translation in Flannery, pp. 894-895.

gentes<sup>78</sup> speaks of the responsibility of lay people in missionary countries to collaborate in parochial and diocesan activity and to administer temporal affairs.<sup>79</sup> And *Apostolicam actuositatem*<sup>80</sup> speaks of lay people of genuinely apostolic spirit engaging zealously in such apostolic works as the administration of the goods of the Church.<sup>81</sup> A clear understanding of the stewardship role of the bishop is evident in the post-conciliar document, *The Directory on the Pastoral Ministry of Bishops*.<sup>82</sup> An analogy can easily be made between the bishop being the good steward of the diocesan goods entrusted to him and other administrators, such as general or provincial superiors, who have been entrusted with the administration of the temporal goods of their institutes. The

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<sup>78</sup> See Decree on the Church's Missionary Activity, *Ad gentes*, December 7, 1965, in *AAS*, 58(1966), pp. 947-990. Translation in Flannery, pp. 813-856.

<sup>79</sup> See *ibid.*, para. 41, pp. 988-89. Translation in Flannery, pp. 854-855.

<sup>80</sup> See Decree on the Apostolate of the Laity, *Apostolicam actuositatem*, November 18, 1965, in *AAS*, 58(1966), pp. 837-864. Translation in Flannery, pp. 766-798.

<sup>81</sup> See *ibid.*, para. 10, pp. 846-847. Translation in Flannery, pp. 777-778.

<sup>82</sup> Congregation for Bishops, *Directorium de pastorali ministerio Episcoporum*, in *Civitate Vaticana*, Typis polyglottis Vaticanis, 1973. English translation prepared by the Benedictine monks of the Seminary of Christ the King, Mission, B.C., *Directory on the Pastoral Ministry of Bishops*, Ottawa, Publications Service of the Canadian Catholic Conference, 1974.

underlying message of these documents is the need for good stewardship on the part of all who on any level assumed responsibility for the goods of the Church.

The Church acknowledges its right to acquire, retain, administer, and alienate temporal goods in pursuit of its proper ends.<sup>83</sup> One of the ends for which the Church carries on its temporal activities is to perform works of charity, especially toward the needy.<sup>84</sup> Thus F. Morrissey is correct in pointing out that administrators of Church goods are stewards of the goods of the poor.<sup>85</sup> The administrators function in a fiduciary role in the canonical sense.

In canon law, the trustee or steward of goods is not considered an owner and does not hold title as such. The trustee's responsibility is rather to carry out transactions in such a manner as will most benefit another person or group, in this case, the Church.<sup>86</sup>

The role of the administrator, then, is to manage church property in a way that is consistent with the purpose and teachings of the Church. This may be described as the faith obligation placed upon the administrator. Although the term "steward" will be referred to only once in Book V of the 1983

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<sup>83</sup> See Canon 1254, §1.

<sup>84</sup> See Canon 1254, §2.

<sup>85</sup> See F. G. Morrissey, "Proposed Canon Law on Temporal Goods Reflects Vatican II's Influence", in *Hospital Progress*, 63(1982) n. 3, p. 38.

<sup>86</sup> *Ibid.*, p. 40.

Code, nonetheless it puts into context all those actions performed by the administrator which are intended for the preservation, development, management, and use of church property.<sup>87</sup>

A. Pastorale munus

On November 30, 1963, Paul VI issued an apostolic letter *motu proprio*, entitled *Pastorale munus*.<sup>88</sup> This letter was issued as the second session of the Second Vatican Council was drawing to a close. Its intent was to facilitate the pastoral care of the faithful by extending to diocesan bishops a variety of faculties and privileges from the celebration of sacraments to the granting of permissions for alienation. Paragraph 32 authorizes bishops

to grant permission, for a legitimate reason, to alienate, pledge, mortgage, rent out, or perpetually lease ecclesiastical property and to authorize ecclesiastical moral persons to contract debts to the sum of money determined by the National or Regional Conference of Bishops and approved by the Apostolic See.<sup>89</sup>

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<sup>87</sup> See J. Hite, "Church Law on Property and Contracts", in *The Jurist*, 44(1984), p. 120.

<sup>88</sup> Paul VI, *Motu proprio, Pastorale munus*, in *AAS* 56(1964) pp. 5-12. English translation in *CLD*, 6(1969), pp. 370-378.

<sup>89</sup> "Concedendi licentiam ut, legitima interveniente causa, bona ecclesiastica alienari, oppignorari, hypothecae nomine obligari, locari, emphyteusi redimi possint, et personae morales ecclesiasticae aes alienum contrahere valeant, usque ad eam pecuniae summam, quam nationalis aut

B. Cum admotae

On November 6, 1964 the papal Secretariat of State issued a pontifical rescript entitled *Cum admotae*<sup>90</sup> whereby certain faculties were delegated by the Apostolic See to superiors general of clerical religious institutes of pontifical law and to abbots president of monastic congregations. These faculties covered a variety of subjects from the power to dispense members from certain impediments to sacred Orders to issues regarding the alienation of temporal goods.

Paragraph nine reads as follows:

With the consent of their council, to allow for a just cause that property belonging to the religious institute may be alienated, pledged, mortgaged, rented out, or perpetually leased and that moral persons belonging to the religious instituted may contract debts to the sum of money determined by the National or Regional Conference of Bishops and approved by the Apostolic See.<sup>91</sup>

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regionalis Conferentia Episcoporum proposuerit et Apostolica Sedes adprobaverit", in *AAS*, 56(1964) p. 10. English translation from *CLD*, 6(1969), p. 375. See also G. Graham, "The Power of Bishops in Recent Documents", in *The Jurist*, 28 (1988), pp. 425-445.

<sup>90</sup> Secretary of State, rescript, *Cum admotae*, in *AAS*, 59(1967) pp. 374-378. English translation in *CLD*, 6(1969), pp. 147-152.

<sup>91</sup> "De consensu sui Consilii, concedendi iusta de causa, ut bona propriae Religionis alienari, oppignarari, hypothecae nomine obligari, locari, emphyteusi redimi possint, utque personis moralibus propriae Religionis aes alienum contrahere liceat, usque ad eam pecuniae summam, quam vel Nationalis vel Regionalis Episcoporum Coetus proposuerit et Apostolica Sedes probaverit", in *AAS*, 59(1967), pp. 375-376. English translation in *CLD*, 6(1969), p. 149. For further

These two documents, *Pastorale munus* and *Cum admotae*, as well as *Religionum laicalium* and a circular letter from the Prefect of the Congregation for the Clergy<sup>92</sup> serve as the foundation stones for the preparation of the new canons dealing with alienation of temporal goods in clerical, religious institutes.

#### SUMMARY

It is evident from what we have seen that the notion of alienation became an issue almost as soon as the Church began to acquire property. Alienations were frowned upon unless they were advantageous to the Church. Reasons of necessity, utility, or piety became the norm. Abuses with respect to alienation led to more stringent regulations, such as those contained in Paul II's constitution, *Ambitiowae*. This

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commentary on *Cum admotae*, see R. Soullard, "Consultations canoniques", in *Vie consacrée*, 57(1985), pp. 186-190.

It could be noted that on May 31, 1966 the Congregation for Religious issued the decree, *Religionum laicalium*, granting to superiors general of pontifical lay religious institutes the same faculty with respect to alienation as had been granted to pontifical institutes in *Cum admotae*. Since this dissertation refers to clerical institutes, the decree does not apply to them. Paragraph two of *Religionum laicalium* is identical to paragraph nine of *Cum admotae* quoted above. See AAS, 59(1967) pp. 362-364. English translation in *CLD*, 6(1969), pp. 153-156.

<sup>92</sup> The letter from Cardinal J. Wright was on the subject of the care of the historico-artistic heritage of the Church. See AAS, 63(1971), pp. 315-317. English translation in *CLD*, 7(1974), pp. 821-824.

document, reaffirmed by Pius IX in 1869, along with the instruction, *Inter ea*, on the subject of debt limitations for religious institutes set the tone for the 1917 codification.

The 1917 Code produced a series of canons covering alienation in an attempt to protect the ecclesiastical goods of the Church. The Roman Pontiff was the supreme administrator and dispenser of the Church's temporal goods. The Holy See, acting in his name, was to be contacted and permission was to be obtained before any alienation beyond a sum equivalent to \$6,000.00 could take place. In this way such actions were meant to protect the goods of the Church.

Two world wars led to a change in the economies of the world. The value of money began to fluctuate; land and buildings, which once were of great value, often became a burden to own and maintain. Stocks and bonds and other investments became the means of retaining financial security in a changing world.

The Second Vatican Council, conscious of world events and sensitive to the needs of people, spoke of the need for good stewardship. Documents such as *Pastorale munus* and *Cum admotae* gave to bishops and religious superiors faculties to respond better to the needs of their people. In *Pastorale munus* stewardship combined with the notion of subsidiarity provided for the possibility of alienation, mortgages, perpetual leases, and even contracting debts to take place in dioceses

on the basis of norms established on the national level and approved by the Apostolic See. *Cum admotae*, issued the following year, granted similar permission to clerical religious institutes of pontifical right.

These documents help form the basis for the revised Code. The task of Chapter III will be to trace the revision process which lead to the formulation of canons 638 and 1292 of the present Code, examine these canons in detail and see how the legislation on alienation is applied to ecclesiastical goods.

**CHAPTER THREE**  
**THE CURRENT LEGISLATION ON ALIENATION**  
**AND ITS APPLICATION TO CERTAIN TRANSACTIONS**

A fire extinguisher is a useful device to have in any home or office. However it is of value only if someone knows how to operate it and the types of fires upon which it can or cannot be used. The Church's legislation on alienation is similar. It can serve to protect the stable patrimony of a diocese or religious institute only if someone understands what the legislation says and how it is to be applied. Thus we intend in this chapter to study in detail the revision process and the content of the two principal canons governing the alienation of temporal goods in clerical, religious institutes, that is canons 638, §3 and §4 and 1292.

Flowing from this study we shall then examine four dimensions of the legislation as it is to be applied in practice. First, the several procedures to be observed: the conditions for validity and liceity, the disposal of proceeds from an alienation, and the dossier to be prepared for the Holy See. Secondly, those acts which are subject to the procedures for alienation. Thirdly, those acts which are not subject to the formalities. Finally, new situations which may need to be addressed in light of changing economic times.

## I. THE REVISION PROCESS

The present Code of Canon Law was promulgated by Pope John Paul II in 1983, but it was Pope John XXIII who set the wheels of change in motion almost 25 years earlier when he announced a synod for the diocese of Rome, an ecumenical council, and a revision of the Code of Canon law.<sup>1</sup>

Since we must examine two separate books of the Code with respect to the revision process we shall once again move from the general to the specific, tracing the revision of canon 1292 in Book V and then that of canon 638 in Book II.

1. Canon 12921977 Schema

The initial revision of Book V took place between 1967 and 1970. Nine sessions were held, and the results were made public in the *1977 Schema*. Canon 37 of this text, basing itself on canon 1532 of the 1917 Code, dealt with the issue of

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<sup>1</sup> See J. A. Coriden, *An Introduction to Canon Law*, New York/Mahwah, Paulist Press, 1991, p. 35.

permissions needed for alienation.<sup>2</sup> (It is not necessary to review such details here).

In 1979 the Commission members met and reviewed the observations received from various consultants. A new draft (1980 *Schema*) was prepared.

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<sup>2</sup> Canon 37 (can. 1532) "§1. Salvo iure Institutorum vitae consecratae legitima auctorita de qua in can. 36. quoad personas iuridicas publicas iuris dioecesanī est loci Ordinarius qui audire tenetur Consilium a rebus oeconomicis et consensum habere eorum quorum interest.

§2. "Si tamen agatur de rebus quarum valor summam a Conferentia Episcopali pro sua cuiusque regione definiendam excedit, licentia loci Ordinarii prius confirmari debet a commissione speciali ad eum finem ab eadem Conferentia constituta.

§3. "Si agatur de rebus ex voto Ecclesiae donatis vel de rebus pretiosis artis vel historiae causa, vel de quibusvis bonis quorum valor excedit duplo summam a Conferentia Episcopali ad normam §2 definitam, auctoritas competens ad valide agendum etiam licentiam Sanctae Sedis obtinere debet.

§4. "Si res alienanda sit divisibilis, in petenda licentia vel confirmatione pro alienatione exprimi debent partes antea alienatae; secus licentia irrita est.

§5. "Ii qui in alienandis bonis consilio vel consensu partem habere debent, ne praebeant consilium vel consensum nisi prius exacte fuerint edocti tam de statu oeconomico personae iuridicae cuius bona alienanda proponuntur, quam de alienationibus iam peractis", in *Schema canonum Libri V: De iure patrimoniali Ecclesiae*, in Civitate Vaticana, Typis polgylottis Vaticanis, 1977, pp. 17-18 (hereafter cited as 1977 *Schema*); English translation from *Draft Canons on Book Five: The Law Regarding Church Possessions*, J. Alesandro, trans., Washington, DC, NCCB, 1978, pp. 26-27.

1980 Schema

In the 1980 *Schema*, canon 37 now became canon 1243. Canon 1243, §1 introduced a) the notion of minimum and maximum amounts for alienations, to be determined by the conference of bishops; b) the competent authority to give permission was the local ordinary; c) he was to receive the consent of the finance council rather than simply consult it; d) in addition to having the consent of interested parties, he was also to have the consent of the college of consultors.

Canon 1243, §2 eliminated an earlier proposal that permission of the Holy See was necessary for alienation of goods whose value exceeded twice the limit established by the conference of bishops. It simply stated that for validity, the alienation of goods beyond the maximum amount required the approval of the Holy See.<sup>3</sup>

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<sup>3</sup> Canon 1243, §1. "Salvo iure Institutorum religiosorum, cum valor bonorum, quorum alienatio proponitur, continetur intra summam minimam et summam maximam ab Episcoporum Conferentia pro sua cuiusque regione definiendas, auctoritas competentens, si agatur de personis iuridicis Ordinario loci non subiectis, propriis determinatur statutis; si vero agatur de personis sibi subiectis auctoritas competentens est loci Ordinarius cum consensu Consilii a rebus oeconomicis et eorum quorum interest.

§2. "Si tamen agatur de rebus quarum valor summam maximam excedit, aut de rebus ex voto Ecclesiae donatis, vel de rebus pretiosis artis vel historiae causa, ad validitatem alienationis requiritur insuper licentia S. Sedis.

§3. "Si res alienanda sit divisibilis, in petenda licentia pro alienatione exprimi debent partes antea alienatae; secus licentia irrita est.

1981 Relatio

The 1981 *Relatio* introduced a number of minor changes. First, the canon would begin with the words: "with due regard for the prescription of canon 564, §3..." Secondly, in addition to the consent of the finance council, that of the college of consultors was also required. And thirdly, the diocesan bishop also needed the consent of these bodies to alienate the goods of the diocese.<sup>4</sup>

1982 Schema novissimum

In the 1982 *Schema novissimum* sent to the Pope, canon 1243 had become canon 1292. One final change was to take place regarding this canon before its promulgation in the 1983 Code. The competent authority referred to in canon 1292, §1 as the

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§4. "Ii qui in alienandis bonis consilio vel consensu partem habere debent, ne praebeant consilium vel consensum nisi prius exacte fuerint edocti tam de statu oeconomico personae iuridicae cuius bona alienanda proponuntur, quam de alienationibus iam peractis", in *Codex iuris canonici: Schema Patribus commissionis reservatum*, in Civitate Vaticana, Liberia Editrice Vaticana, 1980, p. 277 (hereafter cited as 1980 Schema).

<sup>4</sup> *Relatio complectens syntheses animadversionum ab Em.mis atque Exc.mis Patribus Commissionis ad novissimum schema codicis iuris canonici exhibitaram, cum responsionibus a Secretaria et consultoribus datis*, in Civitate Vaticana, Typis polyglottis Vaticanis, 1981, pp. 288-289; (hereafter cited as 1981 *Relatio*). This text referred to the agreed upon changes without repeating the canon in its entirety.

"local ordinary" was changed to the "diocesan bishop".<sup>5</sup> With this final change, canon 1292 became the general canon on permissions required for alienation, as shall be seen later in this chapter.

## 2. Canon 638

Now let us turn our attention to the revision process as it applied to "Institutes of Perfection".

In 1970 a general outline for the revision was first published.<sup>6</sup> The Commission published an official draft in 1977.<sup>7</sup> The general division of the old law was not retained.<sup>8</sup>

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<sup>5</sup> *Codex iuris canonici: Schema novissimum iuxta placita Patrum Commissionis emandatum atque Summo Pontifici praesentatum*, in *Civitate Vaticana, Typis polyglottis Vaticanis*, 1982, p. 225 (hereafter cited as *Schema novissimum*).

<sup>6</sup> Pontifical Commission for the Revision of the Code of Canon Law, *Communicationes*, Romae, Typis Polyglottis Vaticanis, 2(1970), pp. 175-176 (hereafter cited as *Communicationes*).

<sup>7</sup> *Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum*, Romae, Typis polyglottis Vaticanis, 1977, xiii-37p. (hereafter cited as *Schema canonum de institutis vitae consecratae*); English version in *Schema of Canons on Institutes of Life Consecrated by Profession of the Evangelical Counsels*, Washington, DC, Publication Office of the U.S. Catholic Conference, 1977, xxv-73 p. (hereafter referred to as *Schema on Canons on Institutes*).

<sup>8</sup> See *Schema 1977*, p. x. English translation in Pontifical Commission for the Revision of the Code of Canon Law, *Schema of Canons on Institutes*, p. xix.

1977 Schema

Title IV of the 1977 *Schema*, "Temporal Goods of Institutes and Their Administration", contained eight canons. Two of these (cc.40 and 42) would eventually form part of canon 638 of the present Code.

Canon 40 stated:

Within the ambit of the universal law, it belongs to the Constitutions to determine which acts exceed the scope of ordinary administration.<sup>9</sup>

Canon 42 read as follows:

For the validity of an alienation which exceeds the value set by the episcopal conference in accord with the norm of can..., the consent of the Apostolic See is required.<sup>10</sup>

1980 Schema

In the 1980 *Schema*, canon 40 was now referred to as canon 564, §1 and incorporated some changes. For instance, canon 564, §2 introduced a new addition dealing with other

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<sup>9</sup> Canon 40 "Constitutionum est, intra ambitum iuris universalis, determinare quinam actus excedant et modum ordinariae administrationis", in *Schema 1977*, pp. 24-25.

