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**THE GENERAL CHAPTER IN A RELIGIOUS INSTITUTE WITH
PARTICULAR REFERENCE TO IBVM, LORETO BRANCH**

by
Elizabeth M. COTTER, IBVM

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Abstract

The present study charts the evolution of the general chapter, an organ of government that has long historical roots in the Church, one that, as this is the case for IBVM, has proved capable of adjusting and adapting to the demands of life and mission in the modern world. The contemporary understanding of the nature and authority of the general chapter has been influenced by Vatican II's renewed vision of authority as service. In this vision, as is evident from *CIC*'s expression of government in institutes of consecrated life, authority, even within an hierarchical model, is exercised participatively, collaboratively and where possible collegially. However, the general chapter is more than a juridic structure of governance. It is primarily a faith experience whose main task is the union in charity of the members. As a result, prayer and discernment must characterize its participative, collaborative processes.

The fusion of IBVM North America with IBVM Irish Branch in 2003 brought together two Institutes whose charism derived from the same source. Despite their common origins, however, the two Institutes understood authority, its expression in proper law and its exercise in key areas such as the general chapter in apparently different ways. This difference was epitomized in 1986 when one Institute adopted the Ignatian Constitutions while the other rejected them because their hierarchical expression of authority was believed to be incompatible with the way women function in the modern world. The experience of IBVM in North America since Vatican II would seem to suggest that participative, collaborative structures (which are described as a more "feminine" approach to government), functioning within an hierarchical system can meet the need for meaningful involvement of members in government. However, this more "democratic" expression of government can open the members to individualism and majoritarianism. The changes made by the Irish Branch in the exercise of government since 1986 provide hope that an inclusive, participative model of government can be accommodated in the new IBVM Loreto Branch.

Because consecrated life has an inalienable ecclesial dimension, understanding authority and power and their exercise in institutes of consecrated life has relevance for understanding authority and its exercise in other organs of authority at all levels in the Church.

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ABBREVIATIONS

AA	SECOND VATICAN COUNCIL, decree <i>Apostolicam actuositatem</i>
AAS	<i>Acta Apostolicae Sedis</i>
ASS	<i>Acta Sanctae Sedis</i>
c.	canon
cc.	canons
CAIB	Central Archives of the Irish Branch of the Institute of the Blessed Virgin Mary, Dublin, Ireland
CAT	Central Archives of the North American Branch of the Institute of the Blessed Virgin Mary, Toronto
CCCB	Canadian Conference of Catholic Bishops
CCEO	<i>Codex canonum Ecclesiarum orientalium</i>
CCLA	CAPARROS, E. et al. (eds.), <i>Code of Canon Law Annotated</i>
CD	SECOND VATICAN COUNCIL, decree <i>Christus Dominus</i>
CL	JOHN PAUL II, Post-synodal apostolic exhortation <i>Christifideles laici</i>
CIC/17	<i>Codex iuris canonici, Pii X Pontificis Maximi iussu digestus</i>
CIC	<i>Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus</i>
CICLSAL	Congregation for Institutes of Consecrated Life and Societies of Apostolic life (from 28 January 1988).
CLD	<i>Canon Law Digest</i>
CLSA	Canon Law Society of America
CLSA Comm1	CORIDEN, J., T.J. GREEN and D.E. HEINTSCHELL (eds.), <i>The Code of Canon Law: A Text and Commentary</i>
CLSA Comm2	BEAL, J.P., J.A. CORIDEN, T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>
CLSAP	<i>Canon Law Society of America Proceedings</i>

CLSGBI <i>Comm</i>	SHEEHY, G. et al. (eds.), <i>The Canon Law: Letter & Spirit</i>
Cons.	Constitution
<i>ConsL</i>	<i>Consecrated Life</i>
<i>CpR (M)</i>	<i>Commentarium pro religiosus (missionaris)</i>
CRC	Canadian Religious Conference
CRSI	Congregation for Religious and Secular Institutes (from 15 August 1967)
<i>DEC</i>	ALBERIGO, J. et al. (eds.), <i>Decrees of the Ecumenical Councils</i>
<i>DH</i>	SECOND VATICAN COUNCIL, decree <i>Dignitatis humanae</i>
<i>DV</i>	SECOND VATICAN COUNCIL, dogmatic constitution <i>Dei Verbum</i>
<i>ES II</i>	Paul VI, motu proprio <i>Ecclesiae Sanctae</i> , <i>Norms: II</i>
EUNSA	<i>Ediciones Universidad de Navarra, S.A.</i>
<i>Exegetical Comm</i>	MARZOA, A., J. MIRA, R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen ed. of English translation), <i>Exegetical Commentary</i>
FLANNERY1	FLANNERY, A. (gen. ed.), <i>Vatican Council II</i> , vol. 1
FLANNERY2	FLANNERY, A. (gen.ed.), <i>Vatican Council II</i> , vol. 2
GS	SECOND VATICAN COUNCIL, pastoral constitution <i>Gaudium et spes</i>
<i>HD</i>	<i>Human Development</i>
IBMV	Institutum Beatae Mariae Virginis
IBVM	Institute of the Blessed Virgin Mary
<i>Inform.SCRIS</i>	<i>Informationes</i> Sacred Congregation for Religious and Secular Institutes
LCWR	Leadership Conference of Women Religious in the USA
<i>LG</i>	SECOND VATICAN COUNCIL, dogmatic constitution <i>Lumen gentium</i>
<i>L'OR</i>	<i>L'Osservatore Romano</i>
NCCB	National Conference of Catholic Bishops (of the USA prior to July 2001)
<i>OE</i>	SECOND VATICAN COUNCIL, decree <i>Orientalium Ecclesiarum</i>

<i>PB</i>	JOHN PAUL II, apostolic constitution <i>Pastor bonus</i>
<i>PC</i>	SECOND VATICAN COUNCIL, decree <i>Perfectae caritatis</i>
<i>RD</i>	JOHN PAUL II, apostolic exhortation <i>Redemptionis donum</i>
<i>RfR</i>	<i>Review for Religious</i>
SCR	Sacred Congregation for Religious (from 29 July 1908)
<i>StC</i>	<i>Studia canonica</i>
USCC	United States Catholic Conference (prior to 1 July 2001)
USCCB	United States Conference of Catholic Bishops (since 1 July 2001)
UISG	International Union of Superiors General
USG	Union of Superiors General
<i>VC</i>	JOHN PAUL II, post-synodal apostolic exhortation <i>Vita consecrata</i>

INTRODUCTION

The fusion of the Institute of the Blessed Virgin Mary, North American Branch with the Irish Branch of the Institute in 2003, brought together two units whose spirit and charism derived from the same source of inspiration, Mary Ward (1585-1645). The juridic act of merger concerned, however, two groups whose approach to the understanding of authority in a religious institute appeared to differ. This apparent clash of cultures¹ provoked questions concerning the present understanding of the nature of the general chapter's authority and the way in which it operated, particularly in IBVM. Of critical importance for the future of IBVM is the practical question: can two different understandings of authority be accommodated in the new Loreto Branch?²

¹ It is beyond the scope of this thesis to analyse the debates in academic literature concerning culture. Suffice it to say that in our understanding culture is a state of mind that reflects the state of mind of the community. It has a moral force that depends on who is describing it. As a result, it defies a fossilized definition. We have some idea of its importance when we examine its influence on the Church. For example, Pope John XXIII called for *aggiornamento*, i.e., Vatican II was to bring the Church up-to-date with the culture of the times. See JOHN XXIII, apostolic constitution *Humanae salutis*, 25 December 1961, in *AAS*, 54 (1962), pp. 5-13; *Perfectae caritatis* stated that "the manner of life, prayer and work [of the religious] should be in harmony with the present day physical and psychological condition of the members [...] with the requirements of culture and with social and economic circumstances" (*PC*, no. 3, English translation in *FLANNERY* 1, p. 613); *CIC* provides four uses of the concept: c. 248 requires that clerical formation takes account of the general culture appropriate to the needs of the times; c. 787 asks missionaries to take native character and culture into account in establishing dialogue; c. 807 establishes the right of the Church to erect and govern universities which promote the deeper culture; c. 821 asks Bishops' Conferences and diocesan bishops to provide for the establishment of institutes of higher religious studies where subjects pertaining to Christian culture might be taught. See *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1989, *The Code of Canon Law*, new rev. English translation prepared by the CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, in association with the CANON LAW SOCIETY OF AUSTRALIA AND NEW ZEALAND and the CANADIAN CANON LAW SOCIETY, London, HarperCollins, 1997. This translation is used for all subsequent citations of *CIC*.

² The original Mary Ward Institute was founded in 1609. In the Institute of the Blessed Virgin Mary's history, this Institute was the "tree" from which two independent "branches" developed, the Irish Branch, founded in Dublin in 1821 and the North American Branch founded from Dublin in 1847. See below, p. 8, footnote 28.

The Code of Canon Law seems clear regarding the two-fold nature of authority, the personal authority of superiors (c. 618) and the collegial authority of the general chapter (cc. 631 § 1, 119). It is the hierarchical expression of this authority that causes difficulties, particularly in congregations of women.³ However, because of the emphasis on the values of consultation and participation in the exercise of authority, the actual expression of authority in religious institutes is, in fact, the most democratic⁴ expression in the Church.

Underlying our study are, therefore, the following questions:

1. Is hierarchical government⁵ constitutive of religious institutes?
2. Is it the hierarchical system of government in itself, or rather the way in which it is presently exercised the source of the problem?

³ For example, the Constitutions of the Institute of the Blessed Virgin Mary, Irish Branch describes governance in terms of “The Institute’s Head and the Government Descending from Her” (the title of Part 9). The hierarchical expression of government in this Institute and the ways in which it contrasts with the more “democratic” expression in the former North American Branch of the Institute is the subject of our fourth chapter.

⁴ Democracy, as we know it today, evolved from a word, to a revolutionary concept to an accepted benchmark of human civilization whose expression is often corrupted in its present reality. “Democracy” considered from a western viewpoint derives from ancient Greece and the *res publica* of the Romans. However, as Jacques points out, the universal aspect of the Catholic Church does not permit identification with one thought system, government, etc. Nonetheless, “the Church values the democratic system inasmuch as it ensures the participation of citizens in making political choices, guarantees to the governed the possibility both of electing and holding accountable those who govern them, and of replacing them through peaceful means when appropriate” (JOHN PAUL II, encyclical letter *Centesimus annus*, 1 May 1991, no. 46, in *AAS*, 83 (1991), p. 850, English translation PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *Compendium of the Social doctrine of the Church*, Vatican City, Libreria editrice Vaticana, 2005, p. 175). See also R. JACQUES, “Christianisme et droits démocratiques: est-ce compatible?” in *Mission*, no. 1, 12 (2005), pp. 63-80. See below, pp. 111-125.

⁵ *Lumen gentium* describes the Church in terms of an hierarchically structured society as well as a spiritual community. However, although there is an hierarchy in relation to roles, status and authority from the Roman Pontiff down to the pastors of the Church, Vatican II emphasised hierarchy in terms of its function of service to the people of God. See *LG*, nos. 8, 18-29, in *FLANNERY* 1, pp. 357, 369-387. While religious institutes are not part of the hierarchical structure of the Church, they belong, nevertheless, “undeniably to her life and holiness” (*LG*, no. 44, p. 405). See below, p. 55, footnote 22.

3. Can participative, collaborative structures functioning within an hierarchical structure meet the need for meaningful involvement of members in government?

Much has been written about different aspects of the institute of general chapter. The focus of this thesis has been, however, on those sources that contributed to our understanding of the development of the concept of general chapter in the Anglo-Saxon world, since this is the proper context for our analysis of IBVM, North America. We acknowledge the work of G. Lewis, F.J. Callahan, J.A. Barnhisser, M. Antalóczy and L.M. Jarrell in relation to the historical development of the concept of general chapter, of I.M. MacPherson and F. Iannone for their analysis of the exercise of authority in the context of *CIC*. B.J. Blangiardi's study of the general chapter in the Society of Jesus was useful as a background to the evaluation of the *1986 Irish Branch Constitutions*. V. Koluthara provided an interesting analysis of the rightful autonomy of religious institutes in *CCEO* and *CIC* and finally, M.M. Schaumber's study of the evolution of the power of jurisdiction of the lay religious superior, contributed to the understanding of the jurisdiction of the general chapter.

From a canonical viewpoint, the present study focuses therefore on the evolution of an organ of government that has long historical roots in the Church, an organism that, as this is the case for IBVM, has proved capable of adjusting and adapting to the demands of life and mission throughout the centuries and to the recent challenge of different expressions of authority in two Branches of the Institute. The role of proper law in this evolution has been of critical importance in that it demonstrates how an individual institute can adapt universal norms to suit the demands of a particular historical and cultural

situation. The freedom to do this is enshrined in the universal law of the Church. The challenge lies in the harmonization of universal norms with the needs of a particular group or situation. Certainly the general chapter has proved its capacity to do this in the case of institutes of consecrated life

Since it is our belief that the past informs the future, chapter one explores briefly the historical evolution of the concept of general chapter from its first use as a mode of participation of the members in the affairs of the monastery, through its understanding as an instrument of governance that represented the members in the election of the leader and provided for order and discipline, to the present vision as an organ of governance that focuses on the unity of the members of the institute, their on-going renewal and their participation in the government of the institute (c. 631).

Chapter two focuses specifically on the contemporary understanding of the nature and authority of the general chapter. The influence of Vatican II, the universal legislation (*CIC*), and other documents of the Holy See, as well as significant events, e.g., the 1994 Synod of Bishops on consecrated life, are analysed as to their impact on the understanding of the collegial exercise of authority in religious institutes.

Despite the ambiguity in relation to the kind of power exercised by general chapters (c. 596), certain concepts, as well as practical aspects, are common to all general chapters. Chapter three analyses some of the practical issues relating to the celebration of the general chapter within the context of the contemporary understanding of the nature of authority and names some of those issues that require further determination. This analysis lays the foundation for the exploration in chapter four of the role of the general chapter in the

former Irish and North American Branches of IBVM. An examination of the experience of general chapter and the expression of its authority and role in Constitutions enables us to understand how this organ of government finds a different expression in both Branches and considers the implications of different conceptualizations for the new Loreto Branch.

CHAPTER 1

HISTORICAL ANTECEDENTS OF THE CONCEPT OF GENERAL CHAPTER

This chapter will outline the key moments in the development of the concept of general chapter. It does not purport to provide a detailed historical analysis. Others have accomplished this task.¹ It is necessary, nonetheless, to reiterate the main features of the concept of general chapter in its historical context in order to provide a basis for our study of the functions of general chapter and the nature of the authority it exercises in the context of the Institute of the Blessed Virgin Mary.

1.1 – TOWARDS A CANONICAL FRAMEWORK

Chapters in religious institutes have a long history.² The general chapter in today's understanding is the supreme internal authority of the institute whose function is to elect the supreme moderator and to discern the best ways to preserve and adapt the charism and

¹ See the following doctoral dissertations: G. LEWIS, "Chapters in Religious Institutes: An Historical Synopsis and Commentary," *Canon Law Studies*, no. 181, Washington, DC, The Catholic University of America, 1943 (=LEWIS, "Chapters in Religious Institutes"); F. J. CALLAHAN, "The Centralization of Government in Pontifical Institutes of Religious Women with Simple Vows: From Their Beginnings till the Legislation of Leo XIII," Rome, Pontificia Universitas Gregoriana, 1948 (=CALLAHAN, "Centralization of Government"); J.A. BARNHISER, "A Study of the Authority Structures of Three Nineteenth Century Apostolic Communities of Religious Women in the United States," *Canon Law Studies*, no. 487, Washington, DC, The Catholic University of America, 1975; L.M. JARRELL, "The Development of Legal Structures for Women Religious Between 1500-1900," *Canon Law Studies*, no. 513, Washington, DC, The Catholic University of America, 1984 (=JARRELL, "Legal Structures"); F. IANNONE, "Il capitolo generale, origine e sviluppo storico: legislazione del C.J.C. del 1983," Rome, Pontificia Universitas Lateranensis, 1988; M. ANTALÓCZY, "Il capitolo generale nell'ordine dei frati predicatori agli inizi ed oggi: comparazione storico-giuridica," Rome, Pontificia Universitas S. Thomae, 1996.

² See LEWIS, "Chapters in Religious Institutes," pp. 10-49.

spiritual patrimony to changing historical and cultural circumstances.³ The roots of this institution are generally traced back to the development of monasteries in early Church history. As monasteries spread throughout the Western world, the concept of chapter changed to suit new realities. The main features of the general chapter had emerged by the late middle ages. These were given a coherent organisation and structure by the major mendicant orders, particularly by the Dominicans. Early Church councils, especially the Fourth Council of the Lateran in 1215, enshrined key principles in legislation. The general chapter was included in the centralized mode of governance of many of the new congregations that emerged from the 16th century onwards. However, the legislation of the Council of Trent ensured that most of these were not regarded as “religious,” a situation that remained until the promulgation of apostolic constitution *Conditae a Christo* in 1900.⁴ The subsequent Norms provided detailed guidelines in relation to the structure and functioning of general chapters, as well as determining their place in relation to the authority of the Church.

³ See CIC, c. 631 § 1 and CCEO, c. 512 § 1, *Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP.II promulgatus, fontium annotatione auctus*, Libreria editrice Vaticana, 1995, English translation *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, Washington, DC, Canon Law Society of America, 2001. This translation is used for all subsequent citations of the 1990 CCEO. See also JOHN PAUL II, Post-Synodal Exhortation on the Consecrated Life and Its Mission in the Church and the World *Vita consecrata*, 25 March 1996, no. 42, in *AAS*, 88 (1996), pp. 377-486, Vatican English version, Consecrated Life: Post-Synodal Apostolic Exhortation *Vita consecrata* of the Holy Father John Paul II, Vatican City, Libreria editrice Vaticana, 1996, p. 74 (= *Vita consecrata*); CRSI, Instruction on Essential Elements in the Church’s Teaching as Applied to Institutes Dedicated to Works of the Apostolate, 31 May 1983, no. 51, in *L’OR*, English ed., 18 July 1983, p. 7 (= *Essential Elements*).

⁴ See LEO XIII, apostolic constitution *Conditae a Christo*, 8 December 1900, in *ASS*, 33 (1901), pp. 341-347, English translation in D.I. LANSLOTS, *Handbook of Canon Law for Women under Simple Vows*, 9th rev. ed., New York, F. Pustet, 1920, Appendix A, pp. 246-258 (= *Conditae a Christo*).

1.1.1 – Features of the General Chapter: Representation, Consultation, and Deliberation

One of the earliest references to chapter occurs in the eighth century in the commentary of Paul the Deacon on the Rule of St. Benedict.⁵ For Benedict, the chapter was the means by which every member, even the most junior, had the opportunity to discuss and give advice concerning the affairs of the monastery and to elect the monk who was to be abbot.⁶ Benedict's contribution was to enshrine in the rule the principle of consultation with the community. Custom and practice would determine what the matter of these meetings would be, who would take part in the meetings, what would be the status of the members and which matters would require the deliberative vote of those meeting in chapter.⁷

As monasteries established foundations, it became necessary to devise a means by which the satellite communities could be involved in the affairs of the central community also. The Cistercian rule introduced the concept of "general chapter"⁸ and required all

⁵ See *Commentarium Pauli Warnefridi Diaconi Casinensis in regulam S. P. N. Benedicti*, vol. 4, Casiniensi, 1873, p. 43. St. Benedict wrote his rule in the first half of the sixth century but the earliest extant version comes from the commentary of the Lombard, Paul the Deacon, at Monte Cassino in the latter part of the 8th century.

⁶ There was an hierarchical structure in the monastery with the ultimate authority vested in the abbot. Nevertheless, Benedict introduced a consultative mode of operation within the monastic structure. This way of making decisions continued to be a feature in the exercise of authority by general chapters in religious institutes. See T. KARDONG, *Benedict's Rule: A Translation and Commentary*, Collegeville, MN, Liturgical Press, 1996, pp. 69, 525.

⁷ See LEWIS, "Chapters in Religious Institutes," pp. 13-18.

⁸ In the decree of confirmation, Pope Calixtus II made specific reference to the chapter: "Nos ergo vestro in Domino profectui congaudentes, capitula illa et constitutiones auctoritate apostolica confirmamus et omnia in perpetuum rata permanere decernimus" (CALIXTUS II, Ad Stephanum abbatem Cisterciensem, in J.D. MANSI, *Sacrorum conciliorum amplissima collectio*, 2nd ed., vol. 21, Paris, 1901, pp. 190-191 [=MANSI, *Collection*]).

abbots to meet each year in this assembly.⁹ The object of the meeting was to promote the observance of the rule, peace and charity and the salvation of souls.¹⁰ The rule therefore provided the idea of “general” chapter, together with an explicit elaboration of its goal.

The rise of mendicant orders represented a new development in the Church. As they spread, they divided the order into manageable units. The members elected those who governed them, both at the local and the general level. The concept of provincial chapter developed therefore to facilitate government of distant sections of the order. The Dominicans provided the organisation and structures within which this type of government worked.¹¹ They divided the order into provinces and provided the structures that ensured proper representation of the provinces at the general chapter. Their earliest constitutions contained references to local, provincial and general chapter together with a detailed explanation as to how each institution was to function.¹² As a consequence, the members of the general chapter included the superiors elected by the members but also

⁹ “Sed omnes abbates de nostro ordine singulis annis ad generale capitulum Cisterciense, omni postposita occasione convenient, illis exceptis, quos corporis infirmitas retinuerint” (BERNARD OF CLAIRVAUX, *Charta Charitatis*, in J-P. MIGNE, *Patrologiae cursus completus*, Series Latina, vol. 166, Paris, 1854, p. 1380 [= *Charta Charitatis*]). “*Charta Charitatis*” was the name given to the Cistercian constitution by many popes, e.g., Eugene III, Anastasius IV. The title also appears in source documents. When distance rendered it impossible, or very difficult, to travel to the general chapter every year, dispensations were given, e.g., the abbots in monasteries of Scotland and Ireland were required to attend only every fourth year. See LEWIS, “Chapters in Religious Institutes,” p. 20.

¹⁰ “In quo capitulo de salute animarum suarum tracent: in observatione sanctae Regulae vel augundum, ordinent: bonum pacis et charitatis inter se reformat” (*Charta Charitatis*, p. 1381).

¹¹ It is generally acknowledged that Dominic’s constitutions were an amalgam of ideas culled from other rules. Dominic’s unique contribution consisted in the way in which he organised and structured the government of his congregation. See G.R. GALBRAITH, *The Constitution of the Dominican Order 1216-1360*, Manchester, The University Press, 1945, p. 40.

¹² See *Acta capitulorum generalium*, vol. 1, in *Monumenta ordinis Fratrum Praedicatorum historica*, vol. 3, B.M. REICHERT (ed.), Rome, Ex Typographia polyglotta S.C. de Propaganda fide, 1898, pp. 1-5. See also P. MANDONNET, *Saint Dominique*, vol. 2, Paris, Desclée, 1938, pp. 103-273.

representatives who came as delegates.¹³ The general chapter then became the instrument that united the members of the order. The Dominicans also developed the ordinary general chapter, which met every year to deal with the ordinary affairs of the community and the elective chapter, which met for the election of the master prior.

Although early councils made regulations regarding chapters in monasteries,¹⁴ the Fourth Council of the Lateran provided a more uniform system by stating that the Cistercian model was to be introduced in monasteries that did not have this structure. The chapter was to meet every three years; it was to be directed by four presidents; whatever was enacted with their approval was to be inviolable; the purpose of the chapter was named as “the reform of order and the observance of the rule”¹⁵ and one of its functions was to

¹³ Pennington describes the understanding of the jurisprudential concept of *repraesentatio* as one of the most important contributions of the medieval jurists of the *Ius commune* to Western legal thought. The concept developed in relation to the cathedral chapter and its relations with the diocesan bishop but influenced other institutions also. To “represent” meant to receive consent to exercise “*plena potestas*” on behalf of those represented. The instructions given by Master Jordan to eight provincial priors and two deputed diffinitors in 1228 illustrate this understanding of *repraesentatio* in the Dominican order: “*fratres omnes vota sua unanimiter transtulerunt, eisdem potestatem plenarium concedentes ut quicquid ab ipsis fieret, sive in constituendo sive in destituendo, mutando, addendo vel diminuendo, de cetero firmum ac stabile permanere*” (quoted in A.H. THOMAS, *De oudste constituties van de Dominicanen: Voorgeschiedenis, tekst, bronnen, ontstaan en ontwikkeling [1215-1237]*, Bibliothèque de la Revue d’Histoire Ecclésiastique, no. 42, Louvain, Dominikanenklooster, 1965, p. 309). In other words, the brothers gave the representatives “full power” concerning the Roman law concept “whatever touches all, must be decided by all.” These concepts of consent and representation are crucial to democratic institutions today. However, the concepts have little influence in the Church whose laws shaped them, except in chapters of religious institutes. See K. PENNINGTON, “Representation in Medieval Canon Law,” in *The Jurist*, 64 (2004), pp. 361-383.

¹⁴ For example, canon 4 of the Council of Chalcedon (451 A.D.) regulated the establishment of chapels and monasteries with the prior consent of the bishop. This council also attempted to control the extensive travel of some monks by promoting adherence to the vow of stability. See J. ALBERIGO et al. (eds.), *Conciliorum oecumenicorum decreta*, 3rd ed., vol. 1, Bologna, Istituto per le scienze religiose, 1973, p. 89, English translation N.P. TANNER (ed.), *Decrees of the Ecumenical Councils*, vol. 1, London, Sheed and Ward, Washington, DC, Georgetown University Press, 1990, p. 88 (=DEC). For a list of those councils that dealt with aspects of religious life, see V.T. SCHAAF, “The Cloister,” *Canon Law Studies*, no. 13, Washington, DC, The Catholic University of America, 1921, pp. 40-43.

¹⁵ See LATERAN COUNCIL IV, constitution 12, in DEC, vol. 1, pp. 240-241.

consent to any act of extraordinary temporal administration.¹⁶ The local bishop was to strive to reform those monasteries subject to him and ensure that the monasteries could serve God in peace and with freedom. Thus Lateran IV, by making chapters obligatory in all monasteries, establishing their purpose and end, and naming some of the issues that required the approval of the chapter, provided the ground rules for the future development of legislation concerning general chapters.

Pope Boniface VIII (or other author) provided other regulations, enshrined in the *Liber Sextus* of Decretals, in relation to general chapters, e.g., who could vote¹⁷ and what made one *habilis*.¹⁸ The chapter of some monasteries had a role in the admission of new candidates.¹⁹ However, most of the regulations concerning chapters were particular to the rule or constitutions of each order, with the underlying principle that “what touches all must be approved by all.”²⁰ This remained the situation until the Council of Trent.

¹⁶ Certain matters, e.g., financial transactions, required the permission of the abbot and chapter. See LATERAN COUNCIL IV, constitution 59, in *DEC*, vol. 1, p. 262.

¹⁷ Those who were not professed could not vote in the election of those who were and laypersons could not participate in elections with professed religious: “Canonicus impubes ad electionem non vocatus, non agit de contemptu [...]. § 1 in ecclesiis quoque regularibus vel monasteriis hi, qui non sunt tacite vel expresse professi, non debent cum professis vel conversi laici cum clericis electionibus interesse” (*Sextus*, 1, 4, 32, in *Corpus iuris canonici*, Pars secunda, Decretalium collectiones, post A.L. RICHTER curas ad librorum manu scriptorum et editionis Romanae fidem recognovit et adnotatione critica instruxit A. FRIEDBERG, Leipsig, B. Tauchnitz, vol. 2, 1881, Graz, Akademische Druck- u. Verlagsanstalt, 1959, p. 964 [=FRIEDBERG]).

¹⁸ “[...] nulla monialis, nisi duodecimum annum peregerit, et professa fuerit tacite vel expresse, ad eligendum cum aliis admittatur” (*Sextus*, 1, 4, 43, in FRIEDBERG, vol. 2, p. 967).

¹⁹ “Vacante monasterio conventus novum recipit monachum, si communiter ad abbatem et eos spectat; si abbatem solum, secus, si ad solum abbatem pertineat creatio monachorum: eo defuncto nequibit novus monachus a conventu creari, alias poterit, si eorum creatio spectat insimul ad utrumque” (*Sextus*, 3, 14, 6, p. 1052).

²⁰ “Quod omnes tangit debet ab omnibus approbari” (*RJ* 29 in *VI*°, in FRIEDBERG, vol. 2, p. 1122). This Roman law concept was developed by medieval canonists, and found practical expression in the system of representation. See Y.M.-J. CONGAR, “Quod omnes tangit, ab omnibus tractari et approbari debet,” in *Revue historique de droit français et étranger*, 35 (1958), pp. 216-259 and R. KAY, *The Council of Bourges*:

The first fifteen centuries of Church history, therefore, saw the evolution of the concept of general chapter from a local instrument of consultation and participation in government to a general body composed of representatives from the whole order. Legislation of the Church clarified the goals of chapter and ensured that meetings took place in all orders at regular intervals. By legislation that forbade the introduction of any new order, the Church tried to ensure a type of uniformity regarding the religious life. This included establishing requirements in relation to the main principles in the exercise of the authority of general chapters.²¹ In general, however, arrangements regarding general chapters remained the business of the community concerned.

1.1.2 – General Chapters in Centralized Orders: An Organ of Government

As the mendicant orders expanded, a new type of group became associated with them. These were the “Third Orders” by which the mendicants shared their spirituality with the laity. Those associated with the Franciscans and Dominicans lived a kind of religious life, with simple vows and a common lifestyle.²² Their apostolic way of life was the precursor to a new form of consecrated life that began to develop from the 16th century

A Documentary History, Church, Faith and Culture in the Medieval West, B. BOLTON, (gen. ed.), Aldershot, Hampshire, England, Ashgate Publishing, 2002, pp. 94-104.

²¹ Lateran IV forbade the introduction of new religious orders. New foundations were to take the rule of previously approved orders (that is, Benedictine, Augustinian, Basilian, Franciscan). See LATERAN COUNCIL IV, constitutions 12 and 13, in *DEC*, vol. 1, p. 242.

²² Many of these groups received recognition from the Holy See in the sixteenth century. For example, in 1509, Pope Julius II approved the Sisters of Penance, a group attached to the Dominicans; Pope Leo X approved the Franciscan Third Order groups in 1521; Pope Paul III approved the institute founded by Angela Merici in 1544. This latter group did not live common life but the members took vows of chastity and obedience in order to carry out their works of charity more efficiently.

onwards, some inspired by the Society of Jesus,²³ which provided a model for the apostolic mode of living consecrated life, with a non-cloistered life-style, the profession of simple vows and a strongly centralized form of government under a general superior and general chapter, at the service of the mission of the Church.²⁴ Some of these principles contrasted sharply with those expected of women religious, in particular the profession of solemn vows,²⁵ strict enclosure,²⁶ and ascription to an order that had received papal approval.²⁷ The history of the Institute of the Blessed Virgin Mary whose foundress wanted the rule of Ignatius for her followers, illustrates how this development contributed to a new concept of religious life for women, postulating the apostolic way of living religious life in which government by a general superior and general chapter were key elements of governance.²⁸

²³ Despite the prohibition of Lateran IV, the Society of Jesus, founded by Ignatius of Loyola was approved in 1583. The "Formula" of the Society of Jesus approved by Pope Paul III in 1540, established the Society as a religious institute. See PAUL III, decree *Regimini militantis ecclesiae*, 27 September 1540, in *Magnum Bullarium Romanorum: Bullarum privilegiorum ac diplomatum Romanorum Pontificum amplissima collectio* (=MBR), vol. 4, part 1, Graz, Akademische Druck-u. Verlagsanstalt, 1965, pp. 185-187. As a result of the controversy following the approval of the Society of Jesus, Pope Gregory XIII reiterated his approval. Although not all the members professed solemn vows, they were to be treated in the same manner as those who had. In this way, the Pope seemed to be treating solemn vows and simple vows as if there were no difference between the two: "[...] et quamvis ii omnes qui post biennium novitiatus dicta tria vota simplicia, ut praefertur, emisierint, ac in corpus Societatis cooptati [...]" (GREGORY XIII, *Ascendente Domino*, 25 May 1584, in MBR, vol. 4, part 4, pp. 55-60).

²⁴ See CALLAHAN, "Centralization of Government," 1948, pp. 7-11.

²⁵ "Quod votum debeat dici solemne [...] praesentis declarandum duximus oraculo sanctionis, illud solum votum debere dici solemne [...] per professionem expressam vel tacitam, factam alicui de religionibus per sedem apostolicam approbatis" (*Sextus*, 3, 15, 1, in FRIEDBERG, vol. 2, p. 1054).

²⁶ "Periculoso [...] statui [...] universas et singulas moniales, praesentes atque futuras, cuiuscunque religionis sint vel in ordinis in quibuslibet mundi partibus existentes, sub perpetua in suis monasteriis debere de cetero permanere clausura ita [...] monasteria ipsa deinceps egrediendi facultas" (*Sextus*, 3, 16, in FRIEDBERG, vol. 2, pp. 1053-1054).

²⁷ This precept was so important that there was a sanction for those who did not obey it. See COUNCIL OF LYONS II, constitution 23, in *DEC*, vol. 1, pp. 326-327.

²⁸ For a comprehensive study of the canonical development of the Institute of the Blessed Virgin Mary, see M. WRIGHT, *Mary Ward's Institute: The Struggle for Identity*, Sydney, Crossing Press, 1997 (=WRIGHT, *Mary Ward's Institute*). The Institute of the Blessed Virgin Mary (=IBVM), Loreto Branch, developed from this institute's foundation in York, England, in 1821. The chief source for the story of Mary

However, the authorities were not ready at that time to accept a radically different kind of religious life for women and Pope Urban VIII suppressed the Institute in 1631.²⁹

The Institute continued in existence but in the ambiguous situation whereby they were not accepted as religious by the Church authorities in Rome, yet at the same time, at the local level, individual bishops supported the members as such. Episcopal approval came eventually from the German bishops who recognised the religious status of Mary Ward's Institute. This encouraged the chief superior, Catherine Dawson, supported by ecclesiastical and secular rulers, to seek papal approval for the Institute and its constitutions. This approval was not forthcoming, despite the positive recommendation of

Ward's life is M.C.E. CHAMBERS, *The Life of Mary Ward (1585-1645)*, H. COLERIDGE (ed.), London, Burns and Oates, 1882-1885, 2 vols. Mary Ward's plan for the Institute based on the Jesuit *Formula Instituti*, included election of the general superior, convocation of the general chapter to change or establish the constitutions and for "other matters of more than ordinary importance such as alienation or the dissolution of houses and colleges once erected." The chapter was to consist of "as many professed members as could be summoned without grave inconvenience" (M. WARD, *Institutum I*, Vatican Library, Fondo Capponi 47, 1621, ff. 56v-62r, English translation in *Constitutions of the Institute of the Blessed Virgin Mary*, Rome, IBVM (Loreto), 1985, pp. 9-16 [=1986 Constitutions]).

²⁹ The main charges against Mary Ward's community were that the women claimed to be religious; were obedient to a general superior; pronounced vows with the appearance of solemn vows; wandered about freed from enclosure, undertaking works which were totally unsuited to their "weak sex and character, to female modesty and particularly to maidenly reserve, works which men of eminence undertake with great difficulty and only with great caution" (URBAN VIII, bull *Pastoralis Romani Pontificis*, 13 January 1631, in L. CHERUBINI [ed.], *Magnum bullarium Romanum a beato Leone magno usque ad S.D.N. Benedictum XIV*, editio novissima, vol. 4, Luxembourg, Gosse, 1742, pp. 180-182). The Bull of Suppression encouraged those who intended to take their vows in accordance with accepted Church practice, to live apart from the condemned group under obedience to the bishop, or to join one of the approved orders. It abolished the office of general superior. Those who led the group in the following years were called "chief superior," a non-canonical term which did not have the connotations of "general superior" as far as Church authorities were concerned. The Bull of Suppression was not implemented everywhere because of the political turmoil of the times. As a result, a small group of Mary Ward's original followers were able to live in Munich, under the protection of the Elector of Bavaria. They continued their apostolic activities as laypersons. The authorities left them alone and even gave them permission to open a school in 1635. Mary Ward herself travelled to Rome where she received personal exoneration from the Pope. She went from there to England where the group continued their apostolic work, wearing the ordinary dress of the people and taking private vows. Mary Ward nominated her successor, a practice that continued. The first election took place in 1697 and the person elected was appointed for life, in imitation of the practice in the Society of Jesus.

the group of cardinals established to examine the matter.³⁰ Efforts to have the Institute approved eventually came to fruition in 1703, when a shorter version of the rules received the approval of Pope Clement XI. The approved rules contained little about central government, the role of the general superior and the general chapter, and the jurisdiction of the bishop.³¹

Disputes concerning the jurisdiction of the bishop and the general superior were resolved by the intervention of the Holy See and the promulgation of the Constitution *Quamvis iusto* in 1749.³² This document³³ affirmed the position of the general superior and defined her role: to make visitation, oversee the education of children and transfer members, with all due subordination to the authority of the local bishop.³⁴ Furthermore,

³⁰ “S. Congr. Em. SRE Cardinalium Concilii Tridentini Interpretum, attente relatione et voto Emm. D. Cardinalis Coleredi ab eadem S. Congr. pro revisione deputati, censuit, si S.mo Do. Nostro placuerit, praefatas Regulas et respective statuta per suas Litteras Apostolicas in forma Brevis confirmari posse. [Signed]: G. Card. Marescottus, Propraef., R. Palavicinus, Secretarius” (CONGREGATION FOR THE INTERPRETATION OF THE COUNCIL OF TRENT, votum, 13 February 1694, copy in the Archives of the Roman Branch of the Institutum Beatae Mariae Virginis [=IBMV], Rome). IBMV changed its title to Congregatio Jesu in 2004 (=CJ).

³¹ A private response to the question of jurisdiction acknowledged the members as “religious” and clarified the jurisdiction of the “Superiorissa Generalis” over the houses in Bavaria: “[...] omnia Conservatoria huiusmodi sub una Superiorissa tanquam Generali immediate subiecta exstiterunt” (BENEDICT XIV, rescript *Exponi nobis*, 25 May 1742, in the Archives of IBMV in Nymphenburg, 3/16).

³² See BENEDICT XIV, apostolic constitution *Quamvis iusto*, 30 April 1749, in *Benedicti XIV Pont. Opt. Max olim Prosperi cardinalis in de Lambertinis Bullarium*, vol. 3, pars 1, Prati, in Typographia Aldina, pp. 49-68, English translation in WRIGHT, *Mary Ward's Institute*, pp. 196-213 (= *Quamvis iusto*).

³³ With *Quamvis iusto*, the Holy See reiterated the fact that the approval of the Rules of the Institute of the Blessed Virgin Mary by Pope Clement XI in 1703 did not signify approval of the Institute, since the members “do not live according to the enclosure prescribed by the decretal of Boniface VIII, by the decrees of the Council of Trent and by the Constitution of St. Pius V which begins with the words *Circa pastoralis*” (*Quamvis iusto*, § 5, p. 202).

³⁴ See *ibid.*, § 16, p. 208. *Quamvis iusto* § 17 speaks of the subjection of the general superior to the authority of the ordinary; on the other hand, § 18 describes the permission the general superior must receive from the bishop in order to carry out certain actions, for example, admit candidates to the Institute. To avoid confusion, we will refer to the power of the bishop rather than the ordinary, in describing the relationships between the Institute and the local Church. See *ibid.*, §§ 17, 18, pp. 208-209.

she could be delegated the power to receive members.³⁵ The Constitution clarified the relationship between the Institute and the local bishop, gave recognition to communities with simple vows and acknowledgement to the central government model practised in the Institute of the Blessed Virgin Mary.³⁶ Although addressed to this Institute only, the Constitution provided a model for future dealings of the Holy See with similar institutes and thus a new model of living consecrated life was henceforth accepted in the Church, even though official recognition of institutes with simple vows as a legitimate form of religious life only came in 1901.³⁷

In response to the difficulties that followed the Protestant Reformation in the 16th century, the Council of Trent undertook a major renewal of the Church in relation to doctrine and discipline. The Council reenacted some of the legislation previously provided by the Church, e.g., the authority of the general chapter continued to concern the election of superiors, reform and the spiritual and temporal welfare of the community as enunciated

³⁵ Ibid., § 18, p. 209.

³⁶ "The conclusions of *Quamvis iusto* served as the basis of the norms governing institutes of simple vows until 1900" (JARRELL, "Legal Structures," p. 29). Larraona, too, recognised the juridical significance of this document: "In hac constitutione benedictina invenire potest primum iuridicum schema constitutionis congregationum mulierum [...]" (A. LARRAONA, "Commentarium in partem secundum libri II Codicis [1917], quæ est: De religiosis," in *Commentarium pro religiosis* [=CpR], 1 [1920], p. 49 (=LARRAONA, *Commentarium*). According to Orth, the result of this constitution was to legitimate and give juridical existence to communities with simple vows. See C. ORTH, "The Approbation of Religious Institutes," *Canon Law Studies*, no. 71, Washington, DC, The Catholic University of America, 1931, pp. 54-55.

³⁷ See JARRELL, "Legal Structures," pp. 1-325 for the evolution of this new model of religious life. This study documents the interaction of the vision of the four foundresses in relation to apostolic religious life and the contemporary position of the Church regarding what constituted religious life (Angela Merici's Order of St. Ursula [1474-1540], Mary Ward's Institute of the Blessed Virgin Mary [1585-1645], Louise de Marillac's Daughters of Charity [1591-1660] and Catherine McAuley's Sisters of Mercy [1781-1841]). Gradually, over four centuries, a new model emerged, one that enabled religious to live the consecrated life in a new way. See also WRIGHT, *Mary Ward's Institute*, p. 77.

by Lateran IV.³⁸ The relationship between bishops and religious communities was clarified, with the bishops having the overall responsibility for discipline in the diocese that included oversight of monasteries and religious congregations. As in the past, other provisions in relation to general chapters were to be found in the rules and constitutions of individual congregations. Session 25, which dealt with reform, enunciated the principles the Church wished to enforce in relation to the government of religious. Superiors were to ensure that provincial and general chapters complied with the rules established and approved for their communities.³⁹ Penalties were introduced for those who transgressed the provisions enacted for the possession of temporal goods.⁴⁰ Strict enclosure was reinforced for nuns, with threats of penalties for those bishops who did not enforce this prescription and for those religious who disobeyed.⁴¹ The law concerning elections of superiors was revised: secret ballot was introduced in order to preserve the freedom of the electors⁴² and criteria for election were established.⁴³ Those monasteries which were governed under the immediate protection of the Holy See and which had no general chapter were ordered to group together in “congregations” and to institute chapters as a mode of government with

³⁸ Priors or other superiors were to be appointed by the general chapter or by the visitor to correct abuses and to exercise spiritual authority. See COUNCIL OF TRENT, session 25, caput (=cap.) 20, in *DEC*, vol. 2, pp. 782-783.

³⁹ See *ibid.*, cap. 1, p. 776.

⁴⁰ As well as being subject to the sanction of the rule, they were to lose both active and passive voice for two years. The financial regulations of Trent reiterated the provisions of Lateran IV (see footnote 16 above). However, Trent added a penalty for those who transgressed. See *ibid.*, cap. 2, pp. 776-777.

⁴¹ See COUNCIL OF TRENT, session 25, cap. 5, in *DEC*, vol. 2, pp. 777-778.

⁴² See *ibid.*, cap. 6, pp. 778.

⁴³ For example, a general superior had to be at least forty years of age and finally professed for eight years. See *ibid.*, cap. 7, pp. 778-779. Other requirements could be decided by the constitutions of the community.

the same authority over the community as other general chapters exercised.⁴⁴ Bishops acting as delegates of the Holy See were to govern monasteries of nuns subject to the Holy See. However, those monasteries governed by persons appointed in general chapters or by other regulars were to be left in their care.⁴⁵ Finally, to ensure the reforms were enacted by religious everywhere, the Council decreed that if chapters failed to institute reform, provincial synods were to delegate the task of reform to others in the same order.⁴⁶ Thus the “reform” function of the general chapter was given great significance.

Another consequence of the Council of Trent was to consolidate what constituted the notion of a “religious.”⁴⁷ The precepts of Lateran IV (1215) and the Second Council of Lyons (1274) remained in force, determining that new foundations would follow one of the four rules accepted by the Church for religious communities. Pope Pius V took a strict approach to the decrees of the Council of Trent, e.g., not even the bishop could grant exceptions to the rule of enclosure.⁴⁸ Subsequent history would seem to indicate that this regulation applied particularly to women.

In the period after the Council of Trent communities that followed the traditional norms were approved and those that did not were not. In the centralized system, as

⁴⁴ See *ibid.*, cap. 8, p. 779.

⁴⁵ See *ibid.*, cap. 9, p. 779.

⁴⁶ See *ibid.*, cap. 22, p. 784.

⁴⁷ See PIUS V, constitution *Circa pastoralis*, 29 May 1566, in *MBR*, vol. 4, part 2, pp. 292-294. This constitution reiterated the precepts of Boniface VIII in the constitution *Periculosa*, 1298, and also the precepts of the Council of Trent.

⁴⁸ Dispensations could be given if there was a fire, an outbreak of leprosy or epidemic: “[...] inhaerentes etiam decreto sacri Concilii Tridentini de clausura monialium disponenti [...] nisi ex causa magni

recognized by the apostolic constitution *Quamvis iusto*, the authority of the general superior over the members was a crucial feature of the exercise of government. The general chapter's general purpose and function was as described in the past. Its specific authority was formulated in the constitutions of each institute, which resulted in much individual difference. The prevailing attitude was that social needs could be met by lay groups or by tertiary associations. An apostolic way of life was not believed to be compatible with the religious state, particularly for women. However, this position gradually changed⁴⁹ often because bishops wanted the works of charity associated with the new groups.⁵⁰ It was only when great numbers of new institutes began to seek approval that the Church saw fit to enshrine in common law precepts concerning the government and ministry of all religious. The apostolic constitution *Conditae a Christo* of Pope Leo XIII (1900) and the norms which followed it formally recognised institutes of simple vows with their centralized form of government as belonging to the religious state in the strict sense for the first time in

incendii, vel infirmitatis leprae, aut epidemiae [...] excommunicationis maioris latae sententiae vincula statim eo ipso [...]" (PIUS V, constitution *Decori*, 1 February 1570, in *MBR*, vol. 4, part 3, pp. 96-97).

⁴⁹ For example, a group of women who wore the habit of the Dominicans and who professed simple vows were given privileges by Pope Clement IX that were normally reserved to religious. This provided tacit acceptance of their status as religious. The Holy Father approved a list of petitions submitted to the S. Congregation for Bishops and Regulars: "[...] decretum [...] auctoritate Apostolica, tenore praesentium approbamus et confirmamus, illique inviolabilis Apostolicae firmitatis robur adiicimus salva tamen semper in praemittis auctoritate praefatae Congregationis Cardinalium" (CLEMENT IX, constitution *Alias propositas*, 30 August 1667, in *MBR*, vol. 6, part 6, pp. 224-225). However, in 1732, Pope Clement XII reiterated the fact that privileges could be given only to those institutes that professed solemn vows and were approved by the Apostolic See. See CLEMENT XII, bull *Romanus Pontifex*, 31 March 1732, in *MBR*, vol. 13, pp. 215-217.

⁵⁰ Larraona acknowledged the gradual acceptance of this way of life by many bishops and even by the Apostolic See: "[...] circa gradualem admissionem Congregationum ad ius religiosum ac ipsius admissionis influxum in iuris religiosi communis evolutionem [...] plura tamen Conservatoria mulierum cum votis simplicibus permansuerunt, et non pauca etiam, ex Episcoporum auctoritate, tollerante Sede Apostolica, e novo erecta fuerunt" (LARRAONA, "Commentarium," p. 47).

Church history.⁵¹ In addition, *Conditae a Christo* spelled out the limited autonomy of the diocesan institute for the first time and provided for the election of the general superior. This removed the practice whereby the local bishop appointed the superior of the institute. However, he retained the right to confirm or veto the election, which provision was included as a safeguard for new institutes. This gave the bishop a greater input into the internal government of diocesan institutes compared with his role in relation to pontifical institutes.⁵²

1.2 – NORMS FOR INSTITUTES OF SIMPLE VOWS (1901)

The 1901 Norms that followed the promulgation of *Conditae a Christo*⁵³ provided the principles that had developed as a consequence of experience with the various new institutes. Since the concepts enunciated in relation to general chapters remained in force, in some instances, until the promulgation of the 1983 Code and beyond, we will look at them in some detail.

⁵¹ See S. CONGREGATION FOR BISHOPS AND REGULARS (=SCBR), *Normae secundum quas Sacra Congregatio Episcoporum et Regularium in novis religiosis congregationibus approbandis procedere solet* [Rome, Typis S. C. de Propaganda Fide, 1901] (=1901 Norms).

⁵² Diocesan congregations had the right to receive candidates but the bishop examined them regarding their freedom and suitability. He also retained this right for pontifical congregations. While diocesan congregations were responsible for financial affairs, they were accountable to the bishop. He could examine the financial affairs of pontifical congregations, on the other hand, only in relation to the public benefit or worship. The bishop had the right to dismiss religious and to grant dispensations from vows but he was supposed to seek the opinion of the superior of a diocesan congregation. The superior of a pontifical congregation could dismiss a religious but only the Holy See could dispense vows. See *Conditae a Christo*, §§ 1, 2, p. 249.

⁵³ The main focus of the Constitution was to clarify the limits of episcopal jurisdiction over congregations of simple vows. *Conditae a Christo* affirmed the right of the bishop to approve new religious groups (*Conditae a Christo*, p. 247). However, Pius X reserved the final decision regarding new congregations to the Roman Pontiff. See PIUS X, *motu proprio Dei providentis*, 26 July 1906, no. 1, in *ASS*, 39 (1906), p. 344.

1.2.1 – General Principles Regulating General Chapters

The Norms issued by the Congregation for Bishops and Regulars provided a clear picture of the attitude of the Holy See to general chapters.⁵⁴ Part II concerning government and structures of congregations⁵⁵ of simple vows reiterated that supreme authority in an institute was ordinarily exercised by the general superior with his/her council, and in an extraordinary fashion, by the general chapter (no. 203). The general chapter was a mode of government that was representative of the members of an institute. Its purpose was to renew and reform the members, to attend to what concerned the community as a whole, and to elect the general superior. What was new in the Norms was the minute attention to the details of government by general chapter. The result was that the Norms, as well as providing general principles in relation to government by the general chapter, provided a detailed analysis of how it was to be exercised.

1.2.2 – Convocation of the General Chapter

As was the custom, chapters had to be convoked to elect the general superior (no. 205). The ordinary convocation was determined by the constitutions of each congregation, which also established the term of office of the general superior. The extraordinary convocation occurred when the death, resignation or deposition of the general superior

⁵⁴ The 1901 Norms did not constitute law. A. Bizzarri, Secretary to the S.C. for Bishops and Regulars had developed a "Method" which was the precursor to the Norms. It provided the steps that must be taken by institutes to receive recognition from the Holy See. Under him, congregations received approval more easily while constitutions often required frequent revision and were initially approved "*ad experimentum*" only. For the "Method," see SCBR, *Collectanea in usum secretariae sacrae Congregationis Episcoporum et Regularium*, A. BIZZARRI (ed.), 2nd ed., Rome, Typographia polyglotta, Appendix Prima, pp. 772-773.

required this to be done (no. 206). As a general rule, the term of office of the general superior was to be six or twelve years, thus determining that the general chapter would occur at least at these intervals (no. 207). As in the past, the chapter was convoked to deal with the more important matters, which affected all the members (no. 208). Convocation for reasons other than those given in the norms required the permission of the Holy See (no. 210). The method by which the general superior (or vicar if the general superior were dead or otherwise impeded) convoked the general chapter was clearly determined (no. 211). The details concerning the president of the chapter (no. 224), the roles of the scrutineers and the secretary to the chapter were described (nos. 226-228). The local bishop or some other delegate of the Holy See presided over the elections in congregations of women (no. 224). Other details, such as provision for the voting of members who were ill were also elaborated (no. 230).

1.2.3 – Representation

Norms governing representation at chapters provided for those congregations with provinces and those that had none. *Ex officio* representation included the general superior, the councillors, secretary general and the bursar general, all of whom remained members of the chapter even if not reelected (no. 213). If the constitutions allowed, former general superiors were counted in this *ex officio* arrangement (no. 214). If there were no provinces, the superiors of houses in which there were at least twelve members and one delegate chosen by the members in final vows were part of the chapter (no. 215). Smaller houses

⁵⁵ The Norms used the description “in religiosis congregationibus” to describe the new groups seeking approval from the Holy See. See title of *1901 Norms*.

were able to join together, with one of the superiors and another member elected as delegates (no. 216). Members in temporary vows were eligible to vote for delegates but finally professed members only were capable of being elected (no. 217). Secret ballot and election by absolute majority were requirements, unless after two scrutinies, if an absolute majority were not reached, then a relative majority would suffice. If two members had equal votes in the third scrutiny, then the senior by profession was elected (no. 218). Election of delegates for the general chapter took place at the provincial chapter.⁵⁶ The Norms provided also for the representation of smaller communities (nos. 221 and 226). The provincial superior and two delegates represented the province at the general chapter (nos. 220, 222).

1.2.4 – Elections

The election or reelection processes for the general superior had to take place before elections to other offices.⁵⁷ If three ballots failed to arrive at a decision, the election devolved to the Sacred Congregation if the chapter was in Europe. This act suspended the acts of the chapter (no. 233). If the chapter occurred outside Europe, a fourth scrutiny took place between the two who had the highest votes in the third scrutiny. If the votes were tied, the senior by profession was elected (no. 234). A general superior could be elected for a second term of six years or even for a further period of six years, provided there was a

⁵⁶ Members of provincial chapters were the provincial and the provincial council, superiors of houses that had twelve or more members, together with delegates chosen by the membership. These norms ensured that the majority of those attending provincial or general chapters were superiors. This situation was to change dramatically after Vatican II.

⁵⁷ The incumbent had to be at least forty years of age and five years perpetually professed (1901 Norms, no. 231). The Council of Trent had decreed that the person be eight years professed. See p. 12, footnote 43 above.

two-thirds majority. This decision had to be confirmed by the Holy See (no. 235). These conditions were also required for the first reelection of a general superior who had a term of twelve years according to the constitutions (no. 236). The confirmation of the Holy See was required before a general superior could take possession of office in this situation (no. 238). The president of the general chapter declared that a legitimate election had taken place and also promulgated that fact (no. 237). Arrangements were made for substitutes for those delegates who were legitimately prevented from attending (no. 219).

Regulations for the election of councillors (nos. 239-240), the secretary general (no. 241), and bursar general followed. The only difference between these elections and that of the general superior was that a relative majority in the third scrutiny was sufficient for a valid election (no. 242). The councillor who was elected first was designated the vicar general (no. 243). Once elected, these officials took possession of the office, which they retained until the next general chapter unless deposed (no. 245). The deposition of councillors required confirmation by the Holy See (no. 244).

1.2.5 – The Exercise of Authority

The validity of the acts of the chapter depended on the presence of two-thirds of the participants for the respective vote (no. 223). As in the past, the chapter had the power to handle serious matters particularly those that required the permission or the confirmation of the Holy See (no. 246), e.g., modification or authentic interpretations of constitutions (no. 251). The new general superior directed the deliberations for which the votes of an absolute majority of the members of the chapter were required (no. 247). If the new general superior was not a member, the chapter had to be deferred until he/she arrived (no.

247). This delay did not apply to other officers who nonetheless had to be summoned immediately (no. 248). Although the chapter ought not to be prolonged unnecessarily, provision was made for a justifiable extension (no. 249). The ordinances of a general chapter remained in force until the following chapter (no. 250).⁵⁸

With the promulgation of these Norms, new congregations knew clearly what the Holy See required of them. The provisions concerning general chapters reiterated much of what was common practice in the Church. However, congregations of simple vows in virtue of *Conditae a Christo* now had official recognition as a legitimate form of consecrated life. Therefore norms that applied to religious communities generally now could be applied to them. Many of these had a central government model: ordinary government was in the hands of the general superior and council, but they were accountable to the general chapter by which they were elected. Since the general chapter met only at intervals, its form of authority was extraordinary. The Norms were important because they brought together into one document the many regulations and provisions of the Church in relation to the government of religious congregations. The attention to detail was to characterize subsequent legislation, which in turn, brought about a greater uniformity of practice in the Church, even in relation to matters of minor importance. The

⁵⁸ Other laws were included in the Appendix to the *Norms*. See SCBR, decree *Quemadmodum*, 17 December 1890, in ASS, 23 (1890-1891), pp. 505-508, English translation, in D.I. LANSLOTS, *Handbook of Canon Law for Congregations of Women under Simple Vows*, 9th ed., F. Pustet, NY, 1920, pp. 275-280 [regarding manifestation of conscience and the provision of extraordinary confessors; these provisions were to be translated into the vernacular and inserted into the constitutions of women and laymen]; ID., decree *Singulari*, 27 March 1896, in P. GASPARRI (ed.), *Codicis iuris canonici fontes*, vol. 4, Rome, Typis polyglottis Vaticanis, 1936, pp. 1071-1073 (=GASPARRI, *Fontes*), [which regulated the collection and reception of alms and provided guidelines in relation to the ordinary's jurisdiction in this area]; ID., decree *Auctis admodum*, 22 November 1892, in ASS, 25 (1892-1893), pp. 312-325 [concerning the issue of dimissorial letters]; Leo XIII, constitution *Romani Pontificis*, 25 January 1898, in *Leonis XIII, Pontificus Maximi, Acta*, vol. 2, Rome, ex Typographia Vaticana, 1882, pp. 231-260 (=LEO XIII, *Acta*) [which dealt with the question of privilege and exemption].

nature of the power exercised by the general chapter was not explained until the promulgation of the 1917 Code. An examination of its relevant principles will enable us to reach an understanding of the power of general chapters according to the common law of the Church.

1.3 – *CODEX IURIS CANONICI* 1917 ON GENERAL CHAPTERS

Codex iuris canonici of 1917 gathered into one legislative source the vast collection of canonical material that had existed in the Church.⁵⁹ Although the Code contained a large section on religious (cc. 487-672), the precepts concerning general chapters were few. Despite the title *De superioribus et de capitulis*, only one canon (c. 501 § 1) referred explicitly to the general chapter and two to elections, which were the business of general chapters (cc. 506 and 507). However, the role of the general chapter was evident in other areas also: in relation to temporal goods (c. 494 § 2), enclosure (c. 597 § 3) and in relation to providing a seat of studies for clerical religious (c. 587).⁶⁰ For the first time in Church legislation, the power exercised by general chapters was described as “dominative.” This concept impacts directly on our understanding of the nature of the power of the general chapter in the Code of 1983.⁶¹

⁵⁹ *Codex iuris canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus*, Typis polyglottis Vaticanis, 1917, English translation E.N. PETERS (ed.), *The 1917 Pio-Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001 (=CIC/17). This translation will be used unless otherwise stated.

⁶⁰ The disposition of goods of an extinct province (c. 494 § 2), the definition of cloister or changing its limits (c. 597 § 3), the provision of a seat of studies for clerical religious (c. 587 § 1) belong to the general chapter. Constitutions might determine other roles for the general chapter, e.g., in relation to admissions (c. 543).

⁶¹ Canon 488 of *CIC/17* defines the different groupings of religious that existed in the Church at that time. The noun “institute” is used to describe secular institutes from 1947. See below, p. 44, footnote 130. In

1.3.1 – Power of the General Chapter – C. 501 of *CIC/17*

CIC/17 did not describe the authority of the general chapter but it did describe its power.⁶² According to c. 501 the power of a general chapter was of two kinds: the dominative power exercised by all chapters, together with the power of ecclesiastical jurisdiction for both internal and external *fora*, which clerical exempt institutes enjoyed. In addition, the power of “abbots primate” and superiors or prelates of monastic congregations was determined by their constitutions, together with the particular decrees of the Holy See in their regard:

§1 Superiors and chapters, according to the norm of constitutions and common law, have dominative power over subjects; in clerical exempt religious [institutes], they have ecclesiastical jurisdiction both for the internal forum and for the external.⁶³

§ 2 It is nevertheless, strictly prohibited for any superiors whatsoever, to interfere in cases concerning the Holy Office.⁶⁴

§ 3 Abbots Primate and the Superiors of monastic congregations do not have all power and jurisdiction that the common law grants to major superiors, but [rather] their power and jurisdiction is assumed by the

CIC, “institute” is a generic term to describe religious communities who profess vows publically in the service of the Church. Cf title of Book 2, part 3.