<sup>10</sup> Canon 42 "Ad validitatem alienationis, quae valorem a Conferentia Episcoporum definitum ad normam can. ... excedat, consensus Apostolicae Sedis requiritur", in *Schema 1977*, p. 27.

officials who could be designated to incur expenses and perform juridic acts of ordinary administration.<sup>11</sup>

Canon 42 was now numbered canon 564, §3. This canon was noticeably expanded. In addition to the consent of the Holy See for alienation exceeding the maximum limit, the following were also required: a) written permission of the competent superior, b) the intervention of the council, c) consent of the Holy See for business transactions adversely affecting the juridic person, as well as for items given to the Church in virtue of a vow, or items of precious artistic or historical value.<sup>12</sup>

Canon 564, §4, dealing with autonomous monasteries, was also added.<sup>13</sup>

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<sup>11</sup> Canon 564, §2: "Expensas et actus iuridicos ordinariae administrationis valide, praeter Superiores, faciunt, intra fines sui muneris, officiales quoque qui in iure proprio ad hoc designantur", 1980 *Schema*, p. 136.

<sup>12</sup> Canon 564, §3: "Ad validitatem alienationis et cuiuslibet negotii in quo patrimonium personae iuridicae peior fieri potest requiritur licentia in scripto data Superioris competentis cum interventu sui consilii ad normam iuris. Si tamem agatur de negotio quod summam a Sancta Sede pro cuiusque regione definitam superat aut de rebus ex voto Ecclesiae donatis vel de rebus pretiosis artis vel historiae causa requiritur insuper ipsius Sanctae Sedis licentia", 1980 *Schema*, p. 136.

<sup>13</sup> Canon 564, §4: "Pro monasteriis sui iuris de quibus in can. 541, et Institutis iuris dioecesanis accedat necesse est consensus Ordinarii loci in scriptis praestitus", 1980 *Schema*, p. 137.

1981 Relatio

The 1981 *Relatio* produced one further minor change in canon 564, §3. The phrase "patrimony of the juridic person" was replaced by the phrase "patrimonial condition of the juridic person."<sup>14</sup>

1982 Schema novissimum

The 1982 draft sent to the Pope now numbered canon 564 as canon 638. One final change involved the dropping of the words "ad normam iuris" in canon 638, §3 after the words "cum interventu sui consilii..."<sup>15</sup>

**II. THE CANONS**

Having barely traced the revision process for canons 1292 and canon 638 of our present Code, we turn our attention to the promulgated text of these canons to give us some insight into the role the norms now play in the economic life of clerical, religious institutes of pontifical right.

These two canons are pivotal to temporal goods issues for religious institutes. But we must also be cognizant of canon 635 which states that the temporal goods of religious institutes, since they are ecclesiastical goods, are regulated

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<sup>14</sup> *1981 Relatio*, p. 147.

<sup>15</sup> *Schema novissimum*, p. 118.

by the prescriptions of Book V, *The Temporal Goods of the Church*, unless it is expressly stated otherwise. In light of this canon, we must be equally cognizant of canons 1290-1298 in Book V under the title of "Contracts and Alienation in Particular". And, as we shall see later in this chapter, these canons are essential for a proper understanding of the application of the Church's laws with respect to alienation in the broad sense. Once again, moving from the general to the particular, we begin with canon 1292.

A. Canon 1292

Canon 1292 states:

§1. With due regard for the prescription of can. 638, §3, when the value of the goods whose alienation is proposed is within the range of the minimum and maximum amounts which are to be determined by the conference of bishops for its region, the competent authority is determined in the group's own statutes when it is a question of juridic persons who are not subject to the diocesan bishop; otherwise, the competent authority is the diocesan bishop with the consent of the finance council, the college of consultors and the parties concerned.

§2. The permission of the Holy See is also required for valid alienation when it is a case of goods whose value exceeds the maximum amount, goods donated to the Church through a vow or goods which are especially valuable due to their artistic or historical value.

§3. If the object to be alienated is divisible, the parts which have previously been alienated must be mentioned in seeking the permission for alienation; otherwise the permission is invalid.

§4. The persons who must take part in alienating goods through their advice or consent are not to give their advice or consent unless they have first been thoroughly informed concerning the economic situation of the juridic person whose goods are proposed for alienation and concerning previous alienations.<sup>16</sup>

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<sup>16</sup> Canon 1292, §1. "Salvo praescripto can. 638, §3, cum valor bonorum, quorum alienatio proponitur, continetur intra summam minimam et summam maximam ab Episcoporum conferentia pro sua cuiusque regione definiendas, auctoritas competens, si agatur de personis iuridicis Episcopo dioecesano non subiectis, propriis determinatur statutis; secus, auctoritas competens est Episcopus dioecesanus cum consensu consilii a rebus oeconomicis et collegii consultorum necnon eorum quorum interest. Eorundem quoque consensu eget ipse Episcopus dioecesanus ad bona dioecesis alienanda.

§2. "Si tamen agatur de rebus quarum valor summam maximam excedit, vel de rebus ex voto Ecclesiae donatis, vel de rebus pretiosis artis vel historiae causa, ad validitatem alienationis requiritur insuper licentia Sanctae Sedis.

§3. "Si res alienanda sit divisibilis, in petenda licentia pro alienatione exprimi debent partes antea alienatae; secus licentia irrita est.

§4. "Ii, qui in alienandis bonis consilio vel consensu partem habere debent, ne praebeant consilium vel consensum nisi prius exacte fuerint edocti tam de statu oeconomico personae iuridicae cuius bona alienanda proponuntur, quam de alienationibus iam peractis."

For an analysis of this canon, see J. Myers, "The Temporal Goods of the Church", in *The Code of Canon Law: A Text and Commentary*, J. Coriden, T. J. Green, and D.E. Heintschel, eds., New York/Mahwah, Paulist Press, 1985 p. 880. See also L. Chiappetta, *Il Codice di diritto canonico*, Napoli, Edizioni Dehoniane, 1988, vol. 2, pp. 401-403 (hereafter cited as Chiappetta); L'Institut Martin de Azpilcueta, *Code de droit canonique*, traduction française sous la direction de E. Caparros, M. Thériault, and J. Thorn, Montréal, Wilson and Lafleur Limitée, 1990, pp. 746-748 (hereafter cited as L'Institut Martin); P. Lombardia and J. Arrieta, eds., *Codice di diritto canonico*, edizione bilingue commentata, edizione italiana a cura de L. Castiglione, Roma, Edizioni Logos, 1986, vol. 3, pp. 916-918 (hereafter cited as Lombardia and Arrieta); R. Paraliéu et al., *Guide pratique du*

Canon 1292 acknowledges that for the alienation of temporal goods, the consent of the competent superior with the council is required for valid alienation. Thus, as the *motu proprio Pastorale munus*<sup>17</sup> allowed, the determination of minimum and maximum amounts for various regions is to be decided by the conference of bishops. However, these amounts do not apply as such to religious institutes. A maximum sum can be set for religious different from that determined for dioceses, and no minimum is prescribed for religious. The universal law expects the proper law to establish minimum norms governing alienation. These should be decided by individual institutes and incorporated into their own statutes or directories as a means of protecting the stable patrimony of the institute.

Canon 1292, §1 further demands that the diocesan bishop have the consent of the finance council, the college of consultors, and of the parties concerned before he gives consent to the alienation of temporal goods whether they be

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*code de droit canonique*, Bourges, Éditions Tardy, 1985, pp. 365-367; A. Soria-Vasco, H. Laplane and A. Chueca, eds., *Code de droit canonique*, Paris, Éditions du Cerf, 1989, pp. 702-703 (hereafter cited as Soria-Vasco et al.); P. Valdrini et al., *Droit canonique*, Paris, Dalloz, 1990, pp. 448-449.

<sup>17</sup> See Paul VI, *Motu proprio, Pastorale munus*, in AAS, 56(1964) pp. 5-12. English translation in CLD, 6(1969), pp. 370-378.

the goods of a juridic person under his authority or the goods of the diocese itself.<sup>18</sup>

Finally, the reference to the concerned parties who must also give their consent before an alienation takes place refers to such groups as the original donors, the parish priest, if it is parish property that is being alienated, or the legitimate authority representing any public juridic person whose goods are being transferred.

Canon 1292, §2 focuses on the permission of the Holy See which is required for valid alienation. It states that in addition to (*insuper*) the consents demanded by canon 1292, §1 (those of the finance council, the college of consultors, and

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<sup>18</sup> Canons 492 and 493 describe how a finance council is formed, its duration of appointment, and some of the responsibilities vested in this council. Canons 495 to 501 describe the presbyteral council, how it is formed and its function within the diocese. Canon 502 describes how, from this council, the college of consultors is formed.

Although somewhat outside the parameters of this thesis on clerical religious institutes, canon 1292, §1 raises an interesting question as to whether or not a diocesan bishop needs to consult the various bodies (e.g. college of consultors and finance committee) before granting permission to a diocesan institute to alienate its property.

Canon 637 says the local ordinary has a right to know about the financial reports of religious houses of diocesan right. And canon 638, §4 says the written consent of the local ordinary is necessary when an institute of diocesan right wishes to perform an act of alienation. In his supervisory role the bishop should not give consent for the alienation unless he is assured the alienation is in the best interest of the institute itself. He may however have that assurance through an examination of the report of experts submitted to him by the institute or he may choose to ask for an opinion from his own finance committee.

that of the interested parties), the permission of the Holy See is also required for valid alienation in the following instances: a) when the value of the goods exceeds the maximum amount established by it; b) when the goods have been donated to the Church through a vow; or c) when the goods are precious because of their artistic or historical value.<sup>19</sup>

1. Value of goods exceeding the maximum amount established by the Holy See

In March, 1982, the Holy See (through the Congregation for the Clergy) determined a maximum amount of one million dollars for both dioceses and religious institutes in Canada.<sup>20</sup> Any alienation beyond this amount requires an indult from the Holy See. Canada's recent request for a \$3,000,000 limit, similar to that established for the dioceses and religious of the United States, is awaiting approval.

2. Goods donated to the Church through a vow

The various commentaries offer little insight into the notion of a votive offering, that is, one made to the Church in virtue of a vow. The practice of offering goods by vow is less common now than it once was. However, we must recognize

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<sup>19</sup> See Chiappetta, pp. 402-403.

<sup>20</sup> See Canadian Conference of Catholic Bishops, "Alienation of Property", Decree No. 10, in *Studia canonica*, 19(1985), pp. 187-191.

that the Church has a special responsibility when the matter is one of conscience or arises from a sacred contract.

3. Goods that are precious due to their artistic or historical value

The Church holds its sacred images in considerable respect, particularly those which are the object of public veneration of the faithful. It is absolutely forbidden to sell them, and they may not be validly alienated or perpetually transferred without the permission of the Holy See.<sup>21</sup> Such images cannot even be restored without the written permission of the ordinary, and he is not to grant such until he has consulted experts on the matter.<sup>22</sup>

Canons 1189 and 1190 reaffirm this tradition.<sup>23</sup> In an attempt to ensure that sacred objects do not fall into profane use, canon 1269 maintains that those belonging to a public ecclesiastical juridical person can be acquired only by another public ecclesiastical juridic person. Things which are of historical value may include archival material such as letters, photographs, monographs, and diaries. Though their

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<sup>21</sup> See Canon 1190.

<sup>22</sup> See Canon 1189.

<sup>23</sup> The necessity of care for the historical and artistic heritage of the Church was emphasized in the instruction of the Congregation for the Clergy, *Opera artis*, in AAS, 63(1971), pp. 315-317. English translation in *CLD*, 7(1974), pp. 821-824.

monetary value may be limited, the Church desires to protect such documents which tell the story of the faith life of a group of people or the development of a religious institute. Thus such material must not be alienated and certainly not destroyed without serious consideration of its historical value.

Canon 1292, §2 prescribes the necessity of an indult from the Holy See for alienations whose value exceeds a maximum amount. Canon 1292, §3 building upon previous experience (as noted in Chapter II) attempts to forestall sub-dividing property or other objects as a means of circumventing the necessary permission of a higher superior. Thus a piece of property worth one and a half million dollars cannot be subdivided and sold in parts in order to avoid seeking the indult from the Holy See for alienation when the maximum is set at one million dollars. The sale would be canonically invalid if one sought to sell the two or more pieces of property without the indult. It would be equally invalid if one sought the indult for the second piece of property without making reference to the earlier piece of property that had been sold.

Canon 1292, §4 indirectly places upon the administrators of ecclesiastical property the obligation of providing as much information as possible to help those who advise or give consent to be thoroughly informed of the situation. This information should include a thorough explanation of the

economic situation of the juridic person whose goods are proposed for alienation as well as any information concerning previous alienations.

Neither advice nor assent should be given lightly. Thus those whose recommendation or approval is sought are expected to familiarize themselves thoroughly with the matters at hand before offering their opinion.

B. Canon 638, §3-4

Canon 638, §3-4 reads as follows:

§3. For validity of alienation and any other business transaction in which the patrimonial condition of a juridic person can be affected adversely, there is required the written permission of the competent superior with the consent of the council. If, moreover, it concerns a business transaction which exceeds the highest amount defined for a given region by the Holy See, or items given to the Church in virtue of a vow, or items of precious art or of historical value, the permission of the Holy See is also required.

§4. For the autonomous monasteries mentioned in can. 615 and for institutes of diocesan right it is additionally necessary to have the written consent of the local ordinary.<sup>24</sup>

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<sup>24</sup> Canon 638, §3. "Ad validitatem alienationis et cuiuslibet negotii in quo condicio patrimonialis personae iuridicae peior fieri potest, requiritur licentia in scripto data Superioris competentis cum consensu sui consilii. Si tamen agatur de negotio quod summam a Sancta Sede pro cuiusque regione definitam superet, itemque de rebus ex voto Ecclesiae donatis aut de rebus pretiosis artis vel historiae causa, requiritur insuper ipsius Sanctae Sedis licentia.

§4. "Pro monasteriis sui iuris, de quibus in can. 615, et institutis iuris dioecesanis accedat necesse est consensus Ordinarii loci in scriptis praestitus."

Canon 638, §1 begins by reminding religious institutes that it is for the proper law (i.e. constitutions, statutes, directories) within the scope of universal law to decide which acts exceed the limit and manner of ordinary administration and to determine those things which are necessary to place an act of extraordinary administration validly.

Alienation normally involves a contract and as such demands administrative activity. Religious institutes may establish particular norms governing alienation. Canon 638, §3 establishes universal law for religious institutes stating that the written permission of the competent superior and the consent of the council are required for valid alienation or for any other transaction which adversely affects the

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For an analysis of this canon, see J. Leonard, "Temporal Goods", in *A Handbook on Canons 573-746*, J. Hite, S. Holland, and D. Ward, Collegeville, The Liturgical Press, 1985, p. 106-111 (hereafter cited as Leonard). See also A. Calabrese, *Gli Istituti Religiosi: Lineamenti di diritto canonico*, Roma, Fonti Vive, 1986, pp. 181-191; E. Gambari, *Religious Life According to Vatican II and the New Code of Canon Law*, Boston, Daughters of St. Paul, 1986, pp. 569-573; J. Hite, "Religious Institutes", in *The Code of Canon Law: A Text and Commentary*, pp. 486-487; J. Khoury, *Vie consacrée (essai de commentaire des canons 573-709)*, Rome, 1984, pp. 168-171; L'Institut Martín, pp. 392-393; Lombardia and Arrieta, vol. 1, pp. 473-475; V. de Paolis, "Temporal Goods of the Church in the New Code with Particular Reference to Institutes of Consecrated Life", in *The Jurist*, 43(1983), pp. 355-357; R. Paralieu et al., *Guide pratique de code de droit canonique*, Bourges, Éditions Tardy, 1985, pp. 219-220; Soria-Vasco et al., pp. 380-381; P. Valdrini et al., *Droit canonique*, Paris, Dalloz, 1990, pp. 116-118.

patrimony of the juridic person when the amount exceeds the highest amount defined for a given region by the Holy See.<sup>25</sup>

Canon 1292, on the other hand, gives authority to the conference of bishops to establish minimum and maximum amounts governing alienation within their regions, but the permission of the Holy See is required for valid alienation when it is a question of goods whose value exceeds the approved maximum amount. When it is a question of a juridic person not subject to the diocesan bishop, the group's own statutes are to determine who is the authority competent to give the required permission.

The canon is equally clear in stating that items given to the Church in virtue of a vow, or those which are precious because of artistic or historical value cannot be alienated without the permission of the Holy See.

The idea of a gift being given to the Church in virtue of a vow is not now as familiar in North America as it once was.<sup>26</sup> Yet the Code, in canons 121-123, and 1267, §3 speaks clearly about respecting the wishes of a donor. Such items donated to an institute or diocese and duly accepted might not

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<sup>25</sup> J. Hite, "Religious Institutes", in *The Code of Canon Law: A Text and Commentary*, p. 487. See also A. Soria-Vasco, H. Laplane and A. Chueca, eds., *Code de droit canonique*, Paris, Éditions du Cerf, 1989, pp. 380-381.

<sup>26</sup> For instance, many XVI-XVIIIth century Quebec churches such as Bon-Secours chapel in Old Montreal have "ex voto" offerings.

have been clearly recorded and may thus not be protected despite the demands of the canon. A votive offering takes on particular importance for the Church because such a gift represents a sacred contract made between an individual and God.<sup>27</sup> Thus it can be altered only with the permission of the highest authority.

Precious artistic items or those of historical value may also be problematic. What makes something "precious" or gives it "historical value" today? The 1917 Code considered as precious those objects which because of intrinsic worth (i.e. the material from which they were made) or of artistic appeal possessed unusual value. Usually the object had to have a gold value of at least two hundred dollars to be considered precious.<sup>28</sup>

Yet there are many objects worth well less than two hundred dollars that may be recognized as precious and therefore as a treasure within the Church. For instance, a missionary cross used by the first Redemptorists, while having an intrinsic value below two hundred dollars, would be seen by the Redemptorists and the Holy See as a precious object, and the latter would probably not give permission for the sale of

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<sup>27</sup> See D. Heintschel, "Alienation of Church Property Under the New Code of Canon Law", in *The Catholic Lawyer*, 31(1987), pp. 159-160 (hereafter cited as Heintschel).

<sup>28</sup> See J. A. Abbo and J. D. Hannan, *The Sacred Canons*, St. Louis, MO, B. Herder Book Co., 1960, vol. 1, p. 549 (hereafter cited as Abbo and Hannan).

such an item.<sup>29</sup> Relics, while often of little financial worth, have for centuries been regarded as part of the Church's treasures, and they are therefore protected from alienation.<sup>30</sup>

At the same time, though, taking into consideration the value of money today, an item worth ten or fifteen thousand dollars such as an automobile is not necessarily considered precious simply because of its monetary value. We must ask ourselves what is its historical significance? Is it something that should be kept as part of the Church's treasury? These decisions should not be made too quickly, and the advice of experts ought to be sought.

Canon 638, §4, is somewhat complementary to canon 1276, §1 which states that it is the responsibility of the ordinary to supervise carefully the administration of all the goods which belong to a public juridic person subject to him.<sup>31</sup>

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<sup>29</sup> See Heintschel, p. 159.

<sup>30</sup> See Canon 1190.

<sup>31</sup> On October 18, 1990, John Paul II, in his apostolic constitution, *Sacri canones*, promulgated the new *Code of Canons of the Eastern Churches (Codex canonum ecclesiarum orientalium, Romae, Typis Polyglottis Vaticanis, 1990, xlvi-785 p.* English translation under the auspices of the Canon Law Society of America, Washington, DC); canons of this code will be identified by CCEO preceding the canon number. A comparison of canons 638 and 1292 of the 1983 *Code of Canon Law* with the *Code of Canon Law of the Eastern Churches* reveals the following parallels:

Canon 615 had earlier specified that an autonomous monastery which has no other major superior beyond its own moderator and is not associated with any other institute of

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canon 1292, §1	(CCEO) canon 1036, §1, 1036, §1, 1°-3°
canon 1292, §2	(CCEO) canon 1036, §4
canon 1292, §3	(CCEO) canon 1038, §2
canon 1292, §4	(CCEO) canon 1038, §1 (See C. G.

FÜRST, *Canones Synopse zum Codex iuris canonici und Codex canonum Ecclesiarum Orientalium*, Freiburg, Herder, 1992, pp. 42 & 80).

This Code does not contain a specific parallel canon to canon 638 as there is for canon 1292. In a comparison between canon 1292 and (CCEO) canons 1036 and 1038, one notes the following:

- a) the consent of the finance council and the college of consultors is required by both canons;
- b) the competent authority for juridic persons not subject to the diocesan bishop or eparchial bishop is determined by the statutes;
- c) unlike canon 1292, (CCEO) canon 1036, §2 provides special regulations when the value of goods exceeds the maximum amount but is not double the amount;
- d) canon 1292, §2 requires permission of the Holy See for goods donated to the Church through a vow or for precious goods due to their artistic or historical value; while (CCEO) canon 1036, §3 allows for permission to be given by the synod as described in (CCEO) canon 1036, §2;
- e) (CCEO) canon 1036 makes no provision, as does canon 1292, for obtaining the consent of the parties concerned;
- f) (CCEO) canon 1038, §1 is almost identical to canon 1292, §4. The addition of (CCEO) canon 1038, §2 ensures that the advice, consent and confirmation that may be offered will flow from people who have been fully informed.

religious is committed to the special vigilance of the diocesan bishop according to the norm of law. Thus, in light of the responsibility which the diocesan bishop carries with respect to autonomous monasteries, it is understandable that his written consent be required before an alienation of stable patrimony or other business transaction in which the patrimonial condition of the juridic person be adversely effected, take place.

### III. THE ALIENATION OF ECCLESIASTICAL GOODS

In alienating temporal goods, it is expected that a good steward be attentive to both the demands of civil law and canon law. Too often it seems that canon law is the victim of ignorance on the part of many church people, who, anxious to do all that civil law demands, fail to study the church legislation and apply it appropriately.<sup>32</sup> The Church has clear demands regarding those conditions that must be observed if a particular action (i.e. alienation of property) is to be both valid and licit.

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<sup>32</sup> See A. Maida and N. Cafardi, *Church Property, Church Finances and Church Related Corporations: A Canon Law Handbook*, St. Louis, MO, The Catholic Health Association of the United States, 1984, p. 103.

A. Conditions to be observed for validity

Canons 1290-1298 of Book V focus on the subject of "Contracts and Alienation in Particular". We will take "alienation" here in the broad sense of the term by applying the concept to any transaction which may render the rights of a public juridic person less secure or to any contract which may in some way jeopardize the patrimonial condition of the public juridic person. Canon 1290 states that prescribed contractual regulations in civil law for a given territory are generally to be observed in canon law with the same effects as if they were prescriptions of canon law. Thus an act of alienation within the Church is canonically valid only if it is also valid civilly.

The competent church authority must give permission if temporal goods, which are part of the stable patrimony, are to be alienated.<sup>33</sup> Two issues must first be determined by particular or proper law: the minimum sum beyond which the permission of the superior competent is required, and the competent superior to grant the permission.

Canon 1292 defines the competent authority to grant such authorizations within dioceses and for juridic persons subject to the authority of the ordinary, while canon 638, §3 provides for the competent authority in religious institutes.

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<sup>33</sup> See Canon 1291.

Canon 638 is equally clear when it requires, for validity, the written permission of the competent superior with the consent of the council. Furthermore, the written consent of the local ordinary is required in certain cases by canon 638, §4. Canon 1291 also calls for the permission of the competent authority to alienate validly. Thus such permission should not be presumed but must be explicit before proceeding with an alienation. While canon 1291 does not demand written consent it would appear in the best interest of all concerned that it be put in writing.

B. Conditions to be observed for liceity

In alienating goods whose value exceeds the minimum amount, it is first required for liceity that there be a just cause<sup>34</sup> which is usually understood to be either a) urgent necessity (e.g., there are other debts that the juridic person needs to pay), b) evident usefulness (e.g., a certain piece of property has become a tax-burden, and a good price has been offered), c) piety (e.g., to obtain money to build a church or oratory), d) charity (e.g., a desire to sell a piece of property so that the funds received may be used to help another institute that is financially strapped), or e) some other serious pastoral reason (e.g., to be able to establish

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<sup>34</sup> See canon 1293, §1.

a new mission centre in a place where the population is now more numerous).

Canon 1293 also requires that there be a written estimate of the value by experts. Although the number of reports is not specified, the Latin *peritis* would indicate that more than one expert be consulted. This could be a joint evaluation or two distinct ones.

The canon also acknowledges that the general law cannot foresee every circumstance. Therefore, particular statutes enacted by those in authority may further regulate what steps are necessary for an alienation to be licit.<sup>35</sup>

C. The dossier to be prepared

To receive an indult for an alienation for goods whose value exceeds the maximum amount, a dossier must be sent (preferably in three copies) to the Holy See. It should include:

- 1) the letter of request;
- 2) a brief history of the property or object to be alienated;
- 3) the necessary permissions from the various competent

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<sup>35</sup> See J. Myers, "The Temporal Goods of the Church", in *The Code of Canon Law: A Text and Commentary*, J. Coriden, T. Green, and D. Heintschel, eds., p. 881. See also F. G. Morrissey, "Proposed Canon Law on Temporal Goods Reflects Vatican II's Influence", in *Hospital Progress*, 63(1982), no. 3, pp. 42-43.

authorities within the institute (e.g., extract of the council minutes);

4) acknowledgement that the goods in question have been donated to the Church through a vow (if this be so), or that they are goods of artistic or historical value;

5) if the object is divisible, acknowledgement of the parts which have been previously been alienated;

6) reason for the alienation, (e.g., urgent necessity, evident usefulness, piety, charity or other pastoral reason);

7) written estimates from experts concerning the value of the object to be alienated;

8) the offer to purchase;

9) any intention which the juridic person has regarding the proceeds to be received from the alienation;

10) a letter from the Ordinary to the effect that he is aware of the proposed alienation (even though this is not required in the canons, the practice of the Holy See calls for this letter).

#### D. The disposition of the proceeds

Money realized from an alienation is either to be invested carefully for the advantage of the Church or wisely expended in accord with the purposes of the alienation.<sup>36</sup> It is a normal requirement when requesting an indult for the

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<sup>36</sup> See Canon 1294, §2.

alienation of property to indicate why it is taking place. Thus if one seeks permission to sell a building in order to use the profits for the apostolic works of the institute, the permission to sell would also include, if required, a permission to use the funds as stipulated.

On the other hand, if a portion of the stable patrimony of an institute is alienated without a specific request to use the income, then the expectation is that the funds received be used to maintain the same dollar value of the stable patrimony.

The Congregation of the Council issued a declaration in 1951, based on canon (1917) 1531, §3, stating that money received from the alienation of ecclesiastical property is to be invested only in acquiring immovable property for the benefit of the Church and of the corporation concerned.<sup>37</sup> The substance of this declaration was not maintained in the present Code most likely because investments in stocks and bonds may well be financially more secure as well as generate more constant income, than immovable property.<sup>38</sup>

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<sup>37</sup> See Congregation of the Council, Declaration, "Circa alienationem bonorum ecclesiasticorum", in *AAS*, 44(1952), p. 44. English translation in *CLD*, 3(1954), p. 581.

<sup>38</sup> See *L'Institut Martín*, pp. 748-749. See also P. Lombardia and J. Arrieta, vol. 2, p. 919.

## IV. APPLICATION OF THE LEGISLATION

A. Acts subject to the procedures for alienation

While all church property is subject to the canon law on administration of Church goods, however only those goods constituted by lawful assignment as part of the stable patrimony are subject to the legislation on alienation<sup>39</sup> which apply to the conveyance of goods as well as to those actions which can jeopardize the stable patrimony of the institute.

1. Conveyance of goods

The conveyance of goods refers to the transfer of property already owned. This may take place through sale, exchange, or donation. In its strict sense, then, it is the giving over to another party of all or part of a public juridic person's stable patrimony. One must keep in mind that it is possible to convey a piece of property that is not part of the stable patrimony. For example, land which has been left to a religious institute and which, in a given instance, the donor had instructed be sold and the money used for support of a particular apostolic activity.<sup>40</sup> Or it could be property

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<sup>39</sup> See Maida and Cafardi, p. 85.

<sup>40</sup> The intention of the donor receives particular consideration in canon law and will be discussed further in this chapter.

purchased with free capital by the institute simply as a temporary investment. In neither case would the property in question be considered part of the stable patrimony.

Under the general heading of conveyance of goods the following would be considered acts of alienation according to the present law:

a) Sale or transfer of title to property. It can be noted that transfer of property from one juridic person to another is not considered alienation if the transfer occurs between one province and another within the same institute. J. Hite acknowledges that the transfer of property between a religious institute and a diocese is alienation, but he also maintains that a transfer of property may occur between a parish and a diocese without the action being considered an alienation;<sup>41</sup>

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<sup>41</sup> See Hite, "Church Law on Property and Contracts", in *The Jurist*, 44(1984), p. 127.

This author would not support Hite's contention. Canon 634 provides for the possibility of the constitutions to restrict the capacity of provinces and houses to acquire, possess, administer and alienate temporal goods. Thus it is understandable that the transfer of property within an institute not be held to the canons governing alienation.

However, the relationship between the diocese and the parish is different. Canon 1279 confirms that the administration of ecclesiastical goods is the responsibility of the individual who immediately governs the person to whom the goods belong unless particular law provides otherwise. The same canon acknowledges the right of the ordinary to intervene "in case of negligence by an administrator".

Canon 1276 gives to the ordinary the responsibility of supervising carefully the administration of all the goods belonging to the public juridic persons subject to him. This

- b) Spending stable capital that has been immobilized for a specific purpose. Canonically, the capital may have become immobilized because the juridic person, by its own actions, set it aside for a particular purpose, or the money may have been immobilized because of a condition placed upon a gift;
- c) Changing civil organizational structures so that canonical responsibilities toward church property can no longer be properly exercised;
- d) Transferring property given to the Church by reason of a vow;
- e) Transferring objects which are precious because of artistic or historical significance;<sup>42</sup>
- f) It can be noted that while expropriation of property is clearly an alienation, because it has been taken from the juridic person, the formalities cannot readily be followed because the act is involuntary. Nevertheless the immediate administrator should pursue whatever means are available to

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gives him the right to demand an accounting of how goods are being administered and even the right to supply directives. But the material goods of the parish belong to the parish and a transfer of goods from the parish to the diocese would, in this author's view, constitute alienation and be subject to canons 1290-1298. A transfer of property from the parish to the diocese would not, however, be an alienation subject to the norms of canons 1290-1298 if the property in question were not part of the stable patrimony of the parish.

<sup>42</sup> See Hite, "Church Law on Property and Contracts", pp. 126-127.

ensure that a fair return is given for what has been expropriated.

2. Acts which could jeopardize the stable patrimony

Aside from the sale, exchange, or donation of part or all of the public juridic person's stable patrimony, acts which jeopardize this patrimony, such as its mortgaging and certain instances of reorganizing civil corporations, are equally subject to the procedures for alienation.

a. Mortgaging property

A mortgage may be defined as

an interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt.

At common law, [it is] an estate created by a conveyance absolute in its form, but intended to secure the performance of some act, such as the payment of money, and the like, by the grantor or some other person, and to become void if the act is performed agreeably to the terms prescribed at the time of making such conveyance. The mortgage operates as a conveyance of the legal title to the mortgagee, but such title is subject to defeasance on payment of the debt or performance of the duty by the mortgagor.<sup>43</sup>

As the definition suggests, the conveyance of an interest in the property ceases upon payment of the debt. However, until

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<sup>43</sup> H. C. Black, *Black's Law Dictionary*, 5th. ed., St. Paul, MN, West Publishing Co., 1983, p. 911 (hereafter cited as Black).

the debt is paid, there remains the possibility that the property which has been mortgaged may be lost. Thus when ecclesiastical goods are mortgaged, all or part of the stable patrimony of the juridic person is placed in jeopardy. Such an action constitutes alienation in the broad sense and therefore the prescribed procedures must be observed.<sup>44</sup>

b. Reorganizing corporations or changing the juridic status of apostolic works

Most religious institutes in North America are civilly incorporated. Thus these institutes have two personalities. As religious institutes they are public juridic persons and therefore have rights and obligations in canon law. Once civilly incorporated they also have a recognized existence in civil law. The model used for civil incorporations is generally one of stewardship: authority in the corporations is normally held by those who hold authority within the institute.<sup>45</sup>

Many of these same religious institutes have found it necessary to incorporate separately some of their apostolates (e.g., hospitals, colleges, etc.). Thus the hospital or

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<sup>44</sup> One must distinguish between mortgaging ecclesiastical goods and receiving property or buildings which have an existing mortgage. The notion of assuming mortgages will be discussed later in this chapter.

<sup>45</sup> See Maida and Cafardi, pp. 139-140.

college corporation had a standing in civil law distinct from the institute itself. As canonical stewards, the institute's authorities have a two-fold duty of seeing that the obligations of faith and of administration are observed in those apostolic works.<sup>46</sup>

Faith obligations include the responsibility of ensuring that the actions of the institution are in accord with the teaching authority of the Church. Administrative responsibility obliges those in authority to see that the laws regarding administrative obligations as determined by the *Code of Canon Law* and the proper law of the institute are adhered to, whether or not the apostolate has been incorporated separately from the sponsoring body.

Thus the canonical steward when forming a separate incorporation must ensure that certain safeguards be taken in the corporate structures of the incorporated apostolate to guarantee that those in authority are still able, in civil law, to exercise their canonical duties in matters of faith and administration relating to the apostolate.<sup>47</sup>

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<sup>46</sup> See *ibid*, p. 155.

The civil and canonical relationship between religious institutes and the apostolates which they serve is not always clear cut. See, for example, R.T. Kennedy, "McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil-Law Status of Church-Related Institutions in the United States", in *The Jurist*, 50(1990), pp. 351-401.

<sup>47</sup> See Maida and Cafardi, p. 156.

Maida and Cafardi suggest that this is best achieved by the following three steps. First, establish the incorporated apostolate as a membership corporation. Second, limit corporate membership to the canonical stewards of the sponsoring public juridic person. Third, reserve certain powers to the corporate members that will allow them to carry out their faith and administration responsibilities according to Church teaching and law.<sup>48</sup> The reserved powers would include, directly or indirectly, the right

to establish the philosophy according to which the corporation operates;  
to amend the corporate charter and bylaws;  
to appoint the board of trustees;  
to lease sell, or encumber corporate real estate; and  
to merge or dissolve the corporation.<sup>49</sup>

The establishment of a separate corporation based on the above steps would ensure that the assets of these apostolates remain subject to the pertinent public juridic person and thus subject to the canon law on alienation. However, in recent years, one of the main purposes of civil incorporation was to separate the apostolate from the institute sufficiently to protect the latter from legal liability for the acts and omissions of the incorporated body. The model proposed by Maida and Cafardi may or may not accomplish this purpose depending on the degree of control maintained by the institute

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<sup>48</sup> See *ibid.*, p. 156.

<sup>49</sup> *Ibid.*, p. 157.

over the separately incorporated body which it now sponsors. There still exists the possibility of loss of stable patrimony of religious institutes through law-suits by piercing the corporate veil if it can be shown that the institute in fact controls the subsidiary corporation.

In determining the relationship between a religious institute and a particular apostolate which the institute desires to see continue, one must weigh the pros and cons of the legal relationships (both canonical and civil) that are put in place.

It can be asked what are the advantages and disadvantages of maintaining an apostolic work as a direct apostolate of the institute rather than giving it separate canonical existence. If in the future the institute is longer able to provide for the work, there might be greater advantages in allowing it to continue by having it separate from the institute and creating a separate juridic person, either public or private.<sup>50</sup>

As a direct apostolate of the institute without separate civil incorporation, as was often the case in the past, we note the following advantages:

a) perceived catholicity;

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<sup>50</sup> The author is indebted to Robert Kennedy whose course on "Temporal Goods" at The Catholic University of America provided much of the following information regarding the advantages and disadvantages of a public juridic person versus a private juridic person. See also F. G. Morrissey, "Juridic Status: Canonical Provisions, Possible Applications", in *Health Progress*, 67(1986), no. 7, pp. 41-45.

- b) clarity of mission;
- c) a sponsor's direct involvement with the apostolate;
- d) ecclesiastical control (this is helpful because if people see that a work is tied directly to the institute and hence directly to the Church, then they are often more ready to contribute time and money to the work).

The disadvantages are:

- a) minimized autonomy for the apostolic endeavour;
- b) material goods are considered ecclesiastical goods;
- c) there may be church/state conflict;
- d) the sponsor retains canonical liability;
- e) civil liability exists.

Following Maida and Cafardi's suggestion of separate incorporation of the apostolate (under the sponsorship of the institute) we note that the advantages remain the same as if the work is directly performed by the institute.

The advantages would then include:

- a) perceived catholicity -- the institute still sponsors the institution though it is not so visibly present;
- b) clarity of mission -- as part of the reserved powers the institute would clearly establish the philosophy upon which the institution is to operate;
- c) the sponsor would remain involved in the work by being the membership corporation and maintaining the reserved powers;
- d) the property would continue to be ecclesiastical property.