⁶² Canon 501 § 1 describes the “potestas” of superiors and chapters: *superiores et capitula ad normam constitutionem et iuris communis, potestatem habent dominativam in subditos*.

⁶³ The Council of Trent acknowledged the power of superiors over their members. What was new in *CIC/17* was the fact that this power was called “dominative.” The lack of definition, however, led to various interpretations: for some, it indicated the Roman law concept of the power of a *paterfamilias* (cf. B. NICHOLAS, *An Introduction to Roman Law*, Oxford, Clarendon Press, 1977, pp. 143-198); others believed it represented governing and administrative power only (cf. P. MAROTO, *Institutiones iuris canonici*, vol. 1, Madrid, Editorial del Corazon de Maria, 1918, p. 670); still others described it in terms of the power that came from religious profession or the agreement made implicitly on entering a religious institute (cf. CONTE A CORONATA, *Institutiones iuris canonici*, 3rd ed., vol. 1, Rome, Marietti, 1947, p. 634 [=CONTE A CORONATA, *Institutiones*]).

⁶⁴ Matters of faith and morals were reserved to the Holy Office. See PAUL V, constitution *Romanus Pontifex*, 1 September 1606, in *MBR*, vol. 5, part 3, p. 227. See also SACRED CONGREGATION FOR THE HOLY OFFICE, decree, 15 May 1901, in GASPARRI, *Fontes*, p. 534.

proper constitutions and particular decrees of the Holy See, with due regard for the prescriptions of canons 655 and 1594 § 4.

While c. 501 did not state that the exercise of jurisdiction was confined to clerical exempt religious institutes, c. 118 restricted the capability to clerics only. The supreme pontiff received this power by divine law on his acceptance of election, while others received it by canonical mission (c. 219).⁶⁵ Consequently, we must examine the exercise of the power of three groups: all those who enjoyed dominative power; clerical exempt congregations; and monasteries subject to “abbots primate” or other prelates.

1.3.2 – Dominative Power in Non-Exempt Congregations

The exposition of the origins and nature of law as the power of jurisdiction and dominative power is attributed to Suarez.⁶⁶ For him, a perfect society contained all the resources within itself for government and was therefore capable of making laws and enforcing them for the common good.⁶⁷ The origin of legitimate authority came from God directly (spiritual power), or indirectly from God through men (temporal power). Power in the Church was special because it came directly from Christ.⁶⁸ It had two aspects, the

⁶⁵ See PIUS XII, allocution, 2 October 1945, in *AAS*, 37 (1945), p. 256. However, c. 219 provided for the possibility of a layman being elected pope. As such he received the power of jurisdiction. However, he would then have to be ordained. Canon 950 described those in first tonsure as “clerics.” These were not ordained but according to c. 118 these too, could exercise jurisdiction. These canons indicated inconsistency in relation to jurisdiction and the lay state in *CIC/17*.

⁶⁶ See F. SUAREZ, *Opera omnia*, 28 vols., Paris, Vivès, 1856-1858 (=SUAREZ, *Opera omnia*). Reference to canon law occurs in many volumes but Suarez’s specific treatment of canon law occurs in vol. 5, called *De legibus*, the fourth chapter of which is “De lege positiva canonica.” Suarez built his theories on ideas culled from Thomistic philosophy. However, the division of power into categories of orders and jurisdiction was not new, going back to the law of the Decretals in the 12th century.

⁶⁷ See SUAREZ, *Opera omnia*, vol. 5, p. 28.

⁶⁸ See *ibid.*, vol. 24, p. 231.

power of orders, which provided the moral faculty⁶⁹ ordered to the worship of God in the sacraments and power of jurisdiction that enabled the person who possessed it to govern the Church. Dominative power, on the other hand, had its origin in the natural law, was a private power, distinct from jurisdiction, that had its origin in the implied contract entered into by a religious and the institute he/she entered.⁷⁰ Those with dominative power exercised authority in relation to their dependents or subjects only: their power did not extend to the common good. Those with power of jurisdiction, on the other hand, had the capability of exercising authority in both the internal and the external fora.

In the centuries following Suarez, dominative power was described in various ways. In relation to religious institutes, it was generally accepted that this was the authority that resulted in part from the quasi-contract entered into by a religious and his/her congregation implicit in the vow of obedience.⁷¹ When the Code described the power of superiors and chapters as dominative, it was, strictly speaking, a private power that was intended. However, it shared many of the characteristics of public power.⁷² Since a

⁶⁹ See *ibid.*, vol. 20, pp. 220-221.

⁷⁰ Those exercising dominative power were incapable of making laws. See *ibid.*, vol. 5, p. 36.

⁷¹ See A. BLAT, *Commentarium textus Codicis iuris canonici*, editio altera, liber 2, Rome, ex Typographia Pontificia in Instituto Pii IX, 1921, p. 548 and CONTE A CORONATA, *Institutiones*, 4th ed., vol. I, Turin, Marietti, 1950, p. 628.

⁷² "Haec potestas sensu strictissimo et absoluto non potest dici supremo gradu et formaliter, sed tamen ex iure vigenti, quoad plura ipsa dicenda est practice et aequivalenter talis quia ipsi a iure non pauca adiunguntur pro religionibus, quae, pro partibus formalibus et immediatis Ecclesiae, ex potestate iurisdictionis promanant, imo etiam sensu proprio, etsi latiore, potest dici haec potestas formaliter publica, quia ex ea regitur societas iuridica ad statum publicum in Ecclesia constituendum ac exercendum instituta" (A. LARRAONA, "Commentarium Codicis, can 501," in *CpR*, 7 [1926], p. 31 [=LARRAONA, "Commentarium, c. 501"]). The Code itself is ambiguous as to the power of religious institutes. For example, c. 448, 1° describes the vows as "public." Public vows are described in c. 1308 § 1 as those accepted in the name of the Church by a legitimate ecclesiastical authority. The presumption was that the non-exempt superior received the faculty to act as the legitimate authority once the institute had received approval from the Church. See C.A. BACHOFEN, *Commentary on Canon Law*, vol. 3, St. Louis, MO, B. Herder Co., 1919, p. 55.

religious congregation was a type of juridic society, which shared a common nature with other juridic societies, its dominative power had a social aspect. This could be seen, for example, by the fact that some of the acts of superiors and chapters affected the society of the community concerned and the status of persons, e.g., the acts of admittance of candidates to the novitiate and to religious profession (c. 543) and the reception of vows in the name of the Church (c. 1308 § 1). The exercise of dominative power also enabled chapters or superiors to dismiss religious (c. 571 § 1) and so restore them to the secular state (c. 648).⁷³ Chapters and/or superiors could also erect or suppress houses (cc. 497, 498).⁷⁴ All these functions indicated that the exercise of dominative power extended beyond the merely private.⁷⁵ In fact, these acts of dominative power closely resembled acts of jurisdiction. However, they were clearly not acts of jurisdiction for those superiors and chapters who lacked the capability to exercise jurisdiction but acts of social or governing power or acts that came from the power implied in the vow of obedience.⁷⁶ The actual exercise of dominative power (as with the exercise of jurisdiction) had to be spelled out in the particular law of each institute.

⁷³ The act of dismissal differed according to the type of vow, the status of the institute or the gender of the members. See M.M. SCHAUMBER, *The Evolution of the Power of the Lay Religious Superior in the Ecclesial Documents of the Twentieth Century*, Rome, Pontifical University of Santa Croce, 2003, pp. 50-52 (=SCHAUMBERG, *Evolution of Power*).

⁷⁴ These canons also draw our attention to the role of the local ordinary in these important events.

⁷⁵ See A. VERMEERSCH et al. (eds.), *Epitome iuris canonici cum commentariis ad scholas et ad usum privatum*, 8th ed., vol. 1, no. 619, Mechlin-Rome, H. Dessain, Paris-Bruges, Desclée de Brouwer, 1963, p. 502 (=VERMEERSCH, *Epitome iuris canonici*).

⁷⁶ “[...] superiores [ac capituli] servatis normis iuris particularis iurisque communis, fruuntur potestate sociali gubernativa et potestate quae ex voto promanat” (LARRAONA, “Commentarium, c. 501,” p. 33, footnote 163).

The general opinion of authors after the publication of *CIC/17* was that dominative power was a private one. Vermeersch believed that in a familial and imperfect society such as a religious institute, dominative power was a private one that followed from the full surrender of the members to the ends for which the institute was founded. The personal act of each member obliged him/her to obedience to the constitutions and the common law of the Church. The approval of the Church gave validity to the acts of authority undertaken in these circumstances, but the acts remained private, as did the exercise of authority. He acknowledged, however, that the matter was disputed.⁷⁷ Blat contrasted this private power with public power, which had its origin in the natural law and divine positive law, by which the society [of the Church] was constituted.⁷⁸ However, belief in the public nature of religious congregations and therefore in the public nature of the power they exercised continued to grow.

⁷⁷ “Potestas ordinis privati est simpliciter domestica, quae habetur ad regendam domum et familiam contentam, et competit capiti domus quantum necesse est ad ordinem domesticum tutandum. Haec ampliatur usque ad quandam generalem mancipationem personae sive ex huius infirmitate, ut in filios non adultos, sive ex condicione servili, ut in servos proprie tales, sive ex voluntaria deditione ut in religiosos” (VERMEERSCH, *Epitome iuris canonici*, 6th ed., vol. 1, no. 619, p. 442). The 8th ed. of this text stated: “In societati familiari vel herili potestas, quae tunc dicitur dominativa vel domestica, est tantum ordinis privati. De natura potestatis dominativae superiorum religiosorum, nempe utrum sit ordinis publici an privati disputabatur” (ibid., 8th ed., p. 502).

⁷⁸ “Haec potestas dominativa dicitur quoque ab aliis privata, prout opponitur potestati publicae; haec enim originem sortita est iure naturali vel positivo divino, quo societas constituitur, illa vero privata ex voluntate in eam coeuntium societatem imperfectam” (A. BLAT, “De potestate superiorum in religionibus secundum codicem I. C.,” in *Commentarium pro Religiosis et Missionariis* [=CpRM], 16 [1935], p. 325). The same view was held by Pejška: “Natura sua haec potestas privata est, quia radicaliter in voluntate subditorum fundatur, qui libere se superiori regendos tradiderunt, et speciale robur per votum obedientiae acquirit” (I. PEJŠKA, *Ius canonicum religiosorum*, 3rd ed., Freiburg, Herder and Co., 1927, pp. 229-230 [=PEJŠKA, *Ius canonicum*]).

In 1934 Larraona attributed public aspects to the understanding of dominative power as described in *CIC/17* in a very public forum.⁷⁹ In support of his argument, he cited instances from the Code, e.g., c. 488, 1° which defined a religious congregation as a society approved by legitimate ecclesiastical authority whose members profess public vows that must be accepted in the name of the Church (c. 1308 § 1); c. 107 which called the religious congregation a public state of life; c. 111 that said clerics must be ascribed to a diocese or religious congregation, thus putting the religious congregation on a par with the diocese as far as incardination was concerned, and c. 618 § 2, which determined that, in relation to internal government, religious enjoyed autonomy unless the universal law prohibited this. Dominative power, which included such functions, could not therefore be said to be merely private.⁸⁰ Consequently, he coined the phrase “public dominative power” that was “inchoate or imperfect jurisdiction” because lay religious superiors could exercise some but not all of the public functions associated with jurisdiction.⁸¹

⁷⁹ See A. LARRAONA, “De potestate dominativa publica in iure canonico,” in *Acta Congressus iuridici internationalis*, vol. 4, Rome, Pontificium institutum utriusque iuris, 1937, pp. 147-180 (=LARRAONA, “De potestate dominativa publica”).

⁸⁰ A response from the Pontifical Commission for the Interpretation of the Code in 1952 strengthened the notion of the public nature of dominative power when it decided that cc. 197, 199, 206-209, on the power of jurisdiction applied to the dominative power of religious also. See PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE (=PCAIC), *Responsum ad dubium*, 26 March 1952, in *AAS*, 44 (1952), p. 497, English translation in *CLD*, vol. 3, p. 73. The development of the understanding of the public nature of dominative power, together with debates in relation to the source of this power and the extent of its use, continued therefore after the publication of *CIC/17*.

⁸¹ See LARRAONA, “De potestate dominativa publica,” p. 167. According to Schaumber, Larraona’s genius was to merge the public functions given to lay religious superiors by the Code with the power given them in c. 501 § 1. He did not try to reconcile the contradiction inherent in using “public” and “dominative” in the same phrase, nor did he comment on the origin of public dominative power. See SCHAUMBER, *Evolution of Power*, p. 77. Larraona’s description was criticized by Kindt who described dominative power as “ecclesiastical power of a private type” (G. KINDT, *De potestate dominativa in religione*, Bruges, Desclée de Brouwer, 1945, p. 322), and A. BONI, *Gli istituti religiosi e la loro potestà di governo*, Rome, Pontificium Athenaeum Antonianum, 1989, p. 417, who criticised the juxtaposition of “dominative” and “public.”

When we speak, therefore, of the dominative power of the general chapter we must remember that the Code itself was ambiguous in relation to that meaning. This ambiguity continued to provoke debate and discussion as to what was the real power of persons or ecclesiastical institutes, e.g., general chapters, of those who did not possess jurisdiction.⁸²

1.3.3 – The Power of Jurisdiction of General Chapters in Exempt Clerical Institutes

The history of exemption goes back almost to the beginning of monasticism when some monasteries petitioned the Holy See for exemption from the control of the bishop.⁸³ Disputes regarding exemption and the privileges of some monasteries were an issue in many of the councils of the Church. By the 16th century, the privileges given to some monasteries had seriously curtailed the authority of local bishops.⁸⁴ The reforms of the Council of Trent reemphasised the authority of bishops for the care of souls, e.g., in relation to preaching the word of God and administering the sacraments, neither of which could be undertaken without the explicit permission of the bishop.⁸⁵ This reform was not easily implemented, as can be seen from the Constitution *Inscrutabili* of Pope Gregory

⁸² This debate will be reflected in our discussion of the revision of the Code in chapter (=ch.) 2.

⁸³ Vermeersch explained the genesis of privilege in the disputes between bishops and monasteries. Since bishops were the usual founders of monasteries, they enjoyed jurisdiction over them. However, with the growth and development of the monastic system, particularly its expansion beyond the limits of one diocese, problems often arose. As a result, many monasteries sought and obtained, the privilege of exemption from the jurisdiction of the bishop. See A. VERMEERSCH, *De religiosis institutis et personis: tractatus canonico-moralis ad recentissimas leges exactus*, 2nd ed., vol. 1, 1907, Bruges, C. Beyaert, pp. 233-235 (=VERMEERSCH, *De religiosis*).

⁸⁴ See C.J. VAN DER POEL, "Exemption and Institutes of Pontifical Law," in *The Jurist*, 25 (1965), p. 439 (=VAN DER POEL, "Exemption").

⁸⁵ See COUNCIL OF TRENT, session 24, cap. 11, in *DEC*, vol. 2, p. 765.

XV, which reiterated the fact that all exempt congregations were subject to the local bishop for any work that took place within the diocese.⁸⁶

Exemption placed religious and their houses under the jurisdiction of their own superiors and chapters or directly subjected them to the Holy See. Canon 63 § 1 described four methods by which a congregation could receive this privilege: by direct grant from the Holy See,⁸⁷ in virtue of prescription or custom and as a result of communication.⁸⁸ Vermeersch distinguished between active and passive exemption. The former applied to those orders that had jurisdiction over territory as well as subjects. Prelates (whether secular or religious) who obtained jurisdiction in the external forum of communities with active exemption had quasi-episcopal power (c. 110). This authority extended to those clergy and people who lived in their jurisdiction. These superiors whether abbots or prelates *nullius*, or superiors of exempt clerical religious congregations, were in law

⁸⁶ “Necnon, ut in monasteriis, seu domibus virorum, seu mulierum, quibus immanet animarum cura personarum saecularium, praeter eas, quae sunt de illorum monasteriorum seu locorum familia personae tam regulares, quam seculares eiusmodi curam exercentes, subsint immediate in iis, quae ad curam et sacramentorum administrationem pertinent, jurisdictioni, visitationi, correctioni Episcopi, in cuius diocesi sunt sita” (GREGORY XV, constitution *Inscrutabili*, 5 February 1622, in *MBR*, vol. 5, part 5, p. 1). Two centuries later, Leo XIII declared that exemption did not extend to those cases expressly stated in the law, or to those matters that concerned the care of souls and the administration of the sacraments: “Regulares, qui in residentiis missionum commorantur, exemptos esse ab Ordinarii iurisdictione, non secus ac regulares intra claustra viventes, praeter quam in casibus a iure nominatim expressis, et generatim in iis quae concernunt curam animarum et sacramentorum administrationem” (LEO XIII, constitution *Romanos Pontifices*, 8 May 1881, in LEO XIII, *Acta*, p. 238).

⁸⁷ There are numerous examples of the privilege of exemption granted by the Holy See, e.g., SIXTUS IV, constitution *Dum attenta*, 28 November 1476, in *MBR*, vol. 3, part 3, p. 154, granted special privileges to the Carmelites in relation to abstinence; SIXTUS IV, constitution *Regimini*, 31 August 1494, in *MBR*, vol. 3, part 3, pp. 143-144 confirmed the bull *Virtute conspicuos* of GREGORY XI, 6 March 1374, in *MBR*, vol. 3, part 2, pp. 355-359, which granted privileges to the Order of Dominicans and also the constitution *Religiosam vitam* of HONORIOUS III, 22 December 1216, in *MBR*, vol. 3, part 1, pp. 178-179, which approved the Dominican Order under the Rule of St. Benedict; CLEMENT VIII, constitution *Ratio pastoralis*, 20 December 1597, in *MBR*, vol. 5, part 2, pp. 179-180, reaffirmed the privileges given by his predecessors to the Order of Friars Minor and to their associates; LEO XIII, brief *Dolemus*, 13 July 1886, in *ASS*, 19 (1886), pp. 49-50, reaffirmed the privileges granted by his predecessors to the Society of Jesus.

ordinaries (c. 198 § 1). The universal law safeguarded their authority (c. 323 § 1), and although they lacked the episcopal character strictly speaking, nevertheless were permitted to wear pontifical insignia and perform pontifical tasks in their own territory (c. 325). Passive exemption gave jurisdiction over the prelate's subjects and whatever pertained to the monastery, but neither the superior nor the chapter had authority over the clerics or people of the neighbourhood.⁸⁹

Religious with simple vows did not generally enjoy the privilege of exemption (c. 618 § 1) unless, as in the case of the Society of Jesus, the privilege had been specially granted to them. The privileges granted to regulars extended also to the nuns of the same order, insofar as they were capable of exercising them (c. 613 § 2). The inclusion of laws on privilege in the common law of the Church gave privilege the juridical force with which all law is invested.⁹⁰ While privilege widened the scope of the authority of those who possessed it, ecclesiastical jurisdiction was granted only to those exempt institutes that were clerical.

⁸⁸ For an analysis of "communication," see R.A. MATULENAS, "Communication – A Source of Privileges," *Canon Law Studies*, no. 183, Washington, DC, The Catholic University of America, 1943.

⁸⁹ The Council of Trent had clarified that abbots or prelates residing in a diocese, even if they were exempt or "of no diocese," could not usurp the power of bishops, for example, in relation to minor orders and the granting of dismissorial letters. Their authority was limited to those subject to them. See COUNCIL OF TRENT, session 23, cap. 10, in *DEC*, vol. 2, p. 748.

⁹⁰ In virtue of canon 4, privileges granted by the Apostolic See in the past, remained in force, provided they had not been revoked. See J.D. O'BRIEN, *The Exemption of Religious in Church Law*, Milwaukee, WI, Bruce Publishing Co., 1943, p. 10.

CIC/17 clearly distinguished power of orders and power of jurisdiction (c. 108 § 3).⁹¹ The latter was the power of governing that the Church possessed in virtue of divine institution. It included all the powers necessary to govern the society of the Church and direct it to its end.⁹² Consequently, power of jurisdiction included legislative, judicial and administrative authority. Although both power of orders and power of jurisdiction derived from Christ (c. 196), only the Pope was understood to receive the power of jurisdiction directly. Because bishops and other clerics received it in virtue of canonical mission from the competent authority, this gave rise to the view that bishops were vicars of the Pope, rather than vicars of Christ, and other clerics were vicars of the competent authority from whom they received the canonical mission necessary to exercise jurisdiction.⁹³

CIC/17 did not always specify the functions implied in the exercise of jurisdiction.⁹⁴ Consequently, those functions performed by laypersons (who could not by law [c. 118], exercise jurisdiction),⁹⁵ came to be defined in terms of administrative

⁹¹ This canon also clearly described the hierarchical constitution of the Church: *ex divina institutione sacra hierarchia ratione ordinis constat episcopis, presbyteris et ministris; ratione iurisdictionis pontificatu supremo et episcopatu subordinato; ex Ecclesiae autem institutione alii quoque gradus accessere.*

⁹² Michiels described power of jurisdiction as the power that existed in the perfect society of the Church instituted by Christ for the sanctification of the members, a power that directed the members towards the proper goal of the society, that is, eternal salvation. See G. MICHIELS, *De potestate ordinaria et delegata: commentarius tituli V libri II Codicis iuris canonici*, Paris, Desclée et Socii, 1964, pp. 36-37 (=MICHIELS, *De potestate*).

⁹³ The relationship between the episcopacy and the primacy as well as debate concerning the source of the jurisdiction of bishops, were topics discussed at the Second Vatican Council. See below, ch. 2, p. 55.

⁹⁴ See J.P. BEAL, "The Exercise of the Power of Governance by Lay People: State of the Question," in *The Jurist*, 55 (1995), p. 6 (=BEAL, "Governance").

⁹⁵ As a result of this law of *CIC/17*, lay canonists who because of long-standing customs in, e.g., Germany, acted as judges, auditors and assessors in ecclesiastical trials were deprived of the function of judge and auditor and were restricted to the function of assessor, an office that did not require jurisdiction. See S.C. FOR THE COUNCIL, *Resolutio Wratislaviensis*, 14 December 1918, in *AAS*, 11 (1918), p. 128, English translation in *CLD*, vol. 1, pp. 97-98.

functions.⁹⁶ Only clerics were able to obtain power of orders or jurisdiction (c. 118), the latter received by canonical mission (c. 108). In the case of an exempt clerical institute the jurisdiction was personal, not territorial.⁹⁷ The particular law of the institute governed the extent of the power of the general chapter, with the restriction that matters of faith and morals were reserved to the Holy Office (c. 501 § 2).

1.3.4 – Jurisdiction of Abbots Primate and Superiors of Monastic Congregations

The power of “abbots primate” and superiors of monastic congregations was not as wide as that of superiors of clerical exempt congregations. The scope of their power had to be ascertained from the constitutions and from the particular decrees of the Holy See in their regard (c. 501 § 3). Like the chapter of a clerical exempt congregation, which had to follow the judicial process, the chapter of a monastic congregation was competent to dismiss a religious, in accordance with the law (c. 655). The abbot superior of a monastic congregation was also competent to judge, in second instance, cases tried by the abbot of a monastery. On the other hand, the jurisdiction of abbots *nullius* described in cc. 319-328, was quasi-episcopal: they had the same ordinary powers and obligations, with the same sanctions as a residential bishop in his diocese (c. 323 § 1). Their own laws and constitutions governed the chapters of these monasteries (c. 324). Consequently, the chapters of abbacies possessed the dominative power attributed to all chapters, together

⁹⁶ See MICHIELS, *De potestate*, p. 51.

⁹⁷ “Exempt religious” was defined in c. 488, 2°, as a religious [congregation], whether of simple or solemn vows, which was removed from the jurisdiction of the ordinary of the place. The jurisdiction granted to clerical exempt congregations gave them legislative, judicial, coercive and administrative authority, the latter term giving way to the more common term, “executive” power.

with jurisdiction over their subjects that was similar to that of a bishop over his diocese. Their authority was limited, however, to their own territory.⁹⁸

1.3.5 – General Chapters and the Exercise of Authority

The constitutions of every institute determined what must be obeyed and any regulations related to observance. Because each charism was different, the competence of each general chapter depended on the specific rules and regulations of each congregation. Consequently, every religious order and congregation had its own *modus operandi* but all were bound to observe Church law. As a consequence of individual difference, the power exercised by general chapters varied from one institute to another. General chapter acts did not require the approval of the Holy See, but in the case of newer congregations, the common practice of the Congregation for Bishops and Regulars was to ask for the acts and decisions of chapters of congregations with simple vows.⁹⁹ This requirement reassured the Holy See that the newer groups were acting according to practices that were long established in the Church. Because many of these were female, the impression was created that decisions taken in general chapters in congregations of women required the tacit approval, if not the validation, of the Holy See. Under *CIC/17* general chapters dealt with the more serious matters, except modifying or authentically interpreting constitutions

⁹⁸ See CONTE A CORONATA, *Institutiones*, p. 662.

⁹⁹The common belief was that many congregations could approve or confirm their acts in virtue of apostolic privilege. However, the practice of the Holy See changed in the latter part of the 19th century, possibly because of the proliferation of new congregations: “Confirmatio sive approbatio decretis capitulorum generalium in compluribus ordinibus religiosis antecederet ex privilegio pontificio in forma communi censetur esse data sed S. Congr. Ep. et Reg. a recentioribus congregationibus votorum simplicium haud raro exegit, ut acta et decisiones capitulorum generalium ad S. Sedem transmittantur, ut ibidem approbentur” (F.X. WERNZ, *Ius canonicum: ad codicis normam exactam opera P. Vidal*, vol. 3, Rome, Pontificia Universitas Gregoriana, 1933, no. 107, p. 97 [=WERNZ, *Ius canonicum*]).

approved by the Holy See. Outside the time of chapter, the general superior and council had the power to deal with matters otherwise reserved to the chapter.¹⁰⁰

The provisions of the rules and constitutions and the general law of the Church provided the context within which the power of the general chapter operated. Since dominative power related to the internal affairs of a congregation only, the nature of the power exercised by superiors and chapters pertained to the life and activities of the members. The general chapter represented all those who had suffrage by law in a particular “moral person.”¹⁰¹ The chapter functioned as a college and was therefore subject to the norms on collegial persons (cc. 99-106). It usually possessed greater power than the council of the general superior.¹⁰² In addition to formulating regulations in the form of statutes and ordinances that pertained to the life and mission of the congregation, dominative power gave the authority to impose penances, dispense from private vows (c. 1312) and from religious practices determined by the constitutions. However, it did not confer the authority to enact laws, to impose ecclesiastical penalties or censures in the strict sense or to exercise judicial authority. Each congregation had its own practices in relation to the correction of discipline and abuse. Clerical exempt congregations had the authority to impose ecclesiastical penalties unless prohibited by the law, as for example, in matters reserved to the Holy Office. In these congregations, since the office of general

¹⁰⁰ For example the disposition of the temporal goods of an extinct province was the business of the general chapter or outside the time of chapter, the general superior and council (*CIC/17*, c. 494 § 2).

¹⁰¹ In *CIC*, “moral person” is used to describe the Catholic Church and the Apostolic See while “juridic person” is the term for other “aggregates of persons or things which were directed towards the Church’s mission” (c. 113). *CIC/17*’s use of “moral person” was similar to those “aggregates” described as juridical persons in *CIC*. See below, p. 141, footnote 25.

¹⁰² See LARRAONA, “Commentarium c. 501,” p. 429.

superior was an ecclesiastical one, deprivation of it could not be handled by the general chapter but was subject to the universal norms concerning the deprivation of ecclesiastical office (cc. 183-195).

The power exercised by the general chapter of congregations of pontifical right was wider in scope than that exercised by the general chapter of communities of diocesan right. Diocesan institutes required, for instance, the consent of the local bishop to open a house outside the diocese and if the community had houses in several dioceses, they required the approval of all the local bishops in order to make a change or amendment to their statutes and ordinances (c. 495). The power of the general chapters of clerical exempt congregations was wider still: they could enact laws and had the authority to enforce them. All chapters authoritatively elected the general superior and consultors, and the constitutions of some communities also determined that the general chapter could elect other officials, e.g., the secretary general and procurator.¹⁰³ Other differences related to historical factors. For example, the superior usually presided at the chapter in a male community. However, some, e.g., the Franciscans, required the Cardinal Protector to preside.

The situation in relation to women religious was very interesting because of the variety of juridic structure they enjoyed.¹⁰⁴ All women's congregations were subject to the local bishop except in matters for which they had exemption. In congregations of pontifical

¹⁰³ Lewis is of the opinion that just because the universal law contains no specific provision for the privation of office in religious institutes, it does not therefore follow that universal law does not pertain to this situation. He argued that deprivation of ecclesiastical offices must follow the prescriptions of cc. 183-195. See LEWIS, "Chapters in Religious Institutes," pp. 64-65.

¹⁰⁴ See VAN DER POEL, "Exemption," pp. 448-452.

right, he had the right to preside at the election of the general superior (c. 500 § 1). For diocesan congregations of women, the bishop not only presided but also confirmed the election or rescinded it “if his conscience told him to do so” (c. 506 § 4). A response to a query regarding the right to rescind an election clarified that, if in the judgement of the president there were sufficient cause, the election could be rescinded. Furthermore, the right of the ordinary to preside meant the right to preside with jurisdiction.¹⁰⁵

Nuns, who were subject to regular superiors, were subject to the local ordinary in instances specified in the law only (c. 500 § 2). This included the ordinary’s right to give consent to the alienation of goods or permissions that related to debts or obligations sanctioned by the general chapter, the right to preside over the election of their general superior but not to enter the enclosure, and the right to appoint two priest scrutineers for the election (c. 506 § 2). Exempt congregations subject to a regular superior required the approval of both the local ordinary and the regular superior for alienation of precious goods or for contracting debts or obligations beyond the fixed amount before their general chapters could approve the transactions (c. 534 § 1). In the case of nuns subject to the Holy See, the local ordinary acted as its delegate. In a diocesan congregation, the consent of the local ordinary was required before a general chapter could validly alienate precious goods or contract debts or obligations (c. 534 § 1).

Each general chapter, irrespective of the nature of the power it enjoyed, was responsible for the specific arrangements for the chapter, e.g., the determination of the

¹⁰⁵ See PCAIC, 30 July 1930, in *AAS*, 26 (1934), p. 494. A private response clarified that it was the ordinary of the place where the general chapter was held, who had this right to preside. See L.I. FANFANI, *De iure religiosorum ad normam codicis iuris canonici*, 3rd ed., Venice, Istituto Padano di Arti grafiche, 1949, pp. 167-168, who states this was clarified for the Order of Preachers on 11 February 1920.

location where the chapter was to take place, and the method of convocation of the members. The only restriction on this authority was that whatever was arranged had to conform to the common law and to the constitutions of the particular institute. Details of voting and the method of computing votes, issues of active and passive voice, the agenda, the *quorum* or the majority needed for the resolution of a specific issue, were all matters that each congregation defined for its own members with due regard for the precepts of the Church.

Since the constitutions of each congregation pertained to that community only, one cannot give a general description that fits every situation. It is clear, nonetheless, that the general chapter, because it exercised its authority in a collegial fashion, was a democratic institution in every religious congregation.¹⁰⁶ All those participating in the general chapter, whether *ex officio* or by direct election of the members were equal, and in chapter each vote carried the same weight. Consequently, we can say with some authority that government in religious congregations as defined in the 1917 Code was, at least at the highest level, carried out in a democratic manner. The chapter exercised true authority in the congregation. It had proper power, which was distinct from the power of the general

¹⁰⁶ Coronata used the democratic metaphor to describe the authority of general chapters: "Regimen internum religionum potest esse democraticum absolute, quod verificatur in religionibus in quibus omnes superiores directe eliguntur a religiosis in capitulis atque ita ad tempus constituuntur; democraticum moderatum quod habetur in religionibus in quibus religiosi non singulos superiores sed aliquem vel aliquos tantum eligunt vel a quo dein alii constituuntur" (CONTE A CORONATA *Institutiones*, no. 533, p. 633). The government of the Society of Jesus on the other hand, could be called "the most authoritarian, the least democratic or collegial in the Church" because of its strongly hierarchical mode of governing. See B.J. BLANGIARDI, "The General Congregation as an Instrument of Government in the Society of Jesus," JCD thesis, Ottawa, Faculty of Canon Law, Saint Paul University, 1997, p. 119 (=BLANGIARDI, "The General Congregation as an Instrument of Governance"), and "The Jesuits in the Post-Conciliar Era: The Thirty-First General Congregation and the New General," in *Herder Correspondence*, vol. 2, no. 2 (1965), p. 352.

superior.¹⁰⁷ It represented the entire congregation and decided matters collegially by the vote of all the capitulars.

CIC/17 brought together the Church's teaching and practices in relation to general chapters. In so doing, it provided great clarity in relation to the mind of the legislator, but a type of uniformity was also created. This was the logical consequence of prescribing what should and ought to be done in every religious congregation. Building on Bizzari's *Method* and the *1901 Norms*, *CIC/17* clarified key issues, e.g., the nature of power exercised by religious in the Church. This power was defined in three particular ways, thus categorizing religious congregations into three groups: exempt clerical religious, non-exempt religious, and those governed by abbots primate or prelates *nullius*, the major difference being in the authority of the exempt clerical congregations to enact true laws and to carry out judicial functions. The benefit of this clarification lay in the fact that the nature of their power was declared. However, the consequence of defining the power of religious congregations was to limit the rich variety evident in the individual charism of each congregation. This happened as a result of the revision of constitutions in the light of the Code mandated by the Holy See.¹⁰⁸ The guidelines issued were applied literally, with the result that constitutions of every congregation had a sameness that bordered on uniformity.¹⁰⁹ This sameness would cause problems in the years ahead. As the role of common law became

¹⁰⁷ "Capitulum autem vero auctoritas in religione cum propria potestate distincta a potestate superioris [...] et res decernit ad modum collegii per verum suffragium capitularium" (WERNZ, *Ius canonicum*, no. 103, p. 94).

¹⁰⁸ See SCR, decree *Ad normam Canonis 489*, 26 June 1918, in *AAS*, 10 (1918), p. 290.

¹⁰⁹ See SCR, *Declaratio circa religionum constitutiones codici conformatas*, a S. Congregationi pro revisione subiiciendas, ex decreto 26 iunii 1918, 26 October 1921, in *AAS*, 13 (1921), pp. 538-539 (=SCR, *Declaration*).

more and more important, the role of particular law diminished. The resultant uniformity deprived the Church of the expression of the richness of individual charism, which problem was to be addressed by Vatican II.¹¹⁰

1.4 – DEVELOPMENTS IN THE UNDERSTANDING OF THE CONCEPT OF CHAPTER AFTER THE PROMULGATION OF *CIC/17*

The role of the general chapter was clear in relation to the revision of constitutions that took place in the years following *CIC/17*. The Sacred Congregation for Religious indicated that changes would not be acceptable unless they were first discussed and approved by the general chapter, with minor adjustments requiring the approval of the general council only.¹¹¹ However, many constitutions simply quoted canons from the Code with the result that there was a loss of individuality.¹¹² Many clarifications had to be made and dispensations sought for individual groups and this caused a proliferation of interventions from the Holy See. In other words, a partial consequence of the whole process was the centralization of authority in the Holy See that, in turn, resulted in the weakening of authority at the local level.

¹¹⁰ See M. SAID, "Particular Law of Institutes in the Renewal of Consecrated Life," in *R/R*, 36 (1977), pp. 928-932 (=SAID, "Particular Law").

¹¹¹ "Petitio autem non acceptabitur ab hac Sacra Congregatione nisi immutationes in capitulo generali fuerint discussae et approbatae. Si tamen agatur de minoribus aut de verbis substituendis, vel de abrogandis usibus qui in desuetudinem ob temporum et morum diversitatem iam abierint, aut aliis similibus, sufficiat consensus consilii generalis" (SCR, Declaration, pp. 538-539).

¹¹² See SAID, "Particular Law," p. 930.

In the immediate aftermath of the promulgation of the Code, the Sacred Congregation for Religious reviewed and approved many constitutions.¹¹³ Congregations, whose approval had never before been given formally, were required to seek it according to the formula established by the Sacred Congregation.¹¹⁴ This formula included explicit directions regarding what was to be included and excluded from the text of the constitutions, thus curtailing the creativity of the general chapter whose task it was to discuss and approve changes or modifications.¹¹⁵ Communities had to make frequent reference to the Holy See in order to clarify exactly what was required in relation to the exercise of government. For our purposes, we will refer only to those communications that had a direct bearing on the general chapter in the years before Vatican Council II.¹¹⁶

1.4.1 – Clarifications of the Holy See in the Aftermath of *CIC/17*

In 1919, the S.C. for Religious clarified which books of rules and customs the general chapters of pontifical congregations had to submit to the Holy See for correction and revision.¹¹⁷ In 1920, a circular letter clarified the Holy See's disapproval of the reelections of superiors general in congregations of religious women and in monasteries of

¹¹³ See SCR, decree, 19 September 1936, in *AAS*, 28 (1936), pp. 405-406; ID., indult, 21 February 1938, in *CpRM*, 19 (1938), pp. 149-150.

¹¹⁴ See SCR, *Normae secundum quas Sacra Congregatio de Religiosis in novis religiosis congregationibus approbandis procedere solet*, 6 March 1921, nos. 1-2, in *AAS*, 13 (1921), pp. 312-319 (=1921 *Norms*).

¹¹⁵ See 1921 *Norms*, nos. 22-23, pp. 317-318.

¹¹⁶ Those relevant documents already mentioned will not be repeated, e.g., the 1921 *Norms* and the 1921 response regarding the ordinary's function as president of a general chapter.

¹¹⁷ See SCR, decree *In congregatione generali*, 21 March 1919, in *AAS*, 11 (1919), pp. 239-240.

nuns.¹¹⁸ In 1921, a rescript granted certain habitual faculties to the ordinary of nuns in Valentia, Spain, so that women religious could carry out whatever civil or canonical actions were necessary, e.g., to cede their inheritance to their congregation.¹¹⁹ The response given regarding the celebration of general chapters in diocesan congregations clarified the right of the general superior to decide the place for the celebration of the general chapter, even if the congregation was dispersed in several dioceses.¹²⁰ A declaration clarified the process required for the approval of revised constitutions.¹²¹ The decree *Quod iam*, 1922, provided the steps which must be taken by bishops and prelates who had quasi-episcopal jurisdiction, in relation to congregations of religious and societies of apostolic life which had not received approbation in the form of the “decree of praise” from the Holy See.¹²² Some congregations inquired regarding the prorogation of general chapters.¹²³ In 1929, the faculty to permit a relative majority of votes in elections in particular circumstances was granted to the Discalced Carmelites.¹²⁴

Because of the disruption to travel there was a decline in the volume of general correspondence that emanated from the Holy See during World War II. Individual

¹¹⁸ See SCR, circular letter *Saepissime accidit*, 9 March 1920, in *AAS*, 12 (1920), pp. 365-367, English translation in *CLD*, vol. 1, p. 276.

¹¹⁹ See SCR, rescript, 3 February 1921, prot. no. 7, 116/20, in X. OCHOA (ed.), *Leges Ecclesiae post Codicem iuris canonici editae*, vol. 1, Rome, Commentarium pro Religiosis, 1966, col. 328 (=OCHOA, *Leges Ecclesiae*).

¹²⁰ See SCR, 2 July 1921, in *Periodica*, 10 (1922), p. 360, English translation in *CLD*, vol. 1, pp. 279-280.

¹²¹ See SCR, declaration *Iam inde*, 26 October 1921, in *AAS*, 13 (1921), pp. 538-539.

¹²² See SCR, decree *Quod iam*, 30 November 1922, in *AAS*, 13 (1921), pp. 644-646.

¹²³ See SCR, decree *Factum est aliquando*, 23 July 1922, in *AAS*, 14 (1922), p. 428.

communities sometimes required dispensations either from universal or particular laws, with the result that one finds private correspondence in relation to these matters.¹²⁵ In 1948, a decree published the requirements for the Quinquennial report, which each general superior was required to send to the Holy See.¹²⁶ Detailed questions were posed regarding the general chapter: concerning convocation, delegates, the president, the provision of general reports from the general superior and the provinces, and the financial report prepared by the procurator general. Were these reports weighed and considered before elections were held? Were elections carried out according to the law? Were the minutes of previous general chapters sent to the Sacred Congregation? How were decisions communicated and promulgated? What measures were taken to ensure that decisions were faithfully put into practice? In other words, the Holy See required a detailed analysis of the chapter of each congregation. Such detail was new and demanded frequent recourse to the Holy See in order to ensure acts of the general chapter or acts to be proposed, were carried out accurately and validly.

1.4.2 – Expanding the Understanding of the Nature of the General Chapter’s Power

A clear understanding of the direction taken by ecclesiastical authority regarding the government of religious is to be found in a private address of the secretary of the

¹²⁴ See SCR, indult *Facultas adhibendi*, 4 July 1929, prot. no. 3800/29, in OCHOA, *Leges Ecclesiae*, vol. 1, col. 915.

¹²⁵ For example, in 1942, the Discalced Carmelites were given the faculty to postpone general chapters until after the war (see SCR, indult *Facultas datur*, 29 December 1942, in OCHOA, *Leges Ecclesiae*, vol. 2, col. 1725), and in 1943, common constitutions were approved for Third Orders of Franciscans. See SCR, decree *Perplura monasteria*, 12 April 1943, prot. no. 6988/42, in *ibid.*, p. 2170.

¹²⁶ See SCR, *Norms*, 9 December 1948, Rome, e foliis editio ab ipsa SCR, [Rome], 1948, English translation in *CLD*, vol. 3, pp. 168-169.

Sacred Congregation of Religious to superioresses general in 1952.¹²⁷ Speaking of the revision of constitutions, he reminded his listeners of the need to follow the process established by the Church. General chapters were not merely to approve changes by absolute majority, but even by the “moral unanimity” of the capitulars.¹²⁸ He differentiated between constitutions that required the approval of the Holy See and custom books or directories, which did not, but which nonetheless should be submitted to the Sacred Congregation for Religious to ensure they contained nothing that was canonically or theologically erroneous. The policy of the Holy See was to accept changes proposed by the general chapter that had the moral unanimity of the chapter.¹²⁹ The Holy See, while requiring that acts of chapter be forwarded for approval or scrutiny, nevertheless allowed general chapters to function freely according to the constitutions of the congregation concerned. As long as it could be proved that changes or decisions had the required majority or moral unanimity, the Holy See sanctioned the acts. In one area, the Holy See had a strong preference: reelection of superiors general was not favoured in principle. Yet, if a general chapter were to postulate an individual, giving serious reasons and with the required two-thirds majority, then the practice was to accept the decision.

¹²⁷ See A. LARRAONA, Address to the International Congress of Mothers General of Institutes of Pontifical Right, [n.d.] September 1952, Rome, in *Acta et documenta Congressus Internationalis Superiorissarum Generalium*, Rome, 1952, English translation in *CLD*, vol. 1, pp. 206-215 (=LARRAONA, Address).

¹²⁸ See *ibid.*, p. 207.

¹²⁹ Some of the contemporary issues for the general chapters of congregations of women related to religious dress, the abolition of class distinction and the substitution of the Divine Office for the Little Office of Our Lady. The religious dress issue concerned the Holy See only in so far as change had the support of the general chapter. In the event of strong opposition even on the part of the few, the Sacred Congregation counselled “patient waiting.” Abolition of class distinctions required the same support of the general congregation and change from the practice of praying the Little Office of Our Lady to the Divine Office was permitted so long as its recitation did not interfere with the apostolic demands required by the constitutions. See *ibid.*, p. 208.

Pope Pius XII also indicated the mind of the legislator in relation to the government of religious congregations. He affirmed the public nature of the religious state in *Provida Mater*.¹³⁰ The same ideas were expressed in an address to the Delegates of the General Congress of Religious Orders, Congregations, Societies and Secular Institutes in 1951 when the Holy Father also supported the custom of exemption, but at the same time made it absolutely clear that in whatever pertained to the care of souls, the authority of the bishop was paramount.¹³¹ Speaking to Teaching Sisters, he advised them to revise constitutions to suit the needs of changing times¹³² and cautioned superiors general of women religious (and by implication general chapters) to govern with a “motherly spirit.”¹³³ In 1958, Pope Pius XII referred directly to the two types of power of religious congregations, namely, the power of jurisdiction and dominative power. According to the Holy Father, the basis of their power resided in the approval of the Church of the rules and constitutions of a particular congregation, which made it, to use the Holy Father’s own words, “associates of our own office.” The Code of Canon Law directly delegated a share in jurisdiction to clerical religious communities, or by approving the rules and

¹³⁰ He used the descriptions “the public state of perfection,” and “an ecclesiastical institution created by the Church and closely identified with its purpose” (PIUS XII, Apostolic Constitution on Secular Institutes *Provida Mater*, in *AAS*, 39 [1947], pp. 114-124, English translation in *CLD*, vol. 3, p. 137 [= *Provida Mater*]).

¹³¹ See PIUS XII, Address to the Delegates of the General Congress of Religious Orders, Congregations, Societies, and Secular Institutes, 8 December 1950, in *AAS*, 43 (1951), pp. 26-36, English translation in *R/R*, 14 (1955), p. 172.

¹³² See PIUS XII, Apostolic exhortation to the First International Congress of Teaching Sisters, 13 September 1951, in *AAS*, 43 (1951), pp. 738-744, English translation in *R/R*, 14 (1955), pp. 251-256.

¹³³ “[...] une affection maternelle dans la direction de vos soeurs” (PIUS XII, Address to the Superiors General of Religious Women, 15 September 1952, no. 1, in *AAS*, 44 [1952], p. 825).

constitutions, laid the foundations for dominative authority for others.¹³⁴ This reference to “a share in jurisdiction” was to be a key theme in discussions on the revision of *CIC/17* in the years ahead. The public nature of religious congregations was established clearly from this time but the nature of the power they exercised remained unclear.

The promulgation of the Norms for the Oriental Churches and the *Motu proprio Postquam Apostolicis litteris* gave further testament to the fact that for the legislator religious congregations exercised public power. Canon 26 § 2, 2° extended jurisdiction to major superiors of non-exempt monks of whatever juridical condition and to non-exempt clerical congregations of papal or patriarchal right.¹³⁵ In addition, a new definition of ecclesiastical office allowed for some participation at least in ecclesiastical power whether of jurisdiction or orders or “some other public ecclesiastical power” (c. 305).¹³⁶ Some commentators believed this other public ecclesiastical power referred to public dominative power.¹³⁷ Shortly afterwards, the Pontifical Commission for the Authentic Interpretation of

¹³⁴ “[...] per ipsa Nobis probata Regulas et Instituta vestra illius potestatis vestrae, quam ‘dominativam’ appellant fundamenta ponentes, vos socios Nostri supremi officii assumpsimus” (PIUS XII, allocution, to Superiors General of Religious Orders of Congregations of Men, 11 February 1958, in *AAS*, 50 [1958], p. 154, English translation in *CLD*, vol. 5, p. 366).

¹³⁵ See PIUS XII, *Motu proprio* Norms for the Oriental Churches *Postquam Apostolicis litteris*, 2 February 1952, in *AAS*, 44 (1952), pp. 65-152 (= *Postquam Apostolicis litteris*). See especially c. 26 § 2, 2°, p. 74.

¹³⁶ “Officium ecclesiasticum [...] secumferens aut aliquam participationem ecclesiasticae potestatis sive ordinis sive iurisdictionis aut aliam publicam ecclesiasticam potestatem [...]” (*Postquam Apostolicis litteris*, c. 305, pp. 144-145).

¹³⁷ See A. HERMAN, “De motu proprio ‘*Postquam Apostolicis*’,” in *Monitor Ecclesiasticus*, 77 (1952), pp. 259-260.

the Code attributed the power of jurisdiction to the dominative power of superiors and chapters of religious institutes and societies living without public vows.¹³⁸

1.5 – CONCLUSIONS

The concept of general chapter evolved during many centuries. It was an instrument of participation of the members in the life and work of the congregation and provided leadership that was accountable to the members at the general chapter. Over the centuries, the Church had developed rules and regulations in relation to meetings, voting and elections. She struggled to regulate the relationship between religious congregations and bishops, which in fact led to the exemption of many from the direct control of the local ordinary. By the 16th century, this pattern of exemption had caused great difficulty in relation to the authority of individual bishops. The Council of Trent sought to redress the situation, while at the same time protect the rights, privileges and internal freedom of individual congregations. Although the Church developed many regulations in relation to the exercise of power in religious congregations, she never actually defined its nature. This situation was remedied somewhat in *CIC/17*.

The institution of general chapter was a fundamental part of the structure of religious congregations. The Church, by its legislation, sought to ensure that this

¹³⁸ “An praescripta canonum 197, 199, 206-209, de potestate iurisdictionis, applicanda sint, nisi natura rei aut textus contextusve legis obstet, potestate dominativae quam habent superiores et capitula in religionibus et societatibus sive virorum sive mulierum in communi viventium sine votis publicis. R. Affirmative” (PCAIC, response, in *AAS*, 44 [1952], p. 497). This response proved ambiguous however, because now dominative power could be ordinary, that is, attached to an office. However, the Latin Code’s definition of ecclesiastical office restricted its provision to clerics (c. 145). Another ambiguity lay in the fact that the response did not use the epithet “public” with dominative. However, in 1957, the Holy See applied the canons on jurisdiction to “all public ecclesiastical power” (PIUS XII, *Motu proprio Norms for the Oriental Churches Cleri sanctitati*, 2 June 1957, c. 153, in *AAS*, 49 [1957], p. 476).

instrument of government protected the individual charism of each congregation while at the same time ensured that the congregation took its appropriate place in the local church. When the expansion of congregations beyond the borders of one diocese or country necessitated a change in government structures, resulting in greater autonomy for the general chapter of these congregations, the problem of the power exercised by religious congregations became more acute. Unfortunately, in relation particularly to congregations of women, the desire to be governed by their own general chapter was often interpreted as an attempt to be free from the authority of the bishop. However, between the 16th and 20th centuries, the principle of the internal autonomy of all congregations gradually became the norm. Relationships between those congregations that were directly subject to the Holy See and the local ordinaries were gradually clarified.

Because of the social tenor of the times, women's congregations were more restricted in relation to the exercise of government than male congregations. Despite the power given to all general chapters by *CIC/17* in relation to internal autonomy, women's congregations were subject to the jurisdiction of the local ordinary to a greater extent than their male counterparts. This was reflected in the bishop's right (or that of the regular superior) to preside at the election of their superiors general, and in relation to some congregations of nuns and congregations of diocesan right, to confirm or rescind their elections (c. 506 § 4). He also had a key role in the disposition of temporal goods in these congregations.¹³⁹

¹³⁹ For example, superiors of nuns or religious of diocesan right required the consent of the local ordinary for investments (c. 533 § 1, 1°); if the investment concerned the dowry of a professed member, superiors of institutes of pontifical right also required his consent; women religious had to provide an account of the administration of goods on the occasion of the local ordinary's visitation (c. 535 § 2).

CIC/17 determined the power given to general chapters of all congregations. The differentiation between exempt clerical congregations and all others enunciated in c. 501 masked the fact that there were significant differences also in relation to the power given to the general chapters of women religious and lay male congregations. The nature of that power was not described but was assumed from its exercise. The debate in relation to this issue would be a significant factor in the formulation of the power of general chapter in the revision process of the Code. *Codex iuris canonici* would also differentiate between the power to act and the authority that was the source of that power.

CHAPTER 2

CONTEMPORARY UNDERSTANDING OF THE NATURE AND AUTHORITY OF THE GENERAL CHAPTER

The 20th century was a time of great social and political change. The impact of two world wars and the restriction of human rights in the large areas of Europe that fell under Nazi and communist control had a great influence on the development of approaches to individual rights and obligations. New movements and the spread of democratic ideas made an impact on the Church also.¹ This can be seen clearly in the deliberations and documents of the Second Vatican Council on the nature of the Church, its hierarchical structure, the status of the members and the implications of the notion of the People of God as the true and authentic image of the Church in the modern world.² This ecclesiology in turn informed the formulation of the Church's law with the result that the expression of the law of *CIC* 1983 was, in many aspects, radically different from that of *CIC* 1917.³

The section of the law concerning religious institutes was influenced by the new theological understanding of the Church as People of God, the principle of *communio*, the

¹ See p. ix, footnote 4 above and pp. 111-125 below.

² See especially *LG*, nos. 9-17, English translation in *FLANNERY I*, pp. 359-369.

³ The ecclesial dimension of the consecrated life is a consistent theme in the documents of the Holy See. e.g., *LG*, nos. 43-44, pp. 402-405. Pope John Paul II made frequent reference to the ecclesial nature of consecrated life. See JOHN PAUL II, Discourse to the Church of Bergamo, 26 April 1981, in *ConsL*, 7 (1983), p. 22; ID., *CL*, nos. 19-21, in *AAS*, 81 (1989), pp. 393-521, English translation in *Origins*, 18 (1989), pp. 570-571 (=CL); ID., *Vita consecrata*, no. 31, pp. 51-53. See also CONGREGATION FOR THE DOCTRINE OF THE FAITH, Letter to Bishops of the Catholic Church on Some Aspects of the Church Understood as Communion, nos. 15-16, 28 May 1992, in *AAS*, 85 (1993), pp. 838-850, English translation *Letter to the Bishops of the Catholic Church On Some Aspects of the Church Understood as Communion*, nos. 15-16, Boston, MA, St. Paul Books and Media, (1992), pp. 20-21.

primacy of baptism, which conferred equal dignity on each of the baptised, with the inherent rights and duties, the emphasis on authority as service with its concomitant aspects, the need to consult and collaborate with those who are governed.⁴ The emphasis on “authority as service,” the principle of subsidiarity which, out of respect for the dignity of the person, enabled persons and groups to function authoritatively in those areas in which they had competence, and the principles of coresponsibility and collegiality which emphasised the legitimate contribution of every person to the building up of the Body of Christ, in particular, brought about a different approach to the question of government in religious institutes. Some questions, however, were left unresolved, as, for example, the origin of power and the nature of the jurisdiction of superiors and general chapters of non-clerical institutes.

The period of experimentation allowed to each congregation by the norms attached to the motu proprio *Ecclesiae Sanctae II*⁵ produced a variety of responses to the question of authority. Perhaps in reaction to the authoritarianism of the past, many religious communities, particularly in North America, introduced structures of government that were more in keeping with the democratic nature of the times in that part of the world. The struggles of religious in relation to authority can be found not only in attempts to formulate

⁴ These principles also underpinned a separate section of the law on the rights and obligations of Christ's faithful (cc. 208-231). The extent to which these rights impinge on religious will be discussed in ch. 3.

⁵ See PAUL VI, motu proprio *Ecclesiae Sanctae*, *Norms II: Norms for Implementing the Decree* [of the Second Vatican Council]: *On the Up-to-Date Renewal of Religious Life* [Perfectae caritatis] (=ES II), part 1, no. 3, 6 August 1966, in *AAS*, 58 (1966), pp. 775-782, English translation in FLANNERY I, p. 625. *Ecclesiae Sanctae II* is not a self-standing document but one part of a set of norms attached to a Motu Proprio, which also includes norms for the implementation of three other decrees of Vatican II. See FLANNERY I, p. 624, footnote a.

proper law in a different, more democratic manner, but also in the relationships between bishops and religious.⁶

Codex iuris canonici/17 legislated for the “power” of general chapter, i.e., the legal competence to act that has juridically recognizable effects. It did not refer to its authority, a broader concept that includes but goes beyond power.⁷ *Codex iuris canonici*, in contrast, legislates both for the overall authority of general chapters (c. 631) and the power to act that arose from that authority (c. 596).⁸ As a result, we will examine both the authority and the power of the general chapter as it is presented in *CIC*.

2.1 – SECOND VATICAN COUNCIL AND INSTITUTES OF CONSECRATED LIFE

Pope John XXIII referred to the dignity of the human person in 1963,⁹ a theme that appeared again in the Declaration on Religious Liberty, *Dignitatis humanae*,¹⁰ and in the

⁶ In the debates and discussions between the bishops and religious of the United States in preparation for the 1994 Synod, which had for its theme the consecrated life, we find some of the areas of difficulty that persisted in relation to the status and role of religious and, consequently, the understanding of authority in the Church in the United States in particular. See SECRETARIAT FOR SYNOD OF BISHOPS, Working Paper *Instrumentum laboris*, nos. 20, 88, 20 June 1994, in *Origins*, 24 (1994), pp. 105, 128-129 (= *Instrumentum laboris*). This discussion provides the context for an analysis of the understanding of authority in the North American provinces of the Institute of the Blessed Virgin Mary, which is the subject of our fourth chapter.

⁷ See E. McDONOUGH, “Authority in Institutes of Consecrated Life,” in *R/R*, 55 (1996), p. 204.

⁸ For an analysis of c. 631, see below, pp. 84-92; for c. 596, see below, pp. 94-110.

⁹ See JOHN XXIII, encyclical *Pacem in terris*, 11 April 1963, in *AAS*, 55 (1963), pp. 257-304, English translation in *The Pope Speaks*, 9 (1963), pp. 15, 22 (= *Pacem in terris*). This encyclical was also noted for its expression of the democratic principle and for voicing support for women’s equality in state and society (but not in the Church itself). *Ibid.*, pp. 24, 29.

¹⁰ “Contemporary man is becoming increasingly conscious of the dignity of the human person; more and more people are demanding that [all] should exercise fully their own judgement and a responsible freedom in their actions” (*DH*, no. 1, English translation in FLANNERY I, p. 799).

Pastoral Constitution on the Church in the Modern World, *Gaudium et spes*, which spoke of the growing awareness of the sublime dignity of the human person whose rights and duties are universal and inviolable.¹¹ In other words, the Church both recognised this principle in the world and at the same time associated herself with its pursuit. Respect for the dignity of the human person found expression in the principles of equality, authority as service and the emphasis on communion.

The Decree on the Up-to-Date Renewal of Religious Life *Perfectae caritatis* situated renewal in the wider context of renewal of the Church (*PC*, nos. 1-2), thus drawing attention to the ecclesial dimension of religious institutes. Internal renewal was to precede those external adaptations which religious were called to make. *Perfectae caritatis* decreed that it was for the competent authorities and especially for general chapters to establish the norms for appropriate renewal, to legislate for it and to provide for appropriate experimentation. The general principles of renewal given in *Perfectae caritatis* were expanded in the practical provisions of the Norms for Implementing the Decree: On the Up-to-Date Renewal of Religious Life *Ecclesiae sanctae II*. The principle of consultation and the practice of collaboration were to be the *modus operandi* for superiors and chapters.¹² Different types of institute were acknowledged and great freedom was given to enable each form to adapt and renew itself according to its particular traditions

¹¹ See *GS*, no. 26, English translation in FLANNERY I, pp. 927-928. *Lumen gentium* established the basis for equality in Sacred Scripture (*LG*, no. 32, pp. 389-390). Unlike *CIC/17*, *CIC* on the whole, establishes the equality of men and women and eliminates discrimination except in a few cases, e.g., cc. 111 § 1; 604; 1083 § 1; 1089.

¹² See *ES II*, part I, nos. 4, 18, pp. 625, 628.

and history (*PC*, nos. 7-11).¹³ The general chapter had the ultimate responsibility for this task of renewal and adaptation.

2.1.1 – Consecrated Life and Its Place in the Church

Vatican Council II developed a rich theology of consecrated life in the context of the Church.¹⁴ This is evident from the position that *Lumen gentium* accords the consecrated life: in chapter 6, the fundamental theological principles underlying the living of consecrated life are made part of the Dogmatic Constitution on the Church.¹⁵ Vatican II described the religious state of life not in terms of a “middle way” (*LG*, no. 43) between the lay and clerical state, nor as part of the Church’s hierarchical structure, but rather as part of its “life and holiness” (*LG*, no. 44; *PC*, nos. 2, 5).¹⁶ This life was expressed in different ways in the Church in the past and present. Vatican II did not make hierarchical

¹³ In relation to convents of nuns, provision was made for consultation through assemblies of federations or other lawfully convened assemblies (*PC*, no. 4, pp. 613-614).