Likewise, the disadvantages under this model do not change appreciably, there would still be:

- a) minimized autonomy;
- b) the property remains church property and therefore subject to the rules and regulations and authority of the Church;
- c) there remains the potential for church/state conflicts;
- d) canonical liability of the sponsor remains;
- e) civil liability of the sponsor remains to the degree that the sponsor attempts to maintain control. If the sponsor holds certain powers to itself (e.g., the superior who runs the institute is also superior of the work, or the religious who runs the work has to take orders or appears to take orders from the superior of the institute, then there is the possibility of civil liability). With a separate incorporation, there is at least arm's length distance between the institute and the apostolate, but one has to be conscious of the possibility of piercing the corporate veil. Thus though the apostolate has been separately incorporated, the institute may still be civilly liable to the degree that the institute controls the institution.

There appears to be little material written yet on the possible advantages of establishing an apostolate as a private juridic person since this is still a relatively new

institution in canon law.<sup>51</sup> In comparing the advantages of a private juridic person to those already listed we see:

- a) perceived catholicity is still possible;
- b) clarity of mission can still be preserved;
- c) involvement of the sponsor is still possible (statutes must still be approved by the ecclesiastical authority, thus a basic philosophy according to which the corporation operates can be established);
- d) there would be less ecclesiastical control since the temporal goods of a private juridic person are not ecclesiastical goods;
- f) because there is less ecclesiastical control, receiving funds from public authority becomes more likely because the issue of church/state conflict is diminished if not eliminated.

The disadvantages noted when the work was performed either as a direct apostolate of the institute or under the sponsorship of the institute change dramatically when the work becomes that of a private juridic person. We see that:

- a) the autonomy is greater because there is less ecclesiastical control;

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<sup>51</sup> Cf. D. Modde, "Canonical Stewardship Responsibilities for Healthcare Facilities", in *CLSA Proceedings*, 66(1985), no. 5, pp. 47-51. 70.

- b) there is only a minimum application of Book V on "Temporal Goods" because the goods of the private juridic person are not ecclesiastical goods;
- c) the issue of church/state conflict is eliminated or at least significantly reduced;
- d) the canonical liability of the sponsor is somewhat eliminated.

Changing from a public juridic person to a private juridic person involves letting go of the assets and constitutes an alienation. But if the basic philosophy of the institute can continue, the apostolic work is maintained and there is less civil liability, might not such a move warrant the alienation of ecclesiastical goods to a private juridic person? Such a group would not have a mission to act in the name of the Church; nonetheless it would be created by ecclesiastical authority. The statutes that govern the body would be approved by the ecclesiastical authority, and this in effect would give to the apostolic ministry official recognition.<sup>52</sup> That same authority could build into the statutes assurances that the apostolate would follow a catholic philosophy as well as any determinations regarding the temporal goods if and when the apostolate ceased.

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<sup>52</sup> See F. G. Morrissey, "Juridic Status: Canonical Provisions, Possible Applications", p. 43.

The "McGrath thesis" held that the property of catholic hospitals and educational institutions which have been civilly incorporated is the property of the corporate entity and not the property of the religious institute who sponsors the work. McGrath failed to recognize that many of these civilly incorporated hospitals and educational institution may have already acquired canonical status as an apostolic work of the sponsoring diocese or religious community prior to civil incorporation of the institution.<sup>53</sup>

Thus reorganizing the corporation becomes an alienation issue only if the former sponsor is deprived of canonical or civil law control of the corporation or if the property of the incorporated apostolate is placed outside the control of the sponsoring public juridic person. In such a situation canon law considers the property to have been alienated.<sup>54</sup> However, alienation may sometimes be beneficial to the Church especially if it frees it from a financial burden and civil liability while allowing an apostolic work to continue.

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<sup>53</sup> See R. T. Kennedy, "McGrath, Maida, Michiels", in *The Jurist*, 50(1990), p. 369.

<sup>54</sup> See canon 1295.

B. Acts which probably are subject to the formalities

1. Certain types of joint ventures

A joint venture is defined as the process whereby "a corporation [...] has joined with other individuals or corporations within the corporate framework in some specific undertaking..."<sup>55</sup> Two kinds of joint ventures are relevant to our reflections on alienation. One may be for economic gain, (e.g., as a means of disposing of unneeded or troublesome property or as a means of profit-sharing with a developer).<sup>56</sup> A second type involves a religious institute entering into partnership with other institutes, dioceses, individuals, or corporations to ensure the continuance of their apostolate. We shall examine these two forms of joint venture and their canonical implications.

a. Joint venture for economic gain

An institute desiring to put its property to better use may enter into a partnership with a developer. The institute contributes the property to the venture while the developer contributes cash and expertise.

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<sup>55</sup> Black, p. 309.

<sup>56</sup> See F. Sackett and P. Campbell, "Temporalities for Religious: Six Practical Cases", in *CLSA Proceedings*, 46(1984), pp. 74-75.

While such an arrangement is possible, it is difficult to weigh the risks involved in it. In a joint venture involving a general partnership, each party is jointly and severally liable for the obligations of the partnership. Thus if debts were incurred, the institute could find itself liable for obligations well beyond the value of the property proposed for development.

A religious institute entering into this type of partnership needs to examine issues such as consistency with the mission of the institute, control, dissolution, capital contributions, allocations and long term-effects on the institute's operation. These shall be determined in turn.

1) Is the intent of the venture (e.g., low cost housing, a health care facility, a gambling casino) consistent with the institute's mission and objective? What guarantees does the institute have if the developer replaces the venture with one inconsistent with its objectives?

2) Control: does the institute desire to participate in the joint venture as a passive investor or to have a more active role? If the developer is responsible for the day-to-day decisions, are there other concerns (e.g., mortgage or sale of venture property) in which the institute should participate?

3) Dissolution: what procedures would be followed for a withdrawal on the part of one of the parties from the venture?

4) Capital contributions: what amount and type of capital contribution is expected from each of the parties?

5) How will profits and losses be distributed among the partners?

6) Does the institute endanger its tax status?<sup>57</sup>

In pursuing such a joint venture the institute must keep in mind that the contribution of property normally constitutes its alienation in a canonical sense. Thus such a move should not be taken without the advice of both civil and canon lawyers.

b. Joint venture to continue the apostolate

A second type of joint venture is often envisioned as a means of continuing the apostolate. A recent experience for catholic health care institutions both in the United States and in Canada has been to form a joint venture as a means of eliminating duplication of administrative as well as health-care services to cut down operating costs.

Several such partnerships have provided institutes with a way of refocusing their commitment to health care in a time

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<sup>57</sup> See P. Shannon and D. Wilson, *Disposition of Real Estate by Religious Institutes*, Maryland, National Association of Treasurers of Religious Institutes, 1987, pp. 76-78 (hereafter cited as Shannon and Wilson).

of dwindling membership and higher operating costs.<sup>58</sup> Without having to observe the formalities for alienation, religious institutes may freely contemplate a possible joint venture so long as there is no conveyance of goods, the patrimonial condition of the juridic person is not endangered, and the institute is able to carry on its proper function of stewardship by maintaining appropriate controls that are recognized in both the canonical and civil sphere.<sup>59</sup> This is generally accomplished by a series of reserved powers that allow the participants in the joint venture to share facilities, staff, programs, and other resources in common through the creation of a separate corporation. At the same time, though, the institute is able to maintain sufficient autonomy to protect its assets and to carry out its responsibilities as canonical steward. If these guarantees are not in place, then we are dealing with an alienation, and the necessary formalities must be observed.

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<sup>58</sup> See, for example, the formation of Catholic Healthcare West, a multicongregational healthcare system co-sponsored by the Sisters of Mercy of Auburn, CA, the Sisters of Mercy of Burlingame, CA, and the Dominican Sisters of Adrian, MI, as described by R. Kramer, "Partnerships for the Future", in *Health Progress*, 72(1991), no. 5, pp. 42-45 and 55.

<sup>59</sup> See W. Himmelsbach, "Guidelines for Evaluating Potential Joint Ventures", in *Health Progress*, 68(1987), no. 4, p. 58.

2. Abandoning the "reserved powers"

As canonical stewards those in authority have the responsibility of protecting the assets of the institute, including those belonging to apostolates which have been separately incorporated. McGrath believed that the property of Catholic hospitals and educational institutions was lost through civil incorporation. This can happen but it can also be avoided by a sponsoring institute reserving certain powers to itself. These are powers that the corporate members keep for their own exercise and do not delegate to the board of trustees.<sup>60</sup> Reserved powers are necessary if the corporation is to maintain a catholic identity and the canonical stewards are to be able to meet, directly or indirectly, their faith obligations.

These reserved corporate powers would mirror the sponsor's canonical obligations. Without this reservation of corporate power, there is no guarantee that the founding public juridic person can meet its canonical obligations in a way that is meaningful in civil law.<sup>61</sup>

To abandon these powers, the institute would be relinquishing control and this could constitute an alienation.

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<sup>60</sup> See Maida and Cafardi, p. 325.

<sup>61</sup> Ibid., p. 214.

C. Remedies for wrongful alienation

Canon law recognizes the fact that an act of alienation may be valid civilly yet invalid canonically.<sup>62</sup> Besides the fact that the act is null (c. 638, §3) and should be rectified, there is also an obligation to make restitution and to repair any damage caused (cc. 639; 1289).

The Code provides that whenever a right is disputed, some process must be available to the disputing parties to resolve the matter.<sup>63</sup> Thus, punishment of an individual for wrongful alienation, in light of canon 1377, is possible and may even include an ecclesiastical suit; but the Code leaves the determination of the penalty, if any, up to the appropriate ordinary or judge.<sup>64</sup>

Those who alienate ecclesiastical property without permission are to be punished with a just penalty (c. 1377), which, in light of the fact it is *ferendae sententiae*, should be proportionate to the guilt or offense committed.<sup>65</sup> Thus the competent authority (e.g., the Holy See, the diocesan bishop, or the religious superior) would have to determine

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<sup>62</sup> See Canon 1296

<sup>63</sup> See Canon 1491.

<sup>64</sup> See T. J. Green, "Sanctions in the Church", in *The Code of Canon Law: A Text and Commentary*, p. 924.

<sup>65</sup> See F. Testera, ed., *Religious Men and Women in the New Code of Canon Law*, Manila, University of Santo Tomas, 1984, p. 63.

whether a suit should take place, what type of action should take place, by whom and against whom it should be initiated.

A just penalty may include transfer to another office, loss of office, and even dismissal from the clerical or religious state.<sup>66</sup> Canon 1741, 5°, singles out poor administration of temporal affairs which causes grave danger to the Church, as a reason for removing parish priests from office when the situation cannot be remedied in another way. Religious superiors, according to canon 624, can be removed from office for reasons stated in proper law.

The Code indicates that those who assume responsibility within the Church are accountable for their actions. They are called upon to be faithful to the trust which has been placed in them. Thus those who do not honour that trust can be appropriately punished.

#### V. ACTS NOT SUBJECT TO THE LEGISLATION ON ALIENATION

There are certain administrative acts which, although resembling acts of alienation, are not truly so. In such cases the formalities for alienation need not be observed. Instead, the general norms on administration are applicable.

The following transactions, among others, under the appropriate circumstances, may not be subject to the canonical

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<sup>66</sup> See Canon 1336. See also F. G. Morrisey, "Canonical Duties, Liabilities of Trustees and Administrators", in *Health Progress*, 66(1985), no. 5, pp. 51 and 70.

rules on alienation: observing the intentions of the donor, leasing ecclesiastical goods, converting capital assets, assuming mortgages.

A. Observing the intentions of the donors

Fourteen canons of the present Code make reference to the intention of donors with respect to various church matters.<sup>67</sup>

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<sup>67</sup> The following canons can be noted.

Canon 121: the responsibility of respecting the intentions of founders and donors when two or more public juridic persons are joined as one.

Canon 122: if a public juridic person is to be divided, "before all else" the ecclesiastical authority is to observe the intentions of the founders and donors.

Canon 123: the intention of the founders and donors are to be respected if a public juridic person is extinguished.

Canon 326, §2: intentions of the donors are to be respected when a private association of the Christian faithful ceases to exist.

Canon 531: offerings given for some parochial function are presumed to belong to the parish unless it is obvious that such would be contrary to the will of the donor.

Canon 616, §1: when a house of a religious institute is suppressed the proper law of the institute is to provide for the disposal of the goods of the suppressed house, with due regard for the wills of the founders and donors.

Canon 706, §3: the religious who becomes a bishop is to distribute goods coming to him, according to the will of the donors, when the goods do not come to him for personal reasons.

Canon 950 and 954: the intention of the donors is to be respected regarding mass stipends.

Eleven of these canons stress compliance with the intentions of the donors, while the last three (cc. 1301, 1302 and 1310) indicate occasions when the will of the donor might not be observed.

The essential canon touching on temporal goods is canon 1300 which states:

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Canon 1267, §3: the offerings given by the faithful for a definite purpose can be applied only for that same purpose.

Canon 1284, §2, 3°: it is an administrator's responsibility to observe the prescriptions of both canon and civil law or those imposed by the founder, donor or legitimate authority.

Canon 1300: the legitimately accepted wills of the faithful are to be fulfilled with the greatest diligence even as regards the manner of administration and distribution of the goods.

It could be noted that canons 1301, 1302 and 1310 provide for possible exceptions.

Canon 1301: this canon is an exception to adhering to the will of the donor when it states that the ordinary is the executor of all pious wills. Stipulations added to the last will and contrary to this right of the ordinary are to be considered non-existent.

Canon 1302, §1, states that a person is not to accept the role of trustee if the donor expressly and completely forbids the trustee from informing the ordinary of the existence of this trust and its contents.

Canon 1310: the ordinary, for a just and necessary reason may reduce, moderate, or commute the wills of the faithful for pious causes provided such power has been expressly granted him by the founder. He can make further changes if necessary by contacting interested parties and his financial council. As a final recourse he can approach the Holy See if the matter is beyond his own competency.

The legitimately accepted wills of the faithful who give or leave their resources to pious causes, whether through an act which becomes effective during life or at death, are to be fulfilled with the greatest diligence even as regards the manner of the administration and distribution of the goods, with due regard for the prescription of canon 1301, §3.<sup>68</sup>

This canon makes the obligation to observe the intention of the donor not only a moral obligation but also a canonical one. The obligation is binding only when the intention has been "legitimately accepted".<sup>69</sup> However the will of the donor is not absolute. If it happens that the prescribed mode of administration is detrimental to the goals established by the donor, then the Ordinary has the right and the duty to correct the execution of such dispositions.<sup>70</sup>

In particular, it must be clearly determined whether the donation is made to the institute or to the work itself. In the latter case, if the institute were to withdraw from the work, it cannot claim the goods or contributed services that were given to the work and not to the institute.<sup>71</sup>

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<sup>68</sup> Canon 1300 "Voluntates fidelium facultates suas in pias causas donantium vel relinquentium, sive per actum inter vivos sive per actum mortis causa, legitime acceptatae, diligentissime impleantur etiam circa modum administrationis et erogationis bonorum, firmo praescripto can. 1301, §3."

<sup>69</sup> See Myers, p. 885.

<sup>70</sup> See L'Institut Martín, p. 752.

<sup>71</sup> In the case of Queen of Angels Hospital v. Younger, the hospital and the Franciscan Sisters filed declaratory relief action against the Attorney General to determine legality of agreement between the hospital and the religious

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order for retirement pay as well as the validity of lease of hospital properties.

In May 1971 Queen's board of directors approved a lease between Queen and W.D.C. Services, Inc., for 25 years with two options for ten additional years each. Minimum rent was to be one million dollars a year after the first two years.

"In June, the [Franciscan] Motherhouse submitted a claim for 16 million dollars for the value of the Sisters' past services to Queen's board of directors. The board unanimously acknowledged the validity of the claim. In July 1971, an agreement was executed between Queen and the Motherhouse, effective May 1971, settling and compromising the claim for the Sisters' past services by agreeing that Queen should pay to the Motherhouse \$200 per month for each Sister in the Order over the age of 70 years, plus \$200 a month for each lay employee who had worked for the congregation for over 20 years, not to exceed ten lay employees at any one time.

The pensions are payable to all elderly Sisters in the order, whether or not the particular Sister performed services at Queen of Angels Hospital. The initial annual cost of the agreement would be \$309,600—in July 1971, there were 129 Sisters over the age of 70—and up to \$24,000 additional to lay employees.[...]

The trial court made the following relevant findings: Plaintiff Franciscan Sisters of the Sacred Heart ('Motherhouse') is an unincorporated association and a religious order of the Roman Catholic Church. The property of Queen does not belong to either the Motherhouse or the Roman Catholic Church. From the inception of the hospital through 1971, services were provided Queen by the Motherhouse and performed by the Sisters of the Motherhouse. When services were performed, all amounts requested by the Motherhouse for those services were paid by Queen, and except for such compensation, the services were considered donated to Queen by both parties. Neither the Motherhouse nor the Sisters expected any further or future compensation for those services.[...]

The court concluded that Queen had no lawful obligation to repay the Motherhouse, that the compromise agreement was invalid, that the retirement plan was invalid and that, if implemented, it would constitute a diversion of charitable assets." (Queen of Angels Hospital v. Younger in *California Reporter*, vol. 136, 1977, pp. 39-42).

With respect to those acts which constitute alienation and which do not, the intention of the donor must be taken into consideration. Thus the disposal of real estate, liquidating of stocks and bonds, and the spending of money is not an act of alienation if one is faithfully complying with the intentions of the donor. Thus, property simply willed to an institute to provide means to help continue apostolic works may be sold with no obligation to follow the norms on alienation.<sup>72</sup>

B. Leasing of ecclesiastical goods

With reference to property, the word "lease" is understood to mean

a contract by which one owning such property grants to another the right to possess, use and enjoy it for [a] specified period of time in exchange for periodic payment of a stipulated price, referred to as rent.<sup>73</sup>

The 1917 Code had prescribed extensive regulations governing the leasing of church property depending on the annual rent and the length of time the lease was to be in effect. When the lease exceeded the maximum sum and its duration extended for a period of more than nine years, the permission of the Holy

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<sup>72</sup> See F. G. Morrissey, "The Conveyance of Ecclesiastical Goods", in *CLSA Proceedings*, 38(1976), p. 132.

<sup>73</sup> Black, p. 800. For particular concerns regarding leasing by religious institutes, see Shannon and Wilson, pp. 74-76. See also Maida and Cafardi, pp. 261-268.

See was to be obtained.<sup>74</sup> Thus one can conclude that leasing of church property was then regarded as partial or temporary alienation.<sup>75</sup>

The present Code, recognizing the difficulties of establishing general church legislation for the whole world, states the following:

After considering local circumstances, it is the responsibility of the conference of bishops to establish norms concerning the leasing of church goods, especially the permission to be obtained from competent ecclesiastical authority.<sup>76</sup>

The present law makes no reference to the sums involved or the period of time a lease may be in effect; rather, the law leaves to the conference of bishops the responsibility of establishing statutes governing the rental or leasing of properties.<sup>77</sup>

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<sup>74</sup> See canon (1917) 1541. See also Abbo and Hannan, vol. 2, pp. 744-745.

<sup>75</sup> See T. L. Bouscaren, A. Ellis and N. Korth, *Canon Law: A Text and Commentary*, Milwaukee, Bruce Publishing Co., 1966, p. 850.

<sup>76</sup> Canon 1297: "Conferentiae Episcoporum est, attentis locorum adiunctis, normae statuere de bonis Ecclesiae locandis, praesertim de licentia a competenti auctoritate ecclesiastica obtinenda."

<sup>77</sup> It is interesting to compare canon 1277 and 1297. The former gives to the bishops the responsibility of defining what is meant by acts of extraordinary administration. Such a definition would apply to the whole territory. Canon 1297, on the other hand, could be interpreted to allow the conference to establish more than one set of norms in light of local circumstances.

The Canadian Conference of Catholic Bishops on Dec. 1, 1987 established norms to govern the leasing of ecclesiastical immovable property.<sup>78</sup> The decree stated among other things that if the total amount of rent exceeds the maximum amount determined for the region for acts of alienation and if the lease extends beyond nine years, the permission of the Holy See is also required.<sup>79</sup> Thus we see that while the leasing of property is not alienation, because there is no transfer of ownership, norms are in place to govern the matter, especially when property is encumbered for a lengthy period of time and substantial sums of money are involved.

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<sup>78</sup> See Official Document no 575, Decree number 16, in *Studia canonica*, 22(1988), pp. 201-204.

It is also interesting to note that the decree applies to the leasing of buildings or of the space within them. And the term "property" is broadly interpreted to mean not only land and buildings, but also air space and underground areas. Thus one must take into consideration such legal notions as easements and other forms of servitude.

<sup>79</sup> Ibid., 201-203.

The current norms for leasing in the United States simply state that it is an act of extraordinary administration to lease church property when the value of the leased property exceeds the minimum and the lease is for more than nine years. See *Implementation of the 1983 Code of Canon Law*, National Conference of Catholic Bishops, Washington, DC, United States Catholic Conference, Inc., 1991, p. 21. It could be noted that this decision has not yet received the "recognitio" of the Holy See.

C. Conversion of capital assets

Capital assets are immobilized property belonging to a person, association, or corporation. The question arises whether a religious institute can convert its capital assets from one form to another (e.g., land for cash, cash for capital construction, or cash for the reduction or liquidation of a mortgage) or do these actions constitute an alienation? Hite, although not saying whether he accepts or rejects the notion, states that it is the practice of some dioceses and religious institutes to regard the sale of land or buildings which are part of the stable patrimony of a juridic person to be sold and the proceeds used for new construction, payment on a mortgage, or placed in a reserve fund, simply as a conversion of capital assets.<sup>80</sup>

F. Morrisey, writing in 1976, agrees and states

the sale of real estate which is part of the stable capital of the Institute and the application of the proceeds to another capital purpose such as capital construction or reduction or liquidation of a mortgage on buildings or to a plant fund, does not constitute a conveyance to which canon 1532 applies, but may be regarded simply as a conversion of capital assets from one form to another.<sup>81</sup>

Morrisey goes on to say that some canonists might find difficulty with the above interpretation, but it was common

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<sup>80</sup> See Hite, "Church Law on Property and Contracts", pp. 128-129.

<sup>81</sup> Morrisey, "The Conveyance of Ecclesiastical Goods", p. 130.

practice in many dioceses and religious institutes at the time when he wrote the article.

There is an obvious danger in this way of thinking. The funds realized from such a sale would be immobilized. Many religious institutes (as will be shown in Chapter IV) have no proper law governing alienations which are below the limit requiring an indult from the Holy See. Thus they leave themselves open to the possibility of endangering the patrimonial condition of the institute because they fail to have in place (as canon 638, §1 requires) adequate procedures (e.g., whose advice should be sought; whose consent is necessary) to ensure that the final decision is in the best interests of the institute.

Without adequate safeguards in place, there is always a danger that the money received when real estate is converted to cash, although it is immobilized, could, over a very short span of time, be spent.

Spending stable patrimony for construction is obviously a conversion of assets, especially if one is left with the same dollar value in stable patrimony once the construction is completed. A similar argument may be made to suggest that paying off a mortgage with capital assets leaves the institute with the same net worth if debts are reduced, and it now has clear title to a piece of property which it didn't have previously.

The issue is whether or not institutes are prepared to place restrictions upon themselves to ensure that procedures are in place to govern when a provincial superior, council, or province makes use of immobilized funds and other related assets.

While conversion of capital assets might not constitute alienation in the strict sense, one must always consider whether certain conversions can ultimately weaken the patrimonial condition of the institute, in which case the conversion may constitute an alienation in the broad sense of the term.

D. Assuming mortgages

There is an important distinction to be made between deciding to mortgage a piece of property and receiving property which has an existing mortgage on it. To assume an existing mortgage means

to take or acquire a mortgage or deed of trust from some prior holder. Thus, a purchaser may assume or take over the mortgage of the seller. Often this requires permission of the mortgagee. This is distinguishable from taking equity of redemption subject to mortgage because in the latter case grantee is not contractually bound to pay mortgage, whereas if he assumes the mortgage, he binds himself to mortgagor to pay the mortgage and to fulfil all other terms and conditions of mortgage.<sup>82</sup>

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<sup>82</sup> Black, p. 113.

While receiving a piece of property which is mortgaged is not alienation, the institute must be aware of what it is obliging itself to upon reception of the property. The institute becomes personally liable for the payment of the mortgage debt. A piece of property may be worth less than the debt owed on it if the former was bought at a time of inflated real estate prices. On the other hand, the property may be an asset to the institute. If it can pay the mortgage debt from free capital and make good use of the building, or if it can sell the property, pay off the mortgage and still make a profit, then obviously it is in the best interest of the institute to do so.

Assuming a mortgage, then, is not governed by the canons on alienation so long as the patrimonial condition of the public juridic person is not endangered.

The acceptance of such property is not termed a conveyance of goods since no ecclesiastical funds were invested in it. The property may or may not become part of the stable patrimony of the institute, depending on conditions attached to the gift and the actions of the competent authority with respect to the property.<sup>83</sup>

There is also the possibility of obtaining money by mortgage contract in order to construct, for example, a church

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<sup>83</sup> See Morrisey, "The Conveyance of Ecclesiastical Goods", pp. 129-130.

building. If the understanding is that the mortgage is on the building to be constructed, not on the actual stable capital of the institute, then such an arrangement is quite feasible. The institute should not, however, enter into such an arrangement unless it is certain about being able to make the necessary payments without placing undue burden on its own finances.

E. Other acts

There are many activities involving temporal goods that do not involve the conveyance of property to another, or endanger the stable patrimony of the public juridic person. Thus the norms governing alienation would not apply to such acts. In addition to those already mentioned we also note the following:

- 1) money being lent, since a loan is considered a safe and productive investment. Such a loan would only jeopardize church property if it were not a wise investment or there was no interest received or the principal was not returned;
- 2) borrowing money, especially for short term needs (for instance, to meet a payroll date before guaranteed government grants are received). This is quite acceptable if no mortgage or security is demanded to secure the loan;

- 3) the registration of property under a new title: this action is permissible so long as the transfer does not endanger ownership of the assets;
- 4) the use of free capital -- cash on hand -- or money put aside for future needs to pay debts or make purchases;
- 5) the use of proceeds derived from the sale of securities in the acquisition or construction of buildings and other immovable assets;
- 6) the use of church property or securities as loan collateral provided neither is part of the stable patrimony of the juridic person;
- 7) the purchase or sale of equipment and furniture. This is usually considered an act of ordinary administration when the sale of furniture is to enable its replacement with newer furniture;<sup>84</sup>
- 8) the refusal of a gift is not considered an alienation since ownership is not transferred; the gift is simply not accepted.<sup>85</sup> Of course a gift may not be refused without just cause, and in matters of greater importance, it cannot be

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<sup>84</sup> See Testera, *Religious Men and Women in the New Code of Canon Law*, pp. 60-61; see also Hite "Church Law on Property and Contracts", pp. 127-129.

<sup>85</sup> See Morrissey, "The Conveyance of Ecclesiastical Goods", p. 133.

refused without the permission of the ordinary if it is a question of a public juridic person.<sup>86</sup>

## VI. NEW SITUATIONS TO BE ADDRESSED

There are three relatively new issues that confront religious institutes at present and need to be addressed. The first is that of mergers, including the merger of a separately incorporated apostolate with other corporations in order to continue a work that the institute itself is no longer able to maintain. Also there is the merger of a religious institute itself, which because of aging and dwindling numbers is no longer able to sustain itself. Both issues may involve the alienation of temporal goods and therefore would be subject to the norms already discussed. Secondly, there is the issue of the administration of public funds. Thirdly, there is the question of "bond issues".

### A. Mergers

#### 1. Merger of a separately incorporated apostolate

Many institutes in recent years have had to withdraw from particular apostolates. Such a move should not be taken without sufficient prayer and deliberation. But once a

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<sup>86</sup> See Canon 1267, §2.

decision to close has been made, there is the further question of divestiture of the assets.

When the apostolate has been separately incorporated, the divestiture takes place through a corporate dissolution. Debts are paid, and the remaining assets can be given to the sponsoring religious institute if that has been provided for in the corporate documents. The latter is bound to use the proceeds in accord with the intention of the donors who may have contributed them. The task of keeping good records is important for the sponsoring institute to be able to show its equity in the corporation. What is not owned by the institute would be considered to be an asset of the corporation. If no other provisions were made in the corporate documents, the remaining assets would have to be of in a way congruent with the stated purpose of the corporation.<sup>87</sup>

An institute may choose to divest itself through a corporate merger:

Corporate merger is the joining of a sponsored corporation with another corporation in which the other corporation is the surviving entity... Corporate merger with another, stronger Catholic facility or with a multifacility operation sponsored by a Catholic religious group is a good way to preserve apostolates while giving the original sponsor relief from corporate management and affairs.<sup>88</sup>

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<sup>87</sup> See Maida and Cafardi, p. 270.

<sup>88</sup> Ibid., p. 271.

A corporate merger constitutes an alienation and the necessary permission has to be obtained. Such a move may provide an institute with a way of freeing itself from responsibilities which it can no longer maintain. It may also be a way of assuring a particular apostolate continues, and at the same time provide the institute with a way of making a contribution of its own material resources to the continuance of the apostolate. While such a move is noble, it should not be done to the detriment of the institute's stable patrimony; responsibility toward the care of its own members must be a primary consideration. One must, as always, be cognizant of the intention of the donors with respect to any goods that may be lost in such a merger. Finally, it is worth noting that even in a merger there is always the possibility of more than one sponsor governing certain features of the new organization's mission, policy, or operations.<sup>89</sup> All will depend ultimately on what is agreed to by the merging parties.

## 2. Merger of a religious institute

A phenomenon that has been taking place more often in recent years is that of a "merger" between two religious

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<sup>89</sup> See D. Higgins, "Merger and Autonomy: Reaping the Benefits of Both", in *Health Progress*, 68(1987), no. 1, p. 91. See also J. Newman, "Key Issues in Mergers and Acquisitions", in *Health Progress*, 72(1991), no. 5, pp. 56-59 and 65.

institutes. The term refers to the fusion or union of two institutes:

(Fusion) refers to the suppression of an institute or monastery as a separate juridic person and its absorption into another institute or monastery. "Union" is used to refer to the joining of two or more institutes (and their suppression as separate juridic persons) in order to form a new institute.<sup>90</sup>

The issue of merger was addressed in *Perfectae caritatis*<sup>91</sup> especially for those monasteries or institutes where further development did not seem likely. Some norms for implementing procedures for mergers were given in *Ecclesiae sanctae II*.<sup>92</sup>

The present Code also addresses the matter with particular reference to temporal goods. First, the Code requires the administrator of each public juridic person to have on hand an accurate and up-to-date inventory of immovable goods, movable goods, and other goods with a description and appraisal of them.<sup>93</sup> Second, canon 121 provides for the possibility of a union of two or more public juridic persons

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<sup>90</sup> E. O'Hara, "Issues of Aggregation, Mergers and Dissolution", in *CLSA Proceedings*, 49(1987), p. 160.

<sup>91</sup> See Second Vatican Council, *Perfectae caritatis*, in *AAS*, 58(1966), pp. 702-712, translation in A. Flannery, ed., *Vatican Council II, The Conciliar and Post Conciliar Documents*, New York, Costello, 1982, pp. 611-623 (hereafter cited as Flannery).

<sup>92</sup> See *Motu proprio, Ecclesiae sanctae II*, in *AAS*, 58(1966), pp. 775-782. Translation in Flannery, pp. 624-633.

<sup>93</sup> See Canon 1283, 2°.

joining together to form a new juridic personality. It states that the new juridic person obtains the goods of the juridic persons which have joined together. Third, the Code states that it is the Holy See alone that can suppress an institute and decide what is to be done with its temporal goods.<sup>94</sup>

When an institute becomes extinct in the process of joining another institute, it has been the practice of the Holy See to transfer to the receiving institute the persons, the property (both movable and immovable), and other rights and obligations which belong to the institute that is being suppressed.<sup>95</sup> Each member must freely choose to join the new institute, seek a transfer to another institute, or apply for secularization; in some exceptional cases a new institute may be established by those refusing the merger (e.g. certain Sisters of Mercy in Portland, Maine, July, 1991).

A few remaining members cannot continue an institute that is being suppressed, and they are not free to divide the temporal goods among themselves. The Code states that the temporal goods of an institute belong not to the collective

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<sup>94</sup> See Canon 584.

<sup>95</sup> See private communication from the Congregation for Religious, 29 May, 1971, in *CLD* 9(1982), pp. 292-295. See also private communication from Congregation for Religious, in *CLD* 6(1969), pp. 445-446; J. Gallen, "Questions and Answers", in *Review for Religious*, 27(1968), pp. 549-550; C. Gorricho, "Chronica", in *Commentarium pro Religiosis*, 55(1974), p. 87; J. Cuneo and W. Schumacher, eds., "Religious Life", in *Roman Replies and CLSA Advisory Opinions*, Washington, DC, CLSA, 1986, pp. 45-52.

membership but to the juridic person.<sup>96</sup> Obviously in any merger, the institute involved and the Holy See have to be attentive to the intention of the donors as required by canon 121. In addition, an institute may also have funds which have been restricted both canonically and civilly. Canon 1310 provides for the matter to be handled canonically, but the requirements of civil law also have to be taken into consideration.<sup>97</sup>

#### B. Bond issues

A bond may be defined as

a certificate or evidence of a debt on which the issuing company or governmental body promises to pay the bondholders a specified amount of interest for a specified length of time, and to repay the loan on the expiration date. In every case a bond represents debt - its holder is a creditor of the corporation and not a part owner as is the shareholder. Commonly bonds are secured by a mortgage.<sup>98</sup>

Today, healthcare corporations regularly secure capital financing through public bond issues. As the definition suggests, bonds are commonly secured by a mortgage. Thus a hospital or educational facility, separately incorporated, and

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<sup>96</sup> Canon 1256.

<sup>97</sup> See O'Hara, pp. 167-168. See also T. P. Doyle, "The Canonical Status of Religious Institutes. Additional Considerations", in *Monitor ecclesiasticus*, 110 (1985), pp. 235-238.

<sup>98</sup> Black, p. 161.

sponsored by a diocese or religious institute is governed by the norms for alienation if the mortgage endangers even the goods of the apostolate. As Maida points out, an institute may participate in a government bond issue without transforming the institution into an agent of the state.

The major responsibility of the canonical stewards in such an arrangement is to protect the Catholic identity of the incorporated apostolate as well as complying with the canon law on property administration and alienation.<sup>99</sup>

In order to limit any risk to the institute, securities offered for the bonds should be limited to the assets of the incorporated apostolate alone. In maintaining a separation between an incorporated apostolate and the institute itself, bonding agreements would be signed by the incorporated apostolate, and such agreements might also include a disclaimer of any financial guaranty by the sponsoring religious institute.<sup>100</sup>

### C. Administration of public funds

Many religious institutes have separately incorporated some of their apostolates to gain an arm's length distance from the institute itself and to enable the apostolate to receive government financing. Thus the administrators of these

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<sup>99</sup> See Maida and Cafardi, p. 256.

<sup>100</sup> See *ibid.*

apostolates take on the responsibility of being entrusted with public funds. By their acceptance, the apostolate grants in effect to the government a certain equity in the assets of the corporation where these funds have been used for capital expenditures.

Thus it is important that proper records be kept to show the corporation's assets and the institute's contribution to the corporation in the form of lower salaries, loans, etc. Any contribution to the corporation by the public juridic person in the form of goods or labour should be well documented in the event a decision is made to close the apostolate. Distinctions must be clearly made between donations and loans. Thus it would then be possible for the institute to claim its rightful share of the proceeds at the time of dissolution. That which is clearly not owned by the sponsoring public juridic person becomes an asset of the corporation impressed with a trust for the stated corporate purposes.<sup>101</sup>

#### SUMMARY

The temporal goods of religious institutes are regulated by canons 634-640 as well as by the prescriptions of Book V, unless it is expressly stated otherwise. Canons 638 and 1292 are foundational to understanding the legislation on the alienation of ecclesiastical goods. There is a clear

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<sup>101</sup> See *ibid.*, p. 270.

expectation on the part of the Holy See that religious institutes develop proper law on this subject within the scope of universal law.

The Code has determined the conditions to be observed for the validity of alienations. It has also determined initial conditions to be observed for liceity. At the same time the Code allows legitimate authority to prescribe other safeguards that may be put in place to prevent harm to the Church.

Acts which are subject to the procedures for alienation fall into two broad categories, either conveyance of ecclesiastical goods or acts which could jeopardize the stable patrimony of the public juridic person. Under the latter, the mortgaging of property and certain reorganizations of corporations constitute acts for which the procedures for alienation must be carefully observed.

There are several acts which are probably subject to the formalities with respect to alienation. These include certain types of joint ventures as well as acts whereby the "reserved powers" of an institute are abandoned. A determination as to whether such acts constitute an alienation can be determined in examining the actual situation. Since the world of real estate and high finance is very complex, it is impossible to make canonical norms to cover every situation. Thus institutes must move cautiously, ever conscious of their responsibility as stewards of the goods of the Church, to protect their

patrimony, yet always recognizing they must function within both the civil law and the canonical legislation.