¹⁴ See *DV*, no. 8, English translation in FLANNERY 1, p. 754. The debates in the Council on the renewal of religious life in the 3rd session (11 and 12 November 1963) provide an interesting view of the diverse opinions concerning religious that were expressed at the Council. Cardinal Döpfner particularly criticized the approach of the proposed document to women religious who were caught between a “quasi-monastic regimen and overdemanding work.” Cardinal Suenens believed women religious were treated like minors, that this bred infantilism and together with the maternalistic attitude of many superiors, produced a feeling of inferiority among women that had to be removed. He believed a change in the manner of electing superiors, and an insistence that general chapters be more representative of the members, would help to bring about the much needed reform. There was an acknowledgement too, that women must be consulted and that the practice of men producing legislation for women had to change (no woman religious was consulted for the production of the text on religious life). See G. ALBERIGO et al. (eds.), *History of Vatican II*, vol. 4, Leuven, Peters and Maryknoll, NY, Orbis, 2003, pp. 62-93 (=ALBERIGO, *History of Vatican II*). See also X. RYNNE, *Vatican Council II*, 2nd ed., Leuven, Peters and Maryknoll, NY, Orbis, 1999, pp. 387-390 (=RYNNE, *Vatican II*).

¹⁵ Rousseau points out that *LG*, ch. 6 was compiled by a commission consisting of members of the Doctrinal Commission and the Commission for Religious. See J. ROUSSEAU, “Le Code fondamental des constitutions des instituts religieux,” in *StC*, 10 (1976), p. 195, footnote 1.

¹⁶ See also PAUL VI, Apostolic Exhortation on the Renewal of Religious Life *Evangelica testificatio*, 29 June 1971, nos. 2, 25, in *AAS*, 63 (1971), pp. 497-526, English translation in FLANNERY 1, pp. 680-681, 692 (=Evangelica testificatio).

comparisons between clerics, religious and laypersons. However, in order to explain “the special title” by which all religious are consecrated, their life was described as “a more thorough-going way” of living baptismal consecration (*LG*, no. 44), a way that gives more freedom to the individual to witness to the new life acquired through the redemptive work of Christ (*LG*, nos. 44, 46).¹⁷ In living out religious consecration, the religious demonstrates the prophetic and eschatological function of the Church in her spiritual and sacred dimension. As a result, religious are at the service of the Church, always available for her activities which build up the kingdom of God.¹⁸ The constitutions and proper law of each institute establish the particular ways in which that institute serves the needs of the Church and the world.

However, the bishop is ultimately responsible for the care of the people in his diocese. Despite the fact that religious enjoy a true autonomy of life, the norm was that, in whatever pertained to the pastoral care of the faithful, the authority of the bishop was to prevail. In other words, because the religious lives in and for the Church, the true mark of an authentic charism includes the will to be integrated into the Church and an awareness of

¹⁷ See also JOHN PAUL II, Apostolic Exhortation to men and women religious *Redemptionis donum*, 25 March 1984, no. 7, in *Enchiridion Vaticanum*, vol. 9, pp. 721-758, English translation *Apostolic Exhortation of His Holiness John Paul II to Men and Women Religious on their Consecration in the Light of the Mystery of Redemption*, no. 7, London, Catholic Truth Society, 1984, pp. 15-18; *PC*, nos. 1, 5, pp. 611-612, 614; *Essential Elements*, nos. 5, 6, p. 7.

¹⁸ See E. GAMBARI, *Religious Life According to Vatican II and the New Code of Canon Law*, St. Paul Editions, 1986, p. 121 (=GAMBARI, *Religious Life*). Since their ministries have been given to them by the Church, religious must exercise them in the Church’s name. See *PC*, no. 8, p. 615. See *CD*, nos. 33-35, English translation in FLANNERY I, pp. 583-586, for the relationship that should exist between religious and bishops. See also CRSI, and SCB, Directives for Mutual Relations Between Bishops and Religious *Mutuae relationes*, 14 May 1978, nos. 10, 12, in *AAS*, 70 (1978), pp. 473-506, English translation in FLANNERY II, pp. 217, 218 (=Mutual Relations).

obedience to the hierarchy (*LG*, no. 45).¹⁹ The characteristic of communion, which should permeate the very structure of the common life and activity of religious, points to the profoundly ecclesial nature of the consecrated life and is a preeminent aspect of their mission within the Church and secular society.²⁰ The religious state has no meaning outside its connection to the Church: as a living organism, it is part of the organic communion of the whole Church.²¹

2.1.2 – Renewed Vision of Authority in Institutes of Consecrated Life

Authority as service²² relates to the very essence of what power is in the Church: it reveals the nature of Christ's mission.²³ However, in the "perfect society" model of the pre-Vatican II era, the Church exercised her authority by means of two related powers, of

¹⁹ In dealing with the subject of exemption, *CD*, no. 35 lists all those areas in which the bishop's authority is paramount. *Ecclesiae Sanctae*, I, nos. 22-40, English translation in *FLANNERY* 1, pp. 604-609, gives new norms in relation to exemption, based on *CD*, nos. 33-35. *Mutual Relations* provides clear statements on the hierarchical nature of authority in the Church and of the autonomy of religious institutes over their own affairs. These statements were a prelude to the main point of the teaching: the need for mutual respect and cooperation for the good of the Church. See *Mutual Relations*, no. 12, p. 218.

²⁰ See CRSI, Criteria on Religious and Human Promotion, [n.d.] April 1978, no. 27, in *CLD*, vol. 9, p. 404. See also JOHN PAUL II, allocution to Cardinals and Bishops of CRSI, 7 March 1980, in *AAS*, 72 (1980), pp. 207-213, English translation in *CLD*, vol. 9, pp. 439-445.

²¹ The development of ecclesiology, more than any other factor, has, according to CICLSAL, affected the evolution of our understanding of religious community. Religious community, in its structure, motivations, and distinguishing values, makes publically visible and continually perceptible the gift of fraternity given by Christ to the whole Church. See CICLSAL, Fraternal Life in Community *Congregavit nos*, 2 February 1994, no. 2, in *Enchiridion Vaticanum*, vol. 14, pp. 220-283, English translation in *Origins*, 23 (1994), pp. 695-696 (= *Congregavit nos*).

²² In fact, *LG*, ch. 3 presents authority as "hierarchical" while at the same time emphasising that this hierarchical authority must be exercised as service (*LG*, nos. 18-29, pp. 369-387). Coriden describes the origin of the notion of "hierarchical" authority in the writings of Dionysius, the Pseudo-Areopagite in the 5th century, a description of authority that ill suits the reality of its expression in the Church. The term "hierarchical" is used a mere nine times in *CIC*, evidence, in his opinion, of the death of a term that has ceased to have much relevance. See J.A. CORIDEN, *Canon Law as Ministry: Freedom and Good Order for the Church*, New York/ Mahwah, NJ, Paulist Press, 2000, pp. 120-122 (=CORIDEN, *Canon Law*).

²³ See CORIDEN, *Canon Law*, p. 111.

orders and of jurisdiction.²⁴ Bishops, priests and deacons constituted the hierarchical order by divine institution; the pontiff and subordinate episcopate exercised jurisdiction; the competent ecclesiastical authority could institute other grades (*CIC/17*, c. 108).²⁵ There was no dispute regarding the fact that power of orders was received directly from Christ in the sacrament. However, only the pope received jurisdiction directly. Others received it as a consequence of the canonical mission given by the competent authority. This gave rise to the belief that bishops did not have proper power but were vicars of the pope. This issue was hotly debated at Vatican II. Eventually the principle of collegiality was instrumental in explaining an equality of status of bishops based on ordination and their communion with the pope.²⁶

The doctrine of episcopal collegiality influenced the understanding of authority in a general way. If the pope and bishops worked as a college, which the reform of the Roman

²⁴ The Roman Catechism, promulgated as a consequence of the Council of Trent, while distinguishing the two powers, at the same time demonstrated the intimate connection between them. Power of jurisdiction was traditionally given to those who were in sacred orders, but at the same time, the regulation of the exercise of those orders was a matter of ecclesiastical jurisdiction. See PIUS V, *Catechismus ex decreto SS. Concilii Tridentini ad parochos*, Bassani, Suis typis Remondini editit, 1833, pp. 222-223, English translation, *Catechism of the Council of Trent*, J.A. MCHUGH and C.J. CALLAN (eds.), 14th ed., New York, Joseph F. Wagner, Inc., 1956, pp. 320-321. The division of the power of the Church into two parts was accepted in the Church from the 12th century. See K. MÖRS DORF, "Die Entwicklung der Zweigliedrigkeit der kirchlichen Hierarchie," in *Münchener Theologische Zeitschrift*, 3 (1951), pp. 14-16.

²⁵ This formulation drew attention to the distinction between the papacy and the episcopate that had been accentuated in the years following the promulgation of the dogma of papal infallibility by the First Vatican Council. See VATICAN COUNCIL I, 4th public session, cap. 4, *De Romani pontificis infallibili magisterio*, 18 July 1870, in MANSI, *Collection*, vol. 52, pp. 1333-1336, English translation, *On the Infallible Teaching Authority of the Roman Pontiff*, in *DEC*, vol. 2, pp. 815-816.

²⁶ In order to ensure that everyone understood that the exercise of authority by bishops depended on that communion with the pope, the *Nota explicativa praevia* was appended to the Constitution on the Church. For the debate on collegiality, see ALBERIGO et al., *History of Vatican II*, vol. 3, pp. 64-91; vol. 4, pp. 62-93. See also *LG*, nos. 18-29, pp. 369-387 and *NEP*, English translation in FLANNERY 1, pp. 424-426. See ALBERIGO et al., vol. 4, pp. 417-445, for the origin and discussions surrounding the production of *NEP*. See also JOHN PAUL II, apostolic exhortation *Pastores gregis*, no. 8, 16 October 2003, in *AAS*, 96 (2004), pp. 825-924, English translation in *L'OR*, English ed., 22 October 2003 [Special Ed., no. 43], p. iii.

Curia and the establishment of the Synod of Bishops suggested, then the exercise of authority would necessarily involve a different approach to government. Consultation and collaboration would be the means by which government at all levels might operate. The principle of collegiality, therefore, suggested a different approach to the issue of government at all levels in the Church. The principle had particular significance in relation to the exercise of government in institutes of consecrated life, where there was a long tradition of collegial government by the general chapter.²⁷

Canon 118 had restricted the exercise of jurisdiction to clerics, but the *CIC/17* understanding was ambiguous.²⁸ It was understood that the supreme authority could authorize a layperson to exercise jurisdiction in individual cases.²⁹ Many canonists believed, therefore, that the restriction of jurisdiction to clerics was a matter of ecclesiastical law and was subject to change.³⁰ Vatican II did not enter into a discussion about jurisdiction *per se*.³¹ It did refer to *potestas*, *sacra potestas* and *munera*, all of which relate to the question of authority in the Church. Through their consecration, bishops

²⁷ The collegial authority of the general chapter differs from the non-collegial authority of other structures in the Church, e.g., dioceses, parishes.

²⁸ See *CIC/17*, cc. 109, 219, and PIUS XII, apostolic constitution *Vacantis Apostolicae Sedis*, 8 December 1945, nos. 101, 107, in *AAS*, 38 (1946), pp. 97, 98. Furthermore, a layperson appointed or elected as a bishop received jurisdiction at the moment of taking canonical possession of his diocese but had to be consecrated bishop within three months.

²⁹ Despite the fact that there is historical evidence to prove that women also exercised jurisdiction, canonists generally questioned woman's capacity to do so. See A. OTTAVIANI, *Compendium iuris publici ecclesiastici*, Vatican City, Typis polyglottis Vaticanis, 1936, p. 139; M. DE FÜRSTENBERG, "De abbatissa dignitatem archidiaconi habente," in *Periodica*, 78 (1989), pp. 345-359; J.M.ESCRIVÀ DE BALAGUER, *La abadesa de las Huelgas: estudio teológico jurídico*, Madrid, Rialp, 1988.

³⁰ See BEAL, "Governance," in *The Jurist*, 55 (1995), p. 9.

³¹ Jurisdiction is referred to 9 times in the documents of Vatican II: *SC*, no. 130, English translation in FLANNERY I, p. 36; *LG*, nos. 23, 45, pp. 376, 405; *NEP*, no. 2, pp. 424-426; *OE*, nos. 4, 7, English

receive an ontological share in the sacred functions (*munera*) necessary for their office, but they could not exercise the power ordered to action without a canonical mission from the pope and in the hierarchical communion with him and the other bishops (*LG*, no. 22).³² Priests and deacons share in the *sacra munera* communicated through ordination and are thereby part of the hierarchical constitution of the Church (*LG*, nos. 27, 29).³³ Lay persons because they share in the three *munera* of Christ, i.e., his priestly, prophetic and governing functions, in virtue of baptism also share in the priesthood of Christ (*LG*, no. 32). *Lumen gentium* no. 10 connected this common priesthood of all the people with the ministerial or hierarchical priesthood. Traditionally, the understanding of the *munera* had related to the special ministries of those in authority in the Church. In the New Testament, these special ministries were not presented as democratically based or as built up from among the members of the Church. Authority did not derive from the community, nor did it originate in delegation of power. It came instead from Christ and through Christ to the apostles and their successors. Superiors and general chapters, too, receive their authority from Christ and the capability to exercise it from the approval of the institute by the competent authority. The concept of communion³⁴ did not detract from the notion of the hierarchical

translation in FLANNERY 1, pp. 442, 444; *CD*, no. 35 (three times), p. 585 (X. OCHOA, *Index verborum cum documenti Concilii Vaticani Secundi*, Rome, Commentarium pro religiosis, 1967, p. 274).

³² Canonical mission can also be determined by lawful custom that has not been revoked, by laws that are made or recognised by the legitimate authority, and by grant of the supreme authority. See *LG*, no. 24, p. 378.

³³ Deacons, however, are ordained for service, not for participation in the ministerial priesthood. This text suggested Episcopal Conferences might consider whether permanent deacons might be appointed for care of souls, a term associated with jurisdiction. See B. DEUTSCH, "The Jurisdiction of Pastors in the External Forum: A Historical Synopsis and Commentary," *Canon Law Studies*, no. 378, Washington, DC, The Catholic University of America Press, 1957, pp. 2-26.

³⁴ The ecclesiology of communion is the foundation of the way in which the Church is ordered and is fundamental to her relationships. See *Instrumentum laboris*, p. 121. For the teaching on the doctrine of communion, see *AG*, no. 4, English translation in FLANNERY 1, pp. 813-814; *LG*, nos. 4, 12, 13, pp. 350-351,

constitution of the Church that is an article of faith proclaimed by the Council of Trent.³⁵ It did, however, put the emphasis more on the rights and duties of each member of the faithful to build up the Body of Christ. Bishops (*LG*, no. 37) and priests (*PO*, no. 9)³⁶ were requested to promote and appreciate the dignity and special role of the faithful. In addition, *Lumen gentium* said that laypersons could be appointed to offices that had a spiritual purpose (*LG*, no. 33) and suggested that in the absence of, or when sacred ministers were impeded, laypersons could supply some of their functions (*LG*, no. 35). Vatican II did not provide answers as to what these offices might be nor did it comment on the nature of the authority thus exercised. This fuelled debate in the post-Conciliar period, particularly in relation to whether or not laypersons (including non-clerical religious) could exercise jurisdiction.

Vatican II's description of the Church as the People of God promoted a vision of Church in which differences in relation to status or office were less important than the common identity shared in virtue of the baptismal consecration that called each one to holiness and to participate in the mission of the Church.³⁷ Furthermore, the baptised were to function in the context of the Church in the modern world, a world in which the democratic principle of "government by the people for the people," at least in the West,

363-365; *GS*, no. 32, English translation in FLANNERY 1, pp. 931-932; *AA*, no. 3, English translation in FLANNERY I, pp. 768-769; *CL*, nos. 19-21, pp. 570-571. See also J. HAMER, *The Church is a Communion*, London, Geoffrey Chapman, 1964, p. 94.

³⁵ "Si quis dixerit, in ecclesia catholica non esse hierarchiam, divina ordinatione institutam, quae constat ex episcopis, presbyteris et ministris: a.s." (COUNCIL OF TRENT, session 23, cap. 6, p. 744).

³⁶ See *PO*, no. 9, English translation in FLANNERY 1, pp. 880-881.

³⁷ The doctrine of communion applied to everyone in the Church. In the 1992 *Letter to Bishops*, institutes of consecrated life were described as "ecclesial realities that are at the service of communion among various particular churches" (CDF, *Letter to Bishops*, no. 16, p. 21).

was becoming increasingly important. In this vision of the Church, the people worked together with the bishops to bring the message of salvation to all peoples.³⁸ In other words, the common bond among all baptised was emphasised rather than the differences implied in the exercise of different functions. The expression of authority underwent a change as a result, one that had repercussions throughout the Church and particularly in relation to institutes of consecrated life.

Vatican II gave a renewed vision of authority as service (*LG*, no. 21), a theme developed by Pope Paul VI.³⁹ Service is fundamentally service to God that obliges those in authority to seek the will of God through dialogue. The exercise of authority and the practice of obedience go hand in hand with the concept of communion, which is a constitutive part of the exercise of authority in the Church (*LG*, nos. 22, 32). In other words, because all authority derives ultimately from God but is mediated by the Church, it is only in communion with the Church and the representatives of Christ on earth, the Pope and bishops, that the exercise of authority can find meaning and fulfilment. Out of respect for the person and in acknowledgement of the common dignity and fundamental equality of all, the principles of listening and dialogue⁴⁰ form a necessary part of the exercise of

³⁸ The positioning of the chapters of *Lumen gentium* indicated the value the Council gave to the People of God model of the Church: the section on the Church as People of God preceded the chapter on its hierarchical constitution. See G. PHILIPS, "Dogmatic Constitution on the Church: History of the Constitution," in H. VORGRIMMER (ed.), *Commentary on the Documents of Vatican II*, vol. 1, New York, Crossroad, 1989, p. 119. Rynne believed "it would be difficult to overemphasize the importance of the new definition of the Church in terms of the biblical concept of the People of God which found such a magnificent expression in the Constitution on the Church" (RYNNE, *Vatican II*, pp. 575-576).

³⁹ Cf. PAUL VI, allocution to the Roman Rota, 28 January 1971, in *AAS*, 63 (1971), pp. 135-137.

⁴⁰ Pope Paul VI described the importance of dialogue in the life of the Church in his first encyclical letter. See PAUL VI, encyclical letter *Ecclesiam suam*, 6 August 1964, in *AAS*, 56 (1964), pp. 609-659, English translation in *The Pope Speaks*, 10 (1964), 253-292 (= *Ecclesiam Suam*). He explained that dialogue was not a denial of the apostolic or hierarchical element of the Church, nor a denial of the need for

authority. Therefore authority as service necessarily involves the participation of the faithful in a common search for the will of God.⁴¹ These principles do not lessen the authority of the superior or chapter but rather enable that authority to function more efficiently, in that they enlighten the person/body that has to make the decision and those who accept the decision. The exercise of obedience is described as “an active and creative” one (*PC*, no. 14, *Evangelica Testificatio*, no. 25), thus drawing attention to the necessary input of the subject in relation to the exercise of authority, while not lessening the authority of the one making the decision. In other words, respect for the person and the recognition of his/her dignity are characteristics of the exercise of authority as service.⁴²

2.1.3 – General Chapter in the Process of the Renewal of Religious Life

Cooperation of superiors and members is necessary for the renewal of religious life. Nevertheless *Perfectae caritatis* gave the responsibility for the renewal and adaptation of each institute to the general chapter (*ES II*, no. 2).⁴³ The norms of *ES II* gave wide ranging

obedience. It is rather a method of accomplishing the apostolic mission of the Church (see *ibid.*, pp. 275-292).

⁴¹ In their exercise of authority, bishops were to be mindful of the rights as well as the duties of the faithful. See *LG*, nos. 36-37, pp. 393-395.

⁴² This principle found expression, e.g., in the regulation that there should be only one category of sisters in women's communities and, in communities of clerics and lay men, the members should be on an equal footing with equal rights and obligations apart from those arising from sacred orders (see *PC*, nos. 14, 15, pp. 619-620). The Holy See also acknowledged the essential equality of the vow of poverty irrespective of whether it was a solemn or a simple one, thus abolishing the distinction that categorised the different ways of living consecrated life. See CRSI, rescript [to the President of the Union of Superiors General of Austria], 8 July 1974, prot. no. SpR. 121-71, in OCHOA, *Leges Ecclesiae*, vol. 5, col. 4308.

⁴³ *Ecclesiae Sanctae II* applied equally, with the appropriate distinctions, to religious of Eastern and Latin rites. See introduction to *ES II*, p. 624. For those congregations that did not have a general chapter, for example, some convents of nuns, the highest authority of the order was to provide for the renewal and adaptation of constitutions, otherwise, the delegate of the Holy See would attend to the matter. See *ES II*, nos. 9-11, p. 626. The three-year period, within which special general chapters were required to take place, began with the promulgation of *ES*, 11 October 1966.

authority to institutes to find those means of renewal and adaptation which would express most authentically the purpose, spirit and mission of the particular institute. In the context of experimentation, general chapters were in fact given the authority to legislate changes for the congregation. This authority was new. *CIC/17* had acknowledged the dominative power of general chapters over the members of the congregation (c. 501 § 1), but this power was limited to internal matters. With the publication of *ES II*, general chapters had the authority to make changes even in constitutions, but on the understanding that this authority was for an experimental period only and that, eventually, new constitutions would have to be sent to the competent authority for approval. Pope Paul VI made it clear that changes related to disciplinary areas only and that since discipline changes over time, the best approach would be to allow experimentation, which of its nature is temporary only (*ES II*, no. 6). The revision of the Code of Canon Law was ongoing at this period and it would provide an objective norm against which new constitutions would eventually have to be measured.

The most important role in the appropriate renewal of religious institutes belonged to the institutes themselves. They would accomplish it *especially* through general chapters or synaxes.⁴⁴ This indicated that other bodies in the institute had a role in renewal also. *Ecclesiae sanctae II* clearly gave a role to all the members, but assemblies, e.g., provincial chapters, where such existed, might have a role, too. The view that general chapters had wide powers and therefore could delegate a share in those powers to provincial chapters, found further support in *ES II*, no. 23, which required institutes *especially* through their

⁴⁴ Synax is the term used to describe the Eastern law equivalent to the general chapter. Cf. *CCEO*, c. 441 § 1.

general chapters to find concrete ways of promoting both the spirit and practice of poverty.⁴⁵ Furthermore, *PC*, no. 14 spoke of the role of chapters and organisms (in the plural) which must bring about renewal in the ways in which they govern the institute and which must include the participation of the members. The general role of promotion of spiritual and apostolic vitality referred to in *ES II*, no. 1 was the role traditionally taken by general chapters. Now, because of the publication of these new norms, general chapters had an expanded role that included the mandate to involve the whole membership.

Ecclesiae sanctae II did not give directives in relation to the members of the general chapter. However, in keeping with the spirit of collaboration and participation promoted by the Vatican Council and in view of the wide authority given to general chapters in the area of experimentation, many institutes tried to broaden participation. There was no suggestion in *ES II* as to how this might be done, so it was left to the competent authorities in the institute to find ways to implement this particular norm. The delegates themselves, despite being elected by their various provinces or other organisms, did not represent that body as in a democratic society where elected representatives express the will of their constituency. In accordance with tradition, delegates and *ex officio* members participate in a personal capacity and act collegially at the general chapter itself.⁴⁶ Perhaps because the norms did not specify a form of representation and

⁴⁵ See also *PC*, no. 13, pp. 618-619. In international institutes, for example, the practice of poverty might have a different expression in the various provinces or regions, an expression that each provincial chapter might be in the best position to decide. The spirit of poverty, however, must be the same everywhere in the institute.

⁴⁶ See CRSI, reply, 21 March 1971, reported in *RfR*, 37 (1978), pp. 77-78.

collaboration suitable to the times, institutes developed their own and, in so doing, in many places were influenced by the democratic principles in vogue at the period.⁴⁷

Ecclesiae sanctae II provided for a special general chapter that could be either ordinary or extraordinary and could be divided into two distinct periods with not more than a year between the two sessions. This decision had to be made by secret vote of the chapter.⁴⁸ Questions asked in the wake of *ES II* concerned who decided whether the special general chapter should be ordinary or extraordinary; how to obtain the widest possible representation; what methods of consultation and collaboration might be appropriate; whether or not it would be necessary to have provincial chapters (where these applied) to elect capitulars to both sessions of the general chapter, or if in fact, as this was a special chapter, there was a need to convene a provincial chapter merely to elect delegates to the first session of the general chapter. In view of the particular nature of this special chapter, perhaps the capitulars should also be named in a special way. To complicate matters even further, individual institutes constituted chapters of elections in a different manner to chapters of affairs.

Ecclesiae Sanctae II, no. 4 mentioned the provincial or conventual chapter as one of the means of consultation of the members. It did not specifically state that the function of the provincial chapter was to nominate members to the general chapter. Because this was the juridical function of provincial chapters in many modern congregations, it is a

⁴⁷ We believe this less prescriptive approach was a consequence of the Holy See's desire to leave institutes free to formulate their own procedures in accordance with their specific spirit and charism.

⁴⁸ This chapter was special in virtue of its special, albeit temporary, authority and also because of the fact that it was required to meet within two, or at most, three years. It was also special in view of the type

reasonable assumption that this was the function envisaged by *ES II* also. According to *ES II*, no. 2, the task of the general chapter members was to produce those rules and regulations that would enable the membership in the whole institute to renew their religious lives by faithful adherence to the changed rules and regulations. Superiors and members composed the chapter charged with this special function. There is no indication that any superior or particular group had a special role.

The function of the general chapter in relation to the constitutions as enunciated by *ES II* was quite exceptional. Norm 6 gave the chapter the right to change, by way of experiment, certain norms of the constitutions or “typika” in the case of Oriental institutes. The only proviso was that proposed changes would be in keeping with the purpose, nature and character of the institute.⁴⁹ Furthermore, the Holy See would permit experiments contrary to the provisions of common law as the occasion arose.⁵⁰ This was a truly exceptional authorization. Hithertofore, all constitutions had to be approved by the Holy See and, indeed, even the authentic interpretation of the constitutions was reserved to the

of preparation specified by the *Motu proprio*, i.e., chapter preparation had to involve the widest possible membership. See *ES II*, part 1, no. 3, p. 625.

⁴⁹ The Holy See wished to know what experiments had been undertaken and the progress made. This led to a request on 4 December 1967 for acts of special general chapters called in accordance with the norms of *ES II*, no. 3. This in turn led CRSI to send criteria and norms for general chapters so that they could prepare accurately those acts that would eventually be placed in the constitutions. See CRSI, circular letter, 10 July 1972, prot. no. SpR. 194/72, in OCHOA, *Leges Ecclesiae*, vol. 5, col. 4150, English translation in *CLD*, vol. 7, pp. 477-483 (=CRSI, “Criteria”).

⁵⁰ Cf. CRSI, rescript to the General Minister of OFM Conventual, 9 April 1970, prot. no. 12495/69, in OCHOA, *Leges Ecclesiae*, vol. 4, col. 3845, which granted faculties to the Franciscans to introduce experiments contrary to the common law regarding permission for the erection of provinces and houses, permission in relation to admissions and dismissals, dispensations, voting, when the major superior needed the advice or consent of the council in order to act, the method of choosing provincial superiors, etc.

Holy See unless, as in the case of a diocesan institute, the competent authority was the diocesan bishop.⁵¹

Practical issues were not addressed by *ES II*, e.g., the percentage of vote necessary to change a provision of the constitutions and the representation necessary in the chapter to make such a potentially far-reaching change. This was a major departure from the former practice of the Holy See in relation to any change in the constitutions of an institute.⁵² There was no reference to books of customs, prayer books, ritual books, etc., which form such an important part of the life of every religious institute and which reflect the spirit of individual institutes. Changes in all these areas were presumably also the work of the general chapter. The latitude given to institutes by *ES II* was very much in keeping with the respect for individual rights and the principle of subsidiarity which encouraged those with authority to exercise it.

The special general chapter was authorized to extend the authority to experiment to the general council within the time that followed the special chapter, with provision also for independent monasteries of Eastern rites (*ES II*, no. 7). This faculty, given to the general council, and not to the general superior with the consent of the council, was to be

⁵¹ Some congregations, because of privilege (e.g., Carthusians, the Order of Preachers, the Chaldean Augustinians and the Society of Jesus), had the right to modify their own constitutions. However, this was not the general rule. Particular law specified how changes were to be made. For example, consent to constitutional change was given in the Order of Preachers only after three consecutive chapters had given consent, or consent was obtained from a "*capitulum generalissimum*" which was a sort of super general chapter. Later requests for the authority to interpret the rule were refused. See CRSI, response [to the Minister of OFM Conventual], 17 March 1970, prot. no. 12495/69, in OCHOA, *Leges Ecclesiae*, vol. 4, col. 3836, which declared that the authentic interpretation of the Rule of St. Francis remained reserved to the Holy See.

⁵² The continuous practice of the Holy See was to require a two-thirds majority for any constitutional change. This practice was presumed to continue during the time of special experimentation.

exercised in a collegial manner. In other words, decisions made would be as in a general chapter, with general superior and councillors having equal vote.⁵³

The authority given to general chapters in relation to adaptation and renewal in some instances far outweighed the authority previously experienced. In institutes of women particularly, general chapters were usually associated with elections, and *CIC/17* had not determined the role of the general chapter except by declaring the power exercised was dominative and by providing norms for elections. Because of the norms attached to the *motu proprio ES II*, general chapters received not only the mission to effect renewal and adaptation but also the power and authority with which to bring this about.⁵⁴

In the years immediately following the Vatican Council, religious institutes worked to broaden the participation and representation of members who were elected to general chapters.⁵⁵ The first criterion to emerge was to have at least the same number of elected participants as *ex officio* members. The latter were usually superiors, so a concerted effort was made to ensure that elected members represented more adequately the membership. Since such matters were not covered in constitutions, institutes sought permission from the Congregation to experiment with proportional representation, voting by nomination, regrouping of the members by house or by activity and so on. Members were involved

⁵³ For this view, see GAMBARI, *Religious Life*, p. 130.

⁵⁴ Vatican II brought a new dynamism to consecrated life that now had to reflect its role in relation to a rapidly changing world. General chapters became the forum for the expression of this dynamic. Perhaps not all institutes were aware of the expansion of their power and authority.

⁵⁵ We know how the Holy See viewed these years of adaptation, renewal and experimentation because of the publication of *Informationes* by the Sacred Congregation for Religious. See CRSI, "Les chapitres généraux depuis le concile (Premier bilan)," in *Inform.SCRIS*, 3 (1977), pp. 83-100, English translation, "The General Chapters Since the Council (A First Assessment)," in *ConsL*, 3 (1979), pp. 63-76 (=CRSI, "General Chapters").

through various means of consultation, e.g., questionnaires, small group meetings, etc. The amount of material generated required long sessions of chapter but *Ecclesiae sanctae II* had provided for this and had also allowed a second session to be held without further permission from the Holy See.

During this period, some institutes shortened the term of office of the general superior. This in turn shortened the length of time between chapters. Some institutes began to rewrite constitutions in their entirety, others to change those parts that seemed out of date. Some chose to modify the style of the constitutions. However, the main feature of this period was the way in which religious “owned” the task of renewal and adaptation and worked at the task from within. Mistakes were made, e.g., sometimes those elected were unsuited to the task of leadership, sometimes experiments failed due to lack of discernment as to the value of what was tried out and sometimes change was adopted for its own sake rather than from a genuine desire to find a better way.⁵⁶

In the 1970's, according to the Congregation, experiments were more solidly based on the original purpose and spirit of institutes. As a consequence of revisiting their sources and origins, many institutes heard again the cry of the poor and adapted apostolic activities and lifestyle accordingly. To accomplish this goal, many religious gave up the institutions with which they were identified, e.g., schools, hospitals. This inevitably brought about a change in lifestyle, which in turn impacted upon communal life and the living of the vows. The practice of obedience was affected by the evolving notion of what authority is. As a

⁵⁶ Pope Paul VI had earlier seen fit to warn some major superiors gathered in Rome for their respective general chapters not to allow members to introduce anything new on their own initiative as the renovation of discipline required that it proceed from the competent authority. See PAUL VI, allocution to

result, chapters sought to review structures in the light of “authority as service.” The concept of the personal responsibility of the religious for his/her own life, coupled with practices of consultation and collaboration, sometimes resulted in an adoption of solutions proper to those identified with political democracies.⁵⁷

Many experiments were conducted in relation to government. The efforts to widen participation in general chapters to ensure a broader representation of the members and the extension of active voice to those in temporary profession were responses to the Vatican Council’s call for greater participation and involvement of members.⁵⁸ Some general chapters allowed the membership to attend general chapters as “observers,” with no right to vote or to intervene directly in the proceedings. The Congregation concluded that this practice produced no difficulties when the number of observers was few and their participation was limited to study groups.⁵⁹

Many experiments related to the number of members, composition and role of the general council. In those institutes which found the role of councillor restricted to giving

certain superiors general gathered in Rome *Magno gaudio* [private], 23 May 1964, in *AAS*, 56 (1964), pp. 565-571, English translation in *CLD*, vol. 6, pp. 425-433. See especially p. 430.

⁵⁷ See CRSI, “General Chapters,” p. 70. The Congregation recognised that experiments sometimes went too far and that often, religious practices were disregarded in the service of “personal responsibility” and individual initiative. It must be acknowledged, however, that perhaps inexperience with governance structures and procedures led to some of the poor decisions made during this time.

⁵⁸ In some instances, those in temporary profession were given passive voice also, but the Congregation did not favour a general permission in this regard. In 1973, a rescript was issued giving those in temporary profession both active and passive voice in choosing representatives for the general chapter; the temporary professed were, however, restricted to active voice at the general chapter. See CRSI, rescript [private], 17 December 1973, prot. no. 48218/73, in OCHOA, *Leges Ecclesiae*, vol. 5, col. 4252.

⁵⁹ See CRSI, “General Chapters,” p. 74. Sometimes faculties were given to extend the vote in an individual instance, e.g., direct universal suffrage was given to the Franciscans in the election of major superiors in 1975. See CRSI, rescript to the Minister General OFM Conventual, 24 November 1975, prot. no. C. 86-1/75, in OCHOA, *Leges Ecclesiae*, vol. 5, col. 4418. As far as observers at chapters were concerned, this

advice or consent in strictly limited circumstances, sometimes there was a move to try a collegial system of government or one of “revolving responsibility.” The Congregation found that these experiments were unsatisfactory on the whole. However, it was in relation to the expression of authority at the local level that the Congregation saw the influence of the democratic methods in use in the political sphere on the ideas of participation, collaboration and subsidiarity promoted by the Council. Acceptance of the decisions of the group or the majority replaced the traditional concept of religious obedience in some religious institutes. The consequences of this type of thinking and the experiments that resulted led to confusion in relation to the authority of the superior. Some communities made decisions by common accord, thus dispensing with the need for a superior.⁶⁰ In other cases superiors became the “coordinators” of the will of the group or majority. This situation produced a crisis in relation to the understanding of the nature of authority.

A period of evaluation and discernment followed the experiments. Although some of the experiments were acknowledged to have been a mistake, the Congregation agreed that there were many positive consequences also. One of the most positive aspects was undoubtedly in relation to the role of the general chapter. From being the business of superiors for setting up structures and for electing general superiors and councillors, they became, in the words of the Cardinal Prefect of the Congregation “an ecclesial, salvific and family event” in the life of an institute.⁶¹ The time for experimentation produced

practice began in IBVM North America in the early 1970’s. The first observers to provincial chapters were admitted to the Irish Province chapter in 1993.

⁶⁰ For experiments in relation to collegial government at local level in IBVM communities in North America, see below, pp. 265-268.

⁶¹ See E. PIRONIO, “Reflections on General Chapters: A Salvific, Ecclesial and Family Event,” in *L’OR*, English ed., 16 September 1976, pp. 9-10 (=PIRONIO, “Reflections”).

undoubted benefits for religious institutes but there were also negative aspects, e.g., the confusion that developed in relation to the exercise of authority and the role of obedience. To sum up, *Ecclesiae sanctae II* provided the practical norms for the implementation of the values and principles of the Vatican Council. However, these values and principles also found expression in other directives and communications from the Holy See.

2.2 – AUTHORITY IN INSTITUTES OF CONSECRATED LIFE ACCORDING TO THE REVISED CODE OF CANON LAW

In *CIC/17*, (c. 501 §1), the power of superiors and general chapters of non-exempt religious institutes was characterized as “dominative.” However, this understanding evolved so that, by the time of the revision of the Code, dominative power had come to be understood as at least some kind of public power. *CIC/17* had attributed ecclesiastical power of jurisdiction to exempt clerical institutes. However, a series of decrees extended this power to others. During the revision process, several study groups discussed the question of jurisdiction as to whether it could or could not be exercised by laypersons.⁶² Since religious institutes of sisters and brothers were characterised as “lay” (c. 488, 4°), what was discussed and decided by these study groups had an impact on the question of authority in lay institutes of consecrated life.

Three groups of sources revealed the thinking of the Holy See in relation to issues that affected authority in religious institutes: decrees, instructions or other general communications, the private responses to individual queries of superiors general and

⁶² Several study groups discussed the lay jurisdiction issue: On General Norms (see *Communicationes*, 19 [1987], pp. 182-220), The Sacred Hierarchy (see *Communicationes*, 16 [1984],

general chapters as well as the work of the Code Commission. A brief examination of some of the texts that relate directly to our topic will clarify further the issues concerning government and its exercise in the period prior to the promulgation of the Code. Some practical issues clarified by the Holy See in relation to the working of general chapters remained in force, in many cases up to the promulgation of *CIC*.⁶³

2.2.1 – Post-Conciliar Development in the Understanding of Authority in Institutes of Consecrated Life

The pontifical rescript *Cum admotae* extended the power of jurisdiction to all clerical institutes of pontifical right and to Abbots President of monastic congregations.⁶⁴ This rescript established an important principle, namely, that authority in religious institutes was a wider concept than that hitherto exercised. In other words, the principle of subsidiarity could be applied because the Holy See recognised the right of those in authority in religious institutes to make decisions appropriate to their level of authority.⁶⁵

pp. 168-169), Procedures (see *Communicationes*, 2, [1970], pp. 181-191 for a summary of the first nine sessions), and The Fundamental Law of the Church (see *Communicationes*, 9 [1977], p. 288).

⁶³ See SCR, *Criteria and Norms for the Election and Confirmation of [female] Superiors General*, 2 May 1953, prot. no. 01637/53, in OCHOA, *Leges Ecclesiae*, vol. 5, col. 4117. These norms reiterated the principles which were to be adhered to by general chapters: a general superior who had been in office for twelve consecutive years, was not eligible canonically for reelection, but she could be postulated by the general chapter, provided there was an extraordinary reason for this and the constitutions permitted it. A two-thirds majority of the vote was required. The simple wish of the electors, or the suitability of the candidate were not judged to be sufficient reasons for this exceptional method of election. The general chapter had to obtain letters from the local ordinary who had the right to preside at elections in congregations of women, in support of a petition to the Holy See for dispensation from the norms of ordinary election. These provisions retained the force of law during the Vatican Council and afterwards. See also *CIC* /17, c. 507 § 3.

⁶⁴ See SECRETARY OF STATE, rescript *Cum admotae*, 6 November 1965, in *AAS*, 59 (1967), pp. 374-378, English translation in *CLD*, vol. 6, pp. 147-152. This rescript gave authority to heads of clerical institutes of pontifical right in matters formerly not within their competence, e.g., permission to grant extended absence from the community house and to grant an indult of separation from the institute to those in temporary profession.

⁶⁵ See SCR, response [to the President of the Union of Superiors General in Rome], 12 July 1965, prot. no. S.R. 1445/64, in OCHOA, *Leges Ecclesiae*, vol. 3, col. 3303.

The decree *Religionum laicalium*⁶⁶ extended those faculties that were not connected with the clerical character to superiors general of lay religious institutes of pontifical right. The instruction *Renovationis causam* gave jurisdictional faculties to women religious in relation to formation.⁶⁷ However, the decree *Clericalia instituta* issued later that year (1969) said that lay members of clerical institutes could not exercise offices that had a direct connection with the priestly ministry;⁶⁸ the general chapter could grant active and passive voice regarding other forms of chapter, elections or other matters decided at general chapter; the chapter could decree that lay religious could hold the office of councillor at any level.⁶⁹ However, the offices of supreme moderator or superior or vicar

⁶⁶ See SCR, decree *Religionum laicalium*, 31 May 1966, in *AAS*, 59 (1967), pp. 362-364, English translation in *CLD*, vol. 6, pp. 153-156 (= *Religionum laicalium*). These faculties related to the rights of persons, e.g., dispensations from impediments to entrance, vows, etc., and to alienation of property and were formerly limited to those who exercised jurisdiction. The faculties were attached to the office thus ensuring that a new general superior would not have to request them. The decree also clarified which faculties could be delegated and subdelegated by the general superior with the consent of the general council. The Holy See proved flexible in relation to the method of requiring the consent or advice of the council. One difference between *Cum admotae* and *Religionum laicalium* related to the dispensing capacity of superiors: *Cum admotae* no. 14, p. 150, enabled clerical superiors to dispense the temporary professed from vows, whereas *Religionum laicalium* no. 3, p. 154, required non-clerical superiors to seek this dispensation from the local ordinary.

⁶⁷ See CRSI, instruction *Renovationis causam*, 6 January 1969, in *AAS*, 61 (1969), pp. 103-120 (= *Renovationis causam*). This instruction was in response to a request from superiors general for faculties to change formation practices, to establish novitiates, admit to final profession even if the formation period was not continuous, etc. See USG, "Pétition de Union des Supérieurs Généraux au Souverain Pontife," 8 December 1967, in *La Documentation catholique*, 46 (1969), pp. 168-169.

⁶⁸ See *PC*, no. 15, p. 620; *ES II*, no. 27, p. 630 and CRSI, decree *Clericalia instituta*, 27 November 1969, in *AAS*, 61 (1969), pp. 739-740, English translation in *CLD*, vol. 7, pp. 468-469. *Perfectae caritatis* and *ES II* had declared that general chapters were to explore the ways in which non-clerical members of clerical institutes could obtain active voice in certain specific community acts and in elections, and, in the case of some offices, even passive voice. The Congregation for Religious and Secular Institutes was requested to clarify which offices lay religious could hold in clerical institutes. Faithful to the principles of consultation and collaboration enunciated by the Vatican Council, the Congregation consulted both its own consultors and the Union of Superiors General before issuing the decree *Clericalia instituta*, which gave general chapters the right to decree that lay religious could hold any purely administrative office or other office that did not relate directly to the priestly ministry.

⁶⁹ Lay brothers in individual institutes were given voice in elections when this faculty was requested. For example, in 1969, Franciscan lay brothers received faculties for voting in elections. See CRSI,

general at provincial or local levels was restricted to clerics. These provisions required further explanation in the USA, as is evident from the declaration delivered to Major Superiors by the Apostolic Delegate in 1970 which pointed out that *Clericalia instituta* was not motivated by “clericalism.”⁷⁰ It reiterated the basic equality of both clerics and lay as religious, but based its decision on the fact that lay religious had neither the “special preparation” nor the “social” charism demanded for priestly ministry.⁷¹

In response to the many queries from superiors general of lay religious institutes, the delegated faculty to grant an indult of departure from the institute for those in temporary vows was given to lay religious superiors in 1969, thus acknowledging that an act that heretofore implied the exercise of jurisdiction could now be executed by non-clerical superiors and general chapters by specific grant of the Holy See.⁷² For those who

rescript to the OFM Procurator General [private], 7 February 1969, prot. no. 11897/69, in OCHOA, *Leges Ecclesiae*, vol. 4, col. 3714.

⁷⁰ See CRSI, declaration [n.d.], prot. no. 1511/56, distributed to Major Religious Superiors in the USA by the USA Apostolic Delegate (=1970 Declaration), 17 April 1970, prot. no. 811/70, in *CLD*, vol. 7, pp. 469-471.

⁷¹ See *ibid.*, p. 471. Since *PC*, no. 10 had permitted the ordination of brothers who would provide for the internal sacramental needs of the community, some brothers were ordained and incardinated into their religious institute. These priests were then subject to a superior who was not an ordinary. This type of situation contrasted with those brothers in clerical institutes who because of their non-clerical status could not be superior of ordained members. See A.G. VON KOBBS, *Ordained Religious Brothers: The Evangelical and Ecclesial Elements of the Decree Perfectae caritatis* 10 § 2, Rome, Pontificia Universitas Gregoriana, 1993, pp. 173-183.

⁷² See CRSI, decree *Cum superiores*, 27 November 1969, in *AAS*, 61 (1969), pp. 738-739, English translation in *CLD*, vol. 7, p. 77. This faculty derogated from *Religionum laicalium*, no. 3, that had restricted the faculty to dispense from temporary vows to clerical religious only, implying that this was an act of jurisdiction that laymen and women were *inhabiles* to perform. The capacity to act in accordance with the provisions of *Cum superiores*, at the very least, seemed to imply that non-clerical superiors, by specific grant of the Holy See, now possessed the capacity to participate in the exercise of jurisdiction. In the revised Code, the authority to grant an indult of departure to the temporary professed is given by law to supreme moderators of pontifical institutes acting with the consent of their councils. Dispensation from the vows occurs *ipso facto* once this indult has been granted. However, superiors general of diocesan institutes and superiors of *sui iuris* monasteries, still require the confirmation of the local diocesan bishop for the validity of the act of departure. Canon 688 § 2 omits any reference to what happens to the vows after the superior with the consent of the council grants the indult of departure. However, c. 692, which treats of the departure

did not accept the possibility that lay persons could exercise jurisdiction, *Cum superiores* was understood to give lay superiors the faculty to grant an indult of departure from the institute while dispensation from the vows occurred *ipso facto* as a result of this action. For those who believed laypersons were capable of exercising jurisdiction, *Cum superiores* signalled the possibility that lay persons could exercise some form of quasi-jurisdiction. The canonical interpretations of this decree exemplified the two schools of thought on the possession and exercise of *potestas* by laypersons, a debate that developed after the Vatican Council and continued on after the promulgation of the Code.⁷³

The Apostolic Exhortation on the Renewal of Religious Life *Evangelica testificatio* reemphasized the ecclesial dimension of religious consecration and acknowledged the partnership that must exist among all those who are engaged in the mission of the Church. The principles that characterised that partnership, participation, collaboration and subsidiarity were as significant for the relations between the Church and religious institutes as they were for the internal government of religious institutes. In contrast to the formulation in *CIC/17*, the consecrated life was described in terms of a living organism (*Evangelica testificatio*, nos. 11, 50) that changes and develops.⁷⁴ Implied in this description is the belief that the formulation of law in relation to consecrated life has to reflect this dynamism. This, as we shall see, was one of the principles adopted by the study group on institutes of consecrated life. The description of the general chapter would have

of a perpetually professed member, specifies that dispensation from the vows occurs in virtue of the law itself, once the proper procedures have been adhered to.

⁷³ See E. McDONOUGH, "The *Potestas* of Religious Superiors: Background for Canon 596," in *RfR*, 54 (1995), p. 939 (=MCDONOUGH, "The *Potestas* of Religious Superiors").

to reflect its on-going role in the life of an institute. The clarification given by the exhortation regarding authority and individual freedom was significant: the freedom of the person was not in conflict with the exercise of authority, since that exercise necessarily involved dialogue between the superior and the members in their common search for the will of God (*Evangelica testificatio*, no. 25).⁷⁵ Both are necessary for government. The new emphasis on the rights of the person was in harmony with the Church's vision of the fundamental equality of all persons. Legislation reflected that belief.⁷⁶

The extent of authority and the issue of how it was to be exercised continued to call for clarification particularly in view of the extensive authority in relation to renewal that was granted to religious institutes.⁷⁷ The period of experimentation permitted to congregations caused a number of problems in relation to the concept of authority. For

⁷⁴ The description of religious life in terms of "charism" rather than the juridical "state of life" signals a fundamental shift in magisterial teaching. See P.E. WALTER, "Religious Life in Church Documents," in *RfR*, 51 (1992), p. 555.

⁷⁵ Paul VI warned that the trend in the world was for personal development in the context of complete autonomy, which situation could not pertain to the living of obedience and the exercise of authority. See PAUL VI, allocution to the Moderators of the National Conferences of Major Superiors, 19 October 1972, in *AAS*, 64 (1972), pp. 688-691, English translation in *CLD*, vol. 7, pp. 452-453.

⁷⁶ In a letter to the Archbishop of Besançon, the Prefect of the Sacred Congregation for Religious said that the consecrated life aims at the complete development and maturity of the human person. The freedom to live in this way was a right to be respected. See I. ANTONIUTTI [PREFECT, SCR], letter to the Archbishop of Besançon on the occasion of the National Congress for Chaplains of Religious Women in France, July 1964, 23 June 1964, in *CLD*, vol. 7, pp. 418-419; in 1974, the juridical effects of the simple vow of poverty were declared to be the same as the juridical effects of a solemn vow of poverty (CRSI, rescript to the President of the Union of Major Superiors of Austria, 8 July 1974, prot. no. SpR, 127-71, in OCHOA, *Leges Ecclesiae*, vol. 5, col. 4308); in 1974, procedures were provided for the dismissal of religious, which enabled religious ordinaries and superiors of exempt clerical congregations to follow the simple procedure of dismissal used in non-exempt institutes, thus ensuring the same procedure was used in all institutes of men (see CRSI, decree *Processus iudicialis*, 2 March 1974, in *AAS*, 66 [1974], pp. 215-216, English translation in *CLD*, vol. 8, pp. 453-455); a similar procedure for the dismissal of religious women appeared in a circular letter from CRSI in 1976 (see CRSI, circular letter, [n.d.] December 1976, in *CpRM*, 57 [1976], pp. 371-373, English translation in *CLD*, vol. 8, pp. 448-452).

⁷⁷ See CRSI, decree *Ad institutenda experimenta*, 4 June 1970, in *AAS*, 62 (1970), pp. 549-550, English translation in *CLD*, vol. 7, pp. 80-82 (=CRSI, *Ad institutenda experimenta*).

example, the question arose concerning the possibility of an exclusive collegial form of ordinary government for an entire institute, province, or for individual houses, with the consequence that the superior would be a mere executor of the will and decisions of the group. The Congregation for Religious and Secular Institutes unambiguously reiterated the principles of *PC*, no. 14 and *Evangelica testificatio*, no. 25, which stated that superiors must possess personal authority. The principles of consultation and the right of proper law to impose its own limits on that authority was clearly established, but the decree *Experimenta circa* issued in 1972 indicated the unacceptability of such an understanding of collegiality in the governance of institutes.⁷⁸

The general chapter acts sent to the Holy See after the promulgation of *ES II* enabled the Congregation to assemble a list of observations and suggestions for general chapters of the English-speaking world.⁷⁹ In 1972, the Secretary of the Congregation sent a letter to superioresses general concerning modification of constitutions.⁸⁰ The section concerning government indicated that direct election of the general superior had been permitted to some small communities but this permission was exceptional. The principles

⁷⁸ See CRSI, decree *Experimenta circa*, 2 February 1972, in *AAS*, 64 (1972), pp. 393-394, English translation in *CLD*, vol. 7, pp. 484-485 (=CRSI, *Experimenta circa*). Institutes continued to probe the issue of authority. A private reply to the request of a special general chapter to dispense with the office of local superior elicited the response from the Sacred Congregation that this office cannot be dispensed. See CRSI, reply, [private], 5 October 1969, prot. no. 1678/69, in *CLD*, vol. 7, p. 467 [original text in English]. In 1980, the faculty to allow all sisters of a certain institute to take part in a general chapter of affairs was denied but the faculty was given to elect the general superior by direct and universal suffrage. See CRSI, rescript, 8 November 1980, prot. no. 31844/80, in *OCHOA*, *Leges Ecclesiae*, vol. 6, col. 4810. See also *CLD*, vol. 9, pp. 356-357 and 365-366.

⁷⁹ See CRSI, circular letter to the President of the Union of Superiors General, 10 July 1972, prot. no. Sp. R. 194/72, in *OCHOA*, *Leges Ecclesiae*, vol. 5, col. 4150. Although not law, this letter provided a clear indication of the thinking of the Holy See in relation to the authority structures in institutes of consecrated life.

of collaboration and adequate representation of the members was emphasized. The practice of giving active voice to those in temporary profession was acknowledged but it was not considered feasible to give passive voice to those who were not permanent members, nor could these members hold positions of authority in the institute. The authority of councils was to be clearly determined by the general chapter and the principle of consultation adhered to. Since the law of the Church permitted the general chapter to determine what should be done in some juridical matters, e.g., the exercise of active and passive voice, these matters should be expressed in the constitutions.⁸¹

These acts of the Holy See⁸² influenced the development of the concept of the authority of superiors and general chapters. However, the decentralization of authority promoted through the values of autonomy, participation and subsidiarity exists alongside

⁸⁰ This letter referred to the notification sent to religious institutes in 1967. See CRSI, notification to the President of the Union of International Superioresses General, 4 December 1967, prot. no. A. G. 2553/67, in OCHOA, *Leges Ecclesiae*, vol. 3, col. 3613.

⁸¹ Some congregations experimented with giving active and passive voice to those in temporary profession. However, the Sacred Congregation, while permitting such persons to have active and passive voice in electing representatives from the provincial chapter to the general chapter, retained the principle that active voice only was to be permitted to such persons at the general chapter. See CRSI, rescript, 17 December 1973, prot. no. 48218/73, in OCHOA, *Leges Ecclesiae*, vol. 5, col. 4252.

⁸² Other acts were also influential, e.g., the 1971 extension of lay jurisdiction in marriage tribunals revoked the decision of the Congregation of the Council given in 1919 that restricted exercise of the judicial function to clerics. See PAUL VI, motu proprio *Causas matrimoniales*, 28 March 1971, in *AAS*, 63 (1971), pp. 441-446, English translation in *CLD*, vol. 7, pp. 969-974. As early as 1966, the Code Commission study group "On Procedures" proposed that, by indult of the Episcopal Conference, laypersons be allowed to function as lay judges in collegiate tribunals of first instance with two clerics, in areas where it was impossible to constitute a tribunal of three clerics. This proposal was justified historically in that classical canonists admitted that laypersons could be rendered *habiles* for the judicial function and that Vatican II had called for the exercise, for a spiritual purpose, of certain ecclesiastical functions by laypersons. See *Communicationes*, 2 (1970), p. 184 and *LG*, no. 33, p. 391. After Pope Paul VI authorized Episcopal Conferences to appoint laypersons to function in collegiate tribunals, the aforementioned study group formulated a draft canon that gave juridical expression to that authorization. In their 1976 *Schema*, they proposed to extend the judicial function of the power of governance to laymen beyond matrimonial cases as permitted by *Causas matrimoniales*. See also PAUL VI, apostolic constitution *Ministeria quaedam*, 15 August 1972, in *AAS*, 64 (1972), pp. 529-533 (= *Ministeria quaedam*). This constitution also redefined "cleric" as one who had received ordination to the diaconate.

centralization of authority.⁸³ The power of superiors and chapters reflected that dichotomy and found expression as public dominative power with jurisdiction in certain defined areas. The jurisdiction of lay religious superiors and chapters, however, remained somewhat ambiguous, particularly in relation to its origin and nature.

2.2.2 – Process of the Revision of the Law on Religious

The study group “On Religious” began its work in 1966.⁸⁴ Their proposal for the 1977 *Schema* was submitted to the consultants, discussed and revised in twelve sessions between 1978 and 1980. This was followed by the 1981 Report that synthesized the comments concerning the 1980 *Schema*. Finally, as a result of the deliberations of the

⁸³ See J. CHITTISTER, “The New Code and the Development of Religious Life,” in *The Way Supplement*, 50 (1984), pp. 113-121.

⁸⁴ See *Communicationes*, 2 (1970), pp. 168-181; *ibid.*, 5 (1973), pp. 47-69; *ibid.*, 6 (1974), pp. 72-93; *ibid.*, 7 (1975), pp. 63-92. The Commission for the Revision of the Code of Canon Law was created in 1963. See JOHN XXIII, document, 28 March 1963, in *AAS*, 55 (1963), pp. 363-364. This group consisted of 29 Cardinals. Paul VI added 12 Cardinals to the original group in 1963 and 70 consultants in 1964, 16 of whom were religious priests and 1 lay canonist. See PAUL VI, document, 7 November 1963, in *AAS*, 55 (1963), p. 1056 and *id.*, document, 25 April 1964, in *AAS*, 56 (1964), p. 473. 21 more Cardinals were appointed in 1965. See PAUL VI, apostolic letter *Finis Concilio*, 3 January 1966, in *AAS*, 58 (1966), pp. 37-40, English translation in *CLD*, vol. 6, pp. 252-255. There had been no women present at the Vatican Council until Paul VI added 23 women to the list of auditors allowed to attend. A number of these were religious. The Union of International Superioresses General came into being as a result of a suggestion made to these women auditors by the Cardinal Prefect of CRSI. These women took an active part in disseminating information concerning the revision of the law. *Lumen gentium* and *Christus Dominus* broadened the understanding of the term “religious” to include all those who dedicated their lives to God in a form recognised by the Church with some form of sacred bond or vow. However, *Perfectae caritatis* distinguished between the religious institute, the society of common life without vows and the secular institute. This text acknowledged that secular institutes were not religious institutes *per se*, but the general principles governing the renewal of the special way of life lived by members of all three categories in the revision, were made applicable to each group. The title of the study group “On Religious” (*CIC*/1917, c. 487) was changed to “Institutes of Perfection” to include all of the above. The name changed once more to “Institutes of Consecrated Life,” a short form of the title accepted by the study group in May 1974 (Institutes of Life Consecrated by Means of the Profession of the Evangelical Counsels, a title more in keeping with the theology of Vatican II). This description suited all the forms of institute whose members dedicated themselves in a public fashion, with recognisable bonds, to the service of God in the Church. See *Communicationes*, 2 (1970), p. 273. See also *LG*, no. 44, pp. 403-405 and *CD*, no. 33, p. 383. The new title was disputed. See M. SAID, “The Present State of the Reform of the Code Concerning the Section *De institutis perfectionis*,” in *StC*, 8 (1974), pp. 219-221 (=SAID, “Present State”).

Plenary Meeting of the Commission that took place 20-28 October 1981, the final text was submitted to the Holy Father. He personally examined it before giving it to a small group of consultors for their consideration. Some of the changes made at this stage of the process, particularly in relation to participation in the exercise of power of governance by laypersons, impacted on the question of the authority exercised by women religious and brothers and by the general chapters in their respective institutes.

Since the Code is a system of rules, the language of power and authority abounds. However, the style and kind of authority language used is drawn from Roman law rather than from the New Testament.⁸⁵ This meant that Christian values were framed in juridical rather than in pastoral terms. It was the great task of Vatican II to bring about pastoral renewal in the Church by returning to the scriptures and other sources of the Christian tradition. As a result, the kind of authority exercised by Jesus in the New Testament⁸⁶ became the model of authority presented by Vatican II, one that represented Jesus as servant. Human distortion had altered the exercise and nature of authority in the Church.⁸⁷ Accordingly, one of the tasks of the revision committee was to translate the conciliar principles into juridical language, a task that required the juxtaposition of theological

⁸⁵ There are over two hundred examples of the use of “*potestas*” and over three hundred uses of “*auctoritas*” in *CIC*. See X. OCHOA (ed.), *Index verborum ac locutionum Codicis iuris canonici*, Vatican City, Libreria editrice Lateranense, 1984, pp. 44-46, 361-363 (=OCHOA, *Index verborum*).

⁸⁶ New Testament Greek uses “*exousia*” and “*dunamis*” to describe power and authority. Both words are similar in meaning and are almost interchangeable in use. However, the former is closer to our use of “authority” that is the overall power that authenticates action. *Dunamis* is used in the sense of power to act, corresponding to our use of “power” as the force that acts because of the authority exercised or given. See CORIDEN, *Canon Law*, p. 109.

⁸⁷ For a summary of some of the distortions of authority in Christian history, see *ibid.*, pp. 114-118.

principles and juridical concepts. This effort was particularly evident in the section on religious law.

In his directions to the Code Commission members, Paul VI requested them to be guided by the values of Vatican II and by the observations of the various commissions.⁸⁸ He also drew attention to two seemingly contradictory phenomena, “an exaggerated view of liberty” and “a certain progressive development which is not only useful but necessary.”⁸⁹ The study group “On Religious” would have to balance these two aspects, that of liberty and that of caution, particularly in the discussion on the authority of religious superiors and general chapters in non-clerical institutes. Two sets of principles governed their work, those approved by the Synod of Bishops for the entire revision process, together with some adopted by the study group itself.⁹⁰ The juridical norms were to foster the growth of institutes;⁹¹ promote knowledge of the founder and spiritual heritage;⁹² ensure the flexibility necessary for future adaptation; ensure greater

⁸⁸ See PAUL VI, allocution to the Members and Consultors of the Code Commission for the Revision of Canon Law, 20 November 1965, in *AAS*, 57 (1965), pp. 985-989, English translation in *CLD*, vol. 6, pp. 141-145.