Canonists recognize that there are several acts which are not subject to the legislation on alienation. These include: observing the intention of the donor; leasing ecclesiastical goods; converting capital assets, and assuming existing mortgages. Such actions pertain to the administration of temporal goods rather than to their alienation.

Many other issues demand the attention of those in authority. Involvement with bond issues as a means of borrowing money to continue capital projects and the use of public funds in the operation of separately incorporated apostolates both call for careful administration on the part of canonical stewards.

Religious institutes must begin to wrestle with the fact that, because of the high cost of both health care and education as well as diminishing numbers of religious, some apostolates will be able to continue only through a merger with those offering similar services to the public. Along with the merging of some of their separately incorporated apostolates, certain institutes themselves must now look to merging themselves with other communities as a means of caring for aging members.

One cannot doubt the importance for each institute to have in place proper norms which will help ensure financial

stability in the years ahead. The Church has the expectation that the proper law of institutes, within the scope of universal law, will determine norms to govern the ordinary and extraordinary acts of administration. It has a further expectation that norms will also govern the alienation of those goods which form the stable patrimony of the institute. Our focus of attention in Chapter IV therefore will be the examination of the constitutions and statutes of ten clerical religious institutes to see what norms have indeed been established.

## CHAPTER FOUR

### THE PROPER LEGISLATION OF SELECTED CLERICAL RELIGIOUS INSTITUTES RELATING TO THE ALIENATION OF TEMPORAL GOODS

One of the major differences between the 1917 *Code* and the present *Code of Canon Law*, in the areas of ordinary and extraordinary administration and of the alienation of temporal goods, is that the latter, in canons 638 and 1292, no longer establishes concrete universal laws applicable to every situation, but rather it contents itself with suggesting broad norms that call for particularized application.

The proper law of each religious institute, according to canon 638, §1, is to determine limits of ordinary administration as well as those things necessary to place validly an act of extraordinary administration.

As F. Morrisey points out:

many institutes include [...] "alienation" of property among the acts of extraordinary administration; technically speaking, though, alienation is not, as such, an act of administration, since administration has as its purpose to have goods produce results, while alienation entails divesting oneself of goods. However, for convenience alienation has usually been listed under acts of extraordinary administration.<sup>1</sup>

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<sup>1</sup> F. G. Morrisey, "The Directory for the Administration of Temporal Goods in Religious Institutes", in *Unico Ecclesiae servitio: Canonical Studies Presented to Germain Lesage, O.M.I., on the Occasion of his 75th Birthday and the 50th Anniversary of his Presbyteral Ordination*, M. Thériault and J. Thorn, eds., Ottawa, Faculty of Canon Law,

The intent of this chapter is to examine the proper law of ten clerical religious institutes with houses in Canada and the norms which they have established with respect to alienation. This may necessitate also looking at norms established for extraordinary administration. The institutes have been chosen from communities of monks, mendicants, and clerical religious congregations. In addition the prescriptions of their various constitutions, statutes, and financial directories as they relate to the alienation of temporal goods at the general, regional, provincial, or local levels should help us see what norms have been put in place in response to the mandate given by the Code. Such an examination will also enable us to note trends and to draw conclusions about realistic possibilities for the prudent handling of alienations within religious institutes in contemporary society.

Thus this chapter has four simple purposes: 1) to define the various instruments used to articulate the proper law of religious institutes (e.g. constitutions, statutes, financial directories); 2) to analyze the content of the proper law of these institutes as it relates to alienation of temporal goods and, when necessary, to the more general area of extraordinary administration; 3) to compare the various laws which have been set in place, noting any evident trends; and, 4) since

alienations can dramatically affect the stable patrimony of an institute, to show how effective these norms are in protecting the stable patrimony of the various clerical religious institutes.

#### I. CONSTITUTIONS, STATUTES, AND DIRECTORIES

The 1901 *Normae secundum quas Sacra Congregatio Episcoporum et Regularium procedere solet in approbandis novis institutis votorum simplicium*<sup>2</sup> instructed religious congregations not to include spiritual reflections and exhortations in their constitutions but rather to see the texts more as juridical documents.<sup>3</sup> This requirement was not specifically incorporated into the 1917 Code. Sixty-five years later, Pope Paul VI in the *Motu proprio, Ecclesiae sanctae*,<sup>4</sup> called for a union of spiritual and juridical elements within the constitutions, but for a separation between fundamental norms and ones which are more subject to change. He wrote:

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<sup>2</sup> Sacred Congregation for Bishops and Religious, *Normae secundum quas Sacra Congregatio Episcoporum et Regularium procedere solet in approbandis novis institutis votorum simplicium*, in *De religiosis ad normam codicis iuris canonici*, T. Schaefer, ed., Roma, Typis polyglottis Vaticanis, 1947, pp. 1102-1135.

<sup>3</sup> See *ibid.*, paragraphs 26-27, p. 1106.

<sup>4</sup> See *Motu proprio, Ecclesiae sanctae II*, in AAS, 58(1966), pp. 775-782 (hereafter cited as *ES II*). Translation in A. Flannery, ed., *Vatican Council II, The Conciliar and Post Conciliar Documents*, New York, Costello, 1982, pp. 624-633 (hereafter cited as Flannery).

A combination of both elements, the spiritual and the juridical, is necessary, so as to ensure that the principal codes of each institute will have a solid foundation and be permeated by a spirit which is authentic and a law which is alive.

From the basic text of the rules one shall exclude anything which is now out of date, or anything which may change with the conditions of time, or which is of purely local application. Those norms which are linked with present-day life or with the physical and psychical conditions or situations of the subjects, should be entered in separate books such as directories, books of customs or similar documents, whatever be their name.<sup>5</sup>

One can easily see how the concerns of this particular text of *Ecclesiae sanctae* have been incorporated into the present Code. Canon 587, §3 clearly states that spiritual and juridical elements are to be suitably harmonized within constitutions. The establishment of norms or statutes is suggested by canon 587, §4, while several other canons call for directories or handbooks: for finance (c. 635, §2), for formation (c. 659, §3), for chapter procedures (c. 632), and for general governance (c. 617). These can be separate books or simply one general work.

Constitutions, statutes, and directories may be defined in the following manner. The constitutions or the Rule are the fundamental norms about the life and government of an institute. These deal with the lifestyle, incorporation, and formation of members as well as with the proper object of the

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<sup>5</sup> *ES II*, p. 777. English translation in Flannery, p. 627.

vows.<sup>6</sup> The constitutions of pontifical institutes are approved by the Holy See and in the case of diocesan ones, by the diocesan bishop.<sup>7</sup>

Statutes (or rules) are the applications and specifications of the more basic principles found in the constitutions. Generally they outline the juridical consequences of the constitutional principles.<sup>8</sup> Statutes can usually be modified as time and circumstances demand.

Directories are compilations of guidelines for the application of norms already referred to in the constitutions or statutes. A directory may be general, regional, or provincial in its application; at times, it can even be local in the case of a large motherhouse or similar institution.

Since the content of both the statutes and directories flows from the constitutions, the former may be changed by the general chapter, provincial chapter, or other competent

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<sup>6</sup> See Order of Friars Minor, *The Rule and the General Constitutions of the Order of Friars Minor*, Wisconsin, The Franciscan OFM Conference of North America, 1988, p. 19.

Older religious institutes, such as the Franciscans, also have a more basic document, the Rule of the founder. This is seen as superior to the constitutions which are rooted in this earlier document.

<sup>7</sup> See cc. 593 and 595.

<sup>8</sup> See Order of Friars Minor, *The Rule and the General Constitutions of the Order of Friars Minor*, p. 23.

authority as specified in the constitutions.<sup>9</sup>

## II. THE LEGISLATION OF SELECTED RELIGIOUS INSTITUTES

Our intent in this section is to offer a brief description of the institutes selected for study, as well as a general outline of what their constitutions, statutes, and financial directory (if any) prescribe concerning alienation. In particular we wish a) to determine who is the competent authority to establish norms for alienation beyond those already given in the constitutions, and, b) to highlight which norms, if any, have been established. We also wish to offer an evaluation of the norms presented, noting significant trends and drawing certain conclusions.<sup>10</sup>

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<sup>9</sup> See S. Holland, "Institutes of Consecrated Life", in *The Code of Canon Law: A Text and Commentary*, J. Coriden, T. Green, and D. Heintschel, eds., Commissioned by the Canon Law Society of America, New York/Mahwah, Paulist Press, 1985, pp. 459-460.

<sup>10</sup> Our sources of information are two-fold. First, each institute freely submitted its constitutions and statutes in response to the author's request. The two institutes which had financial directories readily submitted them. Upon examination of the material received, provincials, treasurers, or members of councils were contacted by phone and asked to clarify various questions that arose from an examination of the material received. No institute that took part in the study hesitated to answer any question that this author posed to it. However, it can be noted that certain institutes preferred not to be part of this inquiry.

A. Congregations with simple vows1. The Congregation of St. Basila. Brief description

The Congregation of St. Basil was founded in France in 1822. It is a congregation of pontifical right comprised of approximately 400 members. Its governmental structure consists of a general government with regional divisions and local communities. The constitutions of the Congregation of St. Basil, entitled *Basilian Way of Life*,<sup>11</sup> were approved by the Holy See in 1983. The statutes are contained in a book entitled *The Basilian Government*.<sup>12</sup> A third document, *The Basilian Customs*<sup>13</sup> contains a series of customs and spiritual reflections regarding the vows, prayer life, continuing education, and other subjects.

b. Constitutions, statutes and financial directories

With respect to the issue of temporal goods the constitutions state:

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<sup>11</sup> Congregation of St. Basil, *Basilian Way of Life*, Toronto, 1983, 73p.

<sup>12</sup> Congregation of St. Basil, *The Basilian Government*, Toronto, 1980, 152 sections, no pagination.

<sup>13</sup> Congregation of St. Basil, *The Basilian Customs*, Toronto, 1980, 197 statutes, no pagination.

- 1) individual houses have the right to acquire, possess, and administer temporal goods whether they be movable or immovable;<sup>14</sup>
- 2) all the goods, both movable and immovable, of the Congregation are to be administered by the Treasurer General under the direction of the Superior General and the council;
- 3) when it is a question of alienating goods whose value exceeds the amount established by the appropriate national conference of bishops, or of contracting debts and obligations beyond this sum, or of alienating any precious objects belonging to the Congregation, the contract is invalid unless the *beneplicitum* of the Holy See is first obtained. In other cases, the written permission of the Superior General with the consent of his council suffices.<sup>15</sup>

The statutes provide that:

- 1) the general council has a deliberative vote regarding the alienation of valuable property within the limits set by the general chapter or the law of the Church.<sup>16</sup>

At present the Basilians do not have a financial directory.

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<sup>14</sup> See Congregation of St. Basil, *Basilian Way of Life*, art. 140, p. 67.

<sup>15</sup> See *ibid.*, art. 142, p. 67.

<sup>16</sup> See Congregation of St. Basil, *The Basilian Government*, statute 90.

c. Analysis

The constitutions and statutes offer very little direction with respect to alienation of temporal goods. In fact, the statutes, dated 1980, have apparently not been updated to correspond with the revised constitutions which were promulgated in 1983!

Art. 142 adopts the limits determined by the appropriate conference of bishops rather than referring to the limit established by the Holy See for the region.

Although statute 90 states that the general council has a deliberative vote regarding the alienation of valuable property within the limits set by the general chapter or the law of the Church, it appears that no such limit has been established by the general chapter.<sup>17</sup> Thus any alienations of stable patrimony below the maximum limit established by the Holy See would require the consent of the Superior General and council.

Likewise, no norms appear to be in place to determine procedures to be followed for alienations below the limit requiring the approval of the Holy See.

While the Holy See, when granting its *beneplicium*, usually confirms how the proceeds received from the alienation are to be used, no norms, beyond those determined by the

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<sup>17</sup> Private conversation with L. Fink, secretary general, June 2, 1992.

universal law of the Church, exist to safeguard the proceeds of the sale of other parts of the stable patrimony.

Art. 140 states that individual houses have the right to acquire temporal goods. It is not clear, though, if the legislation prevents these goods from being acquired in the name of the community or whether they must be titled in the name of the Congregation. The constitutions are equally unclear in determining whether the superior general can proceed with the sale of property registered civilly in the name of the Congregation, in the absence of consent of a local community which owns it canonically.<sup>18</sup>

## 2. The Congregation of the Holy Spirit

### a. Brief description

The Congregation of the Holy Spirit, commonly known as the Spiritans, was founded in France in 1703 by Claude Poullart des Places. It is a clerical religious institute of pontifical right, comprising clerics and consecrated laymen. Its form of government consists of circumscriptions united under one general government.<sup>19</sup>

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<sup>18</sup> F. G. Morrissey, "The Directory", p. 275. See also P. du Fay de Choisinet, "Le propriétaire des biens en droit canonique", in *Praxis juridique et religion*, 2(1985), pp. 202-211.

<sup>19</sup> Art. 156 of the constitutions states that a circumscription is a grouping of communities brought together under the authority of a superior and council. Provinces,

b. Constitutions, statutes and financial directories

The constitutions of the Congregation of the Holy Spirit, entitled *Spiritan Rule of Life*<sup>20</sup>, were approved by the Holy See in 1987. A *Handbook for the Spiritan Rule of Life*<sup>21</sup> is not a series of statutes but rather a guide book for more thoughtful and meditative reading of the constitutions. It contains one paragraph on the subject of "material goods", stating that the care of such goods is the responsibility of all the members of the community.<sup>22</sup>

Under the heading of "The administration of material goods", the constitutions state that:

1) "the Congregation and the circumscription, but not the houses, are juridical persons, with the power to acquire, possess, administer, and dispose of material goods;"<sup>23</sup>

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foundations, districts, and groups with their own special status created to meet a need are defined as circumscriptions. See *Spiritan Rule of Life*, Congregation of the Holy Spirit, Rome, 1987, p. 75.

<sup>20</sup> Congregation of the Holy Spirit, *Spiritan Rule of Life*, Rome, Scuola Tipografica S. Pio X, 1987, 172p.

<sup>21</sup> Congregation of the Holy Spirit, *A Handbook for the Spiritan Rule of Life*, Rome, The Generalate, 1987, 71p.

<sup>22</sup> See *ibid.*, p. 64.

<sup>23</sup> Congregation of the Holy Spirit, *Spiritan Rule of Life*, art. 229, p. 105.

This article of the constitutions appears to contradict canon 634 of the Code which states that

2) "the general council shall be consulted [by the circumscriptions] about important property transactions. It gives its advice in writing. The prescriptions of Canon 638, §3 shall also be observed";<sup>24</sup>

3) within the council of a circumscription, a deliberative vote is required for the sale of movable or immovable property within the limits imposed by canon law or by decisions of the general chapters;<sup>25</sup>

4) the deliberative vote of the general council is required for permitting the alienation of movable or immovable capital of the congregation.<sup>26</sup>

It should be noted that the congregation has no financial directory; there are no present policies governing investments or the alienation of temporal goods below the limit requiring the permission of the Holy See.<sup>27</sup>

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"institutes, provinces and houses... are juridic persons by the law itself". The constitutions, as stated in this same canon, have the power to exclude or restrict the capacity of a house to acquire, possess, administer or alienate temporal goods. However, they do not have the authority to deny the house juridic personality.

<sup>24</sup> See *ibid.*, art. 232.6, p. 107.

<sup>25</sup> See *ibid.*, art. 247.1, pp. 116-118.

<sup>26</sup> See *ibid.*, art. 249, pp. 118-122.

<sup>27</sup> Private telephone conversation with Edward Graham, C.Ss.P., June 1, 1992.

c. Analysis

The constitutions tend to be somewhat open-ended. The consent of the council of a circumscription may authorize the sale of a piece of property, but "important property transactions" need the approval of the general council. While the general chapter has authority to place limits on the authority of a circumscription regarding the sale of movable or immovable property, it is unclear what is considered an "important property transaction" since according to the Provincial Superior of the Trans-Canada Province of Spiritans there are no norms in place to govern the sale of property beyond those demanded by the Holy See for alienations over \$1,000,000.<sup>28</sup> Thus it would appear that the circumscription could sell property below \$1,000,000 without the approval of the general administration.

Aside from the question of permission, there are no formal norms in place governing procedures to be followed for the sale of property below the maximum.

A third concern is the lack of norms governing the use of proceeds realized from an alienation.

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<sup>28</sup> See *ibid.*

3. The Congregation of Holy Cross

a. Brief description

The Congregation of Holy Cross was established in France in 1837. It is a community of pontifical right. Its form of government is similar to that of the institutes already examined. The congregation has a general government but is also divided into provinces, including three distinct provinces of priests (as well as a province of brothers) in Canada. The English speaking province of the Congregation of Holy Cross, which participated in this study, consists of less than 45 members.

b. Constitutions, statutes, and financial directories

The *Constitutions and Statutes of the Congregation of Holy Cross*<sup>29</sup> were approved by the Holy See in 1988. The 8 sections of the constitutions, sub-divided into 123 paragraphs, do not address the issue of temporal goods. However, the general statutes state that:

1) the local superior must have the consent of his council before requesting the approval of the provincial for acts of alienation, borrowing money or contracting similar

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<sup>29</sup> Congregation of Holy Cross, *Constitutions and Statutes of the Congregation of Holy Cross*, Rome, 1988, 171p.

obligations, for determining policies and procedures for investments of the local administration, and approving plans for building or major repairs;<sup>30</sup>

2) the provincial superior must have the consent of his council when canon law, the constitutions, or statutes require it. He may approve supplementary budgets, unbudgeted expenses, alienations, borrowing funds, building projects and major repairs once he has received this consent;<sup>31</sup>

3) the superior general must have the consent of his council whenever canon law, the constitutions, or statutes require it. In particular he may authorize alienations, loans and similar obligations up to the amounts set by decrees of the general chapter and canon law;<sup>32</sup>

4) for the alienation of real or movable property, there must first be: a) estimates in writing by reliable experts, b) a just cause, c) permission of the competent superior, d) cession in principle to the highest bidder, and e) secure investment of the proceeds;<sup>33</sup>

5) written permission of the competent superior, with consent of his council, is necessary to alienate validly, to mortgage, rent, lease, offer as security, or lend the temporal goods of

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<sup>30</sup> See *ibid.*, statute 52, pp. 100-101.

<sup>31</sup> See *ibid.*, statute 87-24, pp. 123-124.

<sup>32</sup> See *ibid.*, statute 110-26, p. 137.

<sup>33</sup> See *ibid.*, statute 139, p. 147.

the congregation, or borrow up to the amount determined by the Holy See;<sup>34</sup>

6) mention must also be made of other debts; otherwise the permission is invalid;<sup>35</sup>

7) the general chapter is to determine the amount which the provincial superior and council may authorize regarding the alienation of temporal goods;<sup>36</sup>

8) superiors must have the consent of their councils, and local superiors need the authorization of the provincial superior to invest funds or change an investment already made.<sup>37</sup>

The congregation does not have a financial directory. There is however a finance committee composed of members of the congregation.<sup>38</sup>

### c. Analysis

One notes that there is nothing in the constitutions with respect to the whole subject of temporal goods. This is found however, within the statutes, where it is clearly stated who

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<sup>34</sup> See *ibid.*

<sup>35</sup> See *ibid.*, statute 139, pp. 147-148.

<sup>36</sup> See *ibid.*, statute 141, p. 148.

<sup>37</sup> See *ibid.*, statute 143, p. 148.

<sup>38</sup> Private telephone conversation with R. McInroy, C.S.C., June 2, 1992.

is the competent authority for alienations, building projects, investment of funds, etc. Various limits have been determined by the general chapter. There is as well a policy governing the alienation of temporal goods when the goods to be alienated are below the limit that would require the approval of the Holy See.

The Congregation does not have a financial directory. There is however a finance committee composed of members of the congregation. There are no norms in place to govern the use of proceeds received from an alienation.<sup>39</sup>

4. The Congregation of the Most Holy Redeemer

a. Brief description

The Congregation of the Most Holy Redeemer was established in Italy in 1732. Its form of government is similar to that of the institutes already mentioned. Known more familiarly as the Redemptorists, the congregation is pontifical in nature and is composed of approximately 6,000 priests and brothers at present. The *Constitutions and Statutes*<sup>40</sup> of the Congregation of the Most Holy Redeemer were approved by the Holy See in 1986. The "Provincial Statutes:

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<sup>39</sup> Ibid.

<sup>40</sup> Congregation of the Most Holy Redeemer, *Constitutions and Statutes*, Rome, Don Guanella, 1988, xv-310p.

Toronto Province"<sup>41</sup> were approved in 1989. This province presently comprises less than 100 members. There is neither a general nor a provincial directory on temporal goods.

b. Constitutions, statutes, and financial directories

The constitutions and statutes state that:

- 1) the right to dispose of temporal goods belongs to superiors, councils, and chapters according to the norm of the constitutions and statutes, always saving the common law;<sup>42</sup>
- 2) while observing the dispositions of common and proper law, and with the approval of the general government, it belongs to the provincial chapter to lay down norms regarding the manner of holding temporal goods and disposing of them, especially when there is a question of immovable goods;<sup>43</sup>
- 3) the provincial chapter is to decide the limits within which individual superiors, observing the dispositions of the Holy See, with or without their consultors, may spend money, undertake alienations, and contract debts. Acts beyond the highest limits within which superiors may do this require the

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<sup>41</sup> Congregation of the Most Holy Redeemer, "Provincial Statutes: Toronto Province", Toronto, 1989, 39p.

<sup>42</sup> Congregation of the Most Holy Redeemer, *Constitutions and Statutes*, art. 144, p. 104.

<sup>43</sup> See *ibid.*, Statute 0192, p. 222.

approval of the general government.<sup>44</sup>

The provincial statutes state clearly the limits on spending and the procedures to be followed with respect to alienation. The *Provincial Statutes: Toronto Province*<sup>45</sup>, provide that:

- 1) all fixed assets - land and buildings - are to be held in the name and title of the Congregation of the Most Holy Redeemer;<sup>46</sup>
- 2) any sale or purchase of fixed assets must have the approval of the extraordinary provincial council;<sup>47</sup>
- 3) limits for extraordinary expenditures of operating funds as well as limits on capital expenditures are given, but there are no limits regarding alienation.<sup>48</sup>

Finally the document states that prudent administration requires that, before implementing any of the above norms, all persons particularly affected by the pertinent transactions are to be heard.<sup>49</sup>

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<sup>44</sup> See *ibid.*, statute 0193, p. 222.

<sup>45</sup> See Congregation of the Most Holy Redeemer, *Provincial Statutes: Toronto Province*, 39p.

<sup>46</sup> See *ibid.*, prov. statute 5.33, p. 35.

<sup>47</sup> See *ibid.*

<sup>48</sup> See *ibid.*, pp. 36-37.

<sup>49</sup> See *ibid.*, pp. 37-38.

c. Analysis

The norms of the constitutions and statutes and the provincial statutes provide that each house may acquire temporal goods, but all fixed assets must be held in the name of the Congregation. However, only the general or provincial council has the authority to alienate goods in the name of the province.

The provincial chapter can limit the authority of the provincial and his council regarding alienations below the maximum limit. However, since no limit has been established, the provincial council is free to alienate goods up to the present limit determined by the Holy See.

There appear to be no norms in place to govern the alienation of property valued under the limits established by the Holy See, despite the fact that general statute 0192 states that it is the responsibility of provincial chapters to establish such norms.

Furthermore, despite the fact that immovable goods usually constitute stable patrimony, funds received from the two most recent alienations have simply been deposited into a general account. The province does not designate any funds as belonging to the stable patrimony of the institute. Surplus funds are invested in stocks and bonds but are withdrawn as

the need arises.<sup>50</sup>

The province has recently established a finance committee consisting of the provincial treasurer and three lay people to oversee their investment policies and to advise the extraordinary provincial council on financial matters such as proposed alienations, etc.<sup>51</sup>

5. The Congregation of the Resurrection of Our Lord Jesus Christ

a. Brief description

The Congregation of the Resurrection of Our Lord Jesus Christ, more commonly known as the Resurrectionists, was founded in France in the 1830s. It is an apostolic congregation of pontifical right consisting of approximately 500 members. The Ontario-Kentucky Province, whose provincial statutes constitute part of this study, numbers less than 100 members. The constitutions of the Resurrectionists received approval from the Holy See in 1987.<sup>52</sup> Its governmental structure has four levels: local, provincial, regional, and

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<sup>50</sup> Private conversation with F. Maloney, C.Ss.R., Provincial Bursar, June 18, 1992.

<sup>51</sup> Minutes of the Extraordinary Provincial Council of the Congregation of the Most Holy Redeemer: Toronto Province, January 15, 1992.

<sup>52</sup> Congregation of the Resurrection of Our Lord Jesus Christ, *Constitutions of the Congregation of the Resurrection of our Lord Jesus Christ*, Rome, 1988, 125p.

general. The norms which govern the congregation in Canada are found in four texts, *Constitutions of the Congregation of the Resurrection of Our Lord Jesus Christ*,<sup>53</sup> the "General Directory on Temporal Goods",<sup>54</sup> the "Provincial Statutes"<sup>55</sup> for the Ontario-Kentucky Province, and a "CR Book of Financial Management" for the Ontario-Kentucky Province.<sup>56</sup>

b. Constitutions, statutes, and financial directories

Under the heading of "Community and Government" the constitutions state:

1) the superior general needs the consent of his council for validity to grant permission for acts of alienation when the sum involved exceeds the amount set down in the General Directory on Temporal Goods but is within the limits established by the Holy See for the respective country;<sup>57</sup>

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<sup>53</sup> Ibid.

<sup>54</sup> Congregation of the Resurrection of Our Lord Jesus Christ, "General Directory On Temporal Goods", Rome, 1989, 24p.

<sup>55</sup> Congregation of the Resurrection of Our Lord Jesus Christ, "Provincial Statutes", Approved by the General Council, Kitchener, Ontario, April 7, 1990, 28p.

<sup>56</sup> Congregation of the Resurrection of Our Lord Jesus Christ: Ontario-Kentucky Province, "CR Book of Financial Management", Kitchener, Ontario, 1990, 9p.

<sup>57</sup> See *Constitutions of the Congregation of the Resurrection of Our Lord Jesus Christ*, constitution 106, p. 62.

2) the provincial superior, with the consent of his council, can permit acts of extraordinary administration of temporal goods within the limit set by the General Directory, provided that they do not involve the alienation of a restricted object or do not exceed the limit permitted by the Holy See for the respective country.<sup>58</sup>

The *Provincial Statutes* offer no specific statutes with respect to alienation of temporal goods. However, the *General Directory on Temporal Goods*<sup>59</sup> states that:

- 1) each juridic person within the congregation is to have a financial administrator distinct from the major superior;<sup>60</sup>
- 2) each province is to have a finance commission, which may include lay people;<sup>61</sup>
- 3) each province is to prepare a provincial directory on temporal goods;<sup>62</sup>
- 4) the superior general and his council may grant permission for alienation of temporal goods valued between \$250,000 and the limit established by the Holy See;<sup>63</sup>

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<sup>58</sup> See *ibid.*, pp. 75-76.

<sup>59</sup> Congregation of the Resurrection of Our Lord Jesus Christ, "General Directory on Temporal Goods" 24p.

<sup>60</sup> See *ibid.*, II-1, p. 5.

<sup>61</sup> See *ibid.*, IV-8, p. 16.

<sup>62</sup> See *ibid.*, IV-3, p. 14.

<sup>63</sup> See *ibid.*, III-5, p. 10.

5) the provincial superior with the consent of his council may authorize acts of extraordinary administration (including alienation) up to \$250,000 USA dollars.<sup>64</sup>

The "CR Book of Financial Management" states that:

1) a finance committee with advisory powers is to be established after each provincial chapter.<sup>65</sup>

c. Analysis

Once again the combination of constitutions, statutes, and financial directory provides a clear statement that alienations between \$250,000 and the limit determined by the Holy See require the permission of the superior general and council.

The statutes call for a finance committee within each province as well as for a financial directory. The former provides for expertise on financial issues beyond the competency of the members of the institute, while the latter norm ensures that the norms governing alienation and other financial matters will be available for easy reference in one document.

The present directory does not give any norms governing procedures to be followed for alienations below the maximum

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<sup>64</sup> See *ibid.*, IV-2, p. 14.

<sup>65</sup> Congregation of the Resurrection of Our Lord Jesus Christ: Ontario-Kentucky Province, "CR Book of Financial Management", p. 2.

limit, nor are there norms to govern the use of proceeds received from the sale of stable patrimony.

6. Missionary Oblates of Mary Immaculate

a. Brief description of the institute

The congregation is a clerical pontifical institute founded in France in 1816. At present it comprises some 5,500 members. Its organizational structure has four levels, local, regional, provincial, and general. The *Constitutions and Rules*<sup>66</sup> of the Missionary Oblates of Mary Immaculate were revised and approved by the Holy See in 1982. The text is composed of the constitutions which have been sub-divided into 125 articles, and of 154 specific rules (or statutes) interspersed, where appropriate, among the constitutions. There is also a general directory for the administration of temporal goods as well as a *Regional Directory: Administration of Temporal Goods*<sup>67</sup> for the Oblate Canadian Conference which consists of five provinces, two vice-provinces, and one delegation comprising approximately 1000 members.

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<sup>66</sup> Missionary Oblates of Mary Immaculate, *Constitutions and Rules*, Rome, 1982, 181p.

<sup>67</sup> C. Levangie, ed., *Regional Directory: Administration of Temporal Goods*, 1991, 239p.

b. Constitutions, statutes, and financial directories

Under the heading of "Temporal Goods" the constitutions and rules state that:

- 1) houses and provinces, as well as the congregation itself, have the right to own property, though the right to own property by the local houses may be limited by the provincial and his council;<sup>68</sup>
- 2) the superior general can perform certain acts of extraordinary administration without his council; he may spend or authorize the spending of sums equal to the amounts set for a provincial superior acting without his council;<sup>69</sup>
- 3) to alienate Oblate property, the superior general must have the consent of his council;<sup>70</sup>
- 4) he must also obtain the consent of his council to permit a provincial superior to perform an alienation when there is a question of an amount exceeding the competence of the provincial in council;<sup>71</sup>
- 5) a finance committee is recommended at the provincial

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<sup>68</sup> See *Missionary Oblates of Mary Immaculate, Constitutions and Rules*, art. 123, p. 135.

<sup>69</sup> See *ibid.*, rule 152, p. 139.

<sup>70</sup> See *ibid.*

<sup>71</sup> See *ibid.*

level;<sup>72</sup>

6) each province is to develop a provincial directory outlining the specific application of the constitutions and rules. This directory is to be submitted to the superior general for approval.<sup>73</sup>

c. Analysis

The positive elements of the norms outlined in the constitutions and rules and in the regional directory are readily evident. The combination of constitutions, statutes, and financial directory provide a clear statement regarding the authority of the various levels of government to alienate. One notes that the monetary limits governing alienation are the same as those for extraordinary administration.

Presumably because of the size of the particular province and because of its major works, St. Joseph's provincial superior with his council is able to alienate goods at a level twice that of the other provinces.<sup>74</sup> Thus the regional directory is able to take account of the size of a province and the different financial resources when determining monetary limits for such things as ordinary and extraordinary

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<sup>72</sup> See *ibid.*, rule 149 p. 138.

<sup>73</sup> See *ibid.*, rule 95, p. 103.

<sup>74</sup> See C. Levangie, ed., *Regional Directory: Administration of Temporal Goods*, p. 62

administration.

Again, the recommendation of a finance committee provides for the possibility of good financial advice from experts outside of the institute itself. The requirement of a financial directory ensures that norms governing alienation, stable patrimony and other financial issues will be easily found in one text.

The present regional directory does not give any norms governing procedures to be followed for alienations below the limit demanding an indult from the Holy See. These are found in the general finance directory. There are no regional norms to govern the use of proceeds received from the sale of stable patrimony.

One is initially overwhelmed at the size of the regional directory and the broad range of topics it covers. Some issues covered would appear to relate only to financial questions in an indirect way (i.e. dismissal of employees and procedures for cases involving sexual abuse), yet these can have detrimental effects on the financial portfolio of an institute and thus very appropriately are part of the directory.

A commitment has been made to review regularly the contents of this directory and to ensure that it remains up to date.

B. Mendicant institutes

1. The Order of Friars Minor

a. Brief description

The Order of Friars Minor was given approval of its Rule by the Bull, *Solet annuere* of Honorius II in 1223.<sup>75</sup> On Nov. 14, 1245, Innocent IV published *Ordinem vestrum*<sup>76</sup> which reserved proprietorship of the goods used by the friars to the Holy See and allowed recourse to money through trusteeship.<sup>77</sup> The constitutions of the Order of Friars Minor entitled, *The Rule and the General Constitutions of the Order of Friars Minor*,<sup>78</sup> were approved by the Holy See in 1986. *The General Statutes of the Order of Friars Minor*<sup>79</sup> were approved by the general chapter in 1987.

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<sup>75</sup> See Order of Capuchin Friars Minor, *Constitutions of the Order of Capuchin Friars Minor*, p. v.

<sup>76</sup> *Bullarium diplomatum et privilegiorum sanctorum Romanum Pontificum*, S. Franco and H. Dalmazzo, eds., Romae, Taurinensis editio, vol. 3, 1858, pp. 520-522.

<sup>77</sup> C. J. Lynch, "Franciscans", in *New Catholic Encyclopedia*, W. McDonald et al (eds.), New York, McGraw-Hill Book Co., 1967, vol. 6, p. 41.

<sup>78</sup> Order of Friars Minor, *The Rule and the General Constitutions of the Order of Friars Minor*, Wisconsin, The Franciscan OFM Conference of North America, 1988, 158p.

<sup>79</sup> Order of Friars Minor, *The General Statutes of the Order of Friars Minor*, Wisconsin, The Franciscan OFM Conference of North America 1988, 119p.

b. Constitutions, statutes, and financial directories

Under the heading of "The Administration of Goods", the constitutions state that:

- 1) each friary, province, and the whole order should have an administrator of temporal goods;<sup>80</sup>
- 2) the appointment of a representative should take place in accord with the statutes when civil law requires the assistance of a legal representative for contracts, especially alienation;<sup>81</sup>
- 3) expenditures, debts, and alienation go beyond the limits of ordinary administration when they require permission or consent from competent authority according to universal or proper law;<sup>82</sup>
- 4) alienation of goods of artistic or historical value or objects given to the Church in virtue of a vow are considered acts of extraordinary administration. Recourse to the provincial minister is necessary, and all universal and proper laws are to be observed in such cases;<sup>83</sup>

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<sup>80</sup> See Order of Friars Minor, *The Rule and the General Constitutions of the Order of Friars Minor*, art. 244-1, p. 121.

<sup>81</sup> See *ibid.*, art. 246-3, p. 122.

<sup>82</sup> See *ibid.*, art. 249-1, p. 123.

<sup>83</sup> See *ibid.*, art. 249-2, p. 123.

5) the real owners of the buildings and material goods that are necessary for the life and work of the brothers are those whom the brothers serve, or benefactors, or the Church or the Holy See.<sup>84</sup> The practical application of this fact with respect to alienation is not clear either in the constitutions or in the statutes.

In addition to what has been stated in the constitutions, *The General Statutes of the Order of Friars Minor* provide that:

- 1) the general chapter is to determine a limit beyond which the general minister needs the consent of his council to contract debts, alienate property, or to make extraordinary expenditures;<sup>85</sup>
- 2) the provincial chapter determines what constitutes extraordinary expenditure for the provincial minister, what constitutes extraordinary expense for the guardian, and the particular advice or consent that must be obtained from the friary chapter or council or from the provincial council before the building of friaries or churches take place;<sup>86</sup>
- 3) for the alienation of property or the contracting of debts exceeding two-thirds of the sum beyond which permission of the

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<sup>84</sup> See *ibid.*, art. 72, p. 63.

<sup>85</sup> See *Order of Friars Minor, The General Statutes of the Order of Friars Minor*, art. 201, p. 84.

<sup>86</sup> See *ibid.*, art. 202, p. 84.

Holy See is required, the friars need the written permission of the general minister; the provincial and the general councils must also give consent by secret vote;<sup>87</sup>

4) the provincial chapter should determine which goods can be alienated or debts contracted by the provincial superior with consent of his council, the friary council, or chapter.<sup>88</sup>

c. Analysis

The constitutions and statutes offer a clear delineation of powers with respect to ordinary and extraordinary administration. The permissions required for alienations and the amounts beyond which a province needs approval of the general council have also been determined within the context of extraordinary administration. The consent of the councils at various levels takes place through a secret vote.

The Franciscans of Western Canada have also established a lay finance board. This group has been incorporated under federal legislation as "The Apostolic Trustees of the Friars Minor or Franciscans of Western Canada". No decision of the province is made which involves more than \$15,000.00 without the lay finance board's formal approval. While the provincial minister of the Franciscans appoints the board members and has veto power over their deliberations, in practice their advice

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<sup>87</sup> See *ibid.*, art. 203, p. 84.