⁸⁹ See PAUL VI, allocution to the College of Cardinals, 24 June 1967, in *AAS*, 59 (1967), p. 786, English translation in *CLD*, vol. 6, pp. 304-305. There was concern in Rome regarding some interpretations of the principles of Vatican II. See, for example, CDF, Letter to Bishops, 24 July 1966, in *AAS*, 58 (1966), pp. 659-661, English translation in *CLD*, vol. 6, pp. 260-263, which was sent to Episcopal Conferences, initially in secret, but subsequently, published in *AAS*.

⁹⁰ See *Communicationes*, 1 (1969), pp. 77-100. A member of the study group, J. Beyer, synthesised those other principles that were emphasised by the *relator*, M. Said. See *Communicationes*, 2 (1970), pp. 174, 176-178 and also J. BEYER, “Institutes of Perfection in the New Law of the Church,” in *The Way Supplement*, 13 (1971), pp. 92-93 (=BEYER, “Institutes of Perfection”).

⁹¹ See *Communicationes*, 2 (1970), pp. 170-173. *CIC/17* formulated the law in purely juridical terms. However, it is difficult to formulate the charismatic nature of consecrated life in juridical terms. Consequently, the formulators of the revised law incorporated some theological input into the law to draw attention to the charismatic nature of the consecrated life.

⁹² The study group affirmed the need to allow for the different types of institute and quoted *PC*, nos. 2 and 3, and the norms of *ES II*, which enabled each general chapter to make those changes most appropriate

participation and representation of all the members. A number of other general principles informed the work too: there were to be general principles applicable to all institutes and room for individual institutes to express their particular charism; all discrimination between institutes of men and women was to be avoided;⁹³ provision was to be made in the general law for a just application of the principle of subsidiarity;⁹⁴ the greatest possible harmony was to be achieved between common law and the particular law of each institute; each institute was to have true liberty to establish norms which are suitable to its life and work within the limits indicated by the exigencies of common law; the greatest possible respect was to be accorded to the dignity of the human person, his rights and personal

to the particular way of life of the institute concerned. This principle contrasted strongly with *CIC/17*, the *1901 Norms*, and the 1921 Criteria, which required those writing constitutions to follow a prescribed format. This had the consequence of producing constitutions that were rather uniform. See *Communicationes*, 2 (1970), p. 176.

⁹³ This norm was strongly expressed as “constantly in the mind of the Council, that there should be no discrimination between institutes of men and women” (*Communicationes*, 2 [1970], pp. 176-177). The report in this edition of *Communicationes* stated that while these discriminatory norms might have been applicable when the Code was written, they were unthinkable in the present situation (“[...] nostris tamen temporibus impossibile videtur normas discriminatorias hoc in campo formulare” [ibid.]). It is interesting to note Beyer’s comment on this norm. Writing in 1971, he said that he thought that the only way to achieve a change of mind in relation to discrimination against women would be to change the personnel and organisations responsible for the direction of consecrated life at the same time as “we” [the study group] change the structures. What Beyer had in mind was, e.g., the fact that under *CIC/17*, women religious had guardians, were reliant on men in relation to theology, canon law and spirituality, since women could not study these disciplines, relied on men for final decisions, approval of actions, etc., and male religious governed cloistered women. See BEYER, “Institutes of Perfection,” pp. 97-98.

⁹⁴ See *Communicationes*, 2 (1970), pp. 177-178. The principle of subsidiarity looks to lower levels to use that authority with which it is invested, rather than refer all decisions to a higher authority. A lower level is never sufficient in itself. It has authority to act but it needs recourse outside itself when difficulties arise. Örsy defined it thus: “A superior organ should never take over the function of an inferior one, but should only subsidize its strength when necessary” (L. ÖRSY, “Government in Religious Life,” in *The Way Supplement*, 2 [1966], pp. 105-106). M. Said, the *relator* of the study group believed there had to be “a large application of the principle of subsidiarity with the transfer of a part of the power of the central authority of the Church to the internal life of the institute” (M. SAID, art. “Diritto dei religiosi,” in *Dizionario degli istituti di perfezione*, vol. 3, Paoline ed., Rome, 1974-2003, pp. 658-659).

responsibilities, and his normal development, to enable him to achieve physical and psychological maturity.⁹⁵

The juridical nature of the law did not express adequately the charismatic nature of the life of the religious.⁹⁶ Detailed legislation (as in many revised constitutions) covered many elements that would have been more appropriately found in particular law. The distinction between exempt and non-exempt institutes that was the basis for much of the law led to misunderstandings in relation to legitimate authority, particularly regarding the local bishop. Different regulations for men and women, distinctions made in relation to lay and clerical institutes, nuns and sisters, religious institutes and societies of common life, were regarded by some as evidence of discrimination. Some sections of the law, e.g., on dismissal, confessors for nuns and sisters and formation were too complicated. There were too many instances when recourse to the Holy See was necessary. In other words, the formulation of the new law would have to be quite different to *CIC/17*.

⁹⁵ See *Communicationes*, 1 (1969), pp. 82-83. In relation to the emphasis on the rights of persons, Beyer comments that the chairman of the study group, M. Said, had a "constant care for the liberty and dignity of the human person" (BEYER, "Institutes of Perfection," p. 101).

⁹⁶ It could be argued that law can never adequately express the charismatic nature of a religious institute. However, the consultants certainly made a great effort to include this aspect in *CIC*. In a talk given to the Canadian Canon Law Society in 1974, the *relator* of the study group explained that there was no systematic body of law relating to religious from which to begin the revision process. This difficulty was the result of two main factors: the older monastic orders and mendicants had such a well developed body of particular law that there was no need to have intervention by the Holy See and secondly, *Circa pastoralis* had severely prohibited any form of religious life for women other than that of cloistered nuns with solemn vows (see PIUS V, apostolic constitution *Circa pastoralis*, in *MBR*, vol. 4, part 2, pp. 292-294). This meant that when *CIC/17* was being prepared, there was a need to include legislation that provided for the many institutes of simple vows that had come into being in the Church and that had been tolerated as opposed to being formally approved. *CIC/17* had a number of characteristics that needed change or adjustment to the spirit of Vatican II. See SAID, "Present State," p. 216.

2.2.3 – The Authority of General Chapters According to *CIC* 1983

While *CIC/17* spoke of the power of the general chapter (c. 501 § 1), it did not comment on its authority. The revised Code, on the other hand, provides an explanation of the authority of the general chapter in c. 631. With no blueprint from the former law on which to base its revisions, the study group “On Religious” looked to principles enunciated by the Vatican Council, particularly in *LG*, nos. 12, 45,⁹⁷ *PC*, no. 14, *ES II*, nos. 1, 7, 18, 19, and to the practical experiences of general chapters for the formulation of the authority of the general chapter.⁹⁸ *Perfectae caritatis*, no. 14 had asked chapters to give expression to the involvement and concern of all the members for the good of the institute. *Ecclesiae sanctae II* had explained how this could be done: by giving members a real and effective role in the choice of chapter and council officials. To accomplish the task, superiors at every level were to be given appropriate authority. This in turn would minimize recourse to higher authorities.

The principles of coresponsibility, representation, subsidiarity and the expression of authority appropriate to the times underpinned the approach of the study group (*ES II*, nos. 7, 18). The principle of dynamism was recognised by the norms of *ES II* and verified by the practical experience of chapters of renewal in the aftermath of the Vatican Council: renewal is a process that has to be fostered continually (no. 19). Consequently, the law

⁹⁷ Authority in religious institutes flows from ecclesiastical authority and depends upon it (*LG*, no. 12). All religious are subject to the Roman Pontiff as their highest superior (*LG*, no. 45). Authority and obedience are complementary aspects of the same participation in Christ’s offering to his Father. Like Christ, authority must be exercised in a spirit of service (*Essential Elements*, no. 25).

⁹⁸ The principles that guided CRSI when correcting and examining constitutions were published unofficially in its periodical *Commentarium pro religiosus* in 1978. The section on government summarised the *ius vigens* concerning the authority of the general chapter. See CRSI, “Index articulorum pro redigendis

would have to allow for this dynamic. Perhaps because the principles concerning general chapters were so clear in *ES II*, the question of its authority as distinct from its power received little recorded attention from the study group. However, the practical expressions of authority by chapters and superiors had, in some experiments, gone too far. It was necessary, therefore, to describe in precise terms the authority of the general chapter while at the same time acknowledging the right of each institute to determine how this would function in its particular situation.

The first issue to be determined related to the extent and limits of the authority of chapters as far as the universal law is concerned. Accordingly, c. 586 § 1 speaks of the “rightful autonomy” of each institute, i.e., the right of an institute to govern itself according to the nature, spirit and purpose of the institute as established by the constitutions and other proper law as well as its limits (c. 578).⁹⁹ For institutes of pontifical right and for exempt institutes, the higher authority is the Holy See (cc. 591, 593). For institutes of diocesan right, the higher external authority is the diocesan bishop (c. 594), who also has authority in those internal matters that exceed the power of the internal authority (c. 595).

An associated concept related to the relationships between religious institutes and the hierarchy. Since the authority of religious superiors comes “from the Spirit of the Lord in connection with the sacred hierarchy, which has granted canonical erection to the institute and authentically affirmed its specific mission” superiors must “take care of the

constitutionibus ‘De capitulo generale’,” in *CpRM*, 59 (1978), pp. 198-200, English translation in *RfR*, 38 (1979), pp. 75-77 (=CRSI, “1978 Norms”).

⁹⁹ See also *CD*, no. 35, p. 585 and *Mutual Relations*, nos. 13, 34, pp. 219, 231.

special mission of the institute, develop it and work at its effective insertion into ecclesial activity, under the direction of the bishop” (*Mutual Relations*, no. 13). As a result, the real autonomy of religious institutes can never mean independence from the Church. The right degree of autonomy and the limits of competence are contained in the common law and in the constitutions or rules of each institute (*ibid.*).

Another issue that required clarification concerned the relationship between the two forms of internal authority named in the Code: the personal authority of superiors (c. 618),¹⁰⁰ and the collegial authority of chapters (c. 631). Neither form can be used exclusively.¹⁰¹ The personal authority of superiors is never absolute as it is vested in particular persons only for a particular period of office (c. 624) and is exercised in cooperation with their councils (c. 627). The degree to which the personal authority of a superior is circumscribed depends on the provisions of proper law. This means that the exercise of internal authority in every institute can be determined in accordance with its particular spirit and charism. Universal law asserts the right of superiors to this personal authority and provides only one instance in which the superior must act collegially with the council, that is, in the case of dismissal of a religious (cc. 694 § 2, 697, 3°, 699). Under *CIC/17*, the personal authority of the superior assumed more significance than the collegial form of governance. In the period of experimentation, the pendulum swung the other way.

¹⁰⁰ Canon 618 reflects the matter of *PC*, no. 14. In the early drafts of the canon, the emphasis on participation and coresponsibility was stressed to such an extent that the principle of the personal authority of the superior was minimized. The final version, while protecting the principles of participation and coresponsibility, nevertheless stated the personal authority of the superior in unambiguous terms. See *Communicationes*, 9 (1977), pp. 53-61.

¹⁰¹ In 1972, CRSI made it clear that an exclusive and collegial form of ordinary government could not be accepted in an institute, a province or a local community. This form of government would render the superior a mere executor of the will of the group. However, personal authority cannot be exercised in

In order to ensure that personal authority did not become authoritarian, councils were to function (*PC*, no. 14), participation of all the members was to be promoted especially in relation to selecting members for the general chapter (*ES II*, no. 18), subsidiarity was to operate and superiors at all levels were to have the necessary faculties to avoid unnecessary recourse to higher levels (*ES II*, no. 18).

The only function attributed to the general chapter in *CIC/17* was in relation to elections (c. 507 § 1). In fact, in some institutes, the general chapter was merely the vehicle for the election of the general superior and council. The ordinary function of the general chapter, as it evolved through the centuries related to the on-going development and direction of the institute. However, in the years of experimentation and change following the Vatican Council, general chapters became the vehicle for the exploration and expression of different notions of authority and leadership, a change that was radical and far-reaching. The authority given to general chapters by *ES II* was of a scope never before given in the Church: chapters could alter, even though temporarily, the constitutions of the institute and were given the assurance that if prescriptions were counter to common law, that the Holy See would readily authorize them as the need arose.

The 1978 Norms followed by SCRIS in examining and correcting constitutions described the general chapter as “the supreme internal authority in the institute” (no. 2). Its authority was to have “care of the religious and apostolic vitality of the institute, and also for the legislation necessary for the whole institute (cf. *ES II*, part 1, no. 1), the election of the general superior and others (councillors, higher officials) according to the prescriptions

isolation. As a result, both universal and particular law provided for legitimate consultation and limits on the exercise of personal authority. See CRSI, *Experimenta circa*, pp. 484-485.

of the constitutions” (ibid.). It could also establish norms for the erection and change of provinces which were to be included in the constitutions (ibid. 4).¹⁰²

When the consultors met, in November 1979, to discuss the authority of the general chapter, the principles that guided them were: authority must be exercised as service; it has its origin in God; it is mediated through the Church; because of its ecclesial dimension, authority has limits; in their expression of internal authority, institutes have a rightful autonomy; there are two forms of authority, personal and collegial; the universal law provides safeguards in relation to the expression of each.¹⁰³ The text proposed was:

§ 1 The general chapter, which represents the whole religious institute, has supreme legislative authority in the institute. This particularly pertains to 1) protecting the proper charism of the institute and to determining further detail; 2) electing the supreme moderator; 3) dealing with the more important affairs of the institute and determining norms that must be obeyed in the institute and its superiors.

§ 2 According to the norms determined in the institute’s own law, not only lower chapters (provincial, regional, etc.) and communities, but even individual members, may send proposals and suggestions to the general chapter.

§ 3 In each individual institute, the proper law is to define the order of celebrating the general chapter, how business must be conducted and elections carried out. Norms are provided for protecting the freedom of the chapter in this ordo. All members, whether in the actual chapter or outside of it must abstain from abuse and most particularly in relation to the procuring of votes for themselves or others.¹⁰⁴

¹⁰² See also CRSI, *Ad instituenda experimenta*, pp. 80-81.

¹⁰³ See *Communicationes*, 12 (1980), pp. 170-175. The numbering of the canons “On Religious” changed according as the study group was working on “internal government,” the entire section “On Institutes of Perfection” or on the Code in its entirety. Consequently, we will refer to the text only.

¹⁰⁴ “§ 1 Capitulum generale, quod totum institutum religiosum repraesentat, supremam auctoritatem normativam in eodem instituto obtinet (habet). Eius praecipue est: 1) charisma instituti proprium tueri et ulterius determinare; 2) moderatorem supremum instituti eligere; 3) maiora negotia instituti tractare necnon directivas normas eidem instituto eiusque superioribus (auctoritatibus) tradere. § 2 Iuxta normas a quolibet instituto in iure proprio determinatas, non modo capitula inferiora (provincialia, regionalia, etc.) et

What is striking about this initial formulation is the way in which it provides general principles (concerning representation, subsidiarity, functions, participation of all the members, the place of proper law) while at the same time protecting the right of each institute to govern in accordance with its own spirit and traditions. Only minor changes were proposed in relation to the first paragraph: the chapter was “a sign of unity in diversity” and an additional function was to “foster appropriate renewal.”¹⁰⁵ The expression of the authority of the chapter must not detract from the authority of the general superior. Consequently, a lesson learned from the period of experimentation resulted in its description as “extraordinary” by comparison with the ordinary authority of the supreme moderator that remained even while the chapter was in session. The “legislative authority” of the chapter was omitted in favour of “supreme authority according to the constitutions,” thus allowing each institute its particular expression. This change reflected the wide authority of the general chapter not just in relation to establishing, modifying or repealing norms. That authority impacted on every area of the lives of the members in a manner specified in both constitutions approved by the competent authority and other norms approved by the general chapter.

The formula accepted was:

§ 1 The general chapter, which has supreme authority in the institute in accordance with the constitutions, is to be composed in such a way that it represents the whole institute and becomes a true sign of its unity in

communitates, sed etiam quilibet sodalis sua proposita et suggestiones capitulo generali libere mittere valet. § 3 In unoquoque instituto ius proprium ordinem celebrandi capitulum definiat, tum circa negotia tractanda tum circa electiones peragendas. Quo in ordine normae statuuntur ad tuendam capituli libertatem. Sodales omnes, sive de gremio capituli sint sive extranei, abstineant a quovis abusu et potissimum a suffragiorum procuratione tam pro seipsis quam pro aliis” (*Communicationes*, 12 [1980], p. 170).

¹⁰⁵ See *Communicationes*, 12 (1980), p. 170.

charity. Its principal functions are to protect the particular charism of the institute and to promote appropriate renewal in accordance with that charism, to elect the supreme moderator, to deal with more important matters and to issue norms that all are bound to obey.¹⁰⁶

The order of the proposed canon was also changed. Paragraph three became paragraph two. This change reflected the importance given to proper law. By replacing “proper law” with “constitutions,” attention was drawn to the fact that these two elements, i.e., the constitution of the chapter and the extent of its power were so important as to warrant inclusion in the constitutions that required approval of the competent authority. The competent authority was thereby able to ensure the principles of representation, and the correct use of power would be safeguarded. Further practical details in relation to the celebration of the chapter, the manner of holding elections, and other matters that were to be dealt with by the general chapter were to be specified in the institute’s own law. Provisions regarding voting were omitted since these would be given in general norms. The principle was accepted that universal law ought to arbitrate the juridical means necessary to prevent abuses that could occur if the principle of authority were violated.¹⁰⁷

The formulation approved was substantially the same as c. 631 § 2:

§ 2 The composition of the chapter and the limits of its power are defined in the constitutions; the institute’s own law is to determine in further detail

¹⁰⁶ “ § 1 Capitulum generale, quod supremam auctoritatem ad normam constitutionum in instituto obtinet, ita efformetur ut totum institutum repraesens, verum signum eiusdem unitatis in caritate evadat. Eius praecipue est: charisma instituti proprium tueri et accommodatum renovationem iuxta ipsum promovere, moderatorem supremum eligere, maiora negotia tractare necnon normas edicere, quibus omnes parere tenentur” (ibid., p. 171). This text became c. 631 §1 in *CIC* with only one adjustment: “to protect the particular charism of the institute” became “to protect the patrimony in accordance with c. 578.” This patrimony was explained in terms of the nature, purpose, spirit and character of the institute as determined by the founders and approved by the Church, as well as the sound traditions of the institute (c. 578).

¹⁰⁷ See *Communicationes*, 9 (1977), pp. 53-61.

the order to be observed in the celebration of the chapter, especially regarding elections and the matters to be treated.¹⁰⁸

Proposed paragraph two above became paragraph three (c. 631 § 3).¹⁰⁹ The “lower chapters” of the previous version became “provinces and local communities,” and “proposals” was replaced by “wishes.” The former change recognised the ordinary structures of many institutes and the right to determine the authority of its internal bodies or structures and who would make proposals to the chapter. It also allowed for individual differences in the internal organisation of individual institutes. Since “wishes” was less juridical than “proposals,” the latter change reflected the principle that every member has a juridical right to be involved in the affairs of the institute and not only through involvement in juridical structures.¹¹⁰

Two further canons reflect the importance of subsidiarity and the role of the general chapter in relation to other bodies:

(1) Proper law is to determine in greater detail what pertains to other chapters and assemblies of the institute, particularly concerning their nature, authority, composition, procedure and time of celebration.¹¹¹

¹⁰⁸ “§ 2 Compositio et ambitus potestatis capituli definiantur in constitutionibus; ius proprium ulterius determinet ordinem servandum in celebratione capituli, praesertim quoad electiones et rerum agendarum rationes” (*Communicationes*, 12 [1980], p. 171).

¹⁰⁹ “§ 1 Iuxta normas in iure proprio determinatas, non modo provinciae et communicatae locales, sed etiam quilibet sodalis optata sua et suggestiones capitula generali libere mittere potest” (*ibid.*, p. 172). This wording was substantially the same as that given above.

¹¹⁰ In some institutes, e.g., IBVM, provincial chapters are the means by which proposals are transmitted to the general chapter. This does not remove the right of the individual member to do likewise.

¹¹¹ “Ius proprium accurate determinet quae pertinet ad alia instituti capitula et ad alias similes coadunationes nempe ad eorum naturam, auctoritatem, compositionem, modum procedendi et tempus celebrationis” (*ibid.*, p. 173). This became c. 632.

This canon established an important principle: the right of proper law to determine the authority of lower bodies and their functions, composition, time of celebration and other associated matters. Since the law had attributed authority to do this to the general chapter, the proposed canon provides a practical example of one of the functions of the general chapter:

(2) § 1 Chapters, councils or other organs of participation or consultation constituted by the institute, should carry out the function entrusted to them faithfully according to the norms of universal and proper law, and each in its own way should express the care and participation of all the members for the good of the whole institute or of a community.

§ 2 A wise discernment should be maintained in these forms of participation and consultation, so that, for each, attentive to the nature and purpose of the institute, a suitable and efficacious mode of governing ensues. In relation to the consultation, the superior, having heard the members freely according to the norms of law, always retains the authority to discern and especially to decide what must be done.¹¹²

This canon provides another practical example of the authority of the general chapter: to determine other forms of participation in government and consultation that were in keeping with the nature and mission of the institute. The study group debated whether “constitutions” or “proper law” should be used. In this context, the use of “proper law” was more appropriate as it included both constitutions and the institute’s own law formulated

¹¹² Canon 35 “§ 1 Capitula, consilia et alia organa participationis vel consultationis forte ab institutis constituta munus sibi commissum fideliter expleant ad normam iuris universalis et proprii atque suo quaeque modo curam et participationem omnium sodalium pro bono totius instituti vel communitatis expriment. § 2 In his participationis et consultationis formis instituendis servetur congrua discretio, ita ut, attentis uniuscuiusque instituti indole et fine, apto efficacique regimini ab omnibus consulatur. Quando autem igitur de consultatione, superior, libenter auditis sodalibus ad normam iuris, semper auctoritatem retinet decernendi et praecipiendi quae agenda sunt” (PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW [=PCCICR], c. 35, *Schema of Institutes of Consecrated Life Through the Profession of the Evangelical Counsels*, [Rome], Typis polyglottis Vaticanis, 1977, p. 11 [=1977 *Schema*]). See also *Communicationes*, 12 (1980), pp. 173-174. The wording of this canon comes directly from *PC*, no. 14. This canon became c. 633.

by the general chapter.¹¹³ To safeguard the freedom of institutes, it was important to avoid multiplying legislation in relation to organs of consultation and representation. Instead, proper law could specify details concerning all representative bodies in the institute. As a result, the consultors spoke of “organs” rather than naming individual bodies with their particular authority. There was an exhortation to preserve a “wise discernment” and to act in accordance with the nature and end of the institute concerned. Accordingly, the approved text was:

§ 1 Participative or consultative organs are faithfully to carry out the task entrusted to them according to universal law and the institute’s own law, and each in its own way is to express the care and participation of all the members for the good of the whole institute or community.

§ 2 In establishing and using those means of participation and consultation, a wise discernment is to be observed and the way in which they operate is to conform with the nature and purpose of the institute.

Canon 631 § 1 named the authority of the general chapter as supreme, provided a list of matters over which this authority functioned, and established those general principles that were considered essential for the exercise of authority, including the importance of proper law. This was the last discussion of general chapters *per se* by the study group. The principles accepted established the context for the discussion concerning its power.¹¹⁴

¹¹³ See *Communicationes*, 12 (1980), pp. 172-173. The text agreed was: “§ 1 Organa participationis vel consultationis munus sibi commissum fideliter expleant ad normam iuris universalis et proprii atque suo quaque modo curam et participationem omnium sodalium pro bono totius instituti vel communitatis expriment. § 2 In his mediis participationis et consultationis instituendis et adhibendis sapiens servetur discretio, atque modus eorum agendi indoli et fini instituti sint conformes” (ibid., p. 175).

¹¹⁴ The wide consultation with the members mandated by *ES II*, has become a normal feature of the preparation in every institute for a general chapter. The Code aims to ensure it happens by declaring that the general chapter *is to be* representative of the entire membership (c. 631 § 1), that each member has the right to contribute individually (c. 631 § 3), that proper law *is* to define its composition (c. 631 § 2) and that participatory and consultative bodies of whatever kind, *are* to express the care and participation of the whole

2.2.4 – The Nature of the Power of the General Chapter

As we have seen, the power of superiors and chapters was described as dominative in *CIC/17*, but influenced by Church documents, this meaning had changed. As a result, one of the greatest difficulties facing the revision commission related to the description of the power of superiors and chapters. The Code Commission sessions of 1968 and 1969 provided our first evidence of the thinking of the study group “On Religious” in relation to the concept of power and also some of the difficulties that faced them.¹¹⁵ Before describing what the power of superiors and chapters is, the study group clarified first of all what it was not. Consequently, the problematic question of the exemption of some religious institutes from the authority of the diocesan bishop was the first authority issue discussed at length. The focus was to establish clearly the juridical relationship between institutes of consecrated life and the local ordinary.¹¹⁶ However, since the privilege of exemption was a matter between the Holy See and an individual institute, the study group confined its deliberations to general principles only. A second issue that required clarification

membership (c. 633 § 1). The proper law of every institute can name those matters that require prior consultation and/or advice that major superiors and chapters are required to receive before major decisions can be taken. The collaboration of the members has become a necessary part of the exercise of leadership. This is a collaboration on which new leaders and organs of government, e.g., general chapters can depend. For a clear exposition of the background to c. 596, see E. McDONOUGH, “The *Potestas* of Canon 596,” in *Antonianum*, 63 (1988), pp. 551-606 (=McDONOUGH, “The *Potestas* of c. 596,”).

¹¹⁵ See *Communicationes*, 17 (1985), pp. 240-261 (fourth session, 22-26 April 1968, which dealt with the issue of exemption as well as government in diocesan and pontifical institutes and the respective roles of the pope and bishops vis-à-vis religious institutes); *Communicationes*, 25 (1993), pp. 230-262 (fifth session, 9-14 December 1968 that, in addition to the question of visitation in diocesan institutes and the governance of pontifical institutes, began the discussion on the internal government of religious institutes) and pp. 270-299 (sixth session, 24-29 March 1969, which focused on the proposed *Schema* for the section on “institutes of perfection” as well as authority issues, e.g., personal and collegial power).

¹¹⁶ See *Communicationes*, 17 (1985), pp. 240-261. The principles promoted in *CD*, nos. 8, 34-35, namely, that all religious institutes, whether exempt or not, were subject to the authority of the local ordinary regarding apostolic activity, underpinned the discussion on exemption.

concerned the juridic position of diocesan institutes.¹¹⁷ Clarification regarding both of these areas cleared the way for the discussion of the revision of c. 501 (which was to become c. 596) concerning the power of superiors and chapters. This discussion was introduced at the end of the fifth session:

Chapters and Superiors of all religious institutes have dominative power over their subjects in accordance with the norms of common law and their own constitutions; moreover, in clerical institutes of pontifical right, they also enjoy ecclesiastical jurisdiction in both internal and external fora.¹¹⁸

The initial discussion reflected differing opinions in relation to dominative power and jurisdiction.¹¹⁹ Because the Holy See had expanded the notion of public dominative power, that adjective (dominative) ought to be suppressed, but how then should the power of superiors and chapters be described? What was the power of chapters and superiors of lay institutes and could the power of jurisdiction be extended “to laypersons, even

¹¹⁷ Some institutes remained diocesan and others sought pontifical status. The role of the local bishop in relation to these institutes was examined and principles formulated. These included the local ordinary's right to approve changes in constitutions proposed by the general chapter, notwithstanding matters reserved to the Holy See, and clarifications concerning the right of the local ordinary in relation to visitation of institutes in his diocese. The juridical principles concerning institutes of pontifical right were also formulated. Their relationship with the Holy See and local ordinary were spelled out. These general principles clarified the position of institutes in relation to the supreme authority and the local ordinary. See *Communicationes*, 17 (1985), pp. 240-261.

¹¹⁸ “Capitula et superiores omnium institutorum religiosorum, ad normam iuris communis et propriarum constitutionum, potestatem dominativam in subditos obtinent; in institutis autem clericalibus iuris pontificii gaudent quoque iurisdictione ecclesiastica tam pro foro interno, quam pro foro externo” (*Communicationes*, 25 [1993], p. 260). See also *Communicationes*, 7 (1975), pp. 63-92 (for general synthesis of first sixteen sessions of the group). As seen above, by the time of the revision process, there was a commonly held view that dominative power was a public one as it was exercised in relation to the public status of religious and was, according to some commentators, e.g., Larraona, some form of imperfect jurisdiction. Subsequent interpretations reinforced the idea that those with dominative power, in fact exercised a share in jurisdiction, as did the gradual extension of powers of jurisdiction to some superiors by the Holy See.

¹¹⁹ See *Communicationes*, 25 (1993), pp. 260-262. See also E. McDONOUGH, “Jurisdiction Exercised by Non-Ordained Members in Religious Institutes,” in *CLSAP*, 58 (1996), pp. 292-307 (=McDONOUGH, “Jurisdiction Exercised by Non-Ordained Members”).

women.”¹²⁰ The current law (c. 118) that “only clerics” were capable of obtaining power of jurisdiction was not “peacefully accepted.” The group accepted that the issue of jurisdiction required “a profound investigation as to its nature and to whom it could be given.” However, the matter was an “open question” at this particular time, subject to theological investigation.¹²¹ This meant that the only question to be decided in the session related to the extension of power of governance.¹²² The sole change made to the formula of the canon, therefore, was to extend ecclesiastical jurisdiction to all clerical institutes despite the fact the rescript *Cum admotae* had restricted it to pontifical institutes.

The discussions of the sixth session revealed two crucial issues that related to the concept of power: whether “superior” denoted a physical person or a collegial one, and the meaning of the word “power.”¹²³ The issue of whether “superior” denoted a physical

¹²⁰ “Mens est ut supprimatur sic dicta ‘potestas dominativa publica.’ Attamen ex hoc exurgit nota quaestio de potestate in institutis laicalibus; potestne potestas iurisdictionis extendi ad laicos, etiam ad mulieres? In iure hodierno (cf. c. 118), soli clerici sunt capaces obtinendi potestatem iurisdictionis, sed hoc in doctrina non est pacificum. Quaestio haec evidenter connectitur cum alia memorata quaestione de potestate capitulorum, quia etiam in capitulis laici partem habent” (*Communicationes*, 25 (1993), p. 261).

¹²¹ “[...] hoc esse necessarium ut profundius pervestigetur quaestio de potestate iurisdictionis: eius natura et quibus dari possit. Haec enim quaestio adhuc aperta est sub respectu theologico” (*ibid.*).

¹²² There was a discussion as to whether the inclusion of “tam pro foro interno quam pro foro externo” would exclude the possibility of lay participation in the exercise of governance. However, it was noted that even if laypersons could not exercise power of governance in the internal sacramental forum, a certain exercise was possible in the non-sacramental internal forum. See *ibid.*, p. 269. The question of two jurisdictions for exempt institutes was briefly discussed: a member would be subject to the local ordinary as well as to the religious ordinary. However, it was pointed out that there were always two jurisdictions, e.g., a bishop could punish exempt religious even though they were also subject to the authority of the institute.

¹²³ See *ibid.*, pp. 280-283, for a summary of the issues that had to be examined in relation to the governance of religious institutes: terminology (p. 281), superior as physical person and the question of collegial governance (pp. 281-282); possible description of “power” (p. 283); questions concerning the superior’s power and issues around elections (pp. 291-292). In his notes appended to the account of the sixth session, the *relator* drew attention to the order of words that had been decided at the fifth session but not implemented, namely that the canon should read “Superiores et capitula” and not “capitula et superiores.” The new order of words drew attention to the fact that the superior’s power lasted for the term of office determined by the constitutions. The general chapter, on the other hand, despite the fact it was the supreme power in the institute, nevertheless had this authority only while in session. See *ibid.*, pp. 314-315.

person or, as in some institutes, referred also to a college or to collegial persons, required clarification. Experiments carried out in response to *ES II* had resulted in a sort of democratic mode of governing in some institutes whereby the superior did not exercise proper power but possessed a representative function instead. However, the concept of personal authority derives from the very nature of the relationship between superiors and subjects in institutes of consecrated life. Government in religious institutes could not therefore be exercised in an exclusively collegial fashion. This would make the superior a mere representative of the institute, thus detracting from the traditional superior/subject relationship that was of the very nature of the consecrated life. The consultants recognised that where there is abuse of power or where members are not represented in affairs concerning the institute, the notion of power becomes a subject of controversy. Accordingly, the law must be clearly defined with respect to the personal authority of the superior and its exercise in service to the community, and the norms concerning general chapters must provide for the representation of the members. The principle was that “superior” must be understood as a physical person. Individual constitutions could provide for those instances when collegial government was appropriate. If these principles were adhered to, possible abuses of power would be averted. In other words, the concern of the study group was to ensure that legislative provision required superiors to exercise their power in the manner described by the Second Vatican Council, while at the same time leaving individual institutes free to exercise that power according to a particular charism.

Having clarified that power was both personal and collegial, that the personal aspect could never be omitted, that legislation must safeguard the expression of both types of power, the study group then attempted to describe it. There was a suggestion to omit the

word “dominative,” but the term power would be understood in this context. However, one of the consultors believed that the concept of power would then be too vague.¹²⁴ They agreed instead to modify power with the adjective “proper.” This description was an acknowledgement that the power exercised was in the name of the superior or chapter. In other words, although all recognised that superiors and chapters exercised power, no agreement was reached as to how that power should be described. There was agreement, however, that there was a difference in the exercise of power for clerical institutes. They enjoyed “in addition” ecclesiastical jurisdiction. This session marked the last time that the power of superiors and chapters was described as “dominative.”¹²⁵ Consequently, while the issue of power was addressed, the concept was neither named nor defined except in general terms:

Moderators and chapters enjoy proper power over their members, in accordance with particular law¹²⁶ and common law; moreover, in clerical institutes, they enjoy in addition, ecclesiastical jurisdiction for the internal forum and for the external forum.¹²⁷

¹²⁴ “Relator suggerit ut, in lin. 3, expungatur verbum ‘dominativa’ ita ut, relate ad instituta clericalia canon loquatur de potestate iurisdictionis, relate vero ad alia instituta verbum adhibeat ‘potestas’ sine ulla specificatione, quamvis subintelligatur esse potestatem dominativam [....]. Obiicit tamen consultor expressionem ‘potestatem in subditos obtinent’ esse nimis vagam” (ibid., pp. 283-284).

¹²⁵ In the discussions concerning the exercise of power by the supreme moderator, the extent of his/her power, the operation of the principle of subsidiarity and the manner in which supreme moderators were elected, the consultors tried to balance the notion of the personal authority of the superior with the rights of members to be involved in matters that affected them. See ibid., pp. 284-286, 288-290.

¹²⁶ Particular law governs the ways in which power is exercised in religious institutes. This expression was therefore thought more appropriate in this context than “constitutions.” The explanation for this change was given at the beginning of the seventh session. See *Communicationes*, 26 (1994), p. 36.

¹²⁷ “Institutorum moderatores et capitula ad normam iuris particularis et communis sua in sodales gaudent propria potestate; in institutis autem clericalibus gaudent insuper iurisdictione ecclesiastica tam pro foro interno quam pro foro externo” (*Communicationes*, 25 [1993], p. 284).

The canons on governance in religious institutes were reviewed again in autumn 1969.¹²⁸ There was a discussion as to the advisability of including material regarding the origin of power in the preliminary canons on governance of institutes. This was justified because of the view among some religious that power resided in the community and that it was given to persons designated by the community. As a result, the study group included the phrase that the power of superiors came “from God,” which addition would not prejudice any future doctrinal discussions on the origin of power.¹²⁹ It was decided to leave the matters of the origin and form of power to other study groups.¹³⁰ The belief was that issues that were doctrinal need not be solved in the text of the Code.¹³¹ The principle established here, that the power of the superior and chapter does not come from the members, nor is it implied in the profession of vows, sacred bonds or promises, but comes

¹²⁸ See *Communicationes*, 26 (1994), pp. 32-59.

¹²⁹ See *ibid.*, pp. 32, 37. The canon on the power of the superior would now read: “Potestas qua singuli moderatores praediti sunt ad discernendum et praecipendum quae agenda sunt eis a Deo conceditur [....].”

¹³⁰ See *Communicationes*, 19 (1987), pp. 182-220, for the discussion of the study group “On General Norms” in relation to whether or not laypersons could exercise ecclesiastical jurisdiction. This study group grappled with the notions of executive power (a concept introduced by Pius XI in *Quam primas*), and administrative power, both concepts that were unclear as far as canon law was concerned. There was also confusion in relation to whether they were jurisdictional. See PIUS XI, encyclical letter *Quam primas*, 25 December 1925, in *AAS*, 17 (1925), p. 599. A further confusion resulted when Paul VI granted the Apostolic Signatura competence to deal with “controversies arising from acts of administrative power in the Church” (PAUL VI, apostolic constitution *Regimini Ecclesiae universae*, 15 August 1967, no. 106, in *AAS*, 59 (1967), p. 921). The Apostolic Signatura defined this competence as “part of the ministerial power of *pascendi*” (APOSTOLIC SIGNATURA, decision, 1 February 1970, in *Apollinaris*, 44 [1971], pp. 612-613). This definition associated administrative power with orders, providing another source of confusion. There was more confusion related to the nature of precepts. These could be issued in virtue of both dominative and jurisdictional power, with the same juridic effects. See *Communicationes*, 19 (1987), p. 216. In other words, there was a lack of clarity concerning the notion of power.

¹³¹ “Consultor quaerit an expediat aliquid dicere his in primis canonibus circa originem potestatis. Hodie enim quidam tenent sententiam iuxta quam potestas residet in communitate, quae traditur personae ab ipsa communitate designatae. Haec autem doctrina de origine potestate excludit, praeter alia, indolem supernaturalem oboedientiae religiosae [...]. Quaestiones tamen de origine deque formis potestatis in Ecclesia ab alio coetu consultorum pertractantur, etsi quaedam ex his quaestionibus non in canonibus Codicis solvi debeant: relinquendae enim sunt doctrinae” (*Communicationes*, 26 [1994], pp. 36-37). See also *Communicationes*, 5 (1973), pp. 47-63.

from God through the ministry of the Church, removes the power of superior and chapter from the private forum.

The difficulties of the study group in relation to the description of the power of moderators and chapters is reflected in the fact that a joint meeting of the study groups “On the Sacred Hierarchy” and “On Institutes of Consecrated Life” was to be held on 27-28 January 1975. One of the topics for discussion was “the power of moderators of institutes of consecrated life and in particular the power of the lay moderator.”¹³² There is no indication this meeting occurred; consequently, the issue was not clarified.¹³³ Although little change was made to the formulation of c. 596 after the 1977 *Schema*, our understanding of the power referred to in the canon was influenced by the debate on whether or not laypersons could exercise, participate in the exercise of, or cooperate in the exercise of power of governance.

The response to the *dubium* sent in 1976 to the Congregation for the Doctrine of the Faith regarding lay participation in governance, and the response given, influenced the formulation of the general norm of c. 96 of the 1977 *Schema*.¹³⁴ This canon provided for

¹³² See *Communicationes*, 7 (1975), p. 25.

¹³³ Several decrees expanded the notion of jurisdiction but as explained above, the issue was far from clear, e.g., *Renovationis causam* granted some jurisdictional faculties to lay religious superiors in relation to formation, while *Clericalia instituta* denied that lay brothers could hold the office of superior in clerical institutes.

¹³⁴ The *dubium* asked: whether laypersons, inasmuch as they are made participants in the *munera* of Christ, in virtue of baptism, might be admitted to some functions of governance or jurisdiction, under the leadership of the bishops, functions that bring with them some participation in legislative, judicial and executive powers; if the answer is affirmative, what might be those ecclesiastical functions exercised with a spiritual end in view, that might be committed to laypersons. The response, given in 1977, stated: from the dogmatic point of view, laypersons are excluded only from those offices that are intrinsically hierarchical, the capacity for which is connected to orders. Such offices can be determined according to the norm of law or by the Holy See on an *ad hoc* basis (“Utrum laici, utpote baptizati suo modo munera Christi participes facti, adsumi possint, sub ductu quidem episcoporum, ad aliqua munera regiminis seu iurisdictionis,

lay participation in jurisdiction when the supreme authority granted the faculty to do so.¹³⁵ This understanding, in turn, influenced the next version of the formulation of authority in religious institutes. The answer of the Congregation for the Doctrine of the Faith, although imprecise, was understood to mean that only those offices that required the power of orders were restricted to clerics. Laypersons could function in governance in other situations. However, one difficulty in relation to lay participation in governance was immediately obvious: in clerical institutes, governance was restricted to clerics, irrespective of whether there were lay brothers in the congregation or not.¹³⁶ However, despite this difficulty, because of the determination of the CDF, the understanding of the power of superiors and chapters expanded to include the notion that perhaps the power could be described as “jurisdiction.”

The canon in the 1977 *Schema* stated:

§ 1 Moderators and chapters of institutes enjoy power over their members in accordance with the norms of universal law and the constitutions; moreover, in clerical institutes of pontifical right they enjoy, in addition

participationem nempe secum ferentia in potestatibus legislativa, executiva vel iudicali; et si affirmative, quaenam sint haec munera ecclesiastica ad finem spiritualem exercenda quae etiam laicis committi possunt?” [U. BETTI, “In margine al nuovo Codice di diritto canonico,” in *Antonianum*, 58 [1983], p. 641, footnote no. 36]. The CDF attributed the imprecision of the response to the on-going doctrinal investigation in relation to the issue of lay jurisdiction. See PONTIFICAL COUNCIL FOR THE INTERPRETATION OF LEGISLATIVE TEXTS (=PCILT), *Acta et documenta Pontificiae commissionis Codici iuris canonici recognoscendo: congregatio plenaria, 20-29 October 1981*, Vatican City, Typis polyglottis Vaticanis, 1991, p. 37 (=Congregatio plenaria).

¹³⁵ “Potestatis regiminis in Ecclesia, ad normam praescriptorum iuris, habiles sunt, qui ordine sacro sunt insigniti; in exercitio eiusdem potestatis, quatenus quidem eodem ordine sacro non innititur, ii qui ordine sacro sunt insigniti eam tantum partem habere possunt quam singulis non sunt insigniti eam tantum partem habere possunt quam singulis pro causis auctoritas Ecclesiae suprema ipsis concedit” (PCCICR, *Schema canonum libri I de normis generalibus*, Rome, Typis polyglottis Vaticanis, 1977, p. 33 [=1977 *Schema canonum libri I*]). This canon changed before the 1980 *Schema*. Power of governance was explained as power of jurisdiction which belongs to the Church by divine institution and those not in sacred orders can have that part in its exercise that the Church conceded to them in individual cases.

¹³⁶ See *Communicationes*, 11 (1979), p. 59. These concepts were substantially those that appeared in c. 588 § 2 of *CIC*.

(*insuper*), ecclesiastical power of governance for both internal and external *fora*, in keeping however with the prescription of canon [...].¹³⁷

We do not know why the power of superiors and chapters is unmodified in this formulation despite the discussions held in 1969. Perhaps this change reflects the uncertainty as to what the power of superiors and chapters really was. We do know that there was general agreement that the power was neither private nor dominative, but the epithet “ecclesiastical” could not be used in the case of lay institutes, as this would equate power of governance with hierarchical power. There was also confusion as to the power of secular institutes, which was debated again in preparation for the plenary meeting of the Code Commission in 1981.¹³⁸ The *Relatio* provided a very clear description of the consultors’ understanding of power of governance of institutes that were not pontifical and clerical. Since this concept must now be understood in the context of c. 126 (which said that laypersons could have a part in the exercise of power of governance in areas not

¹³⁷ “§ 1 Institutorum moderatores et capitula in sodales sua gaudent potestate ad normam iuris universalis et constitutionum; in institutis autem clericalibus iuris pontificii pollent insuper potestate ecclesiastica regiminis pro foro tam externo quam interno, firmo tamen praescripto canonis” (1977 *Schema*, p. 8). The canon referred to was the new c. 96 in the 1977 *Schema*. See *ibid.*, De normis generalibus, p. 33. The *relator* of the “People of God” study group stated, on 14 January 1980, that the text of c. 96 had been submitted to and approved by the Congregation for the Doctrine of the Faith. This canon was hotly debated at the Plenary Meeting in 1982. See *Communicationes*, 14 (1982), p. 72. The number of this canon would depend on that given in the revision to the description of the limits of the power of governance exercised in the Church. See 1977 *Schema*, p. 8, footnote 1.

¹³⁸ See *Communicationes*, 9 (1977), p. 56. In the *Praenotanda* to the 1977 *Schema*, the *Relator* referred to the “just autonomy,” which gave the institute the right to its own discipline, together with the right to preserve its doctrinal, spiritual and liturgical patrimony. The ecclesiastical power of governance of superiors and chapters of clerical institutes of pontifical right was reiterated. In the case of secular institutes that were clerical and pontifical, there was a suggestion that insofar as these had the ability to incardinate members into the institute, they exercised ecclesiastical jurisdiction, since the ability to incardinate was an act of jurisdiction. The *relator* noted there had been a long discussion regarding power, but that it was not in the study group’s power to decide the question. See *Communicationes*, 11 (1979), pp. 306-307; *Communicationes*, 15 (1983), p. 64. There was no reference to the fact that in institutes of brothers in which some became clerics these too were incardinated into their institutes, despite the fact that the major superior was not an ordinary, and therefore, technically, was not *habilis* for this exercise of government. The Congregation for the Doctrine of the Faith had indicated laypersons could participate in governance. However, both the decree *Clericalia instituta* and the proposed law stated that only clerics could exercise governance in clerical institutes. There was no solution proposed to this problem.

connected to the priestly order, according as the supreme authority conceded it in individual cases), it was thought appropriate to apply canons 128, 130, 134-144 *prudentialia causa*. There was also a clear statement that the power of all institutes except clerical pontifical institutes, even if it is a sort of public, ecclesiastical power, is not power of governance *per se*. On the other hand, the formulation certainly expressed the study group's belief that laypersons could *participate* in the exercise of that power.¹³⁹

The first paragraph of the canon was divided into three parts:

§ 1 Superiors and chapters of institutes have that power over their members that is defined in the universal law and the constitutions.

§ 2 Moreover, in clerical religious institutes of pontifical right, they have in addition ecclesiastical power of governance for internal and external fora.

§ 3 In relation to the power referred to in § 1, the prescripts of cc. 128, 130, 134-144 apply.¹⁴⁰

A final suggestion was made in relation to using the word "authority" in place of "power" but this was not accepted.¹⁴¹ Before the Code Commission's final discussions we

¹³⁹ See *Communicationes*, 15 (1983), pp. 64-65. This rendition was similar to the solution given by the authentic interpretation of the Code Commission in 1952, which applied the parallel canons to the exercise of the dominative power of c. 501. "[...] censetur opportunum ut quoad potestatem de qua in linn. 1-2, huius canonis quae non est potestas regiminis, etsi quamdam potestatem ecclesiasticam publicam constituat [...]" (PCCICR, *Relatio complectens synthesim animadversiorum ab Em.mis atque Exc.mis patribus commissionis ad novissimum schema Codicis iuris canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis*, Vatican City, Typis polyglottis Vaticanis, 1981, p. 140 [=Relatio]). These canons gave the norms for the exercise of executive power of governance, whether ordinary or delegated.

¹⁴⁰ "§ 1 Institutorum superiores et capitula in sodales ea gaudent potestate quae iure universali et constitutionibus definiuntur. § 2 In institutis autem religiosis clericalibus iuris pontificii pollent insuper potestate ecclesiastica regiminis pro foro tam externo quam interno. § 3 Potestati de qua in § 1 applicantur praescripta cann. 128, 130 et 134-141" (*Communicationes*, 15 [1983], pp. 64-65). The description of the way power should be exercised (as service, c. 618) and the provisions for exempt institutes (to be directly subject to the Roman Pontiff or some other ecclesiastical authority, c. 591) became the matter of two separate canons.

¹⁴¹ "Animadversio admitti non potest quia sunt notiones distinctae" (ibid., p. 65).

can describe the understanding of the consultors in relation to the power of chapters and superiors in the following terms: it was a type of public ecclesiastical power which resembled power of governance but was not power of governance for lay major superiors and their chapters. Clerical institutes of pontifical right, and perhaps some secular institutes, also exercised jurisdiction.

Although c. 523 (c. 596) was not a major topic for discussion at the 1981 plenary meeting of the Commission, subsequent interpretations of the power of superiors and chapters were influenced by the hotly debated discussions concerning lay jurisdiction. This debate was provoked by the wording of c. 126 (which became c. 129), which stated that laypersons could have that part in the exercise of power of governance by concession of the Supreme Authority in individual cases; by c. 244 (which became c. 274) which restricted offices requiring power of orders or power of ecclesiastical governance to clerics; and by c. 1373 § 2 (which became c. 1421 § 2) which, by giving judicial offices to laypersons, was a practical example of c. 126.¹⁴² At the plenary meeting in October 1981, a small group vehemently opposed the exercise of the power of governance by laypersons.¹⁴³ However, c. 126 of the 1982 *Schema* included the phrase that laypersons “could have that part” in its exercise, which the Supreme Authority granted in individual cases. The final formulation of c. 126 (c. 129) established the right of those in sacred orders to exercise power of governance. However, paragraph two indicated that laypersons could “cooperate”

¹⁴² See *Congregatio plenaria*, pp. 35-97 and 190-229.

¹⁴³ See *ibid.*, pp. 37-48. Unresolved questions regarding power concern its meaning, whether it is a function, a personal capacity to fulfil a function, a right to fulfil a function, the ontology of power, in what does power consist and so on. See J.J. CUNEO, “The Power of Jurisdiction: Empowerment for Church Functioning and Mission Distinct from the Power of Orders,” in *The Jurist*, 39 (1979), p. 197, footnote 32.

(a term that was somewhat ambiguous) in the exercise of that same power. The power exercised by lay religious superiors and chapters comes under this category.

According to c. 596 § 2, superiors and chapters in clerical religious institutes of pontifical right exercise ecclesiastical power of governance (also called power of jurisdiction in c. 129 §1) for both internal and external *fora*. This power is “in addition” to that described in c. 596 § 1.¹⁴⁴ In contrast to *CIC/17*, which restricted ecclesiastical power of governance to exempt institutes, *CIC* acknowledges that all superiors of clerical religious institutes of pontifical right possess it. One of the problems associated with the grant of power of jurisdiction to clerical institutes of pontifical right arises from the Code’s definition of what precisely that form of institute represents.¹⁴⁵ There are clerical institutes of pontifical right in which lay brothers are permitted, by the constitutions, to obtain the office of superior and to participate in general chapters.¹⁴⁶ According to c. 596 § 2, these superiors and general chapters exercise power of governance, and c. 596 § 1 reinforces this position by stating that superiors and chapters have that power over their members that is

¹⁴⁴ The inclusion of the word “in addition” was believed to deny the possibility that any other group, e.g., superiors of clerical societies of apostolic life, or superiors of diocesan clerical institutes, could exercise power of governance. However, “in addition” did not preclude the possibility that others also had this power. See *Relatio*, p. 139 and *Communicationes*, 15 (1983), p. 64.

¹⁴⁵ A clerical institute in *CIC* is defined as one in which public vows, some form of common life (c. 607 § 2), governance by clerics, the exercise of sacred orders and the recognition of the supreme authority of this categorization (c. 588 § 2) are the constitutive elements.

¹⁴⁶ See *Communicationes*, 11 (1979), pp. 306-307. For discussion of the place of lay brothers in the Church, see J.F. GAFFNEY, “The Religious Brother in the Life of the Church,” in R.J. DALY et al. (eds.), *Religious Life in the US Church: The New Dialogue*, Ramsey, NJ, Paulist Press, 1984, pp. 140-146 (=DALY et al. [eds.], *New Dialogue*). Two recent examples where a lay brother becomes superior of a clerical institute are worth noting: in 1997, a supreme moderator requested and received a dispensation to appoint a lay brother as local superior; in 2000, the same supreme moderator requested permission to appoint a lay brother as superior. The Congregation authorized the permission, signalling for the commentator that an authorization in accord with c. 129 § 2 is what one needs to derogate from the prescription of c. 587 § 2. See F.P. PEDONE, and J.I. DONLON (eds.), “Canon 582 § 2: Lay Brother Permitted to Be Local Superior in

accorded in the universal law (i.e., power of jurisdiction) and the constitutions (power related to the office of superior and member of chapter). Canon 732 applies the same principle to societies of apostolic life.¹⁴⁷ Although secular institutes are not included in the category mentioned in 596 § 2, in virtue of a special concession of the Holy See (c. 266 § 3), members can be incardinated into the institute (c. 715 § 2). The capacity to incardinate members was associated with the possession of power of governance during the revision process. It therefore seems reasonable to suggest that, in these particular institutes, there is also the capacity to possess power of governance.

In addition, although clerical societies of apostolic life of pontifical right are not referred to in c. 596 § 2, the major superiors of these institutes are specifically referred to in c. 134 § 1 as possessing “at least ordinary executive power” and are ordinaries for their own members. In virtue of the fact that c. 732 applies c. 596 to societies of apostolic life, it seems reasonable to assume that moderators and chapters of those institutes that are religious institutes (according to c. 731 § 2, some undertake some form of evangelical bond and thereby fulfill the requirements of c. 607 § 2) are also capable of exercising ecclesiastical power of governance.¹⁴⁸ It appears, therefore, that the category of religious

Clerical Religious Institute,” in *Roman Replies and CLSA Advisory Opinions 2001*, Washington, DC, The Catholic University of America, 2001, p. 27.

¹⁴⁷ Gutiérrez believed that the move away from the concept of dominative power to the unnamed power of non-clerical institutes in c. 596 § 1 is really a move to jurisdiction granted by the supreme authority and other curial bodies with legitimate power. See J.L. GUTIÉRREZ, “ Dalla potestà dominativa alla giurisdizione,” in *Ephemerides iuris canonici (=EIC)*, 39 (1983), pp. 74-103.

¹⁴⁸ Canon 732 extends ecclesiastical power of governance to pontifical societies of apostolic life. However, several categories of institute are excluded from this kind of authority: clerical institutes of diocesan right, secular institutes, whether pontifical or diocesan, and all lay religious institutes. Ecclesiastical power of governance enables the major superiors of clerical religious institutes of pontifical right and of clerical societies of apostolic right of pontifical right to fulfil the role of “ordinary” for their members. This, in turn, gives them the capability, for example, to grant dismissorial letters (c. 1019 § 1) or faculties to hear the confessions of their own members, or those who reside in their houses (cc. 967 § 3, 968 § 2, 969 § 2).

institutes, whose chapter or major superiors can exercise power of governance, is somewhat wider than first appears in 596 § 2.¹⁴⁹ These institutes exercise power of governance in each of the areas referred to in c. 135. Therefore, those clerical institutes of pontifical right, those secular institutes that possess the capacity to incardinate their own members, as well as those societies of apostolic life that satisfy the criteria, *possess* the capacity to exercise power of governance.

What c. 596 §§ 1 and 3 do is to acknowledge that major religious superiors and chapters of religious institutes generally, while not actually *possessing* ecclesiastical power of governance as clerical religious institutes of pontifical right do (as well as secular institutes and those pontifical societies of apostolic life described above), in fact *participate in its exercise*, in virtue of the capability given by the law to exercise certain acts which require an executive power of governance. The very nature of the acts carried out by these organs of authority substantiate this conclusion: granting an indult of excommunication (cc. 686 § 1, 745); granting an indult to those in temporary profession to leave the institute (cc. 688 § 2, 726 § 2); and granting a decree of dismissal (c. 699 § 1, 729, 746).¹⁵⁰ Canon 35 determines that those who issue singular administrative acts

Classification of societies of apostolic life can be very confusing. Some societies have qualities that make them resemble religious institutes, while others are clearly not religious institutes. See T. F. FINN, "An Old Entity – A New Name: Societies of Apostolic Life," in *StC*, 20 (1986), p. 439. As a result, one must examine each society of apostolic life separately in order to ascertain the status of the power exercised therein.

¹⁴⁹ McDonough makes the point that this canon does not exclude the possibility of the participation in the exercise of government by lay institutes and diocesan institutes. See MCDONOUGH, "The *Potestas* of c. 596," p. 597.

¹⁵⁰ The decree of dismissal needs to be confirmed by the competent authority. There are two separate juridic acts of the power of governance here. The competent authority's confirmation does not take from the authority that issued the decree of dismissal. The role of the competent authority is to ensure that the law is applied correctly. This way of proceeding also allows for the possibility of hierarchical recourse on the part of the one dismissed. In addition, Huels points out that in the many instances in the Code where superiors of institutes of consecrated life and societies of apostolic life give permission (*licentia*), this too is

(decrees or rescripts, including indults) do so in virtue of executive power of governance.¹⁵¹ In addition, the law concerning institutes of consecrated life and societies of apostolic life has many examples of juridic acts involving the power of governance, e.g., c. 647 §1 (the supreme moderator or general chapter of religious institutes can erect, transfer, suppress or move a novitiate house by written decree); c. 697, 2° (the major superior of a religious institute or society of apostolic life can issue a precept to warn an offender to reform with a threat of dismissal should this not happen). Each of these acts is an act of the executive power of governance that the chapter or supreme moderator can undertake in virtue of the power given in the Code.

The Code does not differentiate between decrees and indults issued in virtue of ecclesiastical power of government (c. 596 § 2) and the unspecified power of non-clerical institutes (c. 596 §§1, 3). The juridic effects of both are the same irrespective of the nature of the power with which they were issued. The difference, in other words, between the power exercised by non-clerical and clerical institutes, lies in the fact that clerics *possess* the capacity to act (c. 129 § 1), while non-ordained persons do not. Instead, laypersons and

an act of executive power of government, if the act of granting the permission can be identified as a juridical act of executive power of governance. For example, c. 638 § 3 enables the superior to grant permission for the alienation of patrimonial goods, once the stipulated conditions have been fulfilled; c. 665 §1 enables the superior to grant permission of absence from the community house; c. 671 requires the permission of the competent superior for works undertaken outside the community, and so on. See J.M. HUELS, "The Power of Governance and Its Exercise by Lay Persons: A Juridical Approach," in *StC*, 35 (2001), pp. 76-77, footnote 45, and pp. 87-90 (=HUELS, "Power of Governance").

¹⁵¹ The Pontifical Commission's discussion on administrative acts made it clear that these were acts of public power, issued by those possessing administrative or executive power, which in turn, is a facet of the power of governance. See *Communications*, 17 (1985), p. 44.

juridic institutes, e.g., general chapters, are by law *rendered capable* of exercising power of governance in view of the office they hold.¹⁵²

The discussions surrounding the revision of the question of power identified a number of convictions underlying the work of the study group. The power of superiors and chapters over their members is acknowledged, but in contrast to *CIC/17*, is not identified, except in general terms. This lack of identification appears to be deliberate, to avoid entering into the theological debate concerning laypersons and jurisdiction. The power of lay superiors and chapters is acknowledged to be dominative, which is a sort of public ecclesiastical power. However, “ecclesiastical” cannot be used because of its association with hierarchical jurisdiction, and “dominative” is dropped because acts of the Holy See had clearly extended its traditional meaning. In the exercise of this power the norms governing ordinary and delegated executive power of governance are attributed to superiors and chapters of non-clerical institutes. Ecclesiastical power of governance is attributed to clerical religious superiors and chapters of institutes of pontifical right. However, this power is not restricted to this category of religious only. It is unclear if

¹⁵² The valid placing of a juridic act, e.g., issuing a decree (a singular administrative act), requires that the doer is *habilis*. Canon 35 requires that the person acting *possess* executive power. Canon 124 requires that the person performing the act is legally capable of performing it (the capacity here is given by the law in virtue of the office held), the acts must contain those elements that constitute the essence of the act and the formalities and requirements required by law for the valid performance of the act (sometimes advice or consent is required prior to the performance of an act), must be adhered to. The cleric or the college that represents the juridic person of the clerical institute is *habilis* to carry out these juridic acts (c. 129 § 1); the layman or woman religious or juridic person, e.g., the general chapter is *habilis* in virtue of the power given him/her/the institution, by law, in these instances to exercise executive power of governance. Ghirlanda shows that the power exercised in clerical and non-clerical institutes has the same nature and, therefore, is the power of governance, a power that is conferred by the supreme authority in the Code. See G. GHIRLANDA, “De natura, origine et exercitio potestatis regiminis iuxta novum Codicem,” in *Periodica*, 74 (1985), pp. 143-149 (=GHIRLANDA, “De natura potestatis regiminis”). See also MCDONOUGH, “The *Potestas* of c. 596,” pp. 599-606.

offices that involve exercise of jurisdiction might be granted to the non-ordained according to the norms of law, or on an *ad hoc* basis, as indicated in the CDF response of 1976.

The question of the participation of laypersons in the exercise of governance was clearly of significance for the understanding of the type of power exercised in non-clerical religious institutes.¹⁵³ However, despite the lack of description, the juridical effects of acts placed in virtue of this unnamed power, are, in effect, the same as those placed in virtue of the ecclesiastical power of governance attributed to clerical religious institutes of pontifical right. The on-going debate in relation to the question of lay jurisdiction is relevant only to the extent that it clarifies the nature of the power of laypersons.¹⁵⁴ *CIC* moved the debate further than *CIC/17* by acknowledging that this power was more like jurisdiction than dominative power, and by stating, however ambiguously, that lay persons, e.g., lay superiors and chapters, could at least cooperate in its exercise.

2.3 – CONTEMPORARY DEBATE CONCERNING THE EXERCISE OF AUTHORITY IN INSTITUTES OF CONSECRATED LIFE

The concept of authority continued to provoke debate, particularly in North America, where the culture and climate of the times provided an ambience wherein

¹⁵³ See *Communicationes*, 15 (1983), p. 64; *Communicationes*, 19 (1987), pp. 18-19, 204.

¹⁵⁴ See for example, in chronological order, J.H. PROVOST, "The Participation of the Laity in the Governance of the Church," in *StC*, 17 (1983), pp. 417-448; A. GUTIÉRREZ, "Canones circa instituta vitae consecratae et societates vitae consecratae vagantes extra partem eorum propriam," in *CpRM*, 64 (1984), pp. 73-96; GHIRLANDA, "De natura potestatis regiminis," pp. 109-164; A. CELEGHIN, "Sacra potestas: quaestio post conciliaris," in *Periodica*, 74 (1985), pp. 165-225; J. HERRANZ, "The Juridical Status of the Laity: The Contribution of the Conciliar Documents and the 1983 Code of Canon Law," in *Communicationes*, 17 (1985), pp. 287-315; McDONOUGH, "Jurisdiction Exercised by Non-Ordained Members," pp. 292-307; J. BEAL, "The Exercise of Jurisdiction by Lay Religious," in *Bulletin On Issues of Religious Law*, 13 (1997), pp. 1-6 and ID., "Governance," pp. 1-92; J.A. CORIDEN, "Lay Persons and the Power of Governance," in *The Jurist*, 59 (1999), pp. 353-347; HUELS, "Power of Governance," pp. 59-96.

authority was questioned.¹⁵⁵ This can be seen clearly in the years after the promulgation of the Code, when women in particular questioned their status in Church as well as in society, and the tenor of those times had an effect on religious institutes also.

2.3.1 – Influence of Democratic Principles on the Understanding of Authority in Institutes of Consecrated Life in North America

Despite her historically complicated relationship with democratic movements,¹⁵⁶ the Church, especially in modern times, has used her authority to promote democratic principles.¹⁵⁷ The encyclical letter *Pacem in terris* of Pope John XXIII, for example, gave a

¹⁵⁵ This was the era of the civil rights movement and of the growth and development of the feminist movement. However, the problems identified in consecrated life in North America in the survey of Nygren and Ukeritis had their counterpart in other countries also. See D. NYGREN, and M. UKERITIS, "Future of Religious Orders in the United States," in *Origins*, 22 (1992), pp. 257, 259-272 (=NYGREN and UKERITIS, "Future of Religious Orders"), and S. FAGAN, "The Identity of Religious," in A. FLANNERY (ed.), *Towards the 1994 Synod: The Views of Religious*, Dublin, Dominican Publications, 1993, p. 17.

¹⁵⁶ For example, Pius IX (1846-1878) set the Church and the Papacy at odds with many of the developments of the modern world, e.g., the principle of the consent of the governed, in the encyclical *Quanta cura* and in the "Syllabus of Errors," attached to it. See PIUS IX, encyclical *Quanta cura*, 8 December 1864, in *Pii IX Pontificis Maximi Acta*, part 1, vol. 3, [Rome], Ex Typographia Bonarum Artium, [1854-1878], pp. 687-700 and 701-717. Pius X (1903-1914) adopted a critical stance towards some modern democracies, e.g., France and characterized modernism as a synthesis of all heresies. See PIUS X, encyclical *Pascendi Dominici gregis*, 8 September 1907, in *ASS*, 40 (1907), pp. 593-650.

¹⁵⁷ Respect for human rights, belief in freedom and democratic institutions are recurrent themes. See LEO XIII, encyclical letter *Rerum novarum*, 15 May 1891, in LEO XIII, *Acta*, vol. 11, pp. 97-144; PIUS XI, encyclical letter *Quadragesimo anno*, 15 May 1931, in *AAS*, 23 (1931), pp. 177-228 (=Quadragesimo anno); JOHN XXIII, encyclical letter *Mater et Magistra*, 15 May 1961, in *AAS*, 53 (1961), pp. 401-464 (=Mater et Magistra); PAUL VI, apostolic letter *Octogesima adveniens*, 14 May 1971, in *AAS*, 63 (1971), pp. 401-441; JOHN PAUL II, encyclical letter *Laborem exercens*, 14 September 1981, in *AAS*, 73 (1981), pp. 577-647; encyclical letter *Centesimus annus*, 1 May 1991, nos. 11, 22, 46, 48, in *AAS*, 83 (1991), pp. 806-807, 819-820, 850-851, 852-854; ID., encyclical letter *Veritatis splendor*, 6 August 1993, no. 31, in *AAS*, 85 (1993), pp. 1158-1159. The Church contributed significantly to the promotion of democratic principles in Poland and Eastern Europe in the 1990's. See C.J. REID, "Roots of a Democratic Church Polity in the History of Canon Law: The Case of Elections in the Church," in *CLSAP*, 60 (1998), p. 150 and J.B. HEHIR, "Catholicism and Democracy: Conflict, Change, Collaboration," in J. WITTE, JR. (ed.), *Christianity and Democracy in a Global Context*, Boulder, CO, Westview Press, 1993, pp. 13-30. The Canadian Conference of Catholic Bishops (=CCCCB) initiated a number of surveys and questionnaires regarding the participation of women in the Church in Canada. As early as 1971, the CCCB's contribution to the Synod on Justice in the World, revealed the concern of the Conference for justice and equality for women. They established an *ad hoc* committee on women's issues in 1982. See CCCB, *With Respect to Women: A History of CCCB Initiatives*

clear exposition of the influence of democratic principles especially in relation to rights, natural human dignity and the formation of the conviction that all are equal in natural dignity. The principle was enunciated that people have power to choose those who are to rule them, decide the type of government, and the limits and procedures to be used in the exercise of authority. Furthermore, a natural consequence of man's dignity lies in the fact that he has an unquestionable right to take an active part in government. The degree of this involvement will depend on the stage of development reached by the political communities of which the persons concerned are members.¹⁵⁸

While democracy as a system of government does not pertain in religious institutes, democratic principles do.¹⁵⁹ However, in religious institutes, as in the Church, power is hierarchical. Lawfully appointed superiors possess their power in virtue of their office. Even if elected to office, superiors hold the power in a personal capacity. Power does not reside in the members. The general chapter has the authority to elect those who will govern the institute. However, the general chapter does not give those elected the power to govern. This power comes from Christ and is mediated through the Church. By his/her vow of obedience, a religious freely chooses to be obedient to a superior in the service of the

Concerning Women and the Church in Society 1971-2000, Ottawa, CCCB Publications, 2000 (=CCCB, *With Respect to Women*).

¹⁵⁸ The consequence of this type of teaching was that at least on the level of theory and doctrine, no form of approval could be given to discrimination. See *Pacem in terris*, pp. 13-48.

¹⁵⁹ For example, *Congregavit nos* referred to the democratic climate that has encouraged the growth of coresponsibility and of participation by all in the decision-making process. See *Congregavit nos*, no. 48, p. 705. Tierney shows that many democratic ideas have roots in canon law, e.g., representation, consent, natural rights, the holding of elections. See B. TIERNEY, *Foundations of the Conciliar Theory: The Contribution of the Medieval Canonists from Gratian to the Great Schism*, new enlarged ed., Leiden, Brill, 1998; ID., *Religion, Law and the Growth of Constitutional Thought, 1150-1650*, Cambridge, Cambridge University Press, 1982; ID., *The Idea of Natural Rights: Studies on Natural Rights, Natural Law and Church, 1150-1625*, Atlanta, GA, Scholars Press, 1997.

mission. This is not obedience to the group, but rather to the one who represents Christ. Working collegially may suit the female mentality more than the authoritarian approach; nonetheless, one cannot replace the authority of a single superior. However, for women in particular, democratic ideas had a profound effect particularly in relation to government and authority. For the earliest expression of the phenomenon, we have to turn to the experience of religious, particularly women religious in the USA, where the issue of the role of women in the Church had a particular momentum.¹⁶⁰

In 1972, the National Conference of Bishops in the USA established an *ad hoc* committee on women in Church and in society.¹⁶¹ This prompted the decision to write a pastoral letter on the concerns of women in Church and society in 1983. Simultaneously with the consultations related to the eventual publication of this pastoral letter, Pope John Paul II wrote a letter to the Bishops of the USA. Appended to this letter was a document of guidelines entitled “Essential Elements in the Church’s Teaching on Religious Life as

¹⁶⁰ Our focus on North America is important in view of the fact that two provinces of IBVM are situated there. The last chapter of our dissertation will compare the understanding of authority of general chapters in the two North American provinces, with that of the other provinces and regions of IBVM. For a clear exposition of the democratic heritage of the Church in the USA, and its influence on approaches to authority, see O.H. LIPSCOMB, “American, Roman and Catholic: Still Searching for Common Ground,” in *CLSAP*, 61 (1999), pp. 27-48.

¹⁶¹ The work of the committee included a survey on women’s issues (1977) and extensive consultations that resulted in the decision to write a pastoral letter. The Canon Law Society of America contributed an analysis of the issue of women and the Code in 1986 and also a critique of the first draft of the pastoral letter in 1988. For an indepth study of the situation in relation to women at this time, see R. MCDERMOTT, “The Legal Condition of Women in the Church: Shifting Policies and Norms,” *Canon Law Studies*, no. 499, Washington DC, The Catholic University of America, 1979. There was strong Vatican interest in the work of the NCCB, as evidenced in their interventions in 1990 and 1991, which resulted in a joint meeting in Rome between representatives of the bishops and the Holy See. See L. JARRELL and N. REYNOLDS, *CLSA Report*, January 1986, in *CLSAP*, 45 (1983), pp. 146-153 and ID., “Report of the Canon Law Society of America Committee on Women and the Church on ‘Partners in the Mystery of Redemption’,” in *CLSAP*, 50 (1988), pp. 327-346.

Applied to Institutes Dedicated to Works of the Apostolate.”¹⁶² Although the purpose of his letter was pastoral, the Holy Father expressed the view that individuals or groups in the USA had departed from the indispensable norms of religious life, or adopted positions at variance with the Church’s teaching.¹⁶³ This was perceived by some as a (negative) comment on the state of religious life in the USA.¹⁶⁴ In view of the way in which authority was viewed in the USA at this period (i.e., in a democratic way), criticism concerning the way these two documents were communicated inevitably, and perhaps unfairly, affected the reception of the contents of the document also.¹⁶⁵ However, in view of the *Ad limina* visit of the USA bishops which was to take place that year, the Holy Father’s letter might also be understood as a timely reminder of the importance of religious life in the Church of the USA, and of the necessity for relations of mutual respect between religious and

¹⁶² See above, p. 1, footnote 3 and also JOHN PAUL II, letter to the bishops of the USA, 3 April 1983, in *Origins*, 13 (1983), pp. 129, 131-133 and *CLD*, vol. 10, pp. 91-97 (=Letter to USA Bishops).

¹⁶³ See Letter to USA Bishops, p. 95.

¹⁶⁴ See S.A. EUART, “A Canonical Analysis of *Essential Elements* in the Light of the 1983 Code of Canon Law,” in *The Jurist*, 45 (1985), p. 439 (=EUART, “Canonical Analysis”); J.M. LOZANO, “The Theology of ‘*Essential Elements*’ in the Teaching of the Church,” in DALY et al. (eds.), *New Dialogue*, pp. 100-101. The Conference of Major Superiors (women and men) of England and Wales also criticised certain elements of the document, especially the lack of allowance for the influence of culture on structures. The Conference questioned whether government in religious life must reflect the hierarchical structures of the Church. See J.F. GALLAN, “The Conference of Major Superiors [Women and Men] for England and Wales Reacts to ‘*Essential Elements*’,” in *RfR*, 44 (1985), pp. 103-105.

¹⁶⁵ The Congregation said that the guidelines were a response to the requests of bishops, superiors and chapters for more specific direction (*Essential Elements*, no. 2, pp. 44-45); some canonists viewed them as “a compendium of existing legislation” (S. HOLLAND, “The Code and *Essential Elements*,” in *The Jurist*, 44 [1984], pp. 304-308 and ID., “A Canonical Analysis of *Essential Elements* in the Light of the 1983 Code of Canon Law,” in *The Jurist*, 45 [1985], pp. 438-450); for many, especially certain women religious, it was an expression of the kind of authority Vatican II had called the Church to change. There was a fear that the study called for in the document would be “a painful example of the inability of the clerical Church to receive and honour the experience of women as full members of the Church,” a view that was supported by the lack of consultation in relation to the production of the guidelines (B. MOSLANDER, “The Bishops and Religious Life,” in *Origins*, 13 [1983], p. 431). Moslander was a former president of the Leadership Conference of Women Religious (=LCWR), and a member of the advisory committee of religious for the special commission of US bishops on religious life. There was no consultation with the International Union of Superiors General (=UISG) or the Union of Superiors General (=USG), prior to the compilation of *Essential Elements*.

bishops, which were called for at the Vatican Council and legislated for in *Mutual Relations*.¹⁶⁶ Whatever the motivation for the communication, although *Essential Elements* does not constitute new law, it provides “a compendium of legislation” that constituted a useful summary of the essential principles related to the living of consecrated life.¹⁶⁷

The Holy See’s concern for the way authority was exercised in institutes of consecrated life in the USA was evident from the strong emphasis on the personal nature of the authority of superiors, an authority that is clearly not vested in the members.¹⁶⁸

¹⁶⁶ See the interview conducted by the San Francisco Archdiocesan office with Archbishop John Quinn, Pontifical Delegate to the Commission on Religious Life, in DALY et al., *New Dialogue*, pp. 11-15. Buckley is of the opinion that *Essential Elements* was intended to summarize for the bishops, the main features that were common to all institutes of consecrated life. See M.J. BUCKLEY, “Reflections on the Document ‘Essential Elements...’,” in *New Dialogue*, pp. 258-260.

¹⁶⁷ In his “Papal and Curial Pronouncements: Their Canonical Significance in Light of the *Code of Canon Law*,” 2nd ed. rev. and updated by M. THÉRIAULT, Ottawa, Faculty of Canon Law, Saint Paul University, 2001, p. 35, F.G. Morrissey describes a directory as providing the basic principles of pastoral theology, taken from the magisterium of the Church, by which pastoral action in the ministry can be more fittingly directed and governed. This description would appear to suit the task given to the bishops by the Holy Father. The document does not provide legislation. It does not bear the signature of the Pope, but it does come with his approval. Although sent by the Congregation, the Prefect did not sign it. The value of this document, for our purposes, lies in the indications it gives of what were, or were perceived to be, the elements of the consecrated life that most needed to be emphasised at this particular time. See EUART, “Canonical Analysis,” p. 439.

¹⁶⁸ Certain trends that can be identified in religious life in the 1980’s militated against the traditional view of religious life, e.g., the centrality of the person, the community as coresponsible for the growth of the individual, the opportunity to engage in ministry that was not the corporate ministry of the community. Constitutions reflected the need to have dialogue before decision-making. Some made the local community the ordinary decision-making body. In the USA, the effort to move away from the authoritarian structures of the past, caused confusion, for some, in relation to the rightful authority of the Church. This was reflected in a move towards “non-canonical status,” a concept which appeared in the discussions of women leaders in the 1980’s, an option which appears to have its origin in a different view of the authority of the Church to the one traditionally accepted and in the pain of the experience of many women in relation to what was perceived as exclusion from full participation in the ministry of the Church by its hierarchical structure. See for example, S. HOLLAND, “Select Questions in Religious Law: Admission, Separation, Approbation,” in *CLSAP*, 44 (1982), pp. 133-140; R.A. HILL, “The Community and the Option of Non-Canonical Status,” in *RfR*, 41 (1982), pp. 542-550, and T.P. DOYLE, “The Canonical Status of Religious Institutes: Additional Considerations,” in *StC*, 18 (1984), pp. 347-365. Linscott describes a shift from “authority” to “leadership,” the former a canonical/juridical construct, the latter a charism. She argues for the need for both, but during the 1970’s and 1980’s, especially in North America, the emphasis was on leadership that did not always recognise the necessity for the authority that must go with it. See M. LINSKOTT, “Leadership, Authority and Religious Government,” in *RfR*, 52 (1993), pp. 166-203 (=LINSKOTT, “Leadership, Authority, Government”). Lozano’s description of the new trends in religious life in the 70’s and early 80’s cites the centralization of

While strictly speaking, this authority is not shared, neither is it exercised in isolation. The general chapter is one expression of shared responsibility, whose authority must be clearly delineated in the constitutions (*Essential Elements*, nos. 25, 52). The movement away from personal forms of authority affected religious communities in two ways: the development of smaller communities and the development of a form of government characterised by group discernment and dialogue. Perhaps this way of governing was especially pronounced in a society built on democratic principles, as North America is. Certainly the impetus for smaller communities and the trend towards more participative government was more stressed in the USA than elsewhere, as far as the Institute of the Blessed Virgin Mary was concerned at this particular time. Consequently, we find that government in some religious institutes in North America strove to reflect the democratic nature of the society in which the religious institute was situated.¹⁶⁹

The specific problems North American religious had with the two documents reflect the difference in approach to government that had developed there: the process of consultation followed the documents, a process that should have been reversed; already existing studies on the religious life in North America were ignored; both groups of major superiors were by-passed; the real object of the study was religious women; cultural

the person and the growing advocacy for women's rights as two of the most influential in this period. See J.M. LOZANO, "Trends in Religious Life Today," in *R/R*, 42 (1983), pp. 481-505. Conclusions drawn from the survey on religious life in Canada indicated similar trends: religious wanted authority to be shared and exercised as coresponsibility of members together with the superior for the common good. They found no place for authoritarianism, legalism, paternalism and formalism since these acts diminished the freedom of the person. See L. LABONTÉ, "Conclusions Drawn From Our Survey Working Paper 1968 on the 'New Trends' in Canadian Religious Life," in *Donum Dei*, 14 (1969), 1969, pp. 64-65.

¹⁶⁹ The development of more democratic forms of government in IBVM North America in the 1970's, reflected trends in contemporary society. There was not a corresponding development in IBVM Irish Branch at that particular time, although democratic principles, e.g., consultation, dialogue and collaboration did affect the way in which government was exercised. See ch. 4 below.

dimensions of renewal were minimized; concerns were addressed to the United States only; therefore this was perceived as an example of "Roman interventionism."¹⁷⁰

The principles of government expressed in *Essential Elements*, no. 49 were perhaps a reaction to practices of "government by the group," practices that appeared in some revised constitutions but were refused approval by the Congregation for Religious and Secular Institutes.¹⁷¹ *Essential Elements* does not describe authority in terms of autocracy, but rather says it must be so understood and implemented as to fulfil the purpose of religious government that is defined as "the building of a united community in Christ, in which God is sought and the mission of Christ is generously accomplished" (*Essential Elements* no. 52). Problems with authority were evident in the relationships between bishops and religious in the USA and in the reaction of religious to *Essential Elements*.¹⁷²

¹⁷⁰ See M.E. SHEEHAN, "Religious Life in the Church," in *The Way Supplement*, 65 (1989), p. 84, and F.N. DRAVES-ARPAIA, "Reflections on *Essential Elements*: A European Agenda for American Religious?" in *Sisters Today*, 55 (1983-1984), pp. 543-550.

¹⁷¹ The Holy See consistently denied requests for collegial forms of government or for government by boards of directors, on the basis that authority in religious institutes is personal. The different models of government emerging in the USA were a source of concern to the Holy See. For instance, in an address to the Conference of Major Superiors of Men, the speaker noted a movement away from what he termed "a single base authority [authority of office], to a triple base authority [authority of persons, community and office]" (R. CARIGNAN, "The Emerging Future for Religious Orders," in *Origins*, 11 [1981], p. 276).

¹⁷² In a summary of meetings held between the Holy Father and the UISG, tension was described between bishops and religious that had its source in differing concepts of authority. The democratic nature of USA society was the reason given for the sensitive reaction of American religious to lack of consultation and involvement in the production of a document that so intimately concerned them. See UISG, Summary of Report, June/July 1983, in *Origins*, 13 (1983), pp. 484-485. This report was reviewed by CRSI prior to the publication of *Essential Elements*. The LCWR in the USA was unable to obtain an audience with the Holy Father, a fact that generated negative publicity. The LCWR replaced the Conference of Major Superiors of Women (founded following a request from Congregation for Religious in 1964), at a time when, according to Linscott, reaction against authority that followed special general chapters in the USA resulted in considerable modification of structures of religious government. This name change took a while to be accepted by CRSI. See LINSOTT, "Leadership, Authority, Government," pp. 166-167. Granfield believed that the "monarchical model" of authority exercised in some institutes should be replaced by a "democratic" one (see P. GRANFIELD, "Changes in Religious Life: Freedom, Responsibility, Community," in *America*, 151 [1984], p. 121). See also M.A. NEAL, *From Nuns to Sisters*, Mystic, CT, Twenty-Third Publications, 1990, p. 89.

In 1984, the Sacred Congregation for Religious and Secular Institutes issued a decree *Iuris canonici Codice* which gave superiors general acting collegially with their councils the authority to identify norms abrogated by the Code or newly required by the Code.¹⁷³ The superiors general and councils were authorized to formulate new norms, which would have the force of law until the next general chapter. The chapter decisions, in turn, were then to have the force of law, even before acquiring the approval of the competent authority. This authorization, which was contrary to the prescriptions of cc. 587 § 2 and 595 § 1, was perhaps an indication of the somewhat ambiguous understanding, even in the Congregation, of the authority of superiors and chapters. On the other hand, perhaps it was merely a once-off authorization to enable institutes of consecrated life to function authoritatively pending definitive approval of revised constitutions.

In 1992 while the preparations for the Synod of Bishops¹⁷⁴ on consecrated life were underway, the results of a three-year study of religious institutes in the USA were released.¹⁷⁵ This study highlighted the impact of secular culture on consecrated life in the USA and indicated that the most pressing issue that needed to be resolved was that of authority.¹⁷⁶ The report drew attention to the fact that authority in many institutes had

¹⁷³ See CRSI, decree *Iuris canonici Codice*, 2 February 1984, in *AAS*, 76 (1984), pp. 498-499.

¹⁷⁴ See SYNOD OF BISHOPS, 9th Ordinary General Meeting, *De vita consecrata deque eius munere in Ecclesia et in mundo Lineamenta*, Vatican City, Libreria editrice Vaticana, 1992, English translation in *Origins*, 22 (1992), pp. 433, 435-454 (=Lineamenta); *Instrumentum laboris*, pp. 97, 99-138.

¹⁷⁵ See p. 111, footnote 155 above.

¹⁷⁶ See NYGREN and UKERITIS, "Future of Religious Orders," no. 3, p. 271, also *Lineamenta*, no. 29, p. 444. Commenting on the *Instrumentum laboris*, Cabra said that women in the West respond differently to the issue of the right to be involved in decision-making in the Church, and that in the English-speaking world sometimes the influence of radical feminism interjects other issues. See P.G. CABRA, "Le prospettive della vita consacrata nell'*Instrumentum laboris*," in *Inform.CRSI*, 20 (1994), pp. 43-45, English translation, "The Perspectives of Consecrated Life in the *Instrumentum laboris*," in *ConsL*, 20 (1994), p. 39.

undergone “deconstruction,” as a result of various understandings of consensus, subsidiarity, discernment and leadership. This situation, coupled with the dynamics of individualism, the diminished importance of obedience, and the separation of the spiritual life from the life of the Christian community, made the exercise of authority very difficult.¹⁷⁷

The question of authority surfaced also in the four attempts of the USA bishops to write a pastoral letter on the issues of specific concern to women.¹⁷⁸ This initiative of the bishops was unusual in that it drew an unprecedented level of interest from the Vatican, an interest that reflected the Holy See’s concern for some of the developments that had occurred in the USA, particularly in relation to the question of authority.¹⁷⁹ The drafts of the pastoral letter indicated the bishops’ willingness to grapple with the major issues of

¹⁷⁷ In a talk given to USG, the authors of the survey on the “Future of Religious Orders” spoke about the era of disillusionment in relation to authority in the USA, both in Church and State. Specifically in relation to religious, efforts to be more collegial and to practice the best of what members understood to be the requirements of subsidiarity and broad-based consultative decision-making had made these principles normative. Consensus had become the preferred mode of decision-making and their successes in this area had made women religious in particular shape more democratic and collegial forms of government. See D.J. NYGREN, and M.D. UKERITIS, “Transforming Tradition: Shaping the Revision and Identity of Religious Life in the US,” in USG, *Consecrated Life Today: Charism in the Church for the World*, International Congress, 22-27-November, 1993, Rome, Montréal, Éditions Paulines, 1994, p. 24.

¹⁷⁸ There were four drafts of this letter but they did not result in a pastoral letter. Instead, there was a report of the proceedings and a reflection. See NCCB, *Partners in the Mystery of Redemption: A Pastoral Response to Women’s Concerns for Church and Society*, 12 April 1988, in *Origins*, 17 (1988), pp. 757, 759-789 (=NCCB, *Partners in the Mystery of Redemption*); ID., *One in Christ Jesus: A Pastoral Response to the Concerns of Women for Church and Society*, 3 April 1990, in *Origins*, 19 (1990), pp. 717, 719-740 (=NCCB, *One in Christ*); ID., *Called to Be One in Christ Jesus: Pastoral Concerns of Women*, 3 April 1992, in *Origins*, pp. 761, 763-777 (=NCCB, *Called to Be One*); ID., *One in Christ Jesus: In Response to Women’s Concerns*, August 1992, in *Origins*, pp. 221, 223-240 (=NCCB, *One in Christ Jesus*); ID., *Strengthening the Bonds of Peace*, 16 November 1994, in *Origins*, 24 (1994), pp. 417, 419-422 (=NCCB, *Strengthening the Bonds*).

¹⁷⁹ See NCCB, *Strengthening the Bonds*, pp. 419-420. For the efforts made by NCCB and other bodies, e.g., LCWR, to research the issue of women and participation in governance, see P. SMITH, “Strengthening the Bonds of Peace Revisited,” in *CLSAP*, 58 (1996), pp. 358-367 (=SMITH, “Strengthening the Bonds”). For a summary of contemporary attitudes of women to Church authority in the USA, see M.J. WEAVER, *New Catholic Women: A Contemporary Challenge to Traditional Religious Authority*, 2nd ed., Bloomington and Indianapolis, Indiana University Press, 1995.

concern to women: inequality and discrimination based on unjust systems, structures and styles of government in Church and society; and the women's ordination issue that was believed to be at the root of the inequality question.¹⁸⁰ It was a reflection of the tensions between some women's organisations and some bishops that the bishops' conference was unable to come to agreement on many of the issues.¹⁸¹ The fourth draft was not accepted by the NCCB, who instead adopted the pastoral reflection, *Strengthening the Bonds of Peace*, in 1994.¹⁸² This reflection recommended continued dialogue on the issue of equality, the meaning of ministry in the Church, the nature of priesthood and the relationship between jurisdiction and orders.¹⁸³ In other words, the authority issue was still of concern.¹⁸⁴

¹⁸⁰ See NCCB, *Partners in the Mystery of Redemption*, no. 224, p. 781; ID., *One in Christ*, no. 168, p. 735; ID., *One in Christ Jesus*, no. 112, p. 233.

¹⁸¹ The difficulties LCWR and the Association of Contemplative Women had with the document were described in *Origins* in 1985. See Comments of LCWR on Proposed Pastoral on Women, in *Origins*, 3 October 1985, pp. 252-253 and Comments of Association of Contemplative Sisters on Proposed Pastoral on Women, in *ibid.*, p. 50.

¹⁸² Smith categorises the response to the bishops' efforts thus: those who supported the bishops teaching role in general and their efforts to grapple with this topic in particular; those who supported the bishops' initiative generally but who believed the focus of the document should be sexism or patriarchy rather than women; those who believed that any attempt by a body such as the NCCB whose membership excluded women, was flawed from the beginning. See SMITH, "Strengthening the Bonds," p. 335 and also D. GOTTEMOELLER, "Community Living: Beginning the Conversation," in *R/R* 58 (1999), pp. 137-139.

¹⁸³ Responding to the bishops' request for dialogue, LCWR conducted an evaluation of the leadership roles available to women in the Church. This resulted in the publication of the Benchmarks Project in 1996. See LCWR, *Creating A Home: Benchmarks for Church Leadership Roles for Women*, Silver Spring, MD, Leadership Conference of Women Religious, 1996.

¹⁸⁴ Those factors that the Holy See believed impacted on the question of authority in religious communities were summarized in *Congregavit nos*, published by CICLSAL in 1994: the demands for personal freedom and human rights that quickened the process of democratization especially in the West in the wake of Vatican II; the rejection of authority on a wide scale; the positive results of the feminist movement which were to be seen in seeking forms of community life that were more in keeping with a renewed awareness of the identity, dignity and role of women in society. The new concept of the human person placed an emphasis on individualism and personal initiatives. Sometimes these values were reflected in the revised constitutions of communities, and together with the focus on collaboration, participation, dialogue, coresponsibility and subsidiarity, the way authority was perceived underwent a change.

2.3.2 – 1994 Synod of Bishops on the Consecrated Life

The Synod of Bishops of 1994 was significant because, for the first time in history, the entire Church was called to reflect on and study the theme of consecrated life. The depth of preparation and the extent of consultation made the Synod unique.¹⁸⁵ The *Lineamenta* or guidelines for discussion caused great agitation, particularly in the Church in North America.¹⁸⁶ They reflected the positive and negative aspects of changes that had occurred in the consecrated life since Vatican II. Those issues that needed further study included: the evolving role of women and the need to include them in appropriate ways in the life of the Church (nos. 19, 29); the question of lay brothers and particularly their status in mixed institutes (nos. 19, 21); the process of recognition and approbation of new forms

Congregavit nos displayed the belief that the value of consecrated life as an expression of ecclesial communion risked being compromised by a distrust of authority. The consequence of this distrust resulted in disregard for the necessary place of authority, in some instances reducing it to the coordination of the initiatives of the members, with no one in charge. In other situations, all decisions were made collegially. As a result, the Holy See saw fit to remind religious that the redesign of authority called for by Vatican II, must include the concept of obedience to those persons in authority, and relates it to specific situations in accordance with the charism of the institute. Consequently, authority in *Congregavit nos* is described as “always service,” “conducive to unity,” “capable of making final decisions and ensuring their implementation” in which faith plays a decisive role. See *Congregavit nos*, nos. 4-5, 9-10, 48-52, pp. 696-697; 697-699; 705-706.

¹⁸⁵ See *Instrumentum laboris*, no. 3, p. 99. Every Bishops’ Conference, every conference of religious in every nation of the world, members of the Curia and experts were given a carefully prepared document, the *Lineamenta*, whose purpose was to provoke discussion and debate. For a description of one of the *periti*, see C.J. YUHAUS, “The 1994 Synod: Uniqueness and Challenge,” in *R/R*, 54 (1995), pp. 833-850 (=YUHAUS, “The 1994 Synod”). For a comprehensive summary and critique of *Lineamenta*, see R. McDERMOTT, “Consecrated Life and Its Role in the Church and in the World: The *Lineamenta* for the 1994 Synod of Bishops,” in *The Jurist*, 53 (1993), pp. 239-262 (=McDERMOTT, *Consecrated Life and Its Role*).

¹⁸⁶ Canon 346 provided for the presence of clerical religious institutes elected in accordance with the special law for Synods. There was no canonical provision for women. Women were not invited initially, a fact that caused much criticism, as women comprised 72% of religious worldwide at that particular time. Some religious in the USA perceived this as an instance of patriarchy, whereby men would discuss and formulate proposals in relation to the life lived by women and without any input from the major constituents. In response to representation about the issue, Pope John Paul II invited the UISG to send 20 representatives. He personally added 31 others, which made 17% of participants female, and although these women (and religious men who were not ordinaries in the sense of c. 134 § 1) had no vote, they had a very significant role in the discussions and in the formulation of the proposals that were voted upon at the final session of the Synod. See YUHAUS, “The 1994 Synod,” pp. 836-837.

of consecrated life (no. 24). The negative impact of change had manifested itself in tension with the hierarchy in relation to the theory and practice of authority, and the drive towards democracy that spawned attitudes of individualism and lessened esteem for authority and Church discipline (no. 28). These issues had to be examined.¹⁸⁷

The *Lineamenta* drew attention to the “notable effects of the advancement of the status of women in certain countries” (no. 29). While there were positive aspects to this development, the negative effect that caused concern was the “mistaken idea of feminism that laid claim to the right to participate in the life of the Church in ways that are not in keeping with the hierarchical structure willed by Christ” (ibid.). These attitudes were reflected in constitutions that required “obedience to one another,” procedures such as the discernment of a self-appointed group to select a major superior, self-selection for general chapters and universal suffrage in relation to major issues, e.g., election of the supreme moderator.¹⁸⁸ Perhaps because of the responses, particularly of women in the USA, to the issue of authority, the *Instrumentum laboris* also stressed the need to remove discrimination in relation to women; to ensure reciprocity and complementarity with men in relation to roles and responsibilities in Church and society; and to involve women in discernment and decision-making processes, particularly in what concerned their life as

¹⁸⁷ See *Lineamenta*, nos. 19, 21, 24, 28, pp. 440-442, 444. McDermott criticized the language of Section III of *Lineamenta* on the grounds that it was an unbalanced representation of hierarchical authority. See MCDERMOTT, “Consecrated Life and Its Role,” p. 257.

¹⁸⁸ See ibid., p. 253 and E. McDONOUGH, “Juridical Deconstruction of Religious Institutes,” in *StC*, 26 (1992), pp. 310-321. The lack of unanimity in the USA in relation to the major issues surrounding the discussion of the consecrated life at this period is reflected in the creation of the Council of Major Superiors of Women Religious by CICLSAL in 1992. This conference was juridically equal to, but not connected with, the LCWR. The question of the role of women in the Church was also examined in Canada. The Canadian Bishops initiated a national consultation on “Issues of Concern to Women,” in 1992. In 1996, they conducted a consultation in relation to follow-up to the 1995 International Women’s Forum and the United Nations’ Fourth World Conference on Women in Beijing.

consecrated women (nos. 20, 88).¹⁸⁹ The approach to authority in consecrated life emphasized authority as service and communion (nos. 20, 59). The negative impact of democratic ideas had led to an independence from, rather than a balanced participation in, the life of the Church. However, the rightful autonomy of institutes of consecrated life, especially in relation to government, was acknowledged, autonomy protected by ordinaries and by the administrative power that chapters and moderators receive from God through the ministry of the Church (no. 81).

Although the general chapter did not receive any special attention at the Synod,¹⁹⁰ the fruits of the Synod, reflected in the Apostolic Exhortation of Pope John Paul II in 1996, indicate issues of authority that required attention. Specifically in relation to women, there was a plea to take urgent steps to enable women to participate in decision-making processes above all in matters that concern them (*VC*, nos. 14, 41-62, 72). This plea was

¹⁸⁹ The CCCB had made the same recommendation that women be involved in decision-making processes in the Church, as far back as 1982. See CCCB, *With Respect to Women*, p. 18.

¹⁹⁰ Interventions indicate a wide divergence of opinions with regard to the nature of religious life and consequently of the power given to religious superiors and chapters. For example, the president of US Conference of Major Superiors of Men considered role confusion and ecclesial identity as the greatest challenges facing US religious. See G. FERRARA, *Il sinodo dei vescovi, nona assemblea generale ordinaria, 2-30 October 1994: la vita consacrata e la sua missione nella Chiesa nel mondo*, Rome, Edizione la Civiltà Cattolica, 1998, pp. 145-146, English translation in *L'OR*, English ed., 26 October 1994, p. 13. The Bishop of the Congo suggested women could be cardinals. See *ibid.*, pp. 211-212, English translation in *L'OR*, English ed., 2 November 1994, p. 21. Cardinal Hume, on the other hand described religious life in more traditional terms. See G.B. HUME, *Relatio ante disceptationem, 27 September 1994, Synod Episcoporum IX coetus generalis ordinarius, De vita consecrata deque eius munere in Ecclesia et in mundo*, Vatican City, Libreria editrice Vaticana, 1994, English translation in *L'OR*, English ed., 12 October 1994, pp. 9-13. The interventions of the Canadian bishops reflected CCCB's understanding of some of the issues of concern to Canadian women: the absence of women in decision-making roles in the Church; the discrimination against women religious evident in the Vatican Year Book's list of male religious supreme moderators but no female moderators; the treatment experienced by women religious seeking to have constitutions approved compared to male superiors; the difference in monastic cloister for women and men (c. 667); and the fact that cloistered women have no international structure to enable them to voice their needs. See *With Respect to Women*, pp. 55-56.

particularly applicable to contemplative women.¹⁹¹ A special commission was to be established to sort out the status of religious brothers in mixed institutes (*VC*, no. 61).¹⁹² Several recommendations were made in relation to the promotion of good relations between bishops and religious and in relation to the promotion of communion at all levels in the Church (*VC*, nos. 48-50).¹⁹³ In other words, the preparations for the Synod and the Post-Synodal Exhortation revealed some of the on-going issues in relation to authority particularly evident in the USA.

2.3.3 – On-Going Debates Concerning Authority in Institutes of Consecrated Life

Contemporary influences on the question of authority together with the ambiguity caused by the expression of the power of superiors and chapters in c. 596 §§ 1, 3 led to a variety of interpretation in the years after the promulgation of the Code.¹⁹⁴ Explanations generally fall into three categories: those who believe in the essential connection of power

¹⁹¹ For example, in relation to enclosure, monasteries of contemplative monks are required to “observe a stricter discipline.” Women contemplatives, on the other hand, must observe “papal enclosure.” Compare c. 667 § 2 and c. 667 § 3.

¹⁹² Ghirlanda pointed out that two issues this commission will have to work out concern c. 129 § 2: would a non-ordained superior be able to exercise jurisdiction and could such a superior be considered an ordinary. See G. GHIRLANDA, “L’Esortazione apostolica *Vita consecrata*: aspetti canonici,” in *Periodica*, 85 (1996), p. 609. To date, this commission has not been established.

¹⁹³ For the reception of *Vita consecrata*, see A. TEDESCHE, “Per una lettura di *VC*,” in *Inform.CRSI*, 24 (1998), pp. 92-108, English translation, “On a Rereading of *Vita consecrata*” in *ConsL*, 24 (1998), pp. 276-293. See especially pp. 276-278.

¹⁹⁴ Disputes between individual institutes and the Holy See also indicate difficulties with authority experienced in some institutes in the USA, e.g., a dispute between the School Sisters of St. Francis and the Holy See was described by the congregational leader as “a conflict in the understanding of authority” that led to the placing of their European province under the control of the Sacred Congregation. See *CRSI*, letter, 28 May 1984, reported in *R/R*, 44 (1985), pp. 100-101. The LCWR established panels to help sisters experiencing difficulties with ecclesiastical authorities in 1984. In an interview given in 1984, the leader of LCWR stated that sisters had brought US traditions of democracy, women’s equality and open discussion into the Catholic Church, but the Holy See had not always accepted them. See [author unknown], *National Catholic Reporter*, 7 September 1984, pp. 1, 23.

of orders and power of jurisdiction that therefore restricts the exercise of the latter to the ordained; those who believe there is a dual ecclesiastical power, that of orders transmitted through the sacrament and that of jurisdiction transmitted by means of canonical mission, thereby allowing laypersons to share in its exercise; those who recognise that the capacity for the exercise of orders comes from the sacrament, a capacity that is actualized for the bishop with ecclesiastical office. As a result, anyone can receive delegation to exercise the function of governing from the competent authority. Some canonists therefore believe that a lay religious superior or chapter cannot exercise jurisdiction and describe the power of 596 § 1 as dominative.¹⁹⁵ Others grant jurisdiction to both clerical and non-clerical institutes.¹⁹⁶ Others believe such superiors and chapters exercise quasi-jurisdictional power.¹⁹⁷ This variety of response to the canonical description of power has been exacerbated by the different interpretations of authority and how it is, or ought to be, exercised in the Church in general and in religious institutes in particular.

2.4 – CONCLUSIONS

The ecclesiology of Vatican II enriched our understanding of the nature of the Church and of the ways in which the members participate in its life and mission. The

¹⁹⁵ See V. DE PAOLIS, “Gli istituti di vita consacrata,” in *Il Codice del Vaticano II, la vita consacrata*, Bologna, Dehoniane, 1983, pp. 89-95 and D. ANDRÉS “Los superiores religiosos de los religiosos: estatuto comun a todos los superiores,” in *CpRM*, 78 (1997), pp. 95-165.

¹⁹⁶ See J.L. GUTIÉRREZ, “Lo stato della vita consacrata nella Chiesa valori permanenti e innovazioni,” in *Monitor Ecclesiasticus*, 110 (1985), p. 46. Many English-speaking canonists take this position, e.g., Beal, Coriden, and Provost.

¹⁹⁷ See E. GAMBARI, *I religiosi nel codice*, Milan, Ancora, 1986, pp. 77-78; G. SHEEHY, et al., “Norms Common to All Institutes of Consecrated Life,” in *The Canon Law: Letter and Spirit*, Collegeville, MN, Liturgical Press, 1995, p. 328; GHIRLANDA, “De natura potestatis regiminis,” pp. 145-146.

grants of power to institutes of consecrated life by the Apostolic See before the promulgation of *CIC*, together with the discussions concerning lay jurisdiction during the revision process and the on-going debate in relation to the issue lead to the conclusion that there is a large body of authoritative sources which sees no difficulty in acknowledging the exercise of ecclesiastical power of governance by laypersons, including religious. This acknowledgement is based on the evolving understanding of the concept of dominative power attributed to religious superiors and chapters as a form of partial jurisdiction, on the evidence of history and as a result of the response of the Congregation for the Doctrine of the Faith regarding the participation of laity in the exercise of jurisdiction in certain circumstances. The right to participate in governance also derives from the theological understanding that, through baptism, each one shares in the *munera* of Christ and receives a mission to build up the body of Christ. For some, this occurs in virtue of ordination, but for others, the authorization to exercise these functions comes through canonical mission undertaken in communion with the Church. One of the difficulties lies in determining which ministries are intrinsically hierarchical and therefore are not open to the non-ordained.

The Code itself is ambiguous in its description of the power exercised by laypersons and by non-clerical religious in particular. This ambiguity can be seen in c. 596, which does not define power except to say that clerical religious institutes of religious life have “in addition” ecclesiastical power of governance. However, it seems clear that some of the powers given to the non-ordained in the Code presuppose the possession of power of governance or at least the capacity to receive it. There is no difference in practical

consequences whether a decree or indult emanates from a superior or chapter with ecclesiastical power of governance or not.

As the Second Vatican Council and *CIC* did not resolve the problem of the nature and origin of sacred power in the Church, there is a variety of opinion on the matter. Despite the lack of clarity in relation to who may or may not exercise jurisdiction, a number of conclusions may be drawn from this analysis of the nature of the authority and power of general chapters. The Code retains ambiguity concerning the possibility of laypersons exercising jurisdiction, an ambiguity that rests on the lack of clarity concerning the nature and origin of power. This however, cannot be conclusively determined until the theological reflection matures. The *Instrumentum laboris* for the Synod of Bishops called the power of the chapter “administrative” but there is no clarity as to this meaning. *Codex iuris canonici* identifies two types of authority in relation to the general chapter, that of power of governance and another unnamed power. Some acts carried out by clerical major superiors or general chapters are acts of jurisdiction. The same acts, carried out by non-ordained major superiors or general chapters empowered to do so, are not called acts of jurisdiction. The difference between the two types of authority stems from the ordained/non-ordained status of the persons or organ undertaking the act. Besides clerical institutes of pontifical right, some general chapters of secular institutes and some societies of apostolic life also exercise power of governance. The nature of the authority exercised in mixed institutes is unclear, since in fact, a lay brother could be the major superior of clerical members. The general chapters of lay brothers and women’s institutes exercise an unnamed authority. The same acts as to their nature are carried out with the same juridical consequences, irrespective of whether the general chapter is composed of clerical or non-

ordained members or a combination of both. The Code recognises the capability of laypersons to partake in governance in the offices open to laypersons and the delegation of authority possible to suitable and competent persons.

The debate concerning authority has been fuelled by the evolving notion of what constitutes it and by the belief that those governed have a right to participate in that government. This right was actualized in general chapters from their earliest development. However, in some places, notably in North America, this right has become, or is in danger of becoming, the right to govern. This inevitably leads to conflict in a system that is, of its nature, hierarchical.

Codex iuris canonici differentiates between the authority of the general chapter and the power it possesses to act. *Codex iuris canonici* also specifies the issues over which it has authority, the manner in which its power must be exercised and the juridical consequences for the members of the chapter and the wider community of the institute, in other words, it provides for a more complete understanding of what constitutes the authority and power of the general chapter in an institute of consecrated life.

CHAPTER 3

THE GENERAL CHAPTER AS THE REALIZATION OF COLLEGIAL GOVERNMENT IN A RELIGIOUS INSTITUTE

The proper power of the general chapter specified in c. 596 is further delineated in c. 631 § 2: the institutes's own law can limit the power of the general chapter and can decide which matters are within its competence. It can also specify how the general chapter is to operate in its ordinary and extraordinary manifestations, its composition, procedures and the order to be observed. The description given the general chapter in c. 631 § 1 further specifies its nature. It is a canonical institute that has a sign value of the unity in charity of the members. This is apparent in the procedures that describe the dynamic aspects of the chapter. The chapter is further characterized as representative of the whole institute and although, in itself, it is not a juridic person, the chapter represents the juridic person of the institute in a collegial fashion, because the members decide its conduct by participating together in making decisions (c. 115 § 2). Designated as the supreme authority in the institute, the juridic nature of the general chapter is further specified in its functions: to protect the patrimony, to foster renewal in accordance with that patrimony, to elect the supreme moderator, to deal with more important matters and to issue norms all must obey (c. 631 § 1).¹

¹ The article on general chapters in the Code is new. *CIC/17* had only referred to chapters generally in the canons on government (cc. 501, 506, 507). The many practical details in relation to their functions and purposes had evolved in the course of time. The respect of *CIC* for the charism of an individual religious congregation can be seen in the fact that only general principles are established in its regard. This fact can be seen clearly in the law concerning general chapters: c. 631, while naming those functions that are the specific concern of the general chapter, leaves all other details to the proper law of the congregation.

3.1 – TYPES OF GENERAL CHAPTER

In describing the general chapter, one must remember at all times that we are dealing with much more than a juridic structure of governance.² The general chapter is, above all, a faith experience, an experience of the unity of the members, an event in the life of the congregation that has been described as “salvific, ecclesial and familial.”³ As such, it has an impact that reaches beyond the members who actually participate, to the entire membership whose participation is indirect, to the Church in the local area and beyond to the entire Church. *Vita consecrata*, no. 74 recognises that the institute of consecrated life, by the very fact that it promotes the value of fraternal life, provides a privileged experience of dialogue, the “new name of charity,” especially charity within the Church.⁴ The general chapter reflects that communion of the members in the dialogue that characterises its activity. In this way it is a microcosm of the Church.

There are two main emphases in the aims of the general chapter as described in c. 631: the apostolic call to witness to the consecrated life in the present and the call to plan

² Writing in 1984, Alvarez noted a movement away from legislative chapters and toward directional chapters. She attributed this shift to the fact that time and experience had shown that legislation, which deals with structure and resources, is not the primary role of the chapter. See J. ALVAREZ, “Focusing a Congregation’s Future,” in *HD*, vol. 5, no. 4 (1984), p. 32. See below pp. 247-253, 268-274, for this experience in IBVM.

³ In 1976, the prefect of CRSI, Cardinal Pironio, described general chapters in these terms. The impact of his words was profound, perhaps because the prefect articulated what many congregations were in fact experiencing at that time. In focusing on the spiritual dimensions of the need for prayer, discernment, poverty of spirit that would render the delegates open to the work of the Holy Spirit, and fraternal charity that unites the members with God, one another, the local and universal Church, and enables them to dialogue in freedom, the Cardinal in fact articulated those elements that are essential for the operation of a general chapter. These are the values that make this governmental structure different from any other in civil or political life, values that if used more comprehensively in the Church might enable us to be more open to the on-going work of the Holy Spirit in the Church and in the world. See PIRONIO, “Reflections,” pp. 9-10.

⁴ “To this internal drive of charity which seeks expression in the external gift of charity, we will apply the word “dialogue” (*Ecclesiam suam*, no. 64, pp. 276-277).

for the future. The first emphasis points to the fact that the chapter must be a faith experience first of all, a coming together of the action of the Holy Spirit and the acts of the members. In planning for the future, the general chapter calls the members of the congregation to be accountable for their actions since the previous chapter, to affirm what was of value and to correct what needs correction, to establish policies and norms in accordance with the charism and resources and to elect the leader who will help to make these happen. The two elements go together: faith without action is not the Christian vision and action without the direction of the Holy Spirit reduces the chapter experience to something resembling a board meeting.⁵

We find a great deal of creativity and variety in the way in which general chapters are conducted to provide for the functions listed in c. 631 § 1. Custom and tradition, together with the legislation of the Church, have determined that there are different types of general chapter to deal with the functions specified. The purpose of the general chapter determines what type it is to be. An ordinary general chapter might have two components, the election of the supreme moderator and the more important business of the institute. An extraordinary general chapter is convoked to meet some important specific need, e.g., revision of constitutions. Furthermore, in the context of its most important function, i.e., to be a true sign of the unity in charity of the members, one could query if the purpose is to represent the views of all members? Or is it rather a prophetic body whose purpose is to challenge the membership and to provide direction for the future? Since the reception of the chapter acts depends in no small measure on the degree to which members can “own”

⁵ See G.A. ARBUCKLE, “Evaluating General and Provincial Chapters,” in *R/R*, 47 (1988), pp. 177-189 (=ARBUCKLE, “Evaluating Chapters”).

them, the general chapter actually needs to do both. Irrespective of the description given the chapter, what it concerns is the mission of the institute in the service of the Church. Leaders are elected with this end in view and the business of the chapter concerns this purpose also.

3.1.1 – Ordinary General Chapter: Chapter of Affairs

The general chapter of a congregation must protect and renew the spiritual patrimony of the institute. It should be “a moment of grace and of action by the Holy Spirit” (*Essential Elements*, no. 51), which is facilitated by adequate preparation, an atmosphere of prayerful, communal discernment during the chapter, and planned follow-up. Sometimes the members have what one author calls “meta-expectations.”⁶ These can arise from the way pre-chapter preparations are conducted or indeed from the conduct of the chapter itself.⁷ Another author suggests that what should be evolving in the months of preparation for the chapter is how to identify and clarify the proper content and how to differentiate between meta-expectations and what is reasonable. Chapters, if rightly prepared, provide the entire membership with the opportunity to participate in a communal discernment process.⁸

⁶ See J.R. RIVELLO, “Meta-Expectations and the General Chapter,” in *R/R*, 48 (1989), pp. 31-37.

⁷ Overman describes the pre-planning phase of the religious congregation as it prepares for the chapter as a “corporate” planning program, undertaken by the congregation as a function of its chapter. He describes the steps thus: Stage One: Preparation for Chapter: (a) overview: purpose, definitions, stages, schedule (b) the database: the external and internal environments, trends for the future (c) charism and mission statements (d) the areas of concern: evaluations, priorities; Stage Two: Chapter Action: (a) goal-setting (b) strategies (c) action plans; Stage Three: Post-Chapter Implementation: (a) implementation and schedules (b) evaluation: when and how (c) renewal of the planning cycle. See C. OVERMAN, “The Planning Chapter,” in *Sisters Today*, 59 (1987), p. 94.

⁸ See ARBUCKLE, “General Government,” p. 836.

The Church recognises the true autonomy of life, especially of governance for each institute (c. 586 § 1), an autonomy local ordinaries are mandated to safeguard and protect (c. 586 § 2). This autonomy means that the congregation can preserve its patrimony, which includes both the vision of the founders and the lived experience of the members (c. 578). The recognition by Vatican II of the importance of charism, as it is lived according to the history and traditions of the particular congregation, gave a new significance to the lived experience of the founder and the members. As a result, the Code encourages the participation of all the members in the work of the chapter (c. 633). Consequently, pre-chapter work today uses participative procedures, e.g., consensus and discernment, to arrive at proposals and suggestions that are sent to the planning group of the general chapter for inclusion in its agenda. These same procedures have become the *modus operandi* of many general chapters and contribute in no small way to the unity in charity of the members in the process.

Some of the tasks of the ordinary general chapter are functional: to elect the supreme moderator, and in the case of some congregations, other officials also; to protect the patrimony, a task normally accomplished by evaluating the congregation's faithfulness to its charism and mission and putting in place norms, policies or directions to safeguard it into the future; financial evaluations and decisions, particularly those that effect the temporal patrimony of the congregation (c. 638); issues regarding the life and apostolate of members; formation programmes; entrance policies and other major decisions. As a collegial body with supreme authority while in session, the general chapter acts as a check

on the personal authority of the supreme moderator and council by requiring accountability for their stewardship since the previous general chapter.⁹

Constitutional changes require the approval of the general chapter and then approval by the competent ecclesiastical authority (cf. c. 587 § 2). Since the implementation of such changes usually cannot take place until after approval of the Holy See or other competent authority, this means that an institute must wait until the subsequent general chapter to implement new legislation. However, the Holy See has allowed pontifical institutes to acquire “approval in principle” for proposals that receive at least two-thirds of the votes of members of the chapter.¹⁰ The general chapter also authorises changes to other proper law. Consequently, rules and statutes might be changed, directories might be revised and policies issued.

Some of the tasks of the general chapter are inspirational. These are difficult to categorise given that the chapter is basically a faith experience. However, many institutes use the general chapter to produce mission statements or other policy documents in order to inspire the members in the period between general chapters. Sometimes these inspirational documents have a functional aspect also, e.g., the policy document might provide tasks to be accomplished, as in the on-going formation policies adopted by many institutes. These usually include an inspirational section giving the rationale for the document, followed by a programme for action. The task of fostering appropriate renewal

⁹ This is not to say the chapter interferes with the ordinary authority of the general superior and council, which continues for the duration of their mandate.

¹⁰ The jurisprudence of the Holy See requires that any change in constitutions must be approved by two-thirds of the general chapter and then receive the approval of the Holy See. See CRSI, letter, 28 November 1970, prot. no. DD, 95-2/70, in *CLD*, vol. 8, p. 331 (=CRSI, letter, 28 Nov. 1970).

might provide both inspiration and a programme to be followed. One of the tasks of the general chapter is to ensure that such renewal harmonises with the institute's own spirit and mission and that of the Church. The chapter therefore provides the general principles, which individual units of the congregation, e.g., provinces, regions, areas, particularly in an international and multicultural one, adapt in a particular way, thus allowing the principle of subsidiarity to work.

The extent of the authority of the general chapter is defined in the congregation's own law. Consequently, what general chapters actually do varies greatly from one congregation to another. The scope given to proper law by *CIC* means that each congregation can determine over what matters the general chapter has competence. The Code provides several instances where "the competent authority" has the power to act, e.g., in cases of aggregation of congregations (c. 580), dividing the institute into new parts, changing existing divisions (cc. 581, 585), suppressing existing divisions (c. 585). The competent authority might be the supreme moderator acting with personal authority, or with the advice/consent of the council or general chapter. Proper law will determine which authority is competent and the procedures that must be followed.

An ordinary general chapter normally takes care of its business in one session.¹¹ The same delegates may not automatically represent the members at the next chapter, even if the chapter decides another session of the same chapter is required. A separate election

¹¹ The special general chapter permitted by the *motu proprio ES II* was authorized to hold a second session not ordinarily more than a year after the closure of the first session. However, this was an exceptional provision. See CRSI, letter, 28 Nov. 1970, p. 331. See also CRSI, reply, 27 June 1973, prot. no. 43931/73, in *CLD*, vol. 9, p. 342.

must be held, safeguarding the right of the membership to elect representatives and in this way to contribute indirectly to the government of the institute.¹²

The concept of on-going chapters allows for a weighty agenda to be adhered to. However, this type of chapter does not allow implementation of decisions or evaluation of directions. It ceases to be a significant event in the life of an institute. Perhaps the greatest disadvantage of the on-going chapter lies in the inability of the entire membership to exercise the right to be involved in its preparation. When the general chapter is a significant event in the life of a congregation, its effect is magnified. The policy of the Holy See is to ensure that each general chapter is a significant event in itself.¹³

3.1.2 – Ordinary General Chapter: Elections

Some institutes separate elections from chapters of business. Those who hold elections first do so in order to ensure that the transition to a new leadership will be smooth. Those who hold it subsequent to the chapter of business claim that this process enables them to elect those most suited to the tasks established by the chapter of affairs. Still others hold elections in the middle of the chapter of affairs. The principle here is that each congregation has the freedom, under the universal law, to make those arrangements that best accord with its own charism as it is lived out in a particular time and place.

¹² The response of CRSI to a request to provide a “permanent mandate” to delegates to the general chapter of a particular congregation was negative. The Congregation held that even delegates to a possible extraordinary general chapter should be elected so that the members always retain their right to reconsider for whom they will vote. See CRSI, *Observations on Acts of a Special General Chapter*, 16 March 1973, prot. no. G. 39-1/71, in *CLD*, vol. 8, p. 399 (=CRSI, “Observations”). This decision accords with the nature of the general chapter, which is not a permanent body.

¹³ CRSI refused permission to a general council of a certain congregation to dispense with a general chapter scheduled to take place. See CRSI, letter, 28 Nov. 1970, p. 331.

The primary function of an ordinary chapter is to elect the supreme moderator who will govern the institute for the term of office determined by the constitutions. Proper law will establish the criteria for a valid election, for example it must specify the number of years a supreme moderator must be perpetually professed (c. 623). Some institutes also elect general councillors, the general secretary and the general bursar. In accordance with the principle that each institute is to decide its government in accordance with its own charism, the only directives given in universal law are that the supreme moderator is to be elected by means of a canonical election, in accordance with the constitutions (cc. 625 § 1, 631 § 1). The composition of the chapter, the electoral body, and the procedures used are to be specified in proper law (c. 631 § 2), otherwise the norms of universal law pertain (cc. 164-179).¹⁴ In addition, each supreme moderator is to have his/her council. However, the universal law does not state that other officials are to be elected by the chapter, how the council is to be composed, nor does it give specific directions as to its function. In keeping with the principle of subsidiarity, these details are left to proper law (c. 627).¹⁵

¹⁴ See also *CCEO*, cc. 947-960. In the case of Eastern Catholic institutes of consecrated life, particular law must follow universal law in relation to elections. See J. ABBASS, "Two Codes in Comparison," in G. NEDUNGATT (ed.), *Kanonika*, vol. 7, Rome, Pontifical Oriental Institute, 1997, pp. 159-160, 164-173 (=ABBASS, "Two Codes in Comparison"). While many of the principles concerning canonical elections are taken from *CIC/17*, there are some key differences: *CIC/17*, c. 171 required the president and scrutators to take an oath of secrecy: c. 173 does not give that requirement; *CIC/17*, c. 170 invalidated a vote for oneself: this is not mentioned in c. 172; proper law can contain provisions that are different to universal law, especially in relation to the majority necessary to elect (cc. 164, 176, 119, 1°); *CIC/17*, c. 101 § 1, 1° calculated the majority on the number of valid votes cast in a particular ballot: c. 119, 1° calculates the majority on the votes of those present and provides for a different system regarding the third ballot (only the two with the highest votes are included, or the two oldest if there is a tie). If the third ballot results in a tie, the senior by age is elected (*CCEO*, c. 956 § 1 defines seniority in terms of ordination for clerics and first profession for religious). *CIC/17*, c. 506 § 1 required male religious to take an oath to elect those they judged should be elected: *CIC* does not make this discrimination. Both Codes refer to procurement of votes (*CIC/17*, c. 507 § 2, c. 626).

¹⁵ The Code clarifies what is expected of such councillors and that the supreme moderator must consult them in the exercise of government (c. 627/*CCEO*, c. 432 § 1). The Code is very specific on the role and duties of the financial administrator, who must be distinct from the supreme moderator. However,

Elections take place when the term of office of the supreme moderator has come to an end, or in anticipation of its end. In the latter case, according to c. 153 § 2, provision for the office can be made within six months of the expiry of the determined office and it takes effect from the day the office falls vacant. The one elected has no canonical rights arising from the office until the office is vacant. Because today many religious are under contract in relation to apostolic work, many congregations make provision for an in-coming supreme moderator to take office at a time determined by the general chapter. Terms of office of supreme moderators vary. Reelection of the same person for a further term of office is determined by the constitutions of the institute.

It helps the efficiency of the process of election if the members can articulate the qualities needed in the leader.¹⁶ One of the problems for leaders today lies in the fact that they are required to fulfill many different roles. Realistically, no one person can have every gift. As a result, the membership of an institute must determine what gifts are most needed now, and who can best fulfil that role, a task usually accomplished in pre-chapter work. In many congregations the qualities of the leader chosen will influence the choice of councillors also.

besides establishing that there is to be such an official, the Code allows the specifics of appointment to proper law (c. 636 § 1).

¹⁶ At their general chapter of 1983, the supreme moderator asked the members of the Carmelites if the congregation required a leader who is prophetic, or can heal the divisions in the congregation, someone who is a good administrator, legislator, manager or a charismatic figure who can animate the members. See E.E. LARKIN, "Guidelines for Discernment," in *HD*, vol. 5, no. 2 (1984), p. 45 (=LARKIN, "Guidelines for Discernment").

The methods used in the election process are as varied as the institutes that use them.¹⁷ The Congregation for Religious and Secular Institutes held that direct elections of general administrative officers by the entire community is not beneficial.¹⁸ However, they find no problem with nominating persons for these offices provided it is understood that, at the chapter elections, the delegates are free to vote for whomever they think suitable, irrespective of whether the person has been nominated or not.¹⁹

3.1.3 – Extraordinary General Chapter

“Special general chapter” was the title given to the chapters of renewal called for in response to *Ecclesiae Sanctae II*. The agenda of this special chapter was to approve experimentation whereby the existing constitutions might be modified. This gave the

¹⁷ Research carried out in 1990/1991 in Canada, indicated a variety of methods used in the election process. The common elements were named as: surfacing of names by members; circulation of those names; dialogue with delegates or participants at the chapter; nomination; and election, all carried out in the context of discernment. See CANADIAN RELIGIOUS CONFERENCE, *Chapter, Election and Restructuring Experiences: Report on Survey 1991*, M. GALLAGHER (ed.), Ottawa, Canadian Religious Conference, 1992, p. 22 (=GALLAGHER, *Report on Survey*), p. 22. Three broad categories of process can be identified by which communities choose leaders: discernment, election by the chapter, and election by the total membership. See D. GOTTEMOELLER, “Religious Government: A Reflection on Relationships,” in *R/R*, 34 (1975), pp. 376-379 (=GOTTEMOELLER, “Religious Government”). These processes will be dealt with below.

¹⁸ Gottemoeller suggests the desire to have this type of election may indicate a problem with the chapter process. If this is the case, the chapter process must be examined. See GOTTEMOELLER, “Religious Government,” p. 378. In 1980, CRSI indicated that direct elections might occur in congregations of less than one hundred members. See CRSI, letter, 26 March 1980, prot. no. 31844/80, in *CLD*, vol. 10, pp. 103-104 (=CRSI, letter, 26 Mar. 1980). Sometimes an indult is given for direct elections for particular reasons. However, CRSI stipulates that the procedure should be submitted for examination before the actual election, and that a report and evaluation be sent afterwards to the Congregation. See CRSI, indult, 8 November 1980, prot. no. 31844/80, in *CLD*, vol. 10, p. 105; CRSI, letter, 29 July 1982, prot. no. 13844/80, in *CLD*, vol. 10, p. 106; CRSI, reply, 19 May 1969, in *R/R*, 33 (1974), p. 1504; CRSI, letter, 24 October 1972, prot. no. 9030/68, in *CLD*, vol. 8, pp. 355-356 (in this instance, the Congregation allowed direct voting as an exception).

¹⁹ The procedural norms for a particular congregation included the provision that a nominee could decline nomination. CRSI informed them that there should be a clause that invites prayer, discernment and openness to the will of God before declining nomination. See CRSI, letter, 24 August 1981, prot. no. 31844/80, in *CLD*, vol. 10, pp. 105-106.

chapter the authority to supplement, replace or abolish existing provisions. The modern equivalent is the extraordinary chapter an institute might have in response to some particular need.²⁰ For example, if constitutions are in the process of revision, an extraordinary general chapter might be arranged to approve the final texts. Another common reason for an extraordinary chapter is the union or fusion of institutes. Proper law usually provides for extraordinary chapters to cater to any unusual business that might need to be attended to and accords the supreme moderator acting with the advice or consent of the council the right to convoke it. There are times when the general superior, usually with the consent of the council, determines that an extraordinary general chapter must be convoked to address some important issue(s). Elections are not held during extraordinary chapters. However, should the office of supreme moderator fall vacant through resignation, death, incapacity, or removal from office, the chapter then becomes an ordinary one and carries out the task of election of a new supreme moderator.

3.2 – THE CANONICAL STRUCTURE OF THE GENERAL CHAPTER

The general chapter is unique as to its nature and its functions. There is no other ecclesial body or other organism that possesses all its elements:

As a governmental structure the general chapter is truly unique in nature and function. There simply is no other ecclesial body – including even an ecumenical council – that combines elective representation, consultative and deliberative participation, normative authority and the right to choose

²⁰ There have been only two extraordinary general chapters in the former IBVM Irish Branch. Both of these, in 1971 and 1983, were called to finalise constitutions. The 1942 and 1984 extraordinary chapters of IBVM North America were also called to approve constitutions.

the person who will implement its decisions. It is clearly an instrument of shared participation and coresponsibility.²¹

The universal law²² establishes general principles in relation to the exercise of authority of general chapters. The nature of that authority is further specified as juridic, collegial, representative, and participative, principles that are further defined, refined, determined and made practical by proper law.²³

3.2.1 – Juridic Status of the General Chapter

There is a variety of opinion concerning the juridic status of the general chapter and specifically in relation to its juridic personality. The problem centres on the lack of precise definition of juridic personality in the Code.²⁴ As a result of the description given the collegial moral person in *CIC/17*,²⁵ some authors attributed juridic personality to the general chapter.²⁶ In the opinion of some commentators, collegial moral persons consisted

²¹ E. McDONOUGH, "Religious Superiors and Government," in *The Way Supplement*, 50 (1984), p. 66.

²² See also *CCEO*, cc. 511-512. These canons are less specific than c. 631.

²³ The role of proper law will be illustrated in our fourth chapter.

²⁴ See *CIC*, cc. 113-123 and *CCEO*, cc. 920-930.

²⁵ *CIC/17*, c. 99, distinguished the physical and collegial or non-collegial moral person but also spoke of "juridical person" and "juridical entity" and appeared to equate moral person with juridic person. See A. GAUTHIER, "Juridical Persons in the Code of Canon Law," in *StC*, 25 (1991), p. 81. *CIC/17* distinguished the moral person of the Catholic Church and the Apostolic See from "other inferior moral persons" that came into being in the Church in virtue of the law, or by special concession of the competent ecclesiastical authority, with a religious or charitable purpose (c. 100 § 1). *CIC/17* further distinguished the collegial moral person that comprised physical persons, e.g., the confraternity or the chapter, from the non-collegial, that consisted rather in accumulations of assets. See E. REGATILLO, *Institutiones iuris canonici*, vol. 1, Santander, Sal Terrae, 1941, p. 118.

²⁶ Wernz spoke about the "*vera auctoritas*" that had "[*potestas*] *distincta a potestate superioris*" as it represented the whole institute, a part of it or a house (F. WERNZ, *Ius canonicum ad Codicis normam exactum opera P. Petri Vidal*, vol. 3, Rome, Pontificia Universitas Gregoriana, 1933, p. 94 [=WERNZ, *Ius canonicum*]). Larraona believed the chapter was a true collegial moral person, representative of the institute,

of many physical persons united in one body or college. This body was distinct from its members, with a purpose that transcended their interests, since that purpose was the common good. The collegial moral person also had its own power that was distinct from the power of the superior. For this reason such bodies warranted juridic personality from the Church. Among the examples given was the chapter of a religious congregation.²⁷ However, some, e.g., Pejška refuted this because of the lack of perpetuity of the chapter.²⁸ Others held that the perpetual existence of the institution rather than its perpetual activity was what determined perpetuity.²⁹ However, other authors preferred to understand the chapter as the representative of the moral person of the congregation, rather than as an entity in itself.³⁰ As a result, there was no consensus on this issue under *CIC/17*.³¹

but not distinct from the members who comprised it. See A. LARRAONA, "Commentarium *CIC* c. 501," in *CpR*, 6 (1925), p. 429. The consequence of this understanding was that the chapter was not a new juridic person, but coexisted with the institute, a position also taken by Coronata, Fanfani and Schaeffer. See CONTE A CORONATA, *Institutiones*, vol. 1, p. 636; L. FANFANI, *De iure religiosorum ad normam Codicis iuris canonici*, no. 109, 3rd ed., Venice, Istituto Padano di Arti Grafiche, 1949, pp. 167-168; T. SCHAEFER (ed.), *De religiosis ad normam Codicis iuris canonici*, no. 437, 4th ed., Rome, 1947, p. 197. During the revision process, in describing the differences between general chapters and councils, one of the consultants referred to the general chapter in terms of its collegial juridic or moral personality: "[...] capitula sunt quidem personales morales seu iuridicae collegiales et revera repraesentant instituta [...]" (*Communicationes*, 26 [1994], p. 43). However, *CIC* does not confer juridic personality by law, on the general chapter.

²⁷ "Personae morales collegiales illae sunt, quae constant pluribus personis physicis in unum corpus seu collegium adunatis. Quae adunatio in unum corpus seu in unum subiectum iurium distinctum a singulis membris, tam seorsim quam collective sumptis, fit per unitatem finis seu interesse distincti ab interesse singulorum etiam collective sumptorum: atque hoc interesse transcendens interesse singulorum utque ad bonum publicum pertinens est ratio, cur illam recognitionem in personam iuridicam distinctam ex parte Ecclesiae mereatur et obtineat. Talis est capitulum cathedrale vel collegiatum, capitulum alicuius ordinis religiosi, confraternitas etc." (WERNZ, *Ius canonicum*, vol. 2, p. 34).

²⁸ See J. PEJŠKA, *Ius canonicum religiosorum*, 3rd ed., Freiburg, Herder and Co., 1927, p. 217.

²⁹ "Illa perpetuitas non necessario importat in persona collegiali, ut semper et modo continuo suam activitatem explicet, v. gr. Concilium oecumenicum, capitulum generale ordinis: est perpetuitas institutionis, quae cohaeret cum hoc quod activitas nonnisi statis temporibus explicetur" (WERNZ, *Ius canonicum*, vol. 2, p. 44).

³⁰ See G. LESAGE, "La collégialité dans le gouvernement ordinaire des religieux," in *Acta conventus internationalis canonistarum*, 20-26 May 1968, Rome, Typis polyglottis Vaticanis, 1970, p. 463.

Codex iuris canonici describes the juridic person in terms similar to that of *CIC/17* but adds the distinction between public (constituted by the competent authority, to function in the name of the Church, for the common good according to the norms of law), and private (c. 116).³² *CIC* provides the constitutive elements of the juridic person: a plurality of persons (at least three) or things; ordered to a goal (either religious or charitable); that has a useful purpose and the means to achieve it; given juridic existence either by the law or by a specific decree of the competent authority; perpetual in nature;³³ with statutes approved by the competent authority (cc. 114-116, 120). Juridic personality is a construct that confers a two-fold capacity: juridic capacity as a subject of rights and obligations (c. 113),³⁴ and the capacity to act (cc. 118, 221). However, a public juridic person requires a physical person or persons to act for it, whose competence is acknowledged by the law (universal or particular), or by their own statutes (c. 118). Moreover, only this person or group of persons is competent to act for the juridic person.³⁵ If the group of persons decide

³¹ Van den Broeck believed that commentators on *CIC/17* accepted that the chapter was a "moral person;" that this moral person was juridically the same moral person that constituted the religious congregation; that there were not two distinct moral persons, the chapter and the congregation, although not all authors agree on this. See G. VAN DEN BROECK, "Le chapitre général dans les instituts religieux," in *Apollinaris*, 40 (1967), pp. 498-499.

³² *CIC* introduced the concepts of public and private juridical persons largely to facilitate the right of all persons to form associations for the good of the Church. See *AA*, nos. 18-19, 25-25, pp. 784-786, 789-791. See also cc. 215, 298-299. Unlike public juridic persons, private juridic persons come into being only by a specific grant of the appropriate authority (c. 116 § 2). See *Communicationes*, 14 (1982), p. 143.

³³ See *Communicationes*, 14 (1982), p. 144 and L. CHIAPPETTA, *Il Codice di diritto canonico: commento giuridico-pastorale*, vol. 1, Rome, Edizioni Dehoniane, 1996, p. 173, note 3 (=CHIAPPETTA, *Il Codice di diritto canonico*).

³⁴ For example, juridic persons have many rights in relation to temporal goods (c. 1255), and in relation to the pursuit and vindication of rights (c. 1400 § 1, 1°). Juridic persons have obligations, for example, subjection to ecclesiastical authority (cc. 593, 594).

³⁵ Moral persons ("juridic" in *CIC*), whether collegial or non-collegial, were equated with a minor in *CIC/17* (c. 100 § 3). This rule was to preserve the rights and prerogatives of the moral or juridic person in case their representatives neglected them. See J.A. ABBO, and J.D. HANNAN, *The Sacred Canons: A Concise*

the conduct of the juridical person by participating together in making decisions, whether by equal right or not, the juridical person is a collegial one, otherwise it is non-collegial (c. 115 § 2).

The Code provides for the government of institutes of consecrated life according to a hierarchy of superiors who exercise personal power (cc. 618, 622). Superiors represent the juridic person of the congregation/province/house (c. 634 § 1).³⁶ However, these in turn have collegial organs associated with them, including the general chapter, which perform consultative or deliberative roles depending on the constitutions and other proper law. Legislative power is exercised particularly in the general chapter (c. 631 § 1).³⁷ The proper law of each congregation determines exactly the nature, authority, frequency, procedure, and functioning of the general chapter, the main elements of which must be delineated in the constitutions.

The general chapter has many of the elements associated with a juridic person. Therefore, the question arises: is the general chapter a juridic person with the rights and obligations conferred by that personhood? Or is its function merely representative? Clearly the general chapter fulfils some of the prerequisites of the juridical person: it is an aggregate of persons whose purpose befits the Church's mission, and transcends the

Presentation of the Current Disciplinary Norms of the Church, rev. ed., vol. 1, St. Louis, MO, B. Herder Book Co., 1957, p. 147; MICHELIS, *Principia generalia*, pp. 466-467; P. MAROTO, *Institutiones iuris canonici ad normam novi codicis*, 3rd ed., vol. 1, Rome, 1919-1921, p. 544; F.M. CAPPELLO, *Summa iuris canonici in usum scholarum concinnata*, 4th ed., Rome, Pontificia Universitas Gregoriana, 1945, p. 174.

³⁶ Societies of apostolic life also have juridic personality (c. 741 § 1). There is no canon governing the juridic personality of secular institutes but Kennedy maintains this is implied in c. 718, which refers to the administration of the temporal goods of secular institutes. See R.T. KENNEDY, "Juridic Persons," in *CLSA Comm2*, p. 157 (=KENNEDY, "Juridic Persons").

³⁷ In IBVM, the legislative function belongs to the general chapter only. For the understanding of this capacity of general chapters, see above, pp. 94-111.

purpose of the individuals who constitute it.³⁸ Although the main focus of the general chapter is the members and the internal workings of the congregation, this is always in the interests of the mission, which in turn, serves the mission of the Church. The general chapter has its own power distinct from that of the superior and council (cc. 596, 631 § 1). However, among the constitutive elements of the juridic person named in *CIC* is the fact of perpetuity. The *ius vigens* supports the view that the general chapter is not a juridic person: *CIC*, which does not provide information concerning the juridic personality of the general chapter, and two documents of the Congregation that explicitly state the general chapter is not a permanent institution.³⁹ Commentators on *CIC* do not resolve the question of the juridic personality of the general chapter. Marcuzzi, based on the definitions of juridic person given in c. 115 § 2 and 116 § 1, believes the general chapter has juridic personality.⁴⁰ Others accept that the chapter has the structure of a juridic person but is not identified with it.⁴¹ For others the general chapter is not a juridic person but an “organ.”⁴²

³⁸ Among the purposes of institutes of consecrated life we find “building up the Church and the salvation of the world” (c. 573) and “contributing to the Church’s saving mission according to the purpose and spirit of each institute” (c. 574).

³⁹ See CRSI, “Natura e finalità dei capitoli generali,” in *Inform.CRSI*, 2 (1976), p. 216 and *Essential Elements*, no. 51, p. 140 and accompanying Norms, no. 47, p. 142. Both make specific reference to the general chapter as a non-permanent body.

⁴⁰ “Il capitolo generale di un istituto religioso è una persona giuridica collegiale pubblica (cfr. cc. 115 § 2 e 116 § 1), un ‘collegio’ vero e proprio, la cui azione viene determinata dai membri, che concorrono nel prendere le decisioni a norma del diritto universale e nel diritto proprio” (P.G. MARCUZZI, “Il governo degli istituti religiosi,” in F. COCCOPALMERIO et al., *Gli istituti religiosi nel nuovo Codice di diritto canonico*, Milan, Quaderni di vita consacrata, 1984, p. 131).

⁴¹ See V. DE PAOLIS, “Gli istituti di vita consacrata nella Chiesa,” in *La vita consacrata: il Codice del Vaticano II*, vol. 3, Bologna, Edizione Dehoniane, 1992, p. 233.

⁴² See M. ANTALÓCZY, *Lo status quo del capitolo generale nel diritto vigente universale e particolare*, Rome, Pontificia Universitas S. Thomae, 1996, p. 121. His argument is based on c. 116 § 2, which provides the means for the acquisition of juridic personality: by the law itself or express grant of the competent authority. He finds no documentary evidence to suggest the general chapter was accorded the juridic personality by a specific concession of the competent authority. He believes instead that the general chapter is an “organ.”

Descriptions given indicate the variety of opinion: a general chapter is a “collegial organ of government in the likeness of a collegial juridical person”⁴³ or “an authoritative collegial organ that consists of persons acting on an equal basis, in representation of and as the expression of the whole institute or one of its parts”⁴⁴ or “a collegial body at the highest level of the institute, representative of the entire institute.”⁴⁵ For some, this organ of government is qualified because the actions and power of the general chapter are themselves defined by the competent authority,⁴⁶ and the organ is an “extraordinary” one.⁴⁷ However we describe it, there can be no doubt that the general chapter (or comparable institute) is an essential element in the functioning of the juridic person that is the religious congregation (cc. 596, 631). The question is, is it a part of it, yet with its own distinct personality (as a house or province [c. 634 § 1]), or does it exist solely as an organ that represents the juridic person of the congregation? The praxis of the Holy See together with legitimate tradition suggests that the general chapter is not a permanent institution, i.e., it does not provide a permanent organ of government to which the general superior and council are subservient. This explains why some hold a general chapter is not a juridic person, since a juridic person is by its nature, stable and perpetual (c. 120 § 1). This latter view, is in our opinion, substantiated by the present law. However, given the evolution that

⁴³ IANNONE, *Il capitolo generale*, p. 79.

⁴⁴ GAMBARI, *Religious Life*, p. 533. Beyer holds a similar view: “Il c. 631 dà un rilievo particolare al capitolo generale o assemblea plenaria di un istituto religioso [...]. Esso ricorda principi fondamentali: il capitolo rappresenta tutto l’istituto” (J. BEYER, *Il diritto della vita consacrata*, Milan Editrice Ancora, 1989, p. 256).

⁴⁵ R. SMITH, “Governance of Institutes,” in *CLSA Comm2*, p. 794.

⁴⁶ See J. KHOURY, “Commenti [ai] cann. 573-661 del Codice,” in V. PINTO (ed.), *Commento al Codice di diritto canonico*, Rome, Urbanianum University Press, 1985, p. 379.

has occurred in relation to the exercise of authority in religious congregations, we wonder if perhaps this will need to change in the future.

What difference does it make whether the general chapter is a juridic person or not? The juridic person is the subject of rights and obligations and has the capacity to act. If the general chapter is not a juridic person, it does not have these capacities directly. Canon 118 establishes that those persons represent and act in the name of a public juridic person whose competence to do so is recognised by the law (universal or particular), or by their own statutes. Canon 631 allots this purpose to the general chapter and the provisions of proper law specify how this is accomplished. Therefore, the general chapter is the juridic representative of the juridic person of the institute of consecrated life. General chapters must represent the members⁴⁸ but it is the juridic person of the institute that is the subject of the two-fold capacity to act. The capacity to make norms and carry out other defined functions (c. 631) as the representative of the members renders the acts of this organ the acts of the juridic person. Universal law provides the principle whereby this action must be carried out, i.e., in a collegial manner (c. 119). Proper law must determine the details as to how this operates in practice.

3.2.2 – General Chapter as Protector of the Patrimony of the Institute

The general chapter must protect the patrimony and foster renewal in accordance with that patrimony (c. 631 § 1). This function had not been mentioned in *CIC/17*. The

⁴⁷ See L. GUTIÉRREZ MARTÍN, art. “Capítulo,” in *Diccionario teológico de la vida consagrada*, 2nd ed., Madrid, Publicaciones Claretianas, 1992, p. 137.

⁴⁸ See CRSI, letter, 21 March 1971, reported in *RfR*, 37 (1978), pp. 77-78.

spiritual patrimony detailed in c. 578 consists of seven elements, which determine the specific character and nature of a particular institute.⁴⁹ The general chapter is called to protect “the mind and intent of the founder.” Sometimes an institute was founded for a specific work while others had a more general vision. Since *Vita consecrata* no. 36 speaks of the “founding charism,” the members’ experience contributes to the understanding of the charism in the contemporary world. The nature of the institute, whether clerical or lay, contemplative, apostolic, secular, etc., must be protected; its purpose, spirit and character and the sound traditions or characteristics that have marked the institute from the beginning safeguarded. The articulation of these elements is crucial as it shapes the law of the institute. The purpose of both universal and proper law is to protect this individual, unique spirit.⁵⁰ In fact, the task of renewing and adapting the patrimony to accord with a particular time and place became the chief task of chapters in the aftermath of Vatican II.⁵¹ As a result, as well as providing norms for the members, general chapters set goals or

⁴⁹ The elements of c. 578 are based on *PC*, no. 2 [b]).

⁵⁰ As seen above, p. 21, *CIC/17* provided norms based on centuries of experience, to help congregations in the development of its internal life and to regulate external apostolic action. This induced uniformity in the law of all congregations. The influence of universal law was very strong. Vatican II signalled a change. Particular law was to be revised as a step towards the renewal of religious life and revised constitutions were to contain only those precepts that were permanent and of universal value, valid for all times and situations, while proper law was to address the lived reality in an ever-changing world. In other words, proper law once again assumed the significance it had before the *1901 Norms*, *CIC/17* and the 1921 *Criteria*. *Ecclesiae sanctae II*, no. 1, described the task of general chapters not only in terms of making laws, but also as the body that fosters spiritual and apostolic vitality.

⁵¹ See “Les chapitres généraux aujourd’hui (étude),” in *UISG Bulletin*, 52 (1982), pp. 5-12 (=UISG, “Les chapitres généraux”). Said points out that the renewal of consecrated life was so important as to warrant its undertaking even before the universal law was reviewed. This renewal was to take place before the end of 1969. See SAID, “Particular Law,” pp. 924-925. There were several documents to aid the work of renewal: *ES II*, 1966, *Renovationis causam* (on formation), 1967; instruction regulating papal cloister of nuns *Venite seorsum*, 15 August 1969, in *AAS*, 61 (1969), pp. 674-690, English translation in *The Pope Speaks*, 14 (1969), pp. 258-282; and *Evangelica testificatio* (on evangelical witness), 1971. *Perfectae caritatis* provided principles for renewal and the Pontifical Commission for the Revision of the Code, named fostering of the spirit of the founder and specific character of the institute or society as one of the principles adopted.

directions to help them to live the values of the charism in the period between chapters.⁵² In addition, the lived experience of members was so important that *CIC* legislated the chapter “is to be composed” in such a way that it represents “the whole institute” (cf. *PC* 14, *ES II*, no. 18).

Universal law imposes obligations that relate to the spiritual heritage of the institute. Fulfilling these obligations is safeguarded by laws and leadership whose purpose is to enable members to live out the charism of the institute; to ensure that renewal is relevant to a particular time and set of circumstances; and to provide those structures and vision that will enable the members to be faithful to the heritage in the future. The general chapter fulfils these functions by protecting the obligations and rights of members by its norms and guidelines, and by providing the inspiration and structures necessary to ensure its renewal. The general chapter is canonically bound to safeguard the heritage of institutions, and to attempt to interpret them in the light of current history. Because protecting the patrimony is one of its primary purposes, each general chapter must include examining the criteria for renewal and instituting reform if necessary.

Religious have the right to live in accordance with the spirit and charism of the particular congregation to which they have committed their lives. The Code categorises rights⁵³ according to one’s status in the Church. However, they are always accompanied by

⁵² For example, the 1995 North American chapter produced a direction statement. The 1998 Irish Branch general chapter was described as a “direction-setting” one.

⁵³ Principle 6 had required those revising the Code to define and protect the rights of persons. However, what exactly is the meaning of “right” in the context of the Code? McDonough categorizes rights as objective (what is just), subjective (public and private moral faculties), legal (recognized in law); they can be liberties (choices), entitlements (requiring fulfillment) and social responsibilities (possessed and respected according to the common good). In the Church, rights are grouped as human, ecclesial (flowing from baptism), ecclesiastical (pertaining to Church order) and communal. See E. McDONOUGH, “The Protection of

obligations.⁵⁴ This is not surprising, particularly in relation to religious, given the fact that the religious life is freely undertaken for a good greater than the individual's only (c. 573 § 2). As a result, religious (as individuals) have those rights common to all the faithful (cc. 208-231); those specific to religious (cc. 662-672); if the religious is a cleric, other rights are specified (cc. 273-289); if the religious is the holder of an office, universal law or proper law specifies certain rights (c. 145 § 2). The Code does not spell out the rights of religious (or other) communities, except in a general way: the right to internal autonomy of government (c. 586 § 1);⁵⁵ the right to have this autonomy safeguarded (586 § 2); the right to those authority structures specified in universal and proper law (c. 596); certain rights in relation to the acquisition, possession, administration and alienation of temporal goods (c. 634 § 1); the right to admit (c. 641), transfer (c. 684 § 1), grant an indult of excommunication (c. 686), and dismiss members (cc. 694-700) and to engage in apostolic life in a variety of ways (cc. 673-683). However, rights are never absolute.⁵⁶ For the religious

Rights in Religious Institutes," in *The Jurist*, 46 (1986), p. 165 (=MCDONOUGH, "The Protection of Rights"). Provost describes two senses that provide the context for the exercise of rights: they can refer to a claim for non-interference, a sphere of personal autonomy, while respecting the common good and they can be a claim for empowerment, a claim to subsidiary aid by the larger society to enable one to fulfil one's dignity or status as a person. See J.H. PROVOST, "Rights in Canon Law: Real, Ideal, or Fluff?" in *CLSAP*, 61 (1999), p. 317 (=PROVOST, "Rights in Canon Law"). Beal, while acknowledging that the Church had championed the rights of people against totalitarian regimes of every description, nevertheless criticized *CIC* for its "timid" formulation of rights that are "hedged with conditions and qualifications" (J.P. BEAL, "Towards a Democratic Church: The Canonical Heritage," in E.C. BIANCHI and R. RADFORD RUETHER (eds.), *A Democratic Catholic Church: The Reconstruction of Roman Catholicism*, New York, Crossroad, 1992, pp. 73-74 [=BIANCHI and RADFORD RUETHER, *Democratic Church*]).

⁵⁴ See cc. 113 § 2; 145 § 2; 199 § 3; 224; 310; 405 § 1; 614; 654; 685 §§ 1, 2; 701; 737; 743-745. The order of words (i.e., right or duty/obligation) did not present a difficulty for the consultors during the revision process. See *Relatio*, p. 62.

⁵⁵ The right to self-determination is supported by the many references to proper law given in the Code. In the section on Institutes of Consecrated Life alone, Ochoa cites 44 references to *ius proprium*; 16 references to *norma ius proprium* and 50 references to *constitutiones*. See OCHOA, *Index verborum*, pp. 95-96, 231-232, 276.

⁵⁶ Rights are a claim within a social context. In Catholic tradition rights are determined in the context of the common good. The notion of "common good" is itself problematic in that there is no fixed

who is also a *Christifidelis*, these rights and duties are lived in the context of the freely given commitment to live according to a specific charism. For some, this might limit rights in relation to ownership; for all, there are limits in relation to personal freedom.⁵⁷ Rights are also limited by the physical or moral impossibilities of the congregation or the Church community, by the rights of others and by the hierarchical nature of the Church (c. 223 § 1).⁵⁸ In addition, rights in the Church are subject to the *lex suprema*, the law of justice, so that they always remain relative and subordinate to the main end of the Church, the salvation of souls (c. 1752).⁵⁹

definition of what exactly it is (c. 223 § 2). Provost believes the choice is between adopting an institutional emphasis on the good of the Church, or of focusing on the Church as People of God. See J. PROVOST, "The Obligations and Rights of the Lay Christian Faithful," in *CLSA Comm1*, p. 158. Who determines the common good or invokes it, is probably as important as what it is (see R. TORFS, "Rights in Canon Law: Real, Ideal, or Fluff?" in *CLSAP*, 61 (1999), p. 351 [=TORFS, "Rights in Canon Law"]). Torfs gives the example of how common good is treated in canon law compared with the European Convention for the Protection of Human Rights: according to the European Convention, the common good is served by freedom of expression. In c. 212 § 3, however, freedom of expression is "possible only if certain conditions are fulfilled, among them consideration for the common good being explicitly mentioned" (TORFS, "Rights in Canon Law," pp. 34-354). See also R. TORFS, *A Healthy Rivalry: Human Rights in the Church*, Louvain Theological and Pastoral Monographs, no. 20, Leuven, Peeters, 1995, p. 60). In Catholic social teaching the principles of solidarity and subsidiarity are intended to foster the common good. See JOHN PAUL II, encyclical letter *Sollicitudo rei socialis*, 30 December 1987, no. 38, in *AAS*, 80 (1988), pp. 513-586, English translation in *Origins*, 17 (1988), p. 654 and J.A. KOMONCHAK, "Subsidiarity in the Church: The State of the Question," in *The Jurist*, 48 (1988), pp. 298-349 (=KOMONCHAK, "Subsidiarity in the Church"). Provost points out that the principle of subsidiarity was adopted in the Church to differentiate her from the totalitarian regimes defeated in World War II. It was adopted as a principle of revision of the Code, but its applicability within the Church was questioned at the 1985 Synod of Bishops. See PROVOST, "Rights in Canon Law," pp. 322-323.

⁵⁷ Provost gives four reasons why the Church is bound by her own teaching on rights: the Church as sacrament is made visible by its laws; as a social institution the Church's teaching can be applied to herself; the Church as witness to justice requires the practice of recognising rights; the Church as a community of faith is based on the free choice of persons to participate. However, the practical application of rights is difficult. See PROVOST, "Rights in Canon Law," pp. 324-328.

⁵⁸ The protection and vindication of rights in the Church is an area not fully developed despite the assertions of cc. 221 § 1 and 1400 § 1, 1°. However, there are regulations for many kinds of actions in procedural law, (cc. 1400-1752), rules governing juridic acts (cc. 124-128), and administrative acts (cc. 50, 51, 54 § 2). The right to self-defense is so important in procedural law that acts are invalid if this right is infringed (e.g. c. 1598 § 1). Controversies arising from an act of administrative power have to be vindicated by hierarchical recourse (cc. 1400 § 2, 1732), a process rarely known in its intricacies to the ordinary person. See *ibid.*, pp. 337-338.

⁵⁹ See J.P. MCINTYRE, "Rights and Duties Revisited," in *The Jurist*, 56 (1996), p. 127.

A person is incorporated into an institute by religious profession, thereby acquiring the rights and obligations defined for religious in universal and proper law (c. 654). The general chapter as the supreme legislative body in the institute must safeguard these rights and obligations. McDonough categorises the rights of religious as individuals in *CIC* into three areas: the right to necessities (c. 670);⁶⁰ the right to means to fulfil obligations specified in cc. 662-672;⁶¹ and the right to live a religious life (c. 654).⁶² In protecting the patrimony of the congregation, the general chapter ensures that members as a body have those rights and can fulfill those obligations consonant with their consecrated life. Proper law, for which the general chapter is responsible, must ensure that the structures conducive to order exist (e.g., structures of government at all levels, and disciplinary norms for good order [cc. 587, 596, 608, 622, 630]) and that authority and power are exercised in

⁶⁰ The law does not determine what these necessities are, but what the law requires in constitutions approved by the competent authority gives us some indication: the way in which the evangelical counsels are to be lived (c. 598 § 1); a system of government (cc. 618, 622) with appropriate structures (cc. 627, 631-633); appropriate formation (cc. 650, 659, 661); community life and appropriate enclosure or privacy (c. 665, 667); structures in relation to apostolate (cc. 677, 681), all of which are protected by c. 587 § 1. See McDONOUGH, "The Protection of Rights," pp. 168-170.

⁶¹ Members of institutes of consecrated life have obligations in relation to fostering and preserving their spiritual lives (cc. 663, 664, 630). In addition, each institute safeguards its own traditions in this regard in proper law. There are common obligations in relation to community life (cc. 665 § 1, 607 § 2, 608), to enclosure in keeping with the particular charism (c. 667), to the use of the means of social communication (c. 666), to witness to the religious consecration (c. 669). Certain personal obligations must also be safeguarded, e.g., in relation to living the sacred bonds (cc. 599, 600). Living the bond of obedience requires dialogue and the participation of the member. However, in the final analysis, freedom of choice gives way to obedience to lawful superiors (c. 601). There are requirements in relation to ownership: the right to own property is restricted by the requirements of c. 668; in some institutes, the right to own both now and in the future must be renounced by members (c. 668 §§ 4, 5). Canon 672 applies a number of restrictions for clerics to religious: in relation to behaviour (cc. 277, 285 §§ 1, 2); to the offices that can be undertaken (285 § 3); to financial administration (c. 285 § 4); to engage in commercial activities (c. 286); to be active in political or trade union activities (cc. 287, 289 § 2) and to military service (c. 289 § 1). A cleric who is a religious has an obligation to up-date his professional expertise, an obligation that could equally be applied to all religious in virtue of analogy (c. 279 § 2). See McDONOUGH, "The Protection of Rights," pp. 170-176.

⁶² Members have a right to live their lives in accordance with their sacred bonds (c. 587 § 1); receive a proper formation (c. 659); stable community life (cc. 608, 610); work that is in keeping with the charism of the institute (cc. 663-667); as well as the basic material necessities of life (c. 670). See McDONOUGH, "The Protection of Rights," pp. 176-177. See also A.J. ESPELAGE, "The Disruptive Religious, Part II: A Focus on the Individual," in *CLSAP*, 66 (2004), pp. 180-188.

accordance with the prescripts of both proper and universal law (cc. 617-619, 631). The universal law tries to ensure that the structures of authority and power in a congregation are such that the individual's right to live the demands of consecrated life are safeguarded and protected. This means that although superiors have personal power,⁶³ the law restricts its unbridled exercise: they must have a council to assist in governance (c. 627 § 1). Although the general chapter has supreme internal authority, the universal law ensures this is exercised in accordance with clearly defined norms, whether universal or particular. The ability of the chapter to formulate binding norms is restricted by its infrequent meetings and by the fact its existence is limited to the actual sessions.

In a study concerning rights in canon law, Provost and Torfs examined six dimensions: the basis for rights, the extent to which the Church should apply its teaching within the Church, the extent to which c. 208 on fundamental equality is realistic or desirable in an hierarchical Church, the rights of communities in relation to individual rights, protection and defense of rights and the status of rights in the Church and

⁶³ As we have seen, personal and collegial government are complementary. Neither can be exercised to the exclusion of the other. See *Experimenta circa*, pp. 484-485. Canon 596 § 1 provides superiors with "that authority over the members, which is defined in the universal law and in the constitutions." As we have seen above pp. 103-104, superiors of clerical institutes of pontifical right have ecclesiastical power of governance and therefore can make laws. This function is not clearly delineated for other superiors. Canon 622 accords the supreme moderator "authority" over all the provinces, houses and members, to be exercised in accordance with the proper law of the institute. According to IBVM constitutions, for example, the general superior "has the role of inspiring, unifying, and directing the Institute" and also to govern and administer according to the Code and the constitutions of the Institute (constitution [=cons.]) 492. In these constitutions, the general chapter fulfills the legislative function. See below pp. 242. We do not believe the universal law explicitly accords the legislative capacity to the general superior. For example, in 1984, when CRSI authorized superiors general to align proper law with the new *CIC*, two conditions had to be met: he/she had to act collegially with the full council to establish norms for those areas left to proper law and the norms had to be submitted to the next general chapter, which had the authority to establish laws according to the norms of law. See CRSI, decree, 2 February 1984, in *AAS*, 76 (1984), pp. 498-499, English translation in *CLD*, vol. 11, pp. 84-85. However, as described above, supreme moderators participate in the exercise of executive power of governance, in virtue of which, they may issue statutes, if the proper law so permits. See above, pp. 94-111.

specifically in the Code.⁶⁴ Although many efforts have been made to examine the question of rights in the Church and apply them, further thinking and research yet remains to be done as to their exact meaning and significance, their place within the canonical system and the question of the protection and vindication of rights.⁶⁵ This is particularly true in relation to religious, whether we consider the protection or the vindication of rights. Canons 662-672, while purporting to be “obligations and rights of members,” in fact comprise a series of obligations, with some exhortations added.⁶⁶ In addition, these canons restrict some of the rights religious would enjoy as lay faithful (e.g., regarding property [c. 668] and tasks and offices [c. 671]). Of course it must be said that this accords with the nature of religious congregations as voluntary societies in which the members freely take on the obligations implied in living that particular form of life and commit themselves by vow or other sacred promise to fulfilling them (c. 573 § 2). However, in a world that places such an emphasis on rights, religious congregations must be, and must be seen to be, just

⁶⁴ See PROVOST, “Rights in Canon Law,” pp. 317-342; TORFS, “Rights in Canon Law,” pp. 343-384.

⁶⁵ See TORFS, “Rights in Canon Law,” p. 383. Other works on the subject of rights in the Church include D.J. ANDRÉS, *El derecho de los religiosos*, Madrid, Publicaciones Claretianas, Rome, Commentarium pro religiosus, 1983, pp. 401-504; J.P. BEAL, “On Due Process: The Third Decade,” in *Protection of Rights of Persons in the Church*, rev. ed., Washington, DC, Canon Law Society of America, 1991, pp. 1-12; CLSA PERMANENT SEMINAR, “Promoting and Protecting Rights in the Church,” in *The Jurist*, 46 (1986), pp. 1-344; R.J. CASTILLO LARA, “Some General Reflections on the Rights and Duties of the Christian Faithful,” in *StC*, 20 (1986), pp. 7-32; J.A. CORIDEN, “A Challenge: Make the Rights Real,” in *The Jurist*, 45 (1985), pp. 1-23; ID., “The Vindication of the Rights of Parishes,” in *The Jurist*, 54 (1994), pp. 22-39; ID., “The Rights of Parishes: The Canonical Rights and Obligations of Roman Catholic Parishes and Other Local Congregations of the Catholic Faithful,” in *StC*, 28 (1994), pp. 293-309; J. KINNEY, “Rights and Duties of the Faithful in the Schema ‘People of God’: An Encouragement to Exercise Them,” in *CLSAP*, 42 (1980), pp. 107-114; J.P. MCINTYRE, “Lineamenta for a Christian Anthropology: Canons 208-223,” in *Periodica*, 85 (1996), pp. 249-276; J.H. PROVOST, “Ecclesial Rights,” in *CLSAP*, 44 (1982), pp. 41-62; ID., “The Nature of Rights in the Church,” in *CLSAP*, 53 (1991), pp. 1-18; E.A. RINERE, “The Disruptive Religious, Part I: Religious Authority and the Disruptive Religious,” in *CLSAP*, 66 (2004), pp. 171-178 and A.J. ESPELAGE, “The Disruptive Religious, Part II: A Focus on the Individual,” in *CLSAP*, pp. 179-188; J. TINAKO, “The Fundamental Rights and Obligations of the Faithful,” in *Philippiniana Sacra*, 18 (1983), pp. 392-416.

⁶⁶ One of Green’s conclusions is that the Code’s treatment of the rights of the faithful generally, focuses on obligations rather than rights. See T.J. GREEN, “Persons and Structures in the Church: Reflections on Selected Issues in Book II,” in *The Jurist*, 45 (1985), p. 93.

towards all the members. The fact that rights appear in the Code in relation to religious is a testament to the significance the Church attaches to them.⁶⁷

The natural law basis for rights is the dignity of the human person. As we have seen, Vatican II brought a new sense of ownership of this value for the Christian. However, the Church is hierarchical. As a result, our understanding of equality is tempered by its use in the Code. Canon 208, which describes the basic equality of dignity and action of each Christian, derives from *LG* 32 where equality is given as a theological construct. Its use in the Code is clearly juridical. Furthermore, the canon restricts its meaning to “each one’s condition and function.” The decision as to how these principles are to be applied, whether in religious institutes or in the wider Church, is a complex one since equality is never a pure right but is conditioned by the concrete situation in which the principle is being applied. The Declaration on Religious Liberty *Dignitatis humanae* describes how authority is to act in placing limitations on the exercise of rights: moral law obliges individuals to respect the rights of others, their own obligations to others and the common good; protection of rights must not be arbitrary nor induced by favouritism, but be in accordance with the objective moral order (*DH*, no. 7). For the religious, individual rights must be viewed in the context of the common good of the congregation. This in turn must be examined within the framework of the common good of the Church and society at large. However, both communities of the congregation and the community of the Church are faith communities, which differ significantly from secular society.

⁶⁷ Some constitutions provide for the rights of members. For example, the right to recourse is established in the Constitutions of the Sisters of the Holy Name. See *Constitutions and Rules of the Sisters of the Holy Names of Jesus and Mary*, Longueuil, QC, General Administration, 1985, Rule 23, p. 36.

Canon 1400 § 2 requires that disputes arising from an act of administrative power be referred to a superior or to the as yet not established administrative tribunal.⁶⁸ The vindication and protection of rights in the Church is however, a problematical area for two main reasons: the absence of a real separation of powers and the dropping of administrative tribunals in the last stages of the revision process.⁶⁹ This in turn reflects the difficulties in a religious congregation in this area. Procedures specifically related to the protection of the rights of a religious are almost non-existent.⁷⁰ At the present time, the Code does not provide any distinctive procedures for administrative recourse against decrees of religious authorities although proper law could establish such procedures and structures.⁷¹ The Code does, however, foresee hierarchical recourse against administrative decrees and other singular administrative acts (cc. 1732-1739). Judicial power is however restricted to

⁶⁸ The meaning of “administrative act” is not clear in the Code. Canons 1400 § 2 and 1445 § 2 alone refer to administrative power. Acts of administration generally refer to acts performed in relation to the administration of temporal goods. In other places, acts of administrative power seem to indicate acts of executive power. However, it seems that “administrative” and “executive” are only partly coextensive: executive power produces administrative acts. There are also administrative acts, which do not come from or require executive power. See M.R. MOODIE, “The Administrator and the Law: Authority and its Exercise in the Code,” in *The Jurist*, 46 (1986), pp. 43-69. Because of the non-existence of administrative tribunals, the only recourse for a controversy arising from an administrative act is to the superior.

⁶⁹ See *Congregatio plenaria*, p. 344 and TORFS, “Rights in Canon Law,” p. 367.

⁷⁰ The exception to this is in relation to the dismissal of a perpetually professed member for which there is a detailed procedure that includes the possibility of suspensive recourse. See cc. 694-704. This is the one instance given in the Code where the general superior must act collegially with the council in reaching the decision to dismiss. The decree requires the subsequent confirmation of the Holy See or diocesan bishop in the case of a diocesan institute (c. 700). The Eastern Code does not require the collegial act of the superior and council because dismissal is within the competence of the general superior. See *CCEO*, cc. 497-503, 551-553.

⁷¹ Such a policy would have to be drawn up and approved by the general chapter and submitted to the Holy See for approval. Canon 617 ensures that superiors cannot exercise authority in an arbitrary fashion and c. 1389 establishes a penalty for abuse of ecclesiastical power. In the opinion of Morrissey, c. 617 “opens the door” to the preparation of an “administrative directory” containing policies and internal procedures, which helps avoid the arbitrary exercise of government. See F.G. MORRISSEY, “The Governance of Institutes,” in *Institutes of Consecrated Life*, Class Notes for the Private Use of Students, Ottawa, Faculty of Canon Law, Saint Paul University, 2001-2002, p. 69.

clerical institutes of pontifical right who possess ecclesiastical jurisdiction (c. 596 § 2).⁷² Obviously, any member of the faithful may refer their case to the Holy See (c. 1417).

Can these processes be invoked against the singular decrees of general chapters? Since the general chapter is the “supreme authority” in the institute, the general superior and council do not possess the power to overturn a decision of the general chapter. It is difficult to foresee recourse to the higher authority (the Holy See), as general chapters are not permanent bodies. There is always the possibility of referral to the Holy See in accordance with c. 1417 § 1. However, there is no provision for recourse against the norms issued by the general chapter.

In relation to general chapter processes, the law makes provision for an *ipso iure* nullification of an election if there is defective notification to one third or more of those who have the right to be convoked (c. 166 § 3). There is also provision, provided the correct procedure is followed, for recourse when an individual member of the chapter was overlooked, and therefore not present (c. 166, § 2). In this instance, the election, although valid, can be rescinded.

⁷² Excluded from the exercise of this power are clerical institutes of diocesan right (c. 589), all lay institutes (c. 588 § 3), secular institutes (c. 710), societies of apostolic life (c. 731). Chiappetta suggests the exclusion of societies of apostolic life that are clerical and pontifical is a *lacuna legis* because the supreme moderator of such an institute is an ordinary according to c. 134 § 1 (CHIAPPETTA, *Il Codice di diritto canonico*, p. 31). Chiappetta also points out that during the revision process there was a suggestion to omit this canon as diocesan tribunals could hear controversies. This was rejected as there are issues specific to religious that require their own processes. See *Communicationes*, 10 (1978), p. 234. Abbass argues that, given the mind of the Legislator in the parallel Eastern c. 1069 § 1, and because *CCEO* recognises both “religious institutes and societies of common life according to the manner of religious as institutes of consecrated life, these superiors possessing the power of governance are identified with clerical religious institutes of pontifical or patriarchal right (cc. 441 § 2, 511 § 2), as well as clerical societies of common life according to the manner of religious of pontifical or patriarchal right (c. 557)” (ABBASS, “Two Codes in Comparison,” pp. 236-238).

While the general chapter can fulfil its function in relation to safeguarding the rights of the members and thereby protect the patrimony, the possibility of recourse against its actions is limited. As far as the specific rights of the chapter members are concerned, these are the right to represent the membership;⁷³ the right to participate in all the sessions; the right to vote on all matters in the manner determined by both universal and particular law (which right can be vindicated [c. 166 § 2]); and the right to equality. The general chapter must ensure that all these rights, individual and collective, are safeguarded and protected in its *modus operandi* as well as in the norms, policies and procedures that emanate from its authority.

3.2.3 – General Chapter as a Legislative Authority

Pope Pius XI was the first pope to articulate the principle of subsidiarity as a social philosophy in relation to the Church on the 40th anniversary of the social encyclical *Rerum novarum*.⁷⁴ It was reiterated again by Popes John XXIII, Paul VI and John Paul II and adopted by the Code Commission.⁷⁵ However, the history of institutes of consecrated life

⁷³ The jurisprudence of the Holy See determines that delegates represent the entire membership, i.e., they do not represent those who voted them into the role of delegate.

⁷⁴ See *Quadragesimo anno*, p. 203. Morrissey points to three uses of the term “subsidiarity” in Vatican II where the term can mean a) the ability to provide for one’s own needs and those around (*Gravissimum educationis*, no. 3), b) decentralization (*Gravissimum educationis*, no. 6), or c) decisions taken at the most appropriate level (*GS*, no. 86). The third sense reflects the understanding of the Code Commission, reflected in principle 5. See *Communicationes*, 1 (1969), pp. 80-82 and F.G. MORRISSEY, “The Significance of Particular Law in the Proposed New Code of Canon Law,” in *CLSAP*, 43 (1981), pp. 2-3 (=MORRISSEY, “Particular Law”).

⁷⁵ See *Mater et Magistra*, p. 439; PAUL VI, address to the cardinals and members of the synod of bishops, 27 October 1969, in *AAS*, 61 (1969), p. 729; JOHN PAUL II, encyclical letter *Centesimus annus*, 1 May 1991, no. 48, in *AAS*, 83 (1991), p. 854. The fact the application of subsidiarity in the Church was called into question at the time of the 1985 Synod of Bishops by the secretary of the CDF, Cardinal Hamer, has warranted much criticism. See J. HAMER, “Discours à la réunion plénière: note sur le recours au principe de subsidiarité,” in J.A. KOMONCHAK (ed.), *Synode extraordinaire: célébration de Vatican II*, Paris, Éditions du

indicates that this principle existed in the Church for a long time. This can be seen in the way in which the Church allowed them an appropriate autonomy and self-direction. The importance the Church attached to this principle is illustrated clearly in the section of both Codes on institutes of consecrated life and societies of apostolic life. There are 84 references to the proper law of religious institutes in *CIC*, that is, the capability of institutes to articulate for themselves the rules and regulations by which a particular group provides for the adaptation of the universal law to meet their own needs.⁷⁶ Canon 587 stresses the importance of internal legislation and articulates the difference between the constitutions approved by the competent authority (c. 587 §§§ 1, 2, 3) and other norms approved by the general chapter or other competent internal authority (c. 587 § 4).⁷⁷ Furthermore, the

Cerf, 1986, pp. 602-604; A. LEYS, *Ecclesiological Impacts of the Principle of Subsidiarity*, Kampen, Kok, 1995, p. 183; R. HARRINGTON, "The Applicability of the Principle of Subsidiarity According to the Code of Canon Law," JCD thesis, Ottawa, Faculty of Canon Law, Saint Paul University, 1997, pp. 118-141 (=HARRINGTON, Subsidiarity); J.A. CORIDEN, "Necessary Canonical Reform: Urgent Issues for Action," in *Louvain Studies*, 26 (2001), pp. 155 -159; KOMONCHAK, "Subsidiarity in the Church," pp. 320-325. In addition, the final document of the 1985 synod of bishops contained the recommendation that the principle of subsidiarity in the Church be reexamined to ascertain whether it could be applied to the Church, to what degree and in what sense. Johnson rightly points out that the synod had no authority to reconsider the papal pronouncement of Pius XII. See J.G. JOHNSON, "Subsidiarity and the Conference of Bishops," in *The Jurist*, 50 (1990), p. 515 and G. CAPRILE, *Il sinodo dei vescovi: seconda assemblea generale straordinaria (29 novembre-8 dicembre 1985)*, Rome, Edizioni "La Civiltà cattolica," 1986, pp. 553-570.

⁷⁶ See OCHOA, *Index verborum*, pp. 252-3 (*ius proprium*, [40 times]); p. 304 (*norma iuris*, [7 times]); pp. 304-305 (*norma iuris proprii*, [16 times]); p. 302 (*norma/ae*, [11 times]); p. 303 (*norma canonis*, [7 times]); p. 259 (*leges proprias*, [3 times]). *CIC* makes a distinction between constitutions and proper law. The latter includes the former and also those additional codes, directories, guidelines, etc., that comprise the rules and regulations by which a particular institute lives and carries out its mission. When the Code refers a matter to proper law, that matter can be placed in either the constitutions approved by the competent authority or in the other documents approved by the general chapter. However, when the Code requires a matter to be placed in the constitutions, this matter cannot be placed in the other documents (cf. c. 631 § 1, which provides examples of the use of both sets of law). Of course, the practical implementation of principles placed in constitutions is spelled out in directories, etc. Gutiérrez cautions that the constitutions ought to contain only those elements that are of permanent and universal value. See A. GUTIÉRREZ, "The New Code of Canon Law and the Internal Law of Institutes of Consecrated Life," in *ConsL*, 1 (1984), p. 84 (=GUTIÉRREZ, "Internal Law"). *CCEO* refers to the Typicon at least 57 times. See *CCEO*, Index, p. 719.

⁷⁷ See CRSI, "1978 Norms," pp. 75-76; *Essential Elements*, no. 51, p. 66, and accompanying norms, nos. 47-48, p. 75, provide a clear exposition of what is required in relation to the normative function of the general chapter. These are built on the 1901 Norms, described by Gallen as a "foundational document" together with the 1940 Norms for diocesan institutes in missionary areas that are writing constitutions. See J.F. GALLEN, "Typical Constitutions of Lay Religious Congregations," in *R/R*, 25 (1966), p. 362. See also

Church ensured that institutes retained this acquired right by enshrining in the law the mechanisms by which the principle was to operate. The autonomy of life, especially of governance, was ensured in c. 586 and the general chapter was the named internal organ charged with power to make norms for the institute as a whole (c. 631 § 1) and to determine the authority of other bodies in the institute at their appropriate levels (c. 633).⁷⁸ In order to ensure that the tendency towards centralization so evident in the pre-Vatican II Church did not predominate, the law provides for the personal authority of superiors at all levels, exercised as service, with the appropriate consultation and participation of the members (cc. 618, 622). It is significant that the universal law leaves proper law the capability to define its own expression of the authority of superiors (c. 617).⁷⁹

Providing the individual congregation with the mechanisms for establishing norms that bind the entire membership also allows that congregation to adapt/change/modify its provisions to suit changing needs and circumstances. Because of the participatory and consultative emphases implied in the exercise of authority as service and the response of active and creative obedience (*PC*, no. 14), congregations today involve the members in decision-making. Thus for example, a congregation that proposes to revise constitutions

1901 Norms, pp. 15-21 above and S.C. FOR PROPAGATION OF THE FAITH (=SCPF), *Normae pro constitutionibus congregationum iuris diocesani a Sacra Congregatione de Propaganda Fide dependentium*, Rome, Vatican Press, 1940. Huels argues that the laws made by general chapters are really statutes (c. 94). See HUELS, "Power of Governance," p. 75, footnote 40.

⁷⁸ For a description of the power of the general chapter, see above, pp. 94-110. The Holy See believes the too frequent meeting of the chapter weakens authority in a religious institute. See CRSI, indult, 8 November 1980, prot. no. 31844/80, in *CLD*, vol. 10, pp. 104-105.

⁷⁹ Gutiérrez enuntiates three principles that govern the relationship between the various categories of law: 1) because of its hierarchical nature, all law in the Church must accord with that of higher bodies. This principle applies to institutes of consecrated life; 2) subordinate authorities may issue norms of an executive nature, i.e., those aimed at completing and regulating the norms created by the hierarchically superior authority; 3) institutes of consecrated life may establish new norms within the limits of their competence. See GUTIÉRREZ, "Internal Law," pp. 84-85.

will involve the members in pre-chapter commissions, research groups, meetings, consultations, etc. In this way, not only is the entire membership involved, but the reception of the changes is enhanced also because the members were involved in their establishment.⁸⁰

One of the biggest differences between *CIC/17* and *CIC* lies in the approach of the latter to proper law. A whole series of processes reserved to the Holy See by *CIC/17* can now be carried out by institutes themselves, e.g., in relation to leave of absence, exclaustation, transfers, election procedures, establishing and surpressing houses/provinces/regions, enclosure, terms of office, visitation and regulations regarding the use and administration of temporal goods.⁸¹ Proper law will determine who acts authoritatively on these issues. In contrast to the uniformity of those written under *CIC/17*, constitutions today reflect the rich heritage of individual charism available for service in the Church.⁸² In addition, the Church specifically provides for those additional norms collected in books of directories, guidelines, etc. (c. 587 § 4) and over which the general chapter has authority (c. 631 § 1). As a result, the general chapter can legislate for those constitutional changes necessary to ensure the individual institute retains its relevance for the lives of the members as well as for the good of the Church. In addition, it has the legislative power necessary to adapt, change, or modify those norms over which it has

⁸⁰ See MORRISEY, "Particular Law," pp. 15-17.

⁸¹ See cc. 665, 686, 684, 164, 609, 581, 616, 667, 624, 628, 634-640. See also pp. 24-25 above; HARRINGTON, *Subsidiarity*, p. 216.

⁸² As we have seen in ch. 1, one of the by-products of *CIC/17* was to produce a kind of uniformity in relation to the constitutions of individual institutes. Because of the application of the principle of subsidiarity, *CIC* allows for the rich diversity of charism to be evident in very individual books of constitutions as well as the other documents of proper law. This will be shown in our fourth chapter, which examines the proper law of the two former Branches of IBVM.

control. These latter provisions do not require the approval of the Holy See. As a result, the principle of subsidiarity finds one of its best expressions in the universal law's treatment of institutes of consecrated life.

3.2.4 – Collegial Nature of the General Chapter

Although the term “collegiality” became popular around the time of Vatican II, in fact the concept had existed from the early history of the Church.⁸³ History and tradition had determined that the general chapter acted in a collegial manner, i.e., despite being presided over by designated authority, all the members were equal and decisions were made by majority vote, with everyone voting on an equal basis.⁸⁴ In other words, the juridical concept of “college” designates a particular collaboration in decision-making, a

⁸³ As discussed above in ch. 2, p. 56-57, collegiality was applied to the Church's governance at Vatican II. However, *collegium* was commonly used in the 4th and 5th centuries to describe the apostolic community, the community of bishops and priests as well as the bishops themselves. *Lumen gentium* restored the ancient meaning of collegiality as the juridical and moral communion of the bishops among themselves and in union with the pope for shepherding the universal Church. See R. KRESS, art. “Episcopal Collegiality,” in *New Catholic Encyclopedia*, 2nd ed., vol. 3, Washington, DC, The Catholic University of America Press, 2003, pp. 837-838. *CIC* does not permit a collective organ, e.g., a college, to have responsibility for the direct care of souls (e.g., c. 510 which separates parishes from chapters of canons; c. 520 that commits the pastoral care of a parish to a physical person rather than the religious community and c. 517 § 2 that requires a named moderator to coordinate the affairs of a parish given “*in solidum*” to a group of priests). However, colleges carry out a variety of juridical function: ecumenical councils (c. 341), particular councils (c. 445) and episcopal conferences (c. 455) carry out legislative functions; executive functions are carried out by the dicasteries (*PB*, no. 18), episcopal conferences (c. 447), the college of consultors (c. 502). See J.I. ARRIETA, *Governance Structures Within the Catholic Church*, Montréal, Wilson and Lafleur Ltée, 2000, pp. 70-72 (=ARRIETA, *Governance Structures*). In congregations of consecrated life, the collegial principle, i.e., the right of the members to share the decision-making process concerning the important affairs of the congregation was the *modus operandi* of general chapters from their earliest institution.

⁸⁴ Canon 115 § 2 describes two types of college: those whose members participate in decision-making by equal right (each member is juridically equal, e.g., the college of consultors) or unequal right (where decisions are adopted on the basis of the different positions of the members, i.e., some have deliberative status, others do not, e.g., the diocesan synod where the bishop is the sole legislator). In the general chapter, all the lawfully elected delegates participate by equal right.

way of determining the collective will, as well as owning the decision made.⁸⁵ Participation does not have to be direct. In many religious congregations it is indirect, that is, the members elect representatives who in turn make the decisions at the general chapter on behalf of the whole body. Colleges gather the members together as equals and provide an experience of communion in charity and in the duty of service.⁸⁶

In the universal law, the concept of “college” refers to a particular way of making-decisions, as well as unity in acting once the decision is made (c. 119). It is a participative system based on dialogue among all the members of the college and the equality of the participants. In the context of communion, this way of proceeding pre-supposes the willingness of the participants to engage in dialogue and to forego individual opinions in the interests of the common good.⁸⁷ In other words the specific way in which the general chapter operates promotes that union in charity that is one of its most significant functions.

A college must consist of at least three members (c. 115 § 2) and follow the procedure given in c. 119 and/or proper law for collegial acts. The acts of a college have the force of law and are binding on the entire membership irrespective of whether an individual member voted for the particular decision or not (c. 119). The purpose, constitution, governance and manner of acting followed in a college must be established in

⁸⁵ See ARRIETA, *Governance Structures*, p. 74. Sexton describes this process as an exercise in “coresponsibility.” See W.P. SEXTON, “Collegiality and Subsidiarity: Theory, Application, and Evaluation,” in *RfR*, 29 (1970), p. 859.

⁸⁶ See GAMBARI, *Religious Life*, p. 484.

⁸⁷ Arrieta distinguishes “deliberations” which he defines as “analogous to the intellectual process through which an individual arrives at his/her own decision” and “agreements” which “imply the juridical protection of individual opinions.” According to this view, the decision of the college is a “deliberation,” that is, the decision made by the group is the one decision and it has the force of law. See ARRIETA, *Governance Structures*, p. 74.

proper law (cc. 94, 117, 587 §§ 1, 4). A college is always inserted into the Church's legal system according to the norms of the law and statutes (c. 115 § 2). The chairperson is *primus inter pares*.⁸⁸ However, in canon law the chairperson is not always a member of the college. For example, in the elective chapter of diocesan institutes, the president is the diocesan bishop, while the president of the electoral college is the superior designated in the constitutions. The members of a college can be of equal right or not. In the case of a religious institute, the general superior retains his/her power and authority for the duration of office. However, when decisions are made in chapter with the participation of all the members, all have equal vote. It is possible for the participants in a college to have a different status in relation to the vote. Non-delegates might participate in the work of the general chapter; however, they do not vote in a deliberative way with the members.⁸⁹ Not all colleges have juridic personality. The general chapter is the agent that represents the juridic person of the congregation.⁹⁰ However, in the case of representation, those who represent are themselves part of the juridic person they represent. Because of this, the acts of the representative are acts of the juridic person.⁹¹

⁸⁸ See MICHIELS, *Principia generalia*, pp. 494-495.

⁸⁹ See below pp. 177-178 for a discussion on "observers." Proper law must give explicit provisions in relation to the status of visitors, observers, etc. See A. VIANA, *Organización del gobierno en la Iglesia según el derecho canónico latino*, 2nd ed., Pamplona, EUNSA, 1997, p. 116. Parallel examples include when non-bishops are called to participate in an ecumenical council (c. 339 § 2) or vicars, major superiors, etc., who participate in a particular council (c. 443 § 3) or auxiliary bishops who normally do not have deliberative vote at Bishops' Conferences (c. 454).

⁹⁰ The term used to describe acting on behalf of the juridic person is "*personam gerere*" (cc. 393, 532) or "*repraesentatio*" (cc. 118, 1480 § 1).

⁹¹ Contrast this with the *vicarius* (for public functions, e.g., c. 134 § 3) or the *procurator* (for private functions, e.g., c. 1482 § 2) who are distinct from the person (s) they represent. See H. PREE, "On Juridic Acts and Liability in Canon Law," in *The Jurist*, 58 (1998), p. 62, footnote 52 (=PREE, "Juridic Acts"). The *vicarius* or *procurator* acts on behalf of the person while a delegate to a chapter acts in his/her own name and within the scope of the mandate given.

Members of the chapter have a right to be called, a right that can be vindicated (cc. 119, 1°, 166). Because each member has the right to vote on each matter, any infringement of this right has to be sanctioned by the whole college. Canon 174 gives the example of election by compromise, that is, the chapter gives a group the right to do something (e.g., elect a secretary general), which belongs to the chapter. In this eventuality two further conditions are applied: the vote to do this must be unanimous and in writing.⁹²

As we have seen, the Code does not expressly state that chapters in non-clerical institutes of consecrated life and societies of apostolic life exercise power of governance. This omission reflects the divergent opinions among the members of the Code Commission regarding the capability of laypersons to exercise power of governance.⁹³ However, the law itself⁹⁴ gives the general chapter the power to perform certain acts of executive power, irrespective of whether the members are clerical or lay.⁹⁵

Canon 119 establishes the basic principles governing the collegial acts of physical persons acting on behalf of the juridic person. Consequently, the basic rules of the decision-making for the general chapter come from this canon. It deals with three separate

⁹² The Canon Law Letter and Spirit Commentary describes “unanimous” as without dissent or abstention. See G. SHEEHY et al. (eds.), “Juridical Persons,” in *CLSGBI Comm* p. 68. There is no *CCEO* provision for election by compromise.

⁹³ Pagé holds that this same divergence influenced the final wording of c. 129, which, while restricting the capability for power of governance to clerics, yet provides for laypersons to cooperate in its exercise. See R. PAGÉ, “Juges laïcs et exercice du pouvoir judiciaire,” in M. THÉRIAULT, and J. THORN (eds.), *Unico Ecclesiae servitio*, Ottawa, Faculty of Canon Law, Saint Paul University, 1991, pp. 197-212.

⁹⁴ See GHIRLANDA, “De natura potestatis regiminis,” pp. 143-149.

⁹⁵ This is clear for those chapters whose major superior is an ordinary (cc. 596 § 2, 969 § 2). However, as discussed in ch. 2, pp. 94-110 above, the Code does not name the power of lay superiors and chapters. It is clear, nonetheless from the acts these are permitted by law to execute that they, too, exercise executive power of governance (e.g., singular administrative decrees [cc. 581, 609, 641, 684, etc.] or precepts

issues: canonical elections (c. 119, 1°), other kinds of collegial acts (c. 119, 2°) and those matters that affect everyone (119, 3°).⁹⁶ Because the law says “unless the law or statutes provide otherwise,” c. 119 really only provides suppletory norms.⁹⁷ If the particular law or statutes of the juridic person specify procedures, these take precedence over c. 119. The importance of c. 119 lies in the principle established: whatever occurs in accordance with these procedures or those established in proper law has binding force, once the requisite conditions have been fulfilled. This quality is intrinsic to the nature of collegial acts of the public juridic person or collegial acts performed in its name. In relation to the general chapter, therefore, its acts, not only elections carried out, but also decisions on all other matters, have the force of law. Once the act is validly placed, the persons elected acquire

[c. 697, 2°], acts that bind the community [cc. 587 § 4, 631 1, 635 § 2], indults [cc. 686 § 1, 688 § 2, 743, 745], etc. See HUELS, “Power of Governance,” pp. 74-78.

⁹⁶ See *CCEO*, c. 924. This canon, written later than *CIC* is clearer: “With regard to collegial acts, unless the law expressly provided otherwise: 1° when the majority of those who must be convoked are present, that which is approved by an absolute majority of those present has the force of law; if the votes were equal, however, the one presiding is to break the tie by his or her vote; 2° if the acquired rights of individuals are affected, the consent of each of them is required; 3° regarding elections, c. 956 is to be observed.” The response to a doubt posed in relation to the majority required in the third ballot established that a relative majority is sufficient. See PCILT, response, 28 June 1990, in *AAS*, 82 (1990), p. 845.

⁹⁷ See KENNEDY, “Juridic Persons,” p. 164. Today, every congregation specifies its own particular procedure in relation to elections, participation of the members, *quorum* in relation to voting, necessary majorities, etc. Abbass points to five possible areas of difference between the two Codes: because *CIC*, c. 164 allows proper law to provide otherwise, Abbass maintains that c. 168, by contrast with *CCEO*, c. 950, allows an elector to cast more than one vote in virtue of the title he/she holds; *CCEO*, c. 954 § 1, 2° precludes the use of voting by acclamation or a show of hands, which is not prohibited by c. 172 § 1. 2°; *CCEO*, c. 955 § 5 (unlike c. 173 § 4) requires the secretary to read the election acts to the electors before signing and preserving them; *CCEO*, c. 957 §§ 1-2 provides the way communication of the election and acceptance are to be carried out while *CIC*, c. 177 § 1 is undefined; *CIC*, 179 § 3 regarding confirmation where this is required, is covered by *CCEO*, c. 1514 concerning administrative acts. However, c. 164 allows a different provision in proper law. In addition, he catalogues three differences in the way votes are calculated and the procedure used: *CIC*, c. 173 § 3 invalidates a vote that exceeds the number present. *CCEO*, c. 955 § 3 invalidates the vote that is not equal to the number present. In other words, *CCEO* does not permit abstentions, however, an elector may submit a blank ballot; *CCEO*, 955 § 4 requires the ballots to be destroyed, *CIC* omits this detail; *CCEO*, c. 955 § 5 requires the election acts to be read to the electors. See ABBASS, “Two Codes in Comparison,” pp. 164-176.

ius in re to the office by accepting the election⁹⁸ and decisions made become binding on all. Because the general chapter is representative of the juridic person, only those members who constitute the chapter are eligible to be convened and to vote at the chapter.

In relation to elections, c. 119 specifies the majorities needed for a valid vote.⁹⁹ Proper law can, and often does, change these proportions. In the event that proper law does not specify procedures, universal law requires a *quorum* consisting of a majority of those entitled to be convoked are present. Canon 167 § 2 provides for the vote of the infirm. Ballots are taken to arrive at an absolute majority of those present.¹⁰⁰ According to *CIC*, if two consecutive ballots fail to produce a result, a third is taken between the two candidates who received the highest numbers of votes or if more than two received equal numbers of votes, between the two senior by age. After a third inconclusive ballot, that person is

⁹⁸ According to c. 178, if the election does not require confirmation, by accepting the election the person elected immediately obtains the office with all its rights (*ius in re*). Otherwise he/she only acquires a right to the office (*ius ad rem*). If the election requires confirmation, this must be obtained, either personally or through another, within eight canonical days of accepting the election. Confirmation must be given in writing (c. 179). In the case of election by postulation, at least two-thirds of the votes are required and the vote must be made according to the canonical formula (c. 181); the president must, within eight canonical days, request the competent authority to confirm the election (c. 182); the person who accepts a postulation that is admitted, immediately obtains *pleno iure* the office (c. 183).

⁹⁹ Canon law does not normally determine the majority or absolute majority required in particular cases. As a result, each congregation must determine what this means for itself. It is helpful if this information is contained in the directory or manual on chapters to avoid confusion at chapters. Some define majority as any number over 50%. See CRSI, "Observations," p. 339.

¹⁰⁰ *CIC/17* required an absolute majority only of valid votes cast; abstentions or invalid votes were not counted (c. 101 § 1, 1°). Canon 119, however, requires that abstentions and invalid votes must be counted in "those present" which might prevent the arrival at an absolute majority. According to c. 167 § 2, "those present" extends to those in the "house" who have a right to be called. In a collegial act, other than an election, the superior is *primus inter pares*, is dependent on the majority vote and must act in accordance with it. As a result, the superior votes and can break a tie (c. 119). By contrast, when the superior requires the consent or advice of a group, e.g., the council or chapter, according to an authentic interpretation of 1985, he/she does not have the right to vote or break the tie when the law requires the consent of the group. See PCILT, reply, 15 May 1985, in *AAS*, 77 (1985), p. 771. This interpretation gave rise to a number of opinions. Some believe the superior is part of the council, others that he/she is distinct from it. For a detailed analysis of the operation of c. 127 in relation to the council of the general superior, see P. ETZI, *Attività di governo e prassi della consultazione negli istituti di vita consacrata: una lettura dei canoni 627 e 127 del Codice di diritto canonico*, Rome, Pontificium Atheneum Antonianum, 2001.

deemed elected who is senior by age (c. 119, 1°).¹⁰¹ Canons 180-183 provide the procedure necessary for the canonical institute of postulation.¹⁰² If the general chapter proposed to postulate as general superior someone with an impediment (e.g., less than five years perpetually professed or ineligible for reelection because of time already served), in that case, universal law requires at least a two-thirds majority.

In relation to other matters, c. 119 § 2 does not restrict voting to three ballots. Given the presence of a majority of those who are to be summoned, an absolute majority will carry a decision. If after two ballots there is a tie, the presider can break the tie.¹⁰³ Canon 119 § 3 gives the principle operative in particular circumstances: “whatever touches all as individuals must be decided by all.” The provisions from paragraphs one and two dealt with the functioning of the college as a group in matters that concerned the juridic person, i.e., the whole congregation, while paragraph three refers to the functioning of individual members of the college. For example, if the college lawfully decided to mandate a small group (e.g., the supreme moderator and council), to fulfil some function (e.g., election of the secretary general), which was the prerogative of the college (c. 174 § 1), in

¹⁰¹ Canon 119 does not clarify whether an absolute majority is needed in the third ballot. Consequently an authentic interpretation specified that a relative majority is sufficient. See PCILT, reply, 1 August 1990, in *AAS*, 82 (1990), p. 845. The Eastern Code includes reference to the relative majority in the third ballot (*CCEO*, cc. 924, 3°, 956, § 1). The Eastern Code states that if this third ballot should result in a tie, the senior by ordination among clerics and the senior by first profession among religious are deemed elected (cc. 924, 3°, 956 § 1).

¹⁰² See *CCEO*, cc. 961-964.

¹⁰³ See CHIAPPETTA, *Il Codice di diritto canonico*, p. 179

this event, the decision must not only be unanimous, but it must also be written.¹⁰⁴ As a result, the right of the chapter member to exercise his/her vote is safeguarded.

Codex iuris canonici attributes a number of characteristics to colleges.¹⁰⁵ A distinctive characteristic lies in the fact that although it is an obligatory institution in the religious institute, the chapter (or comparable institute) does not become operational until legitimately convoked by the competent authority. It is only then that the chapter can carry out the tasks designated by c. 631. The general norms that regulate an election also govern the convocation of the college (cc. 165-179). If proper convocation does not occur, the law provides for the nullification of the acts or the possibility of revocation. Proper convocation occurs when the *quorum* determined in proper law (or c. 119) assembles. The deliberations are carried out in accordance with the law or statutes of the body. In institutes of consecrated life, proper law determines the procedures in relation to voting. The Code does not provide a procedure in relation to a declaration of invalidity or for rescissory action. However, *Pastor Bonus*, no. 158 provides that the Pontifical Council for the Interpretation of the Code could determine whether acts are in agreement with the universal law.¹⁰⁶ It is possible, therefore, to obtain a clarification in case of doubt.

The question arises, what if the juridic act of the chapter is invalidly placed? Canon 124 does not define a juridic act but it does determine the elements that are essential to its

¹⁰⁴ Canon 174 also stipulates that if the electorate consists of clerics, then the group entrusted with the task of electing must also be clerics, otherwise the election is invalid (c. 174 § 2). For the validity of the election made by compromise, the conditions stipulated must be fulfilled (c. 174 § 3).

¹⁰⁵ See PREE, "Juridic Acts," pp. 481-483.

¹⁰⁶ JOHN PAUL II, apostolic constitution *Pastor bonus*, 28 June 1988, no. 158, in *AAS*, 80 (1988), pp. 841-912, English translation Apostolic Constitution *Pastor bonus*, M. THÉRIAULT et al. (eds.), Ottawa, Faculty of Canon Law, Saint Paul University, 2000, p. 51. See also PREE, "Juridic Acts," p. 82.

valid placing: the person (physical/juridical/college) placing the act must be capable (humanly/canonically); the act must be lawfully placed (i.e., with the requirements [e.g., a specified majority]) and formalities required by the law for validity (e.g., secret vote) and the essential elements that constitute the act must be present (e.g., the informed intention to act).¹⁰⁷ In terms of the general chapter, the members who constitute it are the legal representatives of the juridic person of the congregation. They alone possess the canonical capability to place acts in its name in relation to the functions specified in c. 631. Furthermore, the acts placed by the general chapter, since it represents the public juridic person that is the institute, have the force of law. The consequence of this authority is that rights and obligations ensue from the legitimate acts of the chapter. However, since the title on juridic acts in the Code is new, there is not a well-developed body of canonical doctrine available concerning it.¹⁰⁸ This is particularly true in relation to collegial acts. There are, nonetheless, a number of canons that refer specifically to the valid acts of a collegial person. Canon 166 § 2 provides for the situation when one who had the right to be summoned was overlooked. Although the election carried out in this situation is valid, nonetheless, if the person gives proof of being overlooked and of absence and there is proof that recourse was made within three days of receiving notification of the election, the

¹⁰⁷ There are a number of definitions of the juridic act. The most commonly used are those of Robleda "an externally manifested act of the will by which a certain juridical effect is intended" (O. ROBLEDA, "De conceptu actus iuridici," in *Periodica*, 51 [1962], pp. 413-446), and Michiels "a social human act, legitimately placed and declared, to which the law attributes a determined effect inasmuch as this effect is intended by the agent" (MICHIELS, *Principia generalia*, p. 572). Huels describes the juridic act as "a human act, lawfully placed, by which a person capable in law manifests his/her intention to bring about (a) specific effect (s) recognised in law" (J.M. HUELS, "Juridic Acts in the Canonical System," Class Notes for Doctoral Students, Ottawa, Faculty of Canon Law, Saint Paul University, 2004, p. 3). Pree believes the importance of c. 124 as "a principle of interpretation in regard to any legal act" cannot be overstated since the institution of the juridic act can be found throughout the canonical system (PREE, "Juridic Acts," p. 57).

¹⁰⁸ See PREE, "Juridic Acts," p. 41.

election, even if confirmed, must be rescinded.¹⁰⁹ Canon 153 § 1 describes as invalid the provision of an office that is not vacant, c. 143 § 3 prescribes invalidity for an office obtained by simony and c. 188 prescribes *ipso iure* invalidation for resignation obtained through grave fear unjustly inflicted, deceit, substantial error or simony.¹¹⁰ Since the general chapter alone provides for the office of general superior, all of these canons have application. Canon 177 provides for the acceptance of the one elected within the prescribed canonical time limits and the procedure that must be taken by the college should this not occur. In addition to these instances, c. 172 determines the essential elements for the valid casting of a vote.

Canon 124 § 2 establishes a presumption of law: if the external elements have been placed correctly, the act is presumed to be valid. The onus is on the one alleging invalidity to prove this. The Code provides instances that invalidate or give reason to rescind acts taken (cc. 125, 126). The legal consequence of force that cannot be resisted is that the act is considered not to have taken place.¹¹¹ Since the act is non-existent, no action need be

¹⁰⁹ Canon 158 § 2 describes the process necessary when a college has the right of presentation to office, e.g., in the case of a parish run by a congregation. The college may present one of its members or another (c. 160 § 2), provided the person has been consulted and has not refused within eight canonical days (c. 159). Canons 161 and 162 describe what happens if the person presented is unsuitable, withdraws or dies or if the college does not present someone within the required time. The college has one further opportunity to present another suitable candidate after which the right of provision devolves to the competent authority. Arrieta believes that when presentation devolves upon a college, it resembles an election that requires confirmation. In this situation, the election must be held in accordance with the principles of c. 119 or the proper law requirements. The incumbent must then be presented to the competent authority for confirmation. However, the right of election refers to the designation of an incumbent who then acquires the office with all its rights and obligations (c. 178). In the right of presentation, on the other hand, it belongs to the competent authority to confirm the choice in accordance with c. 163. The incumbent does not acquire rights and obligations as a result of presentation. See J.I. ARRIETA, "Ecclesiastical Offices," in *CCLA*, pp. 133-134.

¹¹⁰ Abbass points out that *CCEO* c. 946 is more extensive in that it also invalidates the act taken because of "fraud" rather than "substantial" fraud. See ABBASS, "Two Codes in Comparison," pp. 162-164.

¹¹¹ See W. ONCLIN, "De requisitis ad actus iuridici existentiam et validitatem," in *Studi in onore di Pietro Agostino d'Avack*, Pubblicazioni della Facoltà di giurisprudenza dell'Università di Roma, no. 48,

taken. However, the Code provides for the declaration of juridical facts, e.g., the non-existence of an act by means of a contentious trial (c. 1400 § 1, 1°) in the case of juridic as well as physical persons. What about the invalidity or rescindibility of acts of executive power which general chapters place? We do not have an answer to this question in relation to the acts of collegial persons. The Code Commission discussed this issue. Both the 1977 and 1980 *Schemata* had a canon specifically addressing what should be done if a member of a college was affected by any one of these deficiencies,¹¹² but the Commission omitted the canon when the members accepted that a collegial act is one placed by a majority of members. It would be too difficult to prove what the Commission called “subjective conditions,” and consequently, such a canon would be “dangerous.”¹¹³ As long as the vote given by a majority of members is freely given, the collegial act is valid.

The question arises whether a college that has power of jurisdiction in the external forum (i.e., the general chapter of clerical institutes of pontifical right) can be regarded as a “superior” in the sense of c. 127. This does not seem to accord with the use of the term

Milan, Giuffrè, 1976, p. 411. Some canonists refer to the “invalidity of the juridic act” placed under force, a description disputed by Pree who believes the act simply never took place, therefore it makes no sense to speak of its invalidity. See PREE, “Juridic Acts,” p. 68 and also p. 69, footnote 80.

¹¹² See *Communicationes*, 14 (1982), p. 145. Canon 125 protects against the injustice caused by certain external forces that restrict freedom to act. Canon 126 regulates the legal consequences of defects in the intention itself, whether the defects are internal or external. See PREE, “Juridic Acts,” p. 67.

¹¹³ “[...] non necesse est ut separatim agatur de actibus collegii. Canon esset periculosus propter condiciones subiectivas quae subintrarent et quae difficillimae sunt probationis” (*Relatio*, p. 37). Pree distinguishes between acts that are null (if one of the essential elements of c. 124 is missing), rescindable (as in c. 166, the convocation of inadequate numbers) or simply ineffective (as in c. 177, the lack of acceptance of election according to the procedures). He also recommends caution in relation to the meaning of words used, as “*effectum habere*” and “*effectum sorti*” are used to refer to both nullity and validity. Therefore, strict attention must be given to the context. See PREE, “Juridic Acts,” pp. 48-49.

“superior” in the Code.¹¹⁴ Another question arises in relation to c. 127. What if the superior needs the consent of the general chapter for a specific act?¹¹⁵ For example c. 581 mandates the competent authority to divide the congregation into parts, to establish new parts or to modify existing structures. What if the general superior needed the consent of the general chapter in order to establish a province?¹¹⁶ Would he/she have the right to vote and in the event of a tie to cast the deciding vote? An authentic interpretation of 1985 concerning the superior’s need for the consent of the council in order to place a valid act decided in the negative despite the practice in some congregations. The principle underlying the decision is that the superior cannot give consent or advice to him/herself.¹¹⁷ There is an additional

¹¹⁴ There are approximately 162 references to “superior” in the Code. Of these, only four connect a collective of persons with the term: c. 708 describes conferences of major superiors, but here, superior is merely descriptive; c. 709 provides for juridic personality for these conferences but only by specific grant of the Holy See; c. 596 §§ 1, 2 equates the general chapter with “superior” (G. CONLAN, *Concordance of the Code of Canon Law* [1983], Victoria, Australia, Mazenod Press, 2002, pp. 186-187). In describing the power of religious congregations, the Code makes separate mention of superiors and chapters (cc. 596, 617-633). Pree believes that even if a college has hierarchical power, it cannot be equated with the term “superior” as used in c. 127. See PREE, “Juridic Acts,” pp. 480-481. For an alternative view, see S. DOBROWSKY, “El consentimiento de un “personarum coetus” y el acto de un superior,” in *Ius canonicum*, 26 (1986), pp. 287-297, 289; M. WALSER, *Die Rechtshandlung im kanonischen Recht. Ihre Gültigkeit gemäss dem Codex iuris canonici*, Göttingen, Cuvillier, 1994, p. 132. Thériault believes “superior” also refers to a general chapter. See M. THÉRIAULT, “De actibus iuridicis,” in A. MARZOA et al. (eds.), *Comentario exegetico al Código de derecho canónico*, 2nd ed., vol. 1, Pamplona, EUNSA, 1997, p. 831.

¹¹⁵ *CIC/17* had several instances for which the superior needed the consent of the chapter, e.g., c. 572 § 2, to authorise first profession; c. 646 § 2, for authorization to make a declaration of legitimate dismissal; c. 655, which required the general superior with chapter (or council) to pass a sentence of dismissal. *CIC* has no such examples. However, proper law may require the general superior to get the consent of the council/chapter for acts such as those expressed in c. 581 (the establishment of provinces).

¹¹⁶ By the decree *Ad instituenda experimenta*, CRSI allowed the internal authorities of religious institutes to make this decision, contrary to the provisions of *CIC/17*, c. 494.

¹¹⁷ See PCILT, response, 5 July 1985, in *AAS*, 77 (1985), p. 771. See also A. GUTIÉRREZ, “Commentarium: De superiore eiusque consilio,” in *CpRM*, 66 (1985), pp. 334-335; F.J. URRUTIA, “Responsa Pontificiae Commissionis Codici iuris canonici authentice interpretando,” in *Periodica*, 74 (1985), pp. 609-628. Writing in 1991, Urrutia said that c. 627, which allows proper law to provide those instances when the superior needs the advice or consent of the council, can never override the interpretation provided. See ID., “Responsa Pontificiae Commissionis Codici iuris canonici authentice interpretando,” in *Periodica*, 80 (1991), pp. 130-142.

problem in that a superior is not a member of his/her council, while he/she is a member of the general chapter. The authentic interpretation does not address this question clearly.¹¹⁸

If the consent of the general chapter is required for a specific act, c. 166 determines that the act is invalid if there is no convocation in accordance with the law, namely, the act is invalid in virtue of the law if more than one third of the voters were overlooked (c. 166 § 3) and there is a possibility of rescission if the conditions of c. 166 § 2 pertain. If the majority does not give consent or there is a tie (which in this instance the superior cannot break), the act cannot take place. An absolute majority of those present is required for the validity of the act (c. 127 § 1).¹¹⁹ Invalidity also occurs when a decision is made in the matters over which the general chapter has no authority, or when the vote is inconclusive.

One of the by-products of renewal for religious was the reclaiming of those democratic structures that were enshrined in tradition: the collegial way of making decisions with the involvement of as many of the membership as possible. The contemporary influence of democracy, where “power is legitimate only when it is derived from the authority of the people and based upon their consent,” had and continues to have, a profound impact on governance structures, despite the fact that the exercise of power in

¹¹⁸ Many constitutions establish that supreme moderators, with the consent of their councils, can establish provinces or other governmental units. This is the practice in IBVM. However, some constitutions do not specify that this is a function of the supreme moderator, e.g., *Constitutions and Directives of the Union of Sisters of the Presentation of the Blessed Virgin Mary*, Dublin, Elo Press Ltd., 1988.

¹¹⁹ Canonists disagree as to whether there is a *lacuna legis* here or not. Aymans and Mörsdorf say no. See W. AYMANS, and K. MÖRSDORF, *Kanonisches Recht. Lehrbuch aufgrund des Codex iuris canonici, 1: Einleitende Grundfragen und allgemeine Normen*, 13th ed., Paderborn, F. Schöningh, 1991, p. 373. Primetshofer uses c. 119, 1° by analogy. See B. PRIMETSHOFER, *Ordensrecht auf der Grundlage des Codex iuris canonici 1983 unter Berücksichtigung des staatlichen Rechts der Bundesrepublik Deutschland, Österreichs und der Schweiz*, 3rd ed., Freiburg im Breisgau, Rombach, 1988, p. 67. Because the Code Commission dropped the reference to a majority, Pree believes this was deliberate and that therefore there is no *lacuna* in c. 127. See *Communicationes*, 33 (1991), p. 244 and PREE, “Juridic Acts,” pp. 485-486.

the Church, and consequently in religious life at the present time, does not follow the democratic model of government.¹²⁰ The exercise of collegiality is based on the principle of the equality of the constituents who compose the college. These in turn have been elected by the membership, thus involving the whole congregation in the task of governance. By establishing principles to ensure this body is both representative and equitable in its *modus operandi*, the universal law provides a system of government for religious institutes that has stood the test of time and could be a model for the entire Church. Among all the organisms in the Church, collegiality finds its best application in religious institutes.¹²¹

3.2.5 – Representative Function of the General Chapter

The description of the general chapter given in c. 631 § 1 indicates it must be representative¹²² of the whole congregation because only in this way can it be a true sign of

¹²⁰ Bianchi believes religious orders preserved the democratic principles of a more horizontal, less hierarchical approach and participatory modes of decision-making. See BIANCHI and RADFORD REUTHER, *Democratic Church*, p. 46. See below for the way in which this kind of influence affects the dynamic aspects of the general chapter.

¹²¹ See GAMBARI, *Religious Life*, p. 488. The Faith and Order Commission of the World Council of Churches consensus statement in 1982 proposed the recovery of equilibrium among the personal, collegial and communal dimensions of ministry as the principle to guide ecclesial reform. As Clifford argues, the recovery of the collegial aspect is crucial to the task of ecumenical dialogue. Religious congregations provide a fine example concerning the interplay of these three elements. As the Holy See has consistently maintained, both the personal and collegial aspects of government must exist side by side in religious congregations. It seems, however, that the Church is hesitant to apply these principles to other institutions in the Church. See WORLD COUNCIL OF CHURCHES, *Baptism, Eucharist and Ministry*, Faith and Order Series, Paper no. 111, Geneva, World Council of Churches, 1982; C.E. CLIFFORD, "Emerging Consensus on Collegiality and Catholic Ecumenical Responsibility," in *The Jurist*, 64 (2004), pp. 332-360.

¹²² For the understanding of "representation," i.e., consent to make, change, modify, retract what will remain permanent and stable, on behalf of those represented, see above, p. 5, footnote 13.

the unity of the congregation.¹²³ Furthermore, all the members have a legal right to be heard in some manner, whether as delegates to the chapter, as members who elect the delegates or as individuals who send wishes or suggestions to it (c. 631 § 3). Perpetually professed members¹²⁴ are eligible for election as representatives, except those who are in the process of transfer to another institute (c. 685 § 1), those who are exclaustated (c. 687), religious who are bishops (c. 705),¹²⁵ those in temporary profession, although at the request of the institute, permission has been given to those three years professed.¹²⁶

A study undertaken by UISG indicates a great variety in the numbers who participate at general chapters. Generally speaking, the size of the institute determines the

¹²³ It was the intention of the Vatican Council to emphasize the principle of representation and participation of all the members in the governance of the institute without interfering with the personal authority of the superior (*PC*, no. 14). The right to representation can be said to be one of the most fundamental as far as religious are concerned. In exercising this right, religious contribute to governance, a right so important that it is enshrined in the Code in c. 631 § 1.

¹²⁴ The Congregation for Religious and Secular Institutes, while promoting participation and the collaboration of all the members, did not favour granting passive voice to those who are not yet permanent members of an institute. The reason given is that their lack of knowledge of the religious life hinders them from a true understanding of the work of the chapter. See CRSI, reply, 5 July 1972, prot. no. T. 103-1/72, in *CLD*, vol. 8, pp. 335-337. In 1987, PCILT clarified the meaning of "religious" in c. 684 § 3 to include those in temporary profession. One wonders, therefore, if these members ought to have the same rights as perpetually professed members in general chapters. See PCILT, reply, 20 June 1987, in *AAS*, 79 (1987), p. 1249.

¹²⁵ Whether a religious who becomes a bishop enjoys active and passive voice in his own institute was the subject of a clarification from the Pontifical Commission. See PCILT, reply, 29 April 1986, in *AAS*, 78 (1986), p. 1324. *CCEO* made a clear statement about this particular situation: the religious who is patriarch, bishop or exarch loses active and passive voice. However, should he return to his monastery, order or congregation, if the statutes permit, he may exercise both active and passive voice (c. 431 § 2).

¹²⁶ Canon 665 does not exclude those on legitimate leave of absence from the community house from exercising their right to both active and passive voice (cf. c. 18). Members on unauthorized leave of absence (c. 665 § 2) can, it seems, also exercise this right, unless proper law determines that active and/or passive voice is removed after a certain time. The canonical status of such members is unclear. One commentator suggests that in fairness to these and to all members, action ought to be taken by major superiors to clarify such situations. See P.L. GOLDEN and R.M. McDERMOTT, "Canons 665 and 686: Opinion," in K.W. VANN, and J.I. DONLON (eds.), *Roman Replies and Advisory Opinions, 1995*, Canon Law Society of America, Washington, DC, 1995, pp. 56-58.

number participating.¹²⁷ Today, it is important to represent age groups, diverse geographical regions, apostolic works, culture and language.¹²⁸ In international congregations, the question of appropriate representation of regions and mission areas arises.¹²⁹ This means more than mere physical representation. There are cultural factors that must be dealt with, for example, in relation to processes used and decisions made.¹³⁰

¹²⁷ Institutes of approximately 5000 and above have approximately 150 members, those with membership between 2000 and 5000 have 60 to 100, those of 1000 members, 40 to 50; smaller institutes have less; however, very small institutes and new institutes of less than 50 members have chapters that include everyone directly. See UISG, "Les Chapitres Généraux," p. 45.

¹²⁸ Institutes use different methods to elect members to general chapters. (1) Non-preferential voting is the system described in canon law where voters cast one vote for as many candidates as there are places to be filled; the scrutators add up the numbers; there can be as many ballots as necessary to reach required majorities or if there is a limited number of ballots, election occurs by relative majority. (2) Simple preferential voting occurs when voters list candidates in order of preference; scrutators count the number of first preference votes; anyone who reaches the required majority is elected; otherwise, the lowest scoring candidate is eliminated and the ballot papers that named him/her as first preference are reexamined; the vote is transferred to the person listed second on that ballot; the process of eliminating and transferring votes continues until if necessary, only two persons remain; one of these will have an absolute majority or the vote is tied. This system works where there is one vacancy to be filled and more than one candidate. The system does not preclude a preliminary nominating ballot conducted non-preferentially to establish a panel of stronger candidates. (3) The points preferential system asks the electors to list the candidates in order of preference; the scrutators assign points to each candidate depending on their place on the list; and the highest scoring candidates are elected. If the number of candidates is high, it is advisable to have a non-preferential vote to establish the strongest candidates. (4) The quota preferential method (also called the Hare-Clark, Droop or single-transferable-vote system) requires candidates to reach a quota not a majority; the size of the quota depends on the number to be elected; if a candidate has more than required, the surplus is transferred to the next person named on his/her list; the purpose of this method is to secure proportional representation. See H. O'LEARY, "Experience with Preferential Voting," in *R/R*, 38 (1979), pp. 105-122.

¹²⁹ Bartush describes the difficulties posed by inadequate representation of the mission territories in the Congregation of Our Lady of the Missions. See B.I. BARTUSH, *Representation at General Chapter for an International Missionary Congregation with Specific Reference to the Congregation of Our Lady of the Missions: Canons 631-633*, JCL thesis, Ottawa, Faculty of Canon Law, Saint Paul University, 1993.

¹³⁰ Just as feminism and democratic principles influenced attitudes to authority in the Western world of the 20th century, so too, today, gender and religion studies are beginning to have an effect in countries that were colonized. Such questions as "in whose voice and on whose behalf do women [or men] from Europe, North America and Australia speak when undertaking projects in religious studies of women [or men] from other cultures;" questions concerning the way westerners govern, the highly gendered understanding of religion, are emerging particularly in India and some African countries. Previously colonized people have begun to decolonize their minds (the SA province of IBVM referred to this "constant challenge" in South Africa, at GC 1998) and criticize the dominant ideologies. Beliefs such as Western ways are "like shoes that do not fit" or "Christianity is surrounded by the myth of its being a white man's [person] religion," the attitude of cultural superiority that is still tangible in our Western society – such attitudes can influence the dynamics in international religious institutes. IBVM, for example, has large provinces in India and East

Proper law determines how delegates are chosen, how many, the number of substitutes, etc. Because the issue of representation of the members assumed such significance after Vatican II, the Code safeguards this right of members. As a result, the method of electing delegates to the general chapter must be that approved by the previous general chapter. If there was not a method approved then, the last method determined by the approval of the general chapter must be followed. The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life holds that delegates do not represent a constituency. Despite the fact that delegates are elected in a particular province, tradition determines that in the general chapter each votes in the best interests of the congregation, not the province/region/unit. The Congregation believes it would be difficult to know the mind of the province on a particular issue.¹³¹ Delegates are required, however, to exercise their right to vote informed by the discussions on the issues.

In an effort to widen the participation at general chapter to as many of the members as possible, some congregations request the presence of observers. According to the praxis

Africa, as well as smaller groupings in South Africa, Mauritius and South America. In some of these areas, numbers are growing, while in the founding provinces of Europe, Australia and North America, the members are aging. This institute, as all multi-cultural, international institutes, has to ensure that not only is there adequate representation at chapters for all members, but that cultural variations are not only acknowledged but are actively incorporated into the structures. For a thought provoking study on the influence of cultural issues, see U. KING and T. BEATTIE (eds.), *Gender, Religion and Diversity: Cross-Cultural Perspectives*, London and New York, Continuum, 2004. Of particular interest are studies by M. JOY, "Post-Colonial and Gendered Reflections: Challenges for Religious Studies," pp. 28-39; T. BEATTIE, "Religious Identity and the ethics of Representation: The Study of Gender and Religion in the Secular Academy," pp. 65-78; S. MORGAN, "Rethinking Religion in Gender History: Historiographical and Methodological Reflections," pp. 113-124; M. BARTON, "Race, Gender, Class and the Theology of Empowerment: An Indian Perspective," pp. 225-237. For an informative critique of Western approaches to the history of colonialism, see J. SAMSON, "The Problem of Colonialism in the Western Historiography of Christian Mission," in *Religious Studies and Theology*, vol. 23, no. 2 (2004), pp. 3-25.

¹³¹ See CRSI, reply, 21 March 1971, in *R/R*, 37 (1978), pp. 77-78 and CRSI, letter, 26 March 1980, pp. 103-104. Not all authors agree with this view. Hogan, for example, believes the representative stands in the place of or acts on behalf of others. See W.F. HOGAN, "The Democratic Aspect of Religious Life," in *R/R*, 22 (1963), p. 330. Perhaps the truth is somewhere in between: those elected to the chapter have the duty

of the Holy See, those only may participate as active members who are designated as such in accordance with the provisions of proper law. However, the chapter may vote to open some sessions to observers. It may vote to permit such observers to participate in certain questions, but they may not vote in chapter. There is also a move to include associates and co-workers. However, it must be remembered these are not members and while it might be beneficial to have their input in terms of areas that concern them, they cannot participate in the decision-making process that is the right of the members only.¹³² None of these represent the members in the sense indicated in c. 631 § 1. Consequently, the praxis of the Congregation remains that members only may represent and take decisions on behalf of the congregation.

Every congregation designates those who are *ex officio* members of the general chapter. These may include the current supreme moderator, the council, financial administrator, former supreme moderator (s) and/or other persons determined by the constitutions, e.g., provincials, where such exist.¹³³ Because of the complex issues in government today, many general chapters have facilitators and/or other experts who, however, do not have the right to vote. All chapters have need of secretarial staff, press

to be informed of the views of those who elected them. However, at the chapter itself, their duty to the common good of the institute is a prior right that must be exercised in accordance with the norms of law.

¹³² See CRSI, letter, 8 November 1980, prot. no. 31844/80, in *CLD*, vol. 10, p. 105. There is need to establish clarity in relation to whether these have voting rights or not, where they are to sit, with the delegates or not, whether they can contribute to the open forum or just in the discussion groups. However, in international institutes, care must be taken to ensure the wealthier provinces/regions do not have an unfair advantage over provinces that cannot afford to send observers. Research indicates the move to include associates is an issue for members rather than non-members. See R. JEFFRIES, *Commitment in Religious Life in the Post-Vatican II Era: A Study of Associate Membership Programs*, New York, Fordham University, 1991, p. 191. See below for an example in IBVM North America, p. 285, footnote 225.

¹³³ In IBVM, both secretary general and financial administrator participate as *ex officio* members of the general chapter.

officers, translators, technicians, liturgists, etc. These do not have the right to vote in substantive matters that affect the entire membership. The question of adequate representation of provinces/regions is often a subject of contention at general chapters. Perhaps this occurs when the members see themselves as representatives of a particular province/region rather than as representatives of the whole institute. Dissatisfaction with levels of representation contributed to the move towards more inclusive chapters, e.g., chapters of the whole or total participation chapters.

3.2.6 – Participative Character of the General Chapter

The value of participation is enshrined in the canonical tradition of religious congregations. As we have seen, from its earliest inception, the general chapter was the means by which the members participated in the governance of the congregation. As congregations grew and expanded, the chapter continued to enable the members to participate in the important affairs of the congregation by means of representation by a combination of *ex officio* members and elected representatives. The right to elect the representatives safeguarded the right of the members to participate in governance. By the time of Vatican II, representation was weighted in favour of superiors. As a result, one of the reforms mandated by the Council was for wider representation at the chapter itself, together with methods of participation that would engage the entire membership (*PC*, no. 14, *ES II*, no. 18). One of the consequences was that congregations developed other participatory structures, the importance of which was enshrined in the law (cc. 632,

633).¹³⁴ However, the law also protected the members's right to participate in the governance of the congregation at its highest level, the general chapter (c. 631 § 1).

One of the consequences of the many experiments that took place in religious institutes in the 1970's was the innovation that occurred in the composition of chapters as well as the emergence of other participatory bodies of governance. The widening of the composition of chapters opened the door to the highly participative chapters that occurred in the 1980's and 1990's. It is not easy to categorize these structures, as one author remarks "participative governance structures are as varied as there are institutes."¹³⁵ These begin at the local level and are continued at intermediate levels, provinces or regions as well as in the general chapter. If the principle of subsidiarity is applied correctly in the congregation, these lower levels will also be an expression of participation and sharing in governance at their respective levels.¹³⁶

The movement to more highly participative structures of government is the result of many factors. Surveys conducted on the future of religious life in the USA indicate that the factors that have effected this change include the influence of democracy, a loss of identity in relation to the corporate vision in religious congregations, the values of inclusivity and equality, and a circular, as opposed to a hierarchical, mode of participation

¹³⁴ "Participation refers to the actions through which the ordinary members of a political system influence or attempt to influence outcomes." The intrinsic value of participation outweighs the cost in terms of time, energy, resources, because those who participate believe they have a share in power. See J.H. NAGEL, *Participation*, Englewood Cliffs, Prentice-Hall, 1987, pp. 1, 14-15.

¹³⁵ See C.M. DARCY, "Models of Participation in Religious Community Chapters," in *CLSAP*, 30 (1995), p. 193 (=DARCY, "Models of Participation").

¹³⁶ Darcy believes that a highly participative and in-depth chapter preparation can fulfil the members need to be involved in the decision-making process. *Ibid.*, p. 196.

promoted by feminist writers.¹³⁷ The paradigm shift implied includes a greater distribution of power and a movement to a non-hierarchical, more participative mode of governance.¹³⁸ As a result, the movement for greater participation of members in the highest decision-making body of the congregation has, in recent times, become a movement towards participatory modes of governance in general that are quite different to the hierarchical models they seek to replace. Despite great progress in the area of participation, members still want to be involved in the general chapter as the supreme legislative organ in the congregation. As members became more enthusiastic about involvement, requests for open chapters or chapters of the whole became more frequent.

¹³⁷ The "Future of Religious Orders" study pointed to a shift in members' understanding of both formal and informal structures, a desire for inclusion and dissatisfaction with the level of influence they could exert on their congregations. The result was that many congregations lacked a sense of corporate identity. See NYGREN and UKERITIS, "Future of Religious Orders," pp. 261, 270-272. A study conducted by LCWR concluded that religious life was undergoing a paradigm shift, a phenomenon that occurs when a new system of beliefs begins to replace one that no longer works. See A. MUNLEY, *Threads for the Loom: LCWR Planning and Ministry Studies*, Silver Springs, MD, Leadership Conference for Women Religious, 1992, p. 2 and C.M. HARMER, *Religious Life in the 21st Century: A Contemporary Journey into Canaan*, Mystic, CT, Twenty-Third Publications, 1995, p. 16.

¹³⁸ See DARCY, "Models of Participation," p. 188 and S.M. SCHNEIDERS, *New Wineskins*, New York, Paulist Press, 1986, p. 107. Robin questions the applicability of Schneiders' theory outside the USA. The reality Schneiders describes for the USA probably does not correspond to that of other countries. Robin's conclusions are based on a sample survey conducted in the United Kingdom in relation to the issues of personal power and shared authority. For Robin, congregations with Ignatian spirituality resemble the hierarchical model most clearly. Government is highly centralized and hierarchical. However, the authority of the general chapter is paramount. The role of discernment is also crucial whereby each exercises personal responsibility in the common search for the will of God. The centralized structure is understood to be the best one to facilitate the mission, which is the reason for the existence of the congregation in the first place. Benedictine groups believe the abbot or abbess holds the place of God (Rule of Benedict, ch. 2, no. 2)). However, the community elects the abbot or abbess general and this authority figure must consult them on important matters. This principle has stood the test of time in Benedictine communities (Rule, ch. 3, no. 3). Many Poor Clares and Carmelites hold the authority of the superior is personal but the authority to take the final decision comes ultimately from the community. Some Carmelites, Franciscans and Dominicans believe that the general superior takes the mandate from the general chapter, so that it is a collective authority delegated by the group to a named leader. For Robin's congregation, the Canonesses of St. Augustine, the original more collegial form of government was rediscovered after Vatican II, with its tradition of electing local leaders and consultative chapters. In her survey, men seemed more wary of terms such as "collective authority" or "collective leadership." See G. ROBIN, "Authority and Leadership," in *The Way Supplement*, 65 (1989), pp. 124-129.

There are two senses in which the term “open chapter” is used.¹³⁹ In autonomous monasteries and in small congregations (less than one hundred members), open chapters mean the right of all the members with active and passive voice to participate in the general chapter with a deliberative vote.¹⁴⁰ To get around the reluctance of the Holy See to give permission to larger congregations to have open chapters, some congregations instituted a process whereby the members nominate or elect themselves as delegates to the general chapter.¹⁴¹ These members have both active and passive voice in accordance with the provisions of the constitutions.¹⁴² In some congregations the list of self-nominees is referred back to the general membership for confirmation, thus paying lipservice to the canonical requirement that general chapters are composed of delegates elected to represent the entire membership.¹⁴³

A chapter of the whole, in theory, gives all the members the opportunity to take part in the highest authoritative body in the congregation. If a congregation petitions the Holy See for universal suffrage for all the members, the Congregation studies the request in relation to the size of the congregation and the geographical proximity of the

¹³⁹ Other descriptions for the same phenomenon include “chapter of the whole” and “total participation chapters.”

¹⁴⁰ A small congregation of thirty-five perpetually professed brothers received permission from CICLSAL to have an open chapter in 2002. In their petition, the brothers explained the process by which they had arrived at this decision to deviate from their constitutions. In granting permission, the Congregation requested a report of the proceedings. See CICLSAL, rescript (private), n.d., in F. PEDONE and J.I. DONLON (eds.), *Roman Replies and Advisory Opinions*, 2001, p. 28.

¹⁴¹ For an example of how this worked in IBVM North America, see below p. 276-277.

¹⁴² In recent times, those in temporary vows for a full three years have been allowed to have active voice. Cf. CRSI, indult, 8 November 1980, prot. no. 31844/80, in *CLD*, vol. 9, p. 357.

¹⁴³ *CIC/17*, c. 170, stated that no one could validly vote for himself. *CIC* did not retain that particular provision. Was this an oversight? Was this the influence of the democratic principle? It seems at odds with the spirit of religious life for such a provision to exist.

members.¹⁴⁴ The aim is to ensure the members have sufficient knowledge of one another, that they can assemble easily and therefore will be able to achieve that union in mind and spirit with one another that is the purpose of the general chapter according to universal law (c. 631 § 1).¹⁴⁵ When refusing an indult for an open chapter, the Congregation listed, among the reasons, considerations such as apostolic commitment, cost, time, and justice to employers.¹⁴⁶ The Congregation also believes the delegate body is “a select group with more knowledge of the specific qualities required for a general superior” than the membership at large, a view not universally held.¹⁴⁷

Such methods of participation, i.e., open chapters or chapters of the whole, present canonical difficulties. Given the fact that the law has constituted the religious institute a

¹⁴⁴ See CRSI, reply, 26 March 1980, in *CLD*, vol. 10, p. 105. The Congregation accepted an alternative method proposed by a small congregation whereby the entire membership could propose three names by preferential ballot. Ten persons with the highest votes were then submitted to the general chapter for final election. However, the Congregation required the institute concerned to state that the members were free to vote for someone other than those nominated. See CRSI, reply, 8 March 1975, prot. no. 598/75, in *CLD*, vol. 8, p. 357. A study of the elective process in 44 small independent foundations in the USA revealed that the search for more satisfying models of election, decision-making and leadership continues in these congregations and that pre-election activities were assuming an increasing significance. The changing perceptions relating to authority and obedience, particularly the notion that the will of God is revealed in His people, the so-called “authority of the group,” influenced governance and ensured that participatory models of government included the whole membership. The author described the developing modes of decision-making and electing as characterized by circular modes of energy, where governance is at its best in listening, collaborative models and leadership that is exercised through the shared vision of the members. See L.M. WELBIG, “Election Processes in Women’s Congregations: The Journey Continues,” in *RfR*, 49 (1990), pp. 901-909 (=WELBIG, “Election Processes”). Canadian research noted a shift from a focus on legislation to a focus on processes that engender spirit, a sense of identity and a greater sense of ownership of decisions. See CANADIAN RELIGIOUS CONFERENCE, Chapters, Elections and Restructuring Experiences, Report on Survey 1991, M. GALLAGHER (ed.), Ottawa, CRC, 1992 (=CRC, 1991 Survey), p. 30. For a practical illustration of this phenomenon, see below pp. 273, 276-277.

¹⁴⁵ An indult was granted to a congregation with 500 members to elect the general superior by universal suffrage when the community was able to assure the Congregation that, because of geographical proximity, the members knew one another very well and were able to convene as a “chapter body” in an atmosphere of prayer and discernment. See CRSI, indult, 26 March 1980, prot. no. 31844/80, in *CLD*, vol. 10, pp. 104-105.

¹⁴⁶ Several canons refer to the witness to poverty that must be given by the religious, e.g., cc. 634 § 2, 635 § 2, 640.

juridic person, whose decisions at the highest level are made collegially, whether directly, as delegates or indirectly, through voting for delegates, every member has the acquired right to participate in decision-making in matters that concern them whether by equal right or not (c. 115 § 2). Traditionally members expressed this right in voting for delegates to the chapter and by submitting proposals, rights also safeguarded in *CIC* (c. 631 §§ 1, 3).¹⁴⁸ Universal law requires that the details of governance structures be written into constitutions (cc. 585, 631 § 2). Changes in constitutions require a two-third vote of the chapter (according to the praxis of the Holy See) and the approval of the competent authority (c. 587 § 2). This fundamental right to participate can be limited (e.g., exclaustated religious lose both active and passive voice [c. 687]), but it cannot be arbitrarily dispensed with. If this occurs, the person thus deprived has the right to take legal action to vindicate that right (c. 221 § 1).

How then is this fundamental right of participation safeguarded in open chapters, full participation chapters, total participation chapters, or chapters of the whole? If every member is not present, how do elderly or infirm members participate? The chapter of the whole removes their acquired right and duty to elect members to represent them. It also isolates them from active participation and deprives the membership of their wisdom and insight.¹⁴⁹ Since the ratio of elderly and infirm members is disproportionately high in some

¹⁴⁷ See CRSI, letter, 26 March 1980, p. 103.

¹⁴⁸ McDonough maintains that all members exercise their right in an equal manner when they vote for delegates or send suggestions to the chapter, irrespective of whether their candidate is elected or not or whether their suggestions were approved or not. See E. McDONOUGH, "Participation in Governance," in *R/R*, 50 (1991), p. 777 (=McDONOUGH, "Participation in Governance").

¹⁴⁹ Darcy points to the ethical issue of excluding the powerless and voiceless and the consequent injustice perpetrated. However, real difficulties implied in the participation of many elderly and infirm

congregations, the option of full participation chapters is not realistic in many cases. Therefore, ways must be found, and often are, of ensuring the congregation benefits from the wisdom and experiences of these members.¹⁵⁰ Those who, for apostolic or other reasons, opt not to be involved in an open chapter effectively deprive themselves of their right to participate. They also lose their right to active voice in the choice of delegates.

There are canonical concerns regarding the validity of the process for electing delegates where nomination and approval/confirmation is given by the membership. This process would seem to be contrary to the provisions of c. 172 § 1, which determine that a vote must be both free and secret. Of course, a member could refrain from voting affirmation to a particular person, but then the person's reputation might be affected (c. 220). In addition, the means of exercising this fundamental right must be specified in the constitutions (c. 587 § 1) and any change in the way governance is exercised must normally receive a two-third vote of the general chapter and subsequent approval of the competent authority (c. 587 § 2). As the general chapter of every congregation is designated "the supreme authority," lower level bodies cannot enact norms that are contrary to the provisions of higher-level bodies. As a result, pre-chapter bodies may not change the provisions of the constitutions that have been approved by the competent authority (cf. c. 135 § 2). Whatever formula is adopted, the freedom of the members to vote for persons of their choice and the right to secrecy in the process are rights that must

members, concern their knowledge of present concerns and apostolic activities of the congregation. See DARCY, "Models of Participation," p. 195.

¹⁵⁰ Modern developments in technology have opened up marvellous possibilities in relation to instant and interactive modes of communication. Techniques, e.g., video-conferencing, can be used to include aged members. Such methods of participation might preclude the involvement of some provinces because of the expense involved. However, research needs to be done to compare such expense with the

be safeguarded.¹⁵¹ However, in an effort to ensure the involvement and participation of all, some congregations have developed very creative approaches to this law.¹⁵²

Alvarez and Conway formulated models of participation in the pre-election process.¹⁵³ The first model relies on a prayerful, non-discursive preparation. Model two in addition, identifies the characteristics necessary for leadership. The third model allows open discussion on the characteristics of leadership needed, the needs of the contemporary world and the personal strengths and limitations of nominees. Model four looks at leadership as a team. As a result, discussions may occur among the nominees, among nominees and delegates or the whole congregation as to the formation of a team that would best suit the needs of the congregation at this precise time. In this model, the members of the team are elected one at a time so that the electors can include whatever qualities have been named as essential. Model five enables the electors and/or nominees to discern several teams whose gifts and qualities suit the situation. The electors elect one team from all the possibilities. The sixth model is a variation on the fifth: one team is given

greater value of the participation of all the members. In this age of rapid advancement of technology, the possibility of interactive chapters, without the need to physically come together, is a real possibility.

¹⁵¹ See F.G. MORRISEY, "Chapters," in A. MARZOA, J. MIRA, R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English translation), *Exegetical Commentary on the Code of Canon Law*, vol. II/2, Montréal, Wilson & Lafleur, 2004, p. 1666. Pre-chapter commissions sometimes determine the various levels of participation, e.g., active, collaborative, supportive or prayerful with levels varying from presence at everything, to prayerful support of all the activities. The effect of the process of self-selection is to give the right to participate fully to a self-selected group while depriving all the others of their juridic rights as members of an institute (cc. 654, 631 § 1). McDonough designates actions taken as a result of such criteria as null and void. See McDONOUGH, "Participation in Governance," pp. 779-780.

¹⁵² See the process for a "total participation chapter" adopted by the Sisters of St. Joseph of Wichita in 1976, in C. BUSH, "A Total Participation Chapter," in *R/R*, 38 (1979), pp. 734-741. When total participation chapters become too large, certain processes, e.g., the selection of candidates for leadership, are sometimes committed to a group outside the chapter process, with the chapter affirming the actual choice. While this provides a creative approach to the problem of numbers, we do not believe it was what was intended by c. 631 § 1. See also DARCY, "Models of Participation," p. 195.

preference and is recommended to the electors for confirmation. There are problems with the fifth and sixth models from a canonical perspective in that presentation for a nominee or team for whom one was required to vote would seem contrary to the provisions of c. 172 § 2, which prohibits conditions attached to a vote and also lessens the freedom of voters.¹⁵⁴

If a chapter is very large, the quality of the process can suffer. Time constraints prevent the free flow of discussion and even if steps are taken to ensure every voice is heard, e.g., in small group sessions, there is little likelihood that each member can contribute to the whole assembly. The quality of discussion might be damaged by input given with little preparation and research and by those who may lack vision and experience. Very strict controls would have to be in place in order to ensure the process moves along. This control might not be acceptable to those who believe they have a right to be heard.

Decision-making is but one aspect of the work of the chapter. The elements of decision-making involve gathering factual data, proposing creative ideas, making choices, implementing those choices and evaluating them.¹⁵⁵ These therefore provide other ways in which the members, whether of the congregation at large, or the chapter delegates, can participate in the process of making a decision. In fact, many congregations carry out these

¹⁵³ See J. ALVAREZ and N. CONWAY, "Current Trends in Leadership Elections," in *HD*, vol. 6, no. 4 (1985), pp. 17-24.

¹⁵⁴ See R.A. HILL, "Election by Consensus: Part I" (=HILL, "Election by Consensus, 1") in *R/R*, 46 (1987), pp. 460-464 and ID., "Election by Consensus: Part II" (=HILL, "Election by Consensus, 2"), in *R/R*, 46 (1987), pp. 620-624.

¹⁵⁵ See R.T. KENNEDY, "Shared Responsibility in Ecclesial Decision-Making," in *StC*, 14 (1980), pp. 5-23.

tasks in pre-general chapter participative assemblies and other bodies, thus providing the membership with a form of participation that contributes significantly to decisions made at the chapter itself.

Since participation in decision-making influences the shape of religious life in the congregation for the years following the chapter, many religious want to be involved. Consequently general chapters must provide structures that enable maximum participation of the members. How religious make decisions will affect not only the future of religious life but will have an impact on the Church also. Effective collaborative decision-making is a model proved and tested in religious congregations that has stood the test of time. The Church has safeguarded its practice. Perhaps the time has now come to implement it more widely in the governance of the Church itself.¹⁵⁶

3.3 – THE DYNAMIC ASPECTS OF GENERAL CHAPTER

The dynamic aspects of chapters reveal most clearly changed perceptions in relation to authority today. They also reflect the ways in which the unity of the members in charity is actively brought about. The reaction to authority so evident in religious life in the post-Vatican II era manifested itself in different experiments that tried to make the exercise of authority more participative. Studies reveal various approaches to the concept of authority and to its exercise today.¹⁵⁷ Governmental structures and roles as they are

¹⁵⁶ See also DARCY, "Models of Participation," p. 200.

¹⁵⁷ See H. LINSKOTT, "Leadership, Authority and Religious Government," in *UISG Bulletin*, 89 (1992), pp. 56-69; GALLAGHER, *Report on Survey*, pp. 4-32. A study conducted in 1990 in the USA noted the increasing significance of pre-chapter activities. The study concluded that authority in these congregations was increasingly being seen as "the gathering place of the collaborative vision of the members." This in turn was part of the patrimony of the congregation, an instrument of revelation that has to be appropriately

described in revised constitutions also reflect the changing attitudes. While there is general acceptance of the fact that ultimately authority comes from God and of the juridic status of the office of lawfully appointed superiors, nevertheless the hierarchical character of the exercise of authority is criticized particularly, but not only in congregations of women.¹⁵⁸ New models of authority are emerging in which faith plays a major role and in which leadership is exercised through the shared vision of the members. In this type of framework, no one person is hierarchically prominent.¹⁵⁹ Because the general chapter is based on the collegial principle, it provides a model of government that suits attitudes to authority today. However, because it represents the membership instead of being composed of the total membership, in some instances, even this democratic, collegial and participative organ is itself being called into question.¹⁶⁰

Changing perceptions of authority and leadership affect the dynamic of governance generally and of general chapters in particular. All the members of a religious community

represented at the heart of governance and decision-making. Constitutions and directories of some of the group studied show that participative government involves more than broad-based organizational models, open discussions and full voting privileges. Models of consensus and discernment are emerging as new models of participation, consensus reflecting the manner in which decisions are negotiated and discernment relating to attitudes. See WELBIG, "Election Processes," pp. 904-907.

¹⁵⁸ The Third National Assembly of LCWR and the Conference of Major Superiors of Men held in Louisville, Kentucky, 19-23 August 1989, identified transformative elements to be worked on by the membership from then until 2010. These included changing the locus of power and the structures of authority, so that there would be more inclusive structures of participation in government. See S. TUTAS, "The Third National LCWR-CMSM Assembly," in *R/R*, 49 (1990), pp. 181-182. A survey conducted before the 1991 assembly of religious men and women in Latin America identified participation of the membership as a high priority. See B. TONNA, "A Discerning Approach to Contemporary Religious Life: Reading the Signs," in C.J. YUHAUS (ed.), *Religious Life: The Challenge for Tomorrow*, New York/Mahwah, NJ, Paulist Press, 1994, p. 60.

¹⁵⁹ See WELBIG, "Election Processes," p. 908.

¹⁶⁰ Malone suggests the time has come to move from election of leaders to a total discernment process for choosing them, and that issues currently addressed in the chapter of affairs, could be dealt with in other more inclusive *fora*. See J. MALONE, "Chaptered to Death," in *HD*, vol. 18, no. 1 (1996), pp. 5-9. For

are implicated in the tasks of leadership either by their position of formal authority and the power so conferred or by positions of informal authority, that is, positions from which they use their personal power either to further the work of the group or to subvert it.¹⁶¹ Personal dynamics therefore can influence both the governance functions of the members generally and that of the delegates who meet in chapter. In addition, changing times and circumstances will affect our understanding of particular themes.¹⁶² Thus when c. 631 draws attention to the dynamic of making unity and fostering renewal that are named functions of the general chapter, the interpretation of those functions will depend on a particular time and set of circumstances.

The Code provides those juridic structures and formal procedures that are necessary for the equitable exercise of authority within the chapter process. However, the atmosphere of prayer and discernment, as well as procedures adopted to carry out juridical requirements, have a major impact on outcomes. Consequently, we need to examine the processes by which the goals of the chapter are accomplished, i.e., discernment, theological reflection, and alternative ways of arriving at decisions, e.g., by consensus and dealing with conflict.

an innovative approach to governance, see R.M. DOWLING and A. WIGLEY, "A Way to Update Governance," in *HD*, vol. 20, no. 4 (1999), pp. 38-41.

¹⁶¹ See J.K. RUFFING, "Visiting a Scene of Election," in *RfR*, 56 (1997), p. 407 (=RUFFING, "Election").

¹⁶² One's own attitude to authority can engender attitudes of rebellion, projection of personal authority onto the designated leader or invisibility. That is to say, a member can subvert the process overtly, e.g., in rebellion against procedures, processes or potential decisions, or covertly, e.g., in unconscious projection onto the leader or by exerting influence behind the scenes or through another person. See A. ARRIEN, *The Four-Fold Way: Walking the Paths of the Warrior, Teacher, Healer and Visionary*, San Francisco, Harper, 1992, pp. 33-36.

3.3.1 – Formal Chapter Procedures

Since Vatican II, institutes have used different formats for the general chapter process. Many of these have derived from or were influenced by theology, spirituality, the human and social sciences, as well as models from the worlds of business and politics. One of the differences in chapters today lies in the fact that where renewal came as a result of chapters held after Vatican II, renewal today comes about because of the chapter process itself. The emergence of discernment and theological reflection processes within the chapter reflect this difference.¹⁶³ However, the general chapter as a juridic institute and the election of the supreme moderator as a canonical process, concern fundamental rights of the members and have juridic consequences.¹⁶⁴ Consequently, we will examine the juridic procedures established by the law before we examine the processes by which these are carried out.¹⁶⁵

¹⁶³ See DARCY, "Models of Participation," p. 192.

¹⁶⁴ See M. WRIGHT, "Elections in Religious Institutes: 'Discernment Processes'," in *Canadian Canon Law Society Conference*, St. John, NB, CCLS, 1991, p. 1 (=WRIGHT, "Discernment Processes").

¹⁶⁵ A study of twenty five institutes in Canada in 1991 indicated that there are certain processes that are common: 1) the establishment of a planning group with a pre-determined mandate; 2) pre-chapter procedures that involve the total membership; 3) the establishment of criteria governing the selection of delegates, other participants and observers; 4) engagement of a facilitator with a clearly determined role and function; 5) a three-stage election process: a) a preliminary phase that surfaces names, establishes nominees, group discernment and straw votes to indicate the mind of the congregation; b) dialogue between delegates and nominees at the chapter itself, facilitated dialogue between the nominees, group dialogue to produce a short list of nominees or leadership teams and the effort to arrive at consensus within the group; c) the election process according to the norms of law (universal and proper). See CRC, *1991 Survey*, pp. 8-29. Wright points to areas of canonical concern: the planning committee's role must be quite clear; they have no authority to change procedures established by the previous chapter; the freedom of the electors must not be infringed, therefore the electors must know that they are in no way bound to vote for the nominees; selection of delegates must be open and free, e.g. the timing of the chapter must not limit the availability of some members; the role of the facilitator must respect the tradition and spirituality of the congregation; the process of reaching consensus must respect individual rights, must deal with conflict and leave room for the action of the Holy Spirit; the canonical process must be followed. See WRIGHT, "Discernment Processes," pp. 5-9.

Proper law determines the general procedures followed by the chapter¹⁶⁶ and the criteria for membership, whether as elected delegates or *ex-officio*, or as in many congregations particularly in North America, criteria for self-selection of members. The provision of a facilitator, with general guidelines concerning his/her role, skills and function, and the status of observers, experts, associates, technical and administrative personnel are all spelled out in proper law. Procedures are established by the preceeding chapter and must not be changed, unless by the vote of the general chapter. Such changes do not require approval of the competent ecclesiastical authority since these matters are usually in directories or other supplementary codes. Of course, any constitutional change requires the approval of the Holy See. Guidelines or chapter directories will establish the provision of scrutators and secretaries and the percentage of vote necessary to procure their establishment, as well as a description of their functions. Regulations in regard to the *quorum* necessary to undertake a vote, the majority necessary to carry it, and what happens in the event of a tied vote are also spelled out. Proper law will also declare the manner in which suggestions or proposals are dealt with, the method of dealing with the vote of members who are ill, lawful substitutions, their rights and obligations, the admission of non-delegates to the chapter, what constitutes an invalid vote, the counting and proclamation of votes, the proclamation of an election, details concerning summoning elected officials, termination of the offices of elected officials, election or appointment of committees, e.g., those who will examine the general and financial reports, co-ordinating committees, liturgical committees, communications committees, etc. In other words,

¹⁶⁶ For an excellent example of what a general chapter procedures handbook ought to contain, see PRECAPITULAR COMMISSION FOR 33RD GENERAL CHAPTER 1998, *Chapter Directory*, Rome, Missionary Oblates of Mary Immaculate, 1998.

proper law contains the rules and regulations of all procedural matters. The proper law requirements for the supreme moderator and/or other officials, the manner in which they are elected, acceptance of elections,¹⁶⁷ refusals, confirmation of elections and procedures for postulation and election by compromise are also included. However, because the principle of authority is so important, universal law provides the general principles surrounding the conduct of elections as well as general regulations concerning other matters.

The general chapter has the legal capacity to act on behalf of the institute. Any act of the power of governance, e.g., decisions made which have the force of law, are juridic acts that must be placed in accordance with the norms of law (c. 124). As a result actions must be free (c. 125 § 1) and if universal or proper law lays down a requirement, e.g., an absolute majority in the first ballot of an election (c. 119, 1°) or a two-thirds majority for a change in constitutions, for the act to be valid, these conditions must be fulfilled. Any departure from the norms that infringe the rights of the members, e.g., to vote or be voted for, the right to vote in secret and freely, might even invalidate the process.

3.3.2 – Discernment Processes

The use of discernment provides a practical example of the role of faith in the functioning of the general chapter. Discernment is based on the premise that if we pray, free ourselves from the obstacles that block us and open our hearts, we will encounter God, whose Spirit will guide our decisions. Green points out the presuppositions of genuine

¹⁶⁷ Upon assuming office, the superiors of clerical religious institutes and societies of apostolic life are bound to make a profession of faith according to the norm of proper law (c. 833 § 8).

discernment: the person sincerely desires to do what God wants; he/she is open to what God wants without reservations; he/she must know the Lord in love.¹⁶⁸ The discernment process aims at freeing the individual from personal preferences and at opening him/her to the will of God in freedom. Discernment helps us get in touch with our feelings and make the connection between them and our judgements. Discernment presupposes the use of the intellect to clarify the options one must choose from. As a result, the preparatory activity where research must be done on the issue to be discerned is very important. Because the process helps one to be aware of the psychic and social elements that condition thinking, the participant feels rather than reasons the way towards decisions.¹⁶⁹

The initial part of the discernment process for elections or other important matters, e.g., the agenda for the next chapter, is often begun in pre-chapter studies and research and refined in other participatory assemblies, thereby providing another forum for the involvement of the membership, as individuals and in local communities or other groups. If the matter to be discerned concerns, for example, an amalgamation or the establishment of a new region, the preparatory work, e.g., fact-finding, discovering how the people concerned feel about the proposal, examination of practical issues like personnel, finance or other resources, can be done before the chapter meets to make the decision about the proposed issue. If the matter to be discerned concerns the election of the supreme

¹⁶⁸ See T. GREEN, *Weeds Among the Wheat: Discernment – Where Prayer and Action Meet*, Notre Dame, IN, Ave Maria Press, 1984, p. 64 (=GREEN, *Discernment*). For a general understanding of the operation of discernment in groups, see B.P. HALL and B. TONNA, *God's Plans for Us: A Practical Strategy for Communal Discernment of Spirits*, New York, Paulist Press, 1980. For the Jesuit approach to discernment, see J. FUTRELL, "Communal Discernment: Reflections on Experience," in *Studies in the Spirituality of Jesuits*, vol. 4, no. 5 (1972), pp. 159-192.

¹⁶⁹ Larkin suggests the use of symbol and imagery as a way of entering into the process of identifying the feelings that affect our decision-making. See LARKIN, "Guidelines for Discernment," pp. 42-45.

moderator and council, the preparatory work might concern fact-finding in relation to the needs of the congregation at this particular time, the type of persons needed to meet those needs as well as the availability of suitable persons. This might result in the naming of possible persons, which information is brought to the chapter where the decision will be made. As a result, the membership is involved in the discernment process in a number of ways: through prayer; using their right of active voice in sending proposals to the chapter; participating at preparatory assemblies thereby applying the principle of subsidiarity; taking seriously the request to send nominations regarding leadership; electing competent representatives, that is, delegates who are familiar with the law of the institute, its history, spirit, traditions, and who have the ability to draw up clear, concise norms which requires skill, research, study, precision.¹⁷⁰

Discernment as a method and process in the lives of individuals and congregations has reemerged today particularly in relation to government.¹⁷¹ The concept connotes an exercise of analysis, leading to an evaluation prior to a decision.¹⁷² Without a spirit of faith, however, an analytical exercise can remain a solely intellectual process. Discernment

¹⁷⁰ See J. BEYER, "Les Chapitres," in *Le Droit de la vie consacrée: Libre commentaire des canons 607-746*, Paris, Éditions Tardy, 1988, pp. 58-59.

¹⁷¹ For those institutes with Ignatian spirituality, discernment is a way of life. However, others, too, practice discernment. For a model based on the teachings of St. Catherine of Siena and using some skills and wisdom from the Quaker tradition, see J. RUFFING, "Exercising Power and Discerning Spirits," in *RfR*, 60 (2001), pp. 454-465. In this model, self-knowledge is attained through union with God, which is the basic prerequisite for conversion, reconciliation with others and freeing oneself to understand and accept where God is leading the group. What is sought is God's will, which Catherine assumes leads to what is best for everyone. In the Quaker tradition, one of the aids to ensuring the decision is of God, lies in the formation of "clearness committees" who will further discern if a particular decision is God's will. See P. LORING, *Spiritual Discernment: The Context and Goal of Clearness Committees*, Pendle Hill Pamphlet no. 305, Wallingford, PA, Pendle Hill Publications, 1992.

¹⁷² See M. DE CARVALHO AZEVEDO, "Discernment and Elections in Religious Institutes," in *Vie consacrée*, 56 (1987), pp. 330-349, English translation in *RfR*, 48 (1989), p. 713 (=AZEVEDO, "Discernment").

therefore is a prayerful reflection on a human situation in the light of faith.¹⁷³ To put it differently, when the juridical norms of the Code and the proper law of the individual institute meet the dynamic of the Holy Spirit, we encounter the need for discernment.¹⁷⁴

There are various ways of carrying out discernment but they all involve fact-finding, weighing of reasons for and against a particular option and discerning the spirits and feelings working within.¹⁷⁵ An experience of freedom and peace will provide signs of God's will in the situation. In communal discernment, the process often involves sharing with the group (in writing or orally) the way the Holy Spirit is moving the individual participant, and is one way in which the union of the members is actively brought about.¹⁷⁶

¹⁷³ "Discernment is a function of a loving, personal relationship to the Lord" (GREEN, *Discernment*, p. 64). Discernment was the process used by St. Ignatius of Loyola as he strove to discover his personal vocation. Communal discernment was the process employed by Ignatius and the first followers as they tried to discover God's plan for the Society of Jesus. Consequently, in Jesuit tradition, discernment is associated with vocation and mission.

¹⁷⁴ For a brief history of the early development of the concept in the Church, see B. WARD, "Discernment: A Rare Bird," in *The Way Supplement*, 64 (1989), pp. 10-18. The description of discernment in these terms comes from BERNARD OF CLAIRVAUX, *On the Song of Songs*, K. WALSH and I.M. EDMONDS (translation), vol. 3, Cistercian Fathers Series, no. 31, Kalamazoo, MI, 1962, p. 25.

¹⁷⁵ Larkin's procedure is based on a three-fold process: 1) imaging self in order to understand where our convictions are coming from and why we think the way we do; 2) experiencing self in God so that we may be free and detached from our own will; 3) getting in touch with the group because real fraternity thrives on openness, self-disclosure, transparency and trust. In this kind of atmosphere, good decisions can be made. Once these steps have been taken, he suggests practical steps to review the current state of the congregation and its present needs, the kind of leader needed to meet these needs, the possible candidates, all done in a spirit of prayer and recollection which brings the assurance that God's will is being done. See LARKIN, "Guidelines for Discernment," pp. 42-45.

¹⁷⁶ Azevedo developed a process for the election of the supreme moderator and councillors based on discernment that has been widely used. The process presupposes that individuals prepare themselves by seeking information and knowledge before the actual election and that they engage in individual discernment. This part of the process could involve local communities or other groups. The group process at the chapter surfaces names and the method relies on writing rather than talking for the most part. See AZEVEDO, "Discernment", pp. 719-725. For the IBVM North American "Open Circle" approach to communal discernment, see below pp. 277-278.

One of the basic elements of election by discernment is the participation of all.¹⁷⁷ When consensus and discernment work together they provide a faith experience and a process in which decisions are truly shared. Needless to say, the use of discernment presupposes a skilled facilitator who will lead the process forward to decision-making.

Discernment relating to the election of leadership has been described as “a complex political, spiritual, psychological and emotional process.”¹⁷⁸ For many congregations, this process begins at local level when decisions are made about representation in general chapters. For this reason, the election of leaders must be seen in the wider context of the whole membership. Preparation for the general chapter involves the total membership. It is the members who elect those who will represent the congregation at the general chapter. These elected delegates exercise a key role in the transition of power and authority from one leader and team to another. This is how the membership participates in governance. By elections, the group decides who will have the right to exercise power in a formal way in relation to the goals and values of the group.

¹⁷⁷ Chiodo describes a process used in the election of a provincial leader and team, one that could be used for the election of a supreme moderator. This model has four basic steps: 1) information gathering in local groups that is carried out in a spirit of prayer and sharing. This leads to submission of nominees with reasons given for the choice; 2) the nominees participate in a discerning process; 3) discerning of nominees and chapter members; 4) creative ways of evoking leadership from among the members. The value of this process lies in the way in which the entire province was involved in the process. See M. CHIODO, “Electing Leaders by Discernment,” in *HD*, vol. 9, no. 2 (1988), pp. 18-19.

¹⁷⁸ See RUFFING, “Election”, p. 404. The author also makes the point that religious communities of women often deny some of these aspects (*ibid.*).

3.3.3 – Theological Reflection and Open-Space Methodology

The process of theological reflection is another structure that facilitates dialogue, builds unity and promotes decision-making at chapters.¹⁷⁹ Theological reflection processes are built on the premise that it is a group process and that no one in the group has the right answer. The structure itself comprises individual reflection, small-group sharing and large-group sharing, all of which continue during the process. This ensures that the individual's experiences are accepted but are also tested and modified in the group interaction. As a result, because this is a time-consuming process, only matters of significance and of sufficient importance to the group will be subjects of theological reflection.¹⁸⁰ These matters are usually the fruit of pre-chapter preparation among the entire membership begun

¹⁷⁹ The impetus for the development of this particular approach came from chapters that wanted a more relational and less intellectual approach. The desire, especially in North America, for broad participation in decision-making, for decision by consensus evident in many women's congregations, from the increasing number of participants who were familiar with this kind of approach because of their work in Third World areas, especially Latin America, were other influences. Contemporary insights, e.g., that adult learning is driven by internal motivation, led to the realisation that surfacing issues from their own experiences enabled ownership of them and also provide a rich resource. The insight that the learning environment is enhanced by trust, respect and acceptance of difference, creates the realisation that chapters must be structured to enhance the relationships of the members. For women, an insight learned from feminism, is that women must start from their own experiences, which they can then test against the insights of experts and others. See J. ALVAREZ and N. CONWAY, "Theological Reflection in Congregational Chapters," in *HD*, vol. 11, no. 4 (1990), pp. 13-15 (=ALVAREZ and CONWAY, "Theological Reflection"). Writing some years later, the authors realised that the process of theological reflection accomplished the task of reflecting on the nature, purpose, spirit of the institute which fulfilled two of the functions listed in c. 631 § 1. However, the process did not enable the emergence of prophetic vision in relation to the future. As a result, they tested out "open-space methodology" to fulfil this particular purpose. See J. ALVAREZ and N. CONWAY, "An Innovative Process for Chapters," in *HD*, vol. 16, no. 2 (1995), pp. 34-38 (=ALVAREZ and CONWAY, "Innovative Process"). For a model of theological reflection produced by LCWR, see LEADERSHIP CONFERENCE OF WOMEN RELIGIOUS, *Theological Reflection*, Washington DC, LCWR, 1986. For a more general study, see J. and E. WHITEHEAD, *Method in Ministry: Theological Reflection and Christian Ministry*, New York, Seabury, 1980.

¹⁸⁰ The process of theological reflection, which takes as its starting point evaluation of the implementation of the previous chapter outcomes, an evaluation that comes from the members in the pre-chapter preparation period, is a method used by many chapters today. Care has to be taken to ensure goals or directions of the chapter are provided in such a way as to be received by the members. Then these can become the starting point for the evaluation leading to the next chapter. See DARCY, "Models of Participation," p. 196.

several months or even a year before the chapter takes place to articulate the agenda for the forthcoming chapter.¹⁸¹

There are five steps to the process: sharing experiences in small groups by participants who have already reflected on the issue concerned; interpretation of the insights in small groups and the identification of images or events in Sacred Scripture that might relate to the discussion, and sharing these insights in the large group; providing input or expertise in the large group on the topic being discussed; integration in small groups of the input heard with the experiences in the small and large groups, the raising of challenges, asking what God is revealing through the input and dialogue, and identifying conclusions that are emerging and sharing these in the large group; in small groups answering the question “if these are the conclusions the chapter is reaching, what actions do they require?”. This process is built on the experiences of the participants, what they learn from these experiences and how the insights of others stretch their own perceptions and knowledge. The conclusions drawn, because they arise from the experiences of the participants, cannot be contrary to those experiences and yet are not limited because the process moved the participants beyond their own horizons.¹⁸² One of the by-products of this type of approach lies in the bonding that occurs among the participants. In so doing,

¹⁸¹ The theological reflection chapter differs from other processes in three ways: 1) the issues are identified well in advance; a small chapter planning committee (5 or 6 are recommended) work with facilitators to develop the questions for the first stage of the process, arrange input for the third stage and identify small group facilitators; 2) there is minimal involvement of the other chapter members before the chapter; 3) four to six weeks before the chapter begins, participants are sent step one questions to reflect on. See ALVAREZ and CONWAY, “Theological Reflection,” pp. 16-17.

¹⁸² The process depends for its success on the readiness of the participants to engage in this type of reflection. There are practical difficulties when the membership of the chapter is very large, as the process is a time-consuming one.

theological reflection produces that sign of unity in charity that is one of the key functions of the chapter (c. 631 § 1).

In multicultural and international institutes, the process of theological reflection can be particularly helpful in surfacing different approaches to significant issues. If creative approaches are taken in both the small and large group sessions, e.g., the use of image, art, movement, etc., theological reflection can free the activity from being bound by analytical language and can allow the religious imagination to speak.¹⁸³ In this way, those for whom the language of the chapter is not their first language (even if translation/interpretation is provided) can be enabled to articulate their thoughts and feelings towards the issue under discussion.

Theological reflection moves the participants at the chapter towards focus and commitment. Open-space methodology,¹⁸⁴ on the other hand, encourages brainstorming and an attitude that may or may not result in action.¹⁸⁵ In this process, the agenda comes from the participants themselves; topics for discussion are named and placed on the wall or other convenient place; participants sign up for the themes that interest them; a record is made of the sessions and these are collated as a report at the end of the chapter. There are four basic rules: whoever comes is the right persons; whatever happens is the only thing that could have; whenever it starts is the right time; when it's over, it's over. The "Law of

¹⁸³ Kemper describes how an imaginative use of theological reflection in a multicultural seminary helped identify those issues his students found different. See J.C. KEMPER, "Imaginative Theological Reflection," in *HD*, vol. 16, no. 4 (1995), pp. 17-19 (=KEMPER, "Imaginative Reflection").

¹⁸⁴ Harrison Owen, an Episcopalian priest, developed the concept in the 1980's. He was influenced by his experience in African villages, where the people come together in circles to explore ideas and to resolve conflict. See H. OWEN, *Open Space Technology: A User's Guide*, Potomac, MD, Abbott, 1992.

¹⁸⁵ See ALVAREZ and CONWAY, "Innovative Process," p. 35.

the Two Feet” applies, that is, participants have the freedom to move if they are learning or contributing nothing in a particular group.¹⁸⁶ Because the process of open-space methodology encourages diversity and choice, it will not suit the agenda of every chapter. However, it could be used in conjunction with theological reflection for particular aspects of the chapter, e.g., to produce creative thinking in relation to a new project. Those who use this methodology suggest it is better if open-space methodology follows theological reflection as the latter establishes a better connection with the membership at large from whom the material for the theological reflection has emerged.¹⁸⁷

3.3.4 – Decision-Making Processes: The Consensus Model

Reaching consensus refers to the way in which decisions are worked out among the members of a group.¹⁸⁸ It is a time-consuming process that brings about general agreement in thought and feeling leading to order where there was disorder.¹⁸⁹ If carried out

¹⁸⁶ For the steps of the process, see KEMPER, “Imaginative Reflection,” pp. 35-36.

¹⁸⁷ See ALVAREZ and CONWAY, “Innovative Process,” p. 38.

¹⁸⁸ In a consensus procedure, all the views are considered and weighed. Therefore each member of the group contributes to the outcome and is willing to abide by the decision made by the group. The method depends for its effectiveness on the atmosphere of trust and acceptance in the group, their ability to speak, listen, and be open to contrary views. They must have the information necessary regarding the issue under discussion and there should be an absence of factions in the group. A chapter is one forum where the procedure works effectively. See ALVAREZ and CONWAY, “Decision-Making by Consensus,” in *HD*, vol. 9, no. 2 (1988), pp. 42-44 (=ALVAREZ and CONWAY, “Consensus”). See also M.B. AUVINE, B. STREIBEL, and L. WEISS (eds.), *Building United Judgement: A Handbook for Consensus Decision-Making*, Madison, WI, The Centre for Conflict Resolution, 1981; M. DRAKE, “Beyond Consensus: The Quaker Search for God’s Leading for the Group,” in *Friends Journal*, 32, no. 10 (1987), pp. 12-14; R. FISHER and W. URY, *Getting to Yes: Negotiating Agreement Without Giving In*, Boston, Houghton Mifflin, 1981.

¹⁸⁹ Sheeran argues for the inclusion of the non-rational in leadership elections. He holds that men’s congregations, in particular, dismiss feelings, prejudice and intuition. Instead of asking the rational question, “who has the gifts required to lead the group” the non-rational question “what reactions do I experience toward this candidate” will help the participants review the role of the elector and the demands of the role of leadership. Feeling responses and instinctive reactions can be explored in structured exchanges and the

effectively, every member can own the decision made. The method recognises the right of each member to make a free decision and depends for its effectiveness on the equality of all the participants. This makes it a very suitable process in a chapter where all the members are equal. The question to be decided has to be discussed and teased out until consensus is reached, a process that benefits from the skills of a good facilitator.¹⁹⁰

Reaching consensus represents a process wherein the way the decision is made is as important as the content of the decision itself. There are a number of key issues: the content must be significant otherwise it might not be worthwhile to spend the time required by the process; the group engaged in the process must have the power to make the final decision; the members must be equal; the issue under consideration must be one regarding which participants are not locked into absolute, mutually exclusive beliefs.¹⁹¹ In addition, the group ought to decide ahead of time what they will do if consensus cannot be reached. They can decide to do nothing; or they can decide a time limit after which a vote will be taken. In this case, they should decide beforehand the majority required for the decision to be accepted.

Decision-making by consensus can have different outcomes: a unanimous decision; the minority might consent to the decision of the majority; there might be a vote in accordance with established procedures that the chapter agrees to accept. It could also happen that someone might block the decision because of serious objections. This latter

ensuing dialogue will help to free the person from biases. See F.D. SHEERAN, "The Nonrational in Leadership Elections," in *HD*, vol. 11, no. 1 (1990), pp. 23-24.

¹⁹⁰ See ALVAREZ and CONWAY, "Consensus," pp. 41-46.

¹⁹¹ *Ibid.* p. 43.

position must be exercised with the greatest of caution but it might be appropriate in certain circumstances since the Spirit works in each one individually as well as in the group as a whole. In the collegial process, where whatever is decided by the majority has the force of law, once a decision is made, it becomes the decision of the chapter. When the decision made is arrived at by consensus, each individual participant can really know his/her viewpoint is included and when the process is carried out in a spirit of prayer and discernment, there is also the belief that God's will is being done.

Election by consensus is a phenomenon that has many adherents.¹⁹² It is a process whereby a pre-chapter or elections committee endeavours to provide a list of nominees for positions of authority in the congregation to the general chapter. To do this, they will produce a plan of action and present it to the membership for comment and discussion. Usually a facilitator helps the assembly of the members reach consensus in this discussion. When the plan has been accepted, it is implemented among the membership at large. The next step is to invite nominations for the leadership positions available. Sometimes the candidate is required to give a self-assessment and sometimes the assessment of others is also solicited. The pre-chapter committee examines these candidates and effectively decides who is to be put forward to the general chapter. Sometimes the list of candidates is reduced during this part of the procedure. Sometimes only one candidate remains. This process reduces the time the chapter needs to spend on the election process.

¹⁹² See HILL, "Election by Consensus, 1," pp. 460-464.

There are a number of canonical difficulties with some aspects of this process.¹⁹³ The first relates to the authority of the pre-chapter selection committee. If the previous general chapter did not approve a new procedure, then this committee cannot use it. No one, not even the supreme moderator, has the power to change the procedure by which a general chapter operates (c. 625 §§ 1, 2). Only the general chapter has this authority (c. 631 § 1) and what it decides pertains to the following general chapter. In addition, procedure for governance must be included in the constitutions, which in turn, must be approved by the competent authority (c. 587). If an institute has not elucidated its procedure in proper law, then the norms of cc. 164-179 apply. The consensus approach to the issue of the election of the supreme moderator seems to arise when the institute concerned believes authority to govern resides in the members. However, universal law clearly determines otherwise. This is not to say that pre-chapter selection committees have no role. In fact, by producing a list of candidates who are suitable, they can provide great assistance to the chapter. However, it must always be understood that the chapter members retain the right to vote for whomever they want and universal law prescribes that this vote must be secret (c. 172). It must also be clearly understood that any list of candidates put forward are suggestions only. Otherwise, the pre-chapter committee might indirectly impose a condition, which in turn invalidates the act (cc. 124 § 1, 172 § 2). This kind of procedure interferes with the rights of persons also. Members have the right to both active and passive voice (except in those cases referred to above¹⁹⁴). These rights might well be respected in a pre-chapter selection process. However, they must also apply in the chapter

¹⁹³ See HILL, "Election by Consensus, 2," pp. 620-624.

¹⁹⁴ See above, pp. 175-176.

itself. Infringement on these rights might render the election invalid or open to challenge by the membership. An invalid election in turn will invalidate subsequent acts of the invalidly elected supreme moderator.

Because of the shift towards more participative forms of government, decisions by consensus are the preferred *modus operandi* in some congregations. However, if taken as a principle that every decision must be made by the consensus of the members, then the role of the general chapter is called into question. Perhaps a compromise position is preferable: since the election of the supreme moderator and those functions named in c. 631 §1 are, by law, a matter for the general chapter, proper law could indicate certain other issues that might be decided by the consensus of the entire membership.

3.3.5 – Decision-Making Processes: Dealing with Conflict

Human interactions require the ability to handle conflict. However, often training and formation, especially in the religious life, taught people to comply and to avoid conflict. On the other hand, experience, particularly in South America in the post-conciliar era, recognised the social importance of using conflict in the interests of justice.¹⁹⁵ As a result, examining conflict and using it positively became one of the issues that groups, e.g., general chapters, began to use in the process of making good decisions. Leaders must identify conflict and work with it.

¹⁹⁵ Arbuckle points out that interest in the conflict perspective in social relations became popular in the English-speaking world in the 1960's. Simultaneously, as a result of the incarnational and social justice thrust of Vatican II, the Church began to experience the impact of this perspective in the work of social justice in South America. See ARBUCKLE, "Evaluating Chapters," p. 184.

Conflictual relationships can be characterized by competition (where there are mutually opposed efforts to attain the same goals), rivalry (conscious competition between two groups), or conflict (the struggle over values in which the aim is to neutralize or eliminate the opponent).¹⁹⁶ In this understanding, the key characteristic is the domination of some groups by others or the domination of an individual over the group. Actual or potential conflict is at the heart of all social relations. Sometimes there is a mask of harmony but the powerful can use their authority to influence, manipulate or oppress through the use of coercion.¹⁹⁷ The underlying assumption concerns the importance of structures in society and how the powerful can use them to their advantage. As a result, the belief is that change comes through altering structures by various means of coercion. Because the general chapter as a structure is the supreme authority in the congregation, there is always the possibility that some will use it to force change on the group. As a result, facilitators of chapters must work to ensure that conflict is brought into the open and dealt with in a healthy way.

In international congregations, culture must be taken into consideration when deciding operational processes in general chapters. Arbuckle gives an example from a certain culture where the emphasis is on the external maintenance of harmonious relationships and consensus in decision-making. He points out that this often masks intense conflictual anger and resentment that must be dealt with if good decisions are to be made. It is a criticism of women religious, particularly, that sometimes they so overvalue consensus that they refrain from taking a stand on issues that do not represent the majority

¹⁹⁶ Ibid., p. 181.

¹⁹⁷ See *ibid.*, pp. 181, 183.

view.¹⁹⁸ In other words, they avoid conflict. It is a function of formal leadership to bring about the dialogue wherein different views and sources of conflict can be resolved.¹⁹⁹

3.4 – THE ROLE OF THE SUPREME MODERATOR

Both universal and proper law define the authority of the supreme moderator (c. 622). As a result, there is great variation in its exercise. However, the Code clearly designates personal power to the one who holds the highest authoritative position in the congregation over all the members, houses and administrative units (cc. 618, 622). This authority has, as its principal function, the spiritual, community and apostolic animation of the community,²⁰⁰ while guiding the fulfilment of its mission in the Church and attending to the juridical areas mentioned in the Code.²⁰¹ The supreme moderator is designated by canonical election (c. 625 §§ 1, 2) and holds an ecclesiastical office with the concomitant rights and duties (cf. c. 145). The ordinary power of governance exercised by the supreme moderator in clerical religious institutes of pontifical right derives from the office (c. 131). This power does not cease to exist until the term of office has expired or the incumbent resigns, dies or is removed (c. 184 § 1). This means that the supreme moderator continues to function in the role even when the general chapter is in session unless proper law

¹⁹⁸ See RUFFING, "Election," p. 406.

¹⁹⁹ Conflict studies practitioners point out the strategies used depending on the issue and the composition of the group engaged in the resolution of the conflict: avoidance, competition, accommodation, compromise and collaboration. Gender, culture, socialization, background, age, etc. influence the way people both understand conflict and the strategies they use to resolve it. See J. MALONE, "Gender Differences in Handling Conflict," in *HD*, vol. 14, no. 1 (1993), pp. 11-15.

²⁰⁰ See *Congregavit nos*, no. 50, p. 706, which also names the areas of authority of specific importance: the spiritual, authority as conducive to unity, and authority capable of making final decisions and assuring their implementation.

²⁰¹ See above, pp. 84-93.

provides otherwise.²⁰² As a result, ordinary business continues and the supreme moderator exercises his/her ordinary authority.²⁰³ As we know from our discussion of c. 596, the power of the supreme moderator is unnamed in the case of those supreme moderators who are non-clerical.²⁰⁴ Legislative power is not usually included. That function belongs to the general chapter. The council of the supreme moderator also continues to exist unless there is a vacancy (cc. 184 § 1, 624).

Canon 617 provides that each institute must spell out how authority is to be exercised.²⁰⁵ When proper law clearly determines authority and its limitations and respects the principle of subsidiarity, misunderstanding is avoided, particularly in relation to the respective roles of the supreme moderator and chapter.²⁰⁶

²⁰² Morrissey points out that during the revision of the Code, there was a discussion in relation to whether the authority should be determined in the constitutions or proper law. In keeping with the principle of subsidiarity, the definitive version stated proper law. This enables each institute to determine the authority of its major superiors in accordance with its particular spirit, history and traditions. See *Communicationes*, 25 (1993), pp. 285-286, 316-317; F.G. MORRISEY, "The Relationship Between Superiors in a Religious Institute," in *Inform.CRSI*, 23 (1997), pp. 126-127.

²⁰³ It is beyond the purpose of this thesis to describe the authority of the supreme moderator except in so far as it relates to the general chapter. For an excellent understanding of the development of the power of the supreme moderator, see the doctoral thesis of SCHAMBER (above, p. 25, footnote 70). See also E. McDONOUGH, "The *Potestas* of Religious Superiors According to Canon 596," in *R/R*, 55 (1996), pp. 551-606.

²⁰⁴ See above, pp. 94-110.

²⁰⁵ Increasingly today, the supreme moderator works in a team with the council or other leadership body. However, this does not preclude the use of his/her personal authority, which is a canonical requirement.

²⁰⁶ Cf. cc. 596, 624, 625 §§ 1, 3, 627 § 1. Constitutions provide for those elements of government that are stable, e.g., officials and major structures (c. 587 §§ 1-3). Other elements that are susceptible to change are placed in the congregation's own law. The technical rules that exist in every organisation and what is of a purely practical order are placed in complementary codes/directories/custom books/supplementary codes/ additional codes, etc. (c. 587 § 4): details concerning consultative groups, chapter preparation, the internal functioning of such bodies (designation and role of officers, formation and role of chapter commissions), technical rules of procedure, majorities necessary, *quorum*, voting, procedures for a tied vote, disposal of ballots, communication of results, etc. See M. DORTEL-CLAUDOT, "The Complementary Code," in *ConsL*, 9 (1984), pp. 108-110, 115-116.

3.4.1 – Pre-Chapter Responsibilities

As the one who animates the institute, it is fitting that it is the task of the supreme moderator to convoke the general chapter. Since change only comes through leadership,²⁰⁷ the leadership provided by the supreme moderator and general government is crucial to the changes the general chapter may be required to bring about. These changes may also surface as agenda issues in pre-chapter preparation.

Proper law determines the manner in which the chapter is convoked, the timing, place of meeting, number of delegates whether elected or *ex officio*, the criteria observed to ensure these truly represent the congregation, the areas of concern to the chapter in addition to those laid down in universal law and the regulations surrounding the election of the supreme moderator and other officials.²⁰⁸ It is the responsibility of the supreme moderator, assisted by the council/leadership team, to ensure these dictates of proper law are adhered to.²⁰⁹ The supreme moderator and his/her council, in whatever way they govern, have a crucial role to play in stimulating the involvement of the whole congregation in preparation for the chapter. The various levels of involvement, e.g.,

²⁰⁷ See G.A. ARBUCKLE, "General Government: Its Leadership Role Today," in *RfR*, 43 (1984), p. 830 (=ARBUCKLE, "General Government"). The IBVM Constitutions designate both the general superior and the general chapter as the bond of unity. See *1986 Constitutions*, cons. 404, p. 138, and cons. 492, p. 162.

²⁰⁸ See CRSI, "1978 Norms," pp. 71-77.

²⁰⁹ Since proper law determines the actual authority of the general administration, every institute is different. Arbuckle, writing in the 1980's, believed three models could be distinguished: the maximum decentralization model: the supreme moderator and council are figureheads only, with real administrative powers in the various units of the institute; the maximum centralization model: all important policies and appointments are controlled by the central administration; the in-between model that provides a general supervisory role for the central administration, with the appointment of key personnel belonging to the provinces or other administrative units. He makes the point that no matter how little administrative authority general governments have, they can and must exercise prophetic leadership: to motivate others to interiorize new values and attitudes freely. Authority, in his view, commands people to act in certain ways; leadership helps bring about culture change. See ARBUCKLE, "General Governance," pp. 821-828.

through prayer, study, reflection and dialogue, provide a way in which every member can be involved, irrespective of age, health, apostolic commitments, etc. As planning can be a time-consuming task, the general government must ensure that it begins several months, or even one or two years before the actual chapter.

As institutes of consecrated life undertook revisions of constitutions after Vatican II, this provided the agenda of general chapters for many years. When this task was completed, institutes focused on the needs of the times, e.g., the cry of the poor, justice and peace, the oppression of women and children. The material emanating from chapters changed as a result. Instead of legislation, chapters began to produce goals, directions, pathways, mission statements, etc.²¹⁰ Since the Code calls for the on-going renewal of institutes (c. 631 § 1), general chapters often need to adjust constitutions or other law to suit changing realities. *Ad hoc* committees can do much of the work associated with these kinds of changes (c. 632). They can put forward proposals to the chapter whose business it is to consider them. This allows for all the preliminary work to be done outside the chapter and provides another means whereby the membership can be involved and participate. It is the task of leadership to ensure this happens.

Structures of government are frequently reviewed since these are in the service of the mission of the congregation. In international congregations, this presents a particular challenge, when numbers are declining and membership is aging in the founding province while often in the newer regions/provinces, the opposite is the case. This may result in the

²¹⁰ See W.F. HOGAN, "Chapters and Structures," in *RfR*, 48 (1989), p. 26 (=HOGAN, "Chapters").

merging of provinces or in unions of congregations with similar spirituality and goals.²¹¹ The Code allows each institute to determine the authority competent to deal with these issues (cc. 581, 585). However, these are not just juridical questions. They relate to the mission and charism of the congregation. Other government issues concern terms of office, the interval between chapters, how to involve the membership, structures of participation and so on. Religious frequently complain about the time and energy necessary for pre-chapter planning as well as the actual dynamic of the chapter itself. This leads to questioning whether the general chapter is the best or the only mode for accomplishing the goals of the congregation.²¹² It is the function of leadership - whether the supreme moderator alone, with council, or acting as a team – to secure the agenda by which the general chapter can make those decisions that will lead the congregation forward.

3.4.2 – Facilitation of the Process of the General Chapter

The president of the assembly is usually the supreme moderator but proper law can determine otherwise. In the interests of greater participation and involvement, chapters today often rotate the persons who chair individual sessions. However, it pertains to the supreme moderator to delegate this function, not to the chapter, since this function belongs to the office. Technical matters that are the responsibility of the supreme moderator include

²¹¹ For a very informative description of the steps to be taken in restructuring, see F.G. MORRISEY, “The Structuring of Provinces in a Religious Institute,” in *The Jurist*, 62 (2002), pp. 114-130. For a practical example, see W.A. BROWN, “The Unification of Provinces in a Religious Institute with Particular Reference to the Situation of the Missionary Oblates of Mary Immaculate in the United States,” JCD thesis, Ottawa, Faculty of Canon Law, Saint Paul University, 2001.

²¹² Hogan wonders if the emphasis on structures, participation, rights of members, and the models of the business world, have detracted from the faith dimension that is the foundation of the consecrated life. See HOGAN, “Chapters,” p. 29. It is our opinion that such material can prove helpful. However, the faith element must not only be included, but is central to whatever procedures are undertaken.

verification of the membership, procedure to declare that the general chapter is the lawful assembly of the congregation, approval of the agenda, procedures to be followed, clarification regarding voting, *quorum* required for particular matters, election of tellers, secretaries, the steering committee to guide the chapter process, a committee to examine the general reports, and the proclamation of the results of a vote, whether elections or general business. The supreme moderator also has the task of contacting any person elected to an office who is not a chapter member and of summoning that person to the chapter. If someone from outside of the chapter members is elected supreme moderator, the chapter must be suspended until that person arrives; in the case of councillors, the deliberations of the chapter continue. In the case of postulation, if this is permitted by the constitutions, the supreme moderator, as president of the assembly, notifies the competent authority in accordance with the norms of cc. 180-183. Should the chapter agree unanimously to elect some official by compromise, the prescripts of cc. 174-175 must be fulfilled. The supreme moderator also declares the chapter closed.

Because of the complexity of issues today, many chapters engage the services of experts and professional facilitators, whose role must be clearly determined. Some chapters require a facilitator who will keep the process flowing and thereby follow the timetable established by the chapter. Others require a listening ear, a person who will work with the steering committee to ensure issues are picked up and dealt with. Whatever the role, it must be clear to all the capitulants. The presence of such a person relieves the general leadership of much of the practical elements of the chapter.

3.4.3 – Accountability

The supreme moderator is accountable to the general chapter. As a result, one of his/her principal functions is to present an account of his/her stewardship of the institute since the last general chapter. This is done by means of two reports. A general report concerns the present state of the congregation. It generally gives details concerning the persons of the congregation, their consecrated life, apostolic works, as well as an account of government and structures. The general finance officer normally prepares the financial report, signs and presents it in accordance with the proper law of the congregation. Both of these reports must be compiled before the chapter and signed by the supreme moderator and council. Presentation of these reports occurs in a variety of ways. In many congregations today, the general councillor with responsibility for a particular area, e.g., formation, apostolic works, etc., may present that section of the report to the chapter.²¹³ Although all capitulants receive the reports, a report committee is usually given the task of studying the reports and of proposing suggestions in relation to them. These may be dealt with as the business of the chapter.

3.4.4 – Promulgation of the Acts

The success of planning lies in the implementation phase.²¹⁴ As a result, the way in which post-chapter promulgation of the acts or promotion of the vision, goals, direction of the chapter is undertaken is vital for the success of the chapter. The response of the

²¹³ This was the process followed in the Irish Branch chapter of 1992.

²¹⁴ Overman believes four elements are required for successful implementation: economy, i.e. taking on what is possible; accountability, i.e., a clear delineation of responsibility and reporting back to the

membership, and the participation in “owning” the work of the chapter, is another way in which they participate in government of the congregation. The responsibility for promulgation of the acts lies with the leadership. The mode of promulgation is that established in the congregation’s own law. Sometimes this essential process is delayed because there is a new administration, which has to be given time to adjust to new roles or even to learn some of the skills required. However, if the membership is to “own” the chapter decisions or directions, they must be as involved in the aftermath of the chapter as they were in the preparation phase.

In 1976, Cardinal Pironio described the general chapter as “a salvific, ecclesial and family event.”²¹⁵ In other words, the celebration of a general chapter is not only for the members but because the congregation’s purpose and mission is to serve God in the needs of the world, the chapter touches that world also. The Cardinal suggested that a new text of constitutions should be received as a “Word of God” to the members, inviting them again to a new covenant relationship with God.²¹⁶ In like manner, we believe that the acts/directives/guidelines of a general chapter should be so received. Many congregations implement the chapter norms with the assistance of the delegates, which in turn enables the membership to share in the chapter experience. Some evaluation of the implementation process, perhaps by way of interim report, should be provided in the chapter manual thereby ensuring the on-going participation of the membership mandated by c. 631 § 1.

competent authority; scheduling, i.e., a clear determination of who does what, when, at what cost, etc; reporting, i.e., to the delegating superior and to the members. See OVERMAN, “Planning,” p. 96.

²¹⁵ See PIRONIO, “Reflections,” pp. 9-10.

3.5 – CONCLUSIONS

The change in attitude towards general chapters since Vatican II, and the change in understanding as to what they represent, are reflected in constitutions. Chapters are called “collegial assemblies,” “the representation of all the members of the congregation,” a “fraternal assembly,” a means of “orienting the common search for the good of the community,” “a spiritual reunion that aims to assure the life of the community, respect for its charism and fidelity to its origin.”²¹⁷ These descriptions indicate the nature of the body. Whatever description is given, the general chapter has a unique role in every congregation. It cannot delegate its supreme authority to any other body or person. The chapter alone can elect the supreme moderator and issue norms binding on the entire membership. In fulfilling their unique role, general chapters protect the rights and obligations of the members of the whole congregation.

As noted above, there is confusion today in relation to authority and power. Some authors claim that many religious communities of women are moving away from an hierarchical model of authority to a more participative one. In the former, authority is derived from God, belongs to the superior and is exercised in regard to those who do not have it. In this model, there is consultation in relation to decision-making but the one with

²¹⁶ For a beautiful reflection on revised constitutions described in this context, see E. PIRONIO, “Constituciones renovadas: Reflexiones del Card. Prefecto,” in *Inform.SCRIS*, 9 (1984), pp. 3-12, English translation “Some Reflections on Revised Constitutions,” in *ConsL*, 9 (1984), pp. 1-9.

²¹⁷ These definitions were taken from newly approved constitutions and quoted in an UISG Study, See UISG “Les Chapitres généraux,” pp. 38-39. A Canadian study of 145 constitutions approved between 1978 and 1984 reflected the different approaches to authority in Canada also. However, the author concluded that although these constitutions reflected a return to the recognition of the rightful authority of major superiors, there was uncertainty regarding the authority of local superiors. See M. DORTEL-CLAUDOT, *Obedience in Religious Life Today, Why? To Whom? How? A Study Based on 145 Newly Revised Constitutions Approved by Vote in General Chapters from 1978-1984*, Ottawa, Canadian Religious Conference, 1986, pp. 3-7.

personal power makes the decision. The focus is on canon law, the legitimate authority of the Church, the authority of the congregation, the community as a group, and the voice of those served in the world. In this model, the general chapter has a clearly defined role and its authority is supreme, with functions determined by c. 631 § 1 and the proper law of the congregation. The participative model on the other hand, operates out of the belief that all are essentially equal, that the authority given to someone is temporary and makes this person first among equals but not the representative of God because all the members have personal responsibility for themselves and for the group. The group chooses those who fill authority positions as in the hierarchical model, but as authority resides in the group, decisions are made *with* not *for* or *on behalf* of the group. The group strives for consensus as far as possible. In this model, the general chapter is merely another forum for the expression of the views of the members. In reality, most congregations operate a mix of the hierarchical and participative models. There are indications that team government, while not always expressed in constitutions, operates in practice in some congregations.²¹⁸ Government is by decision-making through consensus. Women, particularly in the USA, appear to be moving in this direction more quickly than men. As a result, congregations have moved from direct election procedures that have little or no process, with straight voting and no exchange, to procedures involving communal prayer, reflection and dialogue. Methods have ranged from a focus on individuals to focusing on groups; from silent nominees to interviewed nominees; to nominees who themselves propose the composition of leadership teams. There has also been movement towards choice of leaders in the light of the active participation of members, and choosing a group rather than an

²¹⁸ Neither the 1986 Irish *Constitutions* nor the 1986 North American *Constitutions* contain the

individual.²¹⁹ Since structures in religious institutes are there to serve its mission, these should be reviewed periodically. Are chapters the only or best vehicles to accomplish the promotion of the mission and life of the institute? One finds criticisms of the energy needed to prepare for chapters and of the lack of time between chapters in which to realise objectives drawn up. The challenge is to find creative ways of ensuring the goals of chapters are fulfilled and that all the members are involved in the formulation of policies.

The general chapter as a structure of government has a lot to offer the Church: “effective corporate collegial decision-making stands among the most prophetic of models that religious can offer the Church and the world in which we live. We must work to preserve it.”²²⁰ Because the general chapter as the agent of renewal for the individual institute uses processes that are inclusive and participatory, it provides an invaluable structure for the life of the members, and, we suggest, for the wider community of the Church. In fact whether or not religious congregations survive into the future depends in no small measure on how chapters fulfil their role.²²¹ Could the Church learn from the experiences of religious in chapters gained over so many generations, experiences the Church herself has legislated to protect?

principle, yet the general leadership in each Branch operated in this fashion. See pp. 248-249, 275-276.

²¹⁹ M. HARMER, “Chapters Present and Future,” in *R/R*, 53 (1994), p. 120.

²²⁰ DARCY, “Models of Participation,” p. 200.

²²¹ See E. McDONOUGH, “General Chapters: Current Legislation,” in *R/R*, 55 (1996), p. 435.

CHAPTER 4
THE GENERAL CHAPTER IN THE INSTITUTE OF THE BLESSED VIRGIN
MARY, LORET(T)O BRANCH

Just as the nature, purpose and function of the general chapter evolved over the centuries, so too, general chapters evolved in the Institute of the Blessed Virgin Mary, Loreto Branch.¹ As proper law encapsulates the changes that occurred, we will examine the general chapter as it is described in the Constitutions of the Institute as well as documentary evidence from the chapters themselves. In order to understand the structure and way of operation of the general chapter in IBVM today, we will examine the modern formulation of governance in proper law, noting the key principles that render the ecclesiastical institute of general chapter both a statement of democratic principles and, at the same time, an instrument of hierarchical government that found different expression in the former Branches of IBVM.

4.1 – GENERAL CHAPTER IN THE FORMER IRISH BRANCH OF IBVM

The evolution of the general chapter in IBVM resulted from its own internal workings as well as under the impetus of legislation or guidelines from the Holy See. Evidence of this evolution is provided by seven sets of Constitutions in the former Irish

¹ Until 2003, there were three Branches of IBVM: the original IBMV Roman Branch (now called the Congregatio Jesu) founded by Mary Ward in the 17th century; the Irish Branch founded in Rathfarnham, Dublin, by Mother (=M.) Teresa Ball in 1821; and the North American Branch founded in Toronto in 1847, by five sisters sent from Dublin at the request of the Bishop of Toronto. The spelling of “Loreto” changed in the early 20th century in the Irish Branch. However, since the Institute was civilly incorporated in North America as “Loretto,” this spelling was retained there.

Branch,² three in North America,³ as well as archival evidence documenting the operation of general chapters in both Branches.

4.1.1 – Early Structures of Government: The Importance of Consultation

The canonical recognition given to the new Irish Branch of IBVM in 1821 placed the Institute under the jurisdiction of the bishop of the diocese.⁴ However, the first Constitutions⁵ can be traced back to Mary Ward whose model of government was a centralized one, emphasizing the role of the general superior and the chapter in the exercise of authority and envisioning pontifical status for the institute.⁶ The difference was purely

² See *Rules of the Institute of the B.V.M.*, Dublin, Coyne, 1832 (=1832 Constitutions); *The Rules and Constitutions of the Congregation of Nuns of the Institute of the Blessed Virgin Mary Founded in Dublin*, [Dublin], 1862 (=1861 Constitutions), approved *ad experimentum* in 1861 and 1867 and definitively in 1877; *Constitutions of the Institute of the Blessed Virgin Mary for the Houses Dependent on the General Mother-House, Rathfarnham, Co. Dublin, Ireland*, Dublin, Browne and Nolan Ltd., 1914 (=1913 Constitutions); *Constitutions of the Institute of the Blessed Virgin Mary for the Houses Dependent on the General Mother-House Rathfarnham, Dublin*, Browne and Nolan Ltd., approved *ad experimentum* in 1927 and definitively in 1937 (=1937 Constitutions); [Interim] *Constitutions of the Institute Blessed Virgin Mary (Dublin)*, Dublin, Elo Press, 1971 (=Interim Constitutions); 1986 *Constitutions*. All of these documents are in the Central Archives of the Irish Branch, Dublin, Ireland (=CAIB), P2/W/M6.

³ See *Constitutions of the Institute of the Blessed Virgin Mary, Commonly Called English Virgins*, Buffalo, NY, Union and Times Press, [1908], (=Heller Constitutions); *Constitutions of the Institute of the Blessed Virgin Mary (Commonly Called the English Virgins)*, Toronto, [IBVM], 1942 (=1942 Constitutions); *IBVM Constitutions: Constitutions of the Institute of the Blessed Virgin Mary in North America*, Toronto, Loretto Abbey, 1986 (=1986 NA Constitutions). These documents are preserved in the Central Archives of Loretto Abbey, Toronto (=CAT).

⁴ See SCPF, rescript, 5 August 1821, in 1861 *Constitutions*, Appendix, pp. 96-98.

⁵ We do not know when the word “constitutions” began to be used in the original Mary Ward Institute. The first Irish Branch Constitutions were entitled “Rules.” A letter of Paul Cullen, Archbishop of Dublin, to the members of the Institute, appended to the 1861 *Constitutions*, states, that “Constitutions have been added to your Rules” (P. CULLEN, letter, 26 December 1861, in 1861 *Constitutions*, Appendix, pp. 86-87). However, the minutes of the 1907 general chapter refer to the old “Constitutions” written by M. Teresa Ball. See GENERAL CHAPTER (=GC), 4 August 1907, in CAIB, P1/B2-2. For this reason, we will refer to the legislative documents of IBVM Irish Branch as “Constitutions.” For a brief history of the Constitutions, see E. MACDONALD, A Short History of the Constitutions of the I.B.V.M., 1971, in CAIB, W28. The Holy See never formally approved the 1832 *Constitutions*.

⁶ The original manuscript of the 1832 *Constitutions* was based on the Constitutions of IBMV Roman Branch published in 1707. The “Gilbert” Constitutions followed in York, where the Irish foundress received

academic in the early years, but subsequent expansion into other dioceses and beyond the national boundaries rendered this a problem that had to be solved.⁷ While the rules approved for the Institute in Europe contained little reference to the exercise of government by general superior and chapter, the 1832 Irish Branch *Constitutions* provided a detailed description of the general superior's role.⁸ The concept of general chapter was not specifically mentioned. However, the "consultations" mandated resembled the earliest forms of chapter in religious communities.⁹ Two kinds were envisaged: general consultation, e.g., regarding the acceptance of a house in a difficult situation,¹⁰ and an "assembly" of superiors who were "nearby" for matters "of great consequence." In the former consultation, the agenda was sent to local superiors and consultors. Written views of those consulted (including the wider community, if this was appropriate) were sent to the chief superior who made the decision after consideration of the general views. Such

her religious formation, had been revised by a French émigré priest, Fr. Gilbert. They contained many monastic features, e.g., semi-enclosure. The records of IBVM Irish Branch do not comment on the fact that the Irish foundress brought Mary Ward's Constitutions to the new Branch. This fact was noteworthy because the members of the Institute could not acknowledge Mary Ward as founder until 1909.

⁷ The separation of the Navan community and the temporary separation of the house in St. Stephen's Green, Dublin, were the immediate catalysts that prompted the general superior to formulate new constitutions. See [M. EVANGLINE MACDONALD], *Joyful Mother of Children: Mother Frances Mary Teresa Ball*, Dublin, M.H. Gill and Son Ltd., 1961, pp. 267-276 (=MACDONALD, *Joyful Mother*).

⁸ See 1832 *Constitutions*, part 4, ch. 1, no. 1, p. 117. "Chief Superior" was the title used in IBMV after suppression in 1631. We do not find the use of "general superior" until *Quamvis iusto* in 1749. The rescript *Inscrutabili* of Clement XI, 13 June 1703, approved only basic rules for IBMV. The apostolic constitution *Quamvis iusto* however, spelled out the duties of the general superior, relationships with local ordinaries and referred to the election of the general superior and consultors by the members. See *Quamvis iusto*, nos. 18-22, pp. 209-211. See also pp. 10-11, above.

⁹ See 1832 *Constitutions*, part 4, nos. 7, 9, pp. 174-176 and part 5, nos 1-5, pp. 177-179.

¹⁰ This was how the decision to send members to India occurred. M. Teresa Ball initially declined the invitation of the bishop of Calcutta; however, when almost every member volunteered, M. Teresa Ball took this as a sign of God's will for the Institute. Thus began the missionary thrust of the Irish Branch of IBVM. See MACDONALD, *Joyful Mother*, pp. 190-191.

decisions had the force of law.¹¹ The second consultation also allowed for the consultation of the members.¹² It was clear that while the general superior could make laws, nonetheless she was required to consult the members. In one instance only (for the alienation of a house) was the approval of “the entire Institute” required.¹³

The election of the chief superior, on the death of the incumbent, had two parts.¹⁴ The first took place in the local community where the superior and the four most senior members of the first degree¹⁵ gathered information about suitable candidates, shared it with all the houses, voted *in situ* and sent the sealed votes to the vicaress. The second part of the election took place when the vicaress assembled the five most senior electors from nearby houses. They counted the sealed votes. In the event of a tied vote, the assistants to the general superior voted between those of equal vote. The office was envisaged “for life” but provision was also made for a term.¹⁶ The Constitutions did not provide for the election of

¹¹ See *1832 Constitutions*, part 8, ch. 5, nos. 1-4, pp. 177-179.

¹² *Ibid.*, ch. 4, no. 9, pp. 175-176.

¹³ This condition was strongly worded: “[...] she is not empowered to demolish, desert entirely, or alienate the houses of the Institute, which have been actually erected, without the approbation of the whole Institute” (*ibid.*, no. 6, p. 174).

¹⁴ See *1832 Constitutions*, part 8, ch. 1, nos. 1-12, pp. 154-162.

¹⁵ Members were categorized: the “first degree” members were “choir sisters” who had the privileges of full membership, e.g., in relation to voting, but whose actions were tempered by the monastic rules that were attached to the Constitutions, e.g., in relation to going outside the cloister. The “second degree” sisters did not have the right to vote in the elections of officers but had greater freedom in relation to going beyond the cloister. The 1968 chapter abolished the distinction. See GC, 1 August 1968, in CAIB, P1/B3-4.

¹⁶ See *1832 Constitutions*, part 8, ch. 2, pp. 163-164. The process described for the election, bears a marked resemblance to that described for the election of the general superior of the Jesuits. See constitution (=cons.) 694, in SAINT IGNATIUS OF LOYOLA, *Constitutions of the Society of Jesus*, G.E. GANSS (trans.), St. Louis, MI, 1970, pp. 299-300 (=SJ *Constitutions*).

the assistants (consultors).¹⁷ The electors assumed their role because of seniority, not as representatives elected by the members. The most significant aspect of the election procedure, however, was that it was an entirely internal affair,¹⁸ and the principle of consultation was enshrined in the Constitutions as an essential feature of government.

4.1.2 – The First General Chapters 1862-1880: The Emergence of Representation

The expansion of the Institute had two main consequences: structures of government had to be created to suit the new reality and new Constitutions had to be written. The assembly held in 1861 to elect a new general superior consisted of members of the motherhouse only.¹⁹ The Constitutions approved *ad experimentum* later that year introduced several new elements in relation to government generally and the functioning of

¹⁷ The chief superior chose the consultors, with the consent and approval of the Archbishop of Dublin. See *1832 Constitutions*, cons. 30, p. 61

¹⁸ This freedom disappeared in the *1861 Constitutions*, which provided many instances of the role of the local bishop, e.g., as president of the elections for the general superior and consultors.

¹⁹ The rescript establishing the new Irish foundation placed it under the jurisdiction of the Archbishop of Dublin. Since he could “find no rule about the election or the power of the superioress either clearly laid down or approved by the Holy See” and since there was no formal canonical connection between the motherhouse and the seven houses founded in the diocese between 1821 and 1861, the Archbishop petitioned to have the jurisdiction of the general superior over these and future foundations recognised, provided the consent of the ordinary of the relevant diocese was obtained. The petition requested the powers established for the general superior in *Quamvis iusto*, but further requested that her power to transfer sisters from one diocese to another should be with the “consent and leave of the bishop or bishops in whose dioceses respectively the houses are situated” (P. CULLEN [Archbishop of Dublin], petition, [n.d.] 1861, in CAIB, Correspondence with the Holy See (=CwHS), P2/W/2 and PIUS IX, rescript, 26 September 1861, in *ibid*. The introduction to the *1861 Constitutions* explained that the spread of the Institute throughout Ireland and to India, Mauritius, North America, Spain and England, made