<sup>88</sup> See *ibid.*, art. 204, pp. 84-85.

is followed consistently.<sup>89</sup>

2. The Order of Capuchin Friars Minor

a. Brief description

The Order of Capuchins Friars Minor was approved by Clement VII in 1528 and looks upon Francis of Assisi as its spiritual founder. The congregation has a general government and is also divided into provinces. The constitutions of the Order of Capuchin Friars Minor were approved by the Holy See in 1982.<sup>90</sup> There are two provinces in Canada; the English-speaking Central Canadian Province presently consists of less than 40 members.

b. Constitutions, statutes, and financial directories

The constitutions state that:

- 1) the construction, acquisition, and alienation of houses is the responsibility of the provincial minister with the consent of his council ("definitory");<sup>91</sup>
- 2) the general minister, with the consent of the definitory,

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<sup>89</sup> Private letter received from the provincial, Kevin Lynch, dated May 12, 1992.

<sup>90</sup> The Order of Capuchin Friars Minor, *Constitutions of the Order of Capuchin Friars Minor*, Hays, Kansas, 1983, 54p.

<sup>91</sup> See *ibid.*, art. 69, p. 21.

shall lay down the limits beyond which major superiors are bound to ask either the consent of their council or the permission of their competent superior before contracting obligations, alienating goods, or incurring extraordinary expenses;<sup>92</sup>

3) limits determined by the general minister and his definitory must keep in mind the differing values of money; these officers must consult with the major superiors and the conference of major superiors if necessary before establishing appropriate norms.<sup>93</sup>

The Capuchins have no financial directory, nor, at present, do they have legislation relating to the alienation of property beyond the general norms of the Church.<sup>94</sup>

Whenever the general law requires a Vatican indult to alienate property, we are bound to seek it and, under those circumstances, to seek approval of the Generalate. Otherwise we are free to buy and sell properties. [...]

Local Provinces are free to establish their own guidelines (with respect to spending limits of local superiors and their councils and the provincial and his council). The Central Canadian Province has no such guidelines.<sup>95</sup>

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<sup>92</sup> See *ibid.*, art. 73, p. 22.

<sup>93</sup> See *ibid.*

<sup>94</sup> Information received in a private letter from the provincial of the Central Canadian Province of the Capuchins to the author dated May 1, 1992.

<sup>95</sup> *Ibid.*

c. Analysis

The authority to alienate is possessed by the general government as well as by individual provinces. While the general and provincial councils have the authority to impose limits on contract obligations, extraordinary expenses, and alienations, none appear to have been established to date.

According to their provincial superior, the Central Canadian Province of the Capuchins has not yet established norms governing alienations below \$1,000,000. Thus there are presently no specific procedures in place affecting the alienation of goods or the use of the proceeds received.

C. Monastic institutes

1. The Order of Cistercians of the Strict Observance

a. Brief description

The Order of Cistercians of the Strict Observance traces its founding back to 1098 when Robert of Molesme, Alberic, and Stephen Harding left the flourishing Benedictine Abbey at Cîteaux with a group of men to begin a new life in the wilds of Cîteaux, France with the intention of seeking God by

following the Rule of St. Benedict in its native simplicity.<sup>96</sup> The Order is a monastic institute ordered to prayer and contemplation; five monasteries presently exist in Canada.

b. Constitutions, statutes, and financial directories

The constitutions and statutes of The Order of Cistercians of the Strict Observance, commonly known as The Trappists, were approved by the Holy See in 1990.<sup>97</sup> Under the heading of "Temporal Administration", the constitutions simply state that:

- 1) the abbot is to ensure that the community's possession and use of temporal goods is such that the law of the gospel is obeyed, and provision is made for human needs;
- 2) the Order and its monasteries are juridical persons, capable of acquiring, possessing, administering, and alienating temporal goods;
- 3) the monastery is to have a finance committee and the economic situation of the monastery is to be reviewed

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<sup>96</sup> M. R. Flanagan, "Trappists", in *New Catholic Encyclopedia*, W. McDonald et al (eds.), New York, McGraw-Hill, 1966, vol. 14, p. 261.

<sup>97</sup> The Cistercian Order of the Strict Observance, *Constitutions and Statutes of the Monks and Nuns of the Cistercian Order of the Strict Observance and Other Legislative Documents*, Rome, 1990, xviii-124p.

regularly;

4) alienation or any transaction by which the patrimonial condition of the monastery could be adversely affected is considered an act of extraordinary administration. When such acts exceed the sum fixed by law, then special permission is required to perform them validly;

5) the general chapter may determine the sums in excess of which special permission is needed for the validity of other acts of extraordinary administration;

6) consent is required by both the conventual chapter<sup>98</sup> and the general chapter for acts exceeding the amount referred to above; (but since the general chapter only meets at specified intervals this could delay certain decisions);

7) the general chapter may fix a lesser sum for which the consent of the conventual chapter is required before proceeding with a particular transaction.<sup>99</sup>

c. Analysis

The constitutions clearly state that the monastery is a juridic person and that the abbot and the cellarer have responsibility for the ordinary financial administration.

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<sup>98</sup> The conventual chapter is composed of monks in solemn vows who have stability in the community together with the superior. All enjoy active and passive voice in its deliberations and acts unless otherwise noted in the constitutions.

<sup>99</sup> See *ibid.*, pp. 38-41.

There are clear guidelines in place governing spending powers for the abbot with or without his council.

Once again, we note that there is no financial directory, that ordinary and extraordinary administration have not been clearly defined, and that alienation is seen as an act of extraordinary administration. No norms are in place to govern the alienation of temporal goods beyond reference to those persons whose approval is necessary for the sale based on its dollar value.

2. The American-Cassinense Congregation of Benedictine Monasteries

a. Brief description

The American-Cassinense Congregation is a monastic congregation of pontifical right, erected in 1855 by Pope Pius IX with the Apostolic Letter *Inter ceteras*. The congregation is composed of autonomous monasteries of Benedictine monks which follow the *Rule of St. Benedict* and *The Constitutions and the Directory of the American-Cassinense Congregation of Benedictine Monasteries*<sup>100</sup> promulgated as proper law of the

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<sup>100</sup> Congregation of the American-Cassinense Congregation of Benedictine Monasteries, *The Constitutions and the Directory of the American-Cassinense Congregation of Benedictine Monasteries*, Muenster, Sask., St. Peter's Press, 1990, xii-156p.

institute in 1989.<sup>101</sup>

b. Constitutions, statutes, and financial directories

The constitutions and directory state that:

- 1) the monasteries of the Congregation have the right to acquire, possess, administer, and alienate temporal goods. This right is to be exercised in accordance with universal law and the proper law of the Congregation;<sup>102</sup>
- 2) the authorization of the abbot is needed for extraordinary expenditures; if the amounts exceed those fixed by the general chapter, then the consent of the council of seniors or of the monastic chapter is also needed;<sup>103</sup>
- 3) the alienation of any monastic property or of investments requires the written authorization of the abbot; if the value exceeds the sum fixed by the general chapter, the consent of the council of seniors or of the monastic chapter is also

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<sup>101</sup> The use of the term "directory" in this context may be misleading. In reality the book entitled *The Constitutions and The Directory of the American-Cassinese Congregation of Benedictine Monasteries* is really constitutions and statutes. A one page, non-published document entitled "Norms for Financial Transactions", dated June, 1992, has been obtained from St. Peter's Abbey, Muenster, Sask., outlining norms for alienations and other financial matters.

<sup>102</sup> See *ibid.*, art. 33, p. 30.

<sup>103</sup> See *ibid.*, Directory 34.2, p. 31.

required;<sup>104</sup>

4) for alienations that exceed the sum fixed by the Apostolic See or items of precious art or of historical value and anything donated through a vow, the written permission of the abbot, the consent of the monastic chapter, the written authorization of the president with the consent of his council, and consent of the Apostolic See are all required;

5) a monastery may not separate itself from its academic apostolate if it has one, by transferring its financial and legal responsibility to outside interests without a responsible guarantee of the assumption of the associated obligations and adequate compensation to the monastery. The approval of the President of the Congregation, acting collegially with his council, must be given before such a transfer can be made. The president and his council may require that the consent of the general chapter be obtained.<sup>105</sup>

The norms governing financial transactions state that

- 1) each monastery shall establish norms for financial transactions;
- 2) the norms apply to extraordinary financial transactions including alienations and provide that:
  - a) in amounts not in excess of \$5,000 or \$50 per capitular,

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<sup>104</sup> See *ibid.*, Directory 34.3, p. 31.

<sup>105</sup> See *ibid.*, Directory 34.3, no, 3 p. 32.

whichever is greater, the abbot acts by his own judgment. The monastic chapter may establish a lower amount and add other conditions;

b) in amounts not in excess of \$30,000 or \$300 per capitular, whichever is greater, the consent of the council of seniors is required. This chapter may establish a lower amount and add other conditions;

c) for larger amounts, the consent of the monastic chapter is required. The monastic chapter may establish a lower amount and add other conditions.<sup>106</sup>

### c. Analysis

The constitutions acknowledge that each monastery has the right to acquire, possess, administer, and alienate goods within the limits of universal and particular law. Alienations are looked upon as one aspect of extraordinary administration. Appropriate norms have been established regarding the permissions needed before alienations can take place. The statutes, however, offer two possibilities for spending powers, granting monasteries of over one hundred members a higher limit with respect to matters of extraordinary administration. On the other hand, the statutes provide no

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<sup>106</sup> "Norms for Financial Transactions of the American-Cassinense Congregation of Benedictine Monasteries" received by the author in a private communication from L. Hinz, June 18, 1992.

norms regarding procedures to be followed or to the use of proceeds from an alienation.

The institute attempts to protect its academic apostolate with a statute that demands not only adequate compensation to the monastery but also a guarantee of assumption of the associated obligations. Since the approval of the president of the Congregation with his council is needed and even the consent of the general chapter may be required before such an alienation takes place, and then only on condition that the apostolate continue, this might leave the institute waiting a long time before a suitable person could be found to continue an educational work if the abbey wished to divest itself of this apostolic activity.

### III TRENDS

This examination of the documents of a number of institutes enabled us to determine certain trends. Among these, the following can be noted.

1) While all the institutes have determined who is the competent authority to establish norms with respect to the capacity of regions, provinces, or local houses to alienate, many such authorities have not drawn up the pertinent legislation.

2) Only two of the institutes studied have determined norms beyond those required by universal law with respect to

procedures to be followed for alienations below the limit requiring an indult from the Holy See.

3) Canon 1294 is clear in stating that money realized from an alienation is either to be invested carefully for the advantage of the Church or wisely expended in accord with the purposes of the alienation. The institutes are not attentive to protecting stable patrimony which has been converted to liquid assets.

4) There does appear to be a trend in favour of establishing finance committees within institutes.

5) Three of the institutes examined have established financial norms separate from their constitutions and statutes; two have incorporated these norms into financial directories, and at least two other institutes are contemplating establishing financial directories.

#### **SUMMARY**

From the ten clerical institutes examined the following summary may be drawn up:

1) The procedures governing the alienation of temporal goods with respect to who may alienate goods, the procedures to be followed, and the use of the proceeds are not clearly defined in most of the institutes examined.

2) Some institutes have no finance committees; others limit their finance committee to members of the institute. Thus both

groups may possibly be depriving themselves of the advice of experts who may guide their deliberations when issues of alienation and other financial matters arise.

3) Several institutes deposit into their general account funds received from the alienation of temporal goods. Thus what was stable patrimony has become general funds for the day-to-day operation of the institute.<sup>107</sup>

4) Most institutes have some norms and policies governing financial matters, but the majority have yet to incorporate these norms into a formal directory.

5) Some institutes follow very clear norms as a matter of "custom"; but these have no formal approval and thus there is little guarantee that these same norms will be followed by a new administration.

6) One or two provincials saw no need for norms regarding alienations or investment policies since their institutes owned limited amounts of property and had few investments. It would seem, though, that the more limited the stable patrimony of an institute, the more good stewardship demands that care be taken for what is owned by having suitable policies in place.

7) The lack of appropriate norms, the absence of qualified

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<sup>107</sup> Private conversation with D. Taylor, bursar of the Congregation of the Resurrection and with F. Maloney, bursar of the Congregation of the Most Holy Redeemer, June 15, 1992.

people to give input into major financial questions, and the lack of a directory to bring together one's own rules and regulations governing financial issues can have detrimental effects on the financial well-being of an institute.

8) The establishment of provincial, regional or general financial directories, depending on the size of the institute, can provide a clear understanding of the rules and regulations in place to govern not only alienation but other matters relating to temporal affairs.

9) Each institute, regardless of its size and of its nature, needs sufficient norms in place to protect its stable patrimony for the goods of its members.

#### GENERAL CONCLUSIONS

An examination of ten clerical religious institutes and the norms they have established relating to the alienation of temporal goods raises three questions. Do institutes need to maintain stable patrimony? Do institutes need norms to govern the alienation of temporal goods belonging to their stable patrimony? What requirements could such norms contain?

a. The need for stable patrimony

Canon 670 specifies the responsibility of a religious institutes to provide for the needs of its members. The emphasis of this canon is primarily on support for the members

in their ministry, The canon, however, may be more broadly interpreted to include support for those members of the institute who are also retired. Recognizing the reality of continually increasing numbers of sick and aging members, these institutes must build up adequate resources to safeguard financial stability. Stable patrimony, in the form of immovable property and/or fixed capital, is a means of ensuring that the necessary resources are available when required. Thus competent authorities, conscious of canon 634, §2' to avoid all appearance of luxury, immoderate wealth, and amassing of goods, would be wise to determine appropriate norms to: a) increase their stable patrimony and b) determine when and how the goods of the stable patrimony may be alienated according to the purpose and needs of the institute and its members.

b. The need for norms to govern alienation

The present Code gives broad discretion to religious institutes when alienating temporal goods valued below the maximum limit established by the Holy See. Competent superiors and their councils, whose area of expertise is usually not financial, need to have in place norms to guide them as a means of protecting the financial stability of the institute. Appropriate norms, combined with the ongoing advice of qualified finance and investment committees, can establish parameters within which those who govern the institute can

make informed decisions. The present proper law of many religious institutes allows for the possibility of disposing of stable patrimony of the institutes valued below the limit requiring an indult from the Holy See without sufficient, if any, guidelines to determine whether such alienations will be in the long-term best interest of the institute.

c. A proposal of norms for alienation

In addition to the various permissions required by canon 1292, canon 1293 requires a just cause and written estimates from experts before alienating goods whose value exceeds the minimum amount which has been determined by the conference of bishops. A similar minimum amount can be established by individual religious institutes beyond which a series of requirements would have to be met before alienating property. Such requirements might include: a) estimates in writing by reliable experts, b) a just cause, c) permission of the competent superior, d) willingness to hear from those affected by the alienation, e) advice of finance and investment committees, f) secure investment of the proceeds not immediately needed for particular expenditures. Such a set of norms, combined with a financial policy that strives to maintain or increase a stable patrimony that can respond to the future needs of the institute, falls well within the responsibility of those who assume authority over the

institute.

#### FINAL OBSERVATIONS

The purpose of this dissertation has been to examine the question of alienation of temporal goods in light of the present Code which places upon religious institutes the responsibility of determining norms to ensure good financial management of their goods.

This flows naturally from the principle of subsidiarity which was one of the ten principles guiding the revision of the Code of Canon Law. The universal law of the Church with respect to temporal goods articulated in Book V must be supplemented with appropriate norms to ensure good administration and the protection of the stable patrimony of religious institutes.

Our examination of ten religious clerical institutes having houses in Canada has pointed out some excellent norms put in place by a few institutes. More effort however must go into the establishing of policies and norms to secure more fully the financial future of such institutes. Such norms are not meant to tie hands unnecessarily but to provide administrators with the tools and policies necessary to guide them in the task as good stewards of the temporal goods of their institutes.

These norms are especially necessary now as the maximum

value of goods requiring an indult of the Holy See before an alienation can take place is \$ 3,000,000 for religious institutes in the United States, and there is every reason to believe the same limit will be granted shortly to the religious institutes in Canada. A financial directory is a simple tool which can place before administrators within communities norms or general policies governing the administration of temporal affairs. In addition, a financial directory can contain a comprehensive listing of immovable property and fixed capital which forms the stable patrimony of the institute. When gathered into one unit, it is easier to see the strengths and weaknesses of the policies an institute has in place and the extent of its financial resources.

The regional directory for the administration of temporal goods for the Oblate Canadian Conference is a good example of what is possible in this regard. A very comprehensive document, its strength lies in the fact that it contains 1) a philosophy of management, 2) general principles dealing with temporal goods (including definitions of such terms as temporal administration, ordinary administration, and extraordinary administration), 3) a series of directives and policies that concretize the philosophy and general principles (i.e. pension funds, how to handle charitable requests, borrowing of funds) and, lastly 4) a series of practical tools in the form of outlines and formats that are often needed

(e.g. last will and testaments, monthly budgets, sample contracts for volunteer workers, etc.).

A strong point of the directory is that it provides easy access for information such as the limits on spending powers of all those in authority (i.e., a provincial can spend \$6,000 on his own authority, \$50,000 with consent of a reduced council and \$300,000 with the consent of the full council).<sup>108</sup>

A financial directory could be of great assistance with respect to alienations needing either an indult from the Holy See or permission from higher superiors within the institute. The directory might include, for example,

a listing of questions to be answered when presenting requests for authorization to proceed [with alienations]: a) the reasons for the sale or transfer; b) the eventual purchaser; c) the intermediaries, if any; d) the conditions of sale; e) the use of funds to be realized from the sale; f) the opinion of the diocesan bishop. It could also determine g) which documents are to accompany the request: an offer to purchase, evaluations of the property, the minutes of the council requesting the permission, and so forth.<sup>109</sup>

As good canonical stewards, those in authority must take reasonable steps in response to canon 638 to protect the financial stability of their institutes through the establishment of suitable norms to guarantee appropriate

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<sup>108</sup> Congregation of Oblates of Mary Immaculate *Regional Directory: Administration of Temporal Goods*, C. Levangie, ed., pp. 62-63.

<sup>109</sup> F. G. Morrisey, "The Directory", pp. 280-281.

management of their resources, for the continuance of apostolic ministry and providing for the needs of the members at present and in the years to come.

Good norms will also provide essential information to those who must assume leadership roles in the future. A lack of norms in the area of temporal goods is ultimately a disservice to institutes in particular and to the Church at large.

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## BIOGRAPHICAL NOTE

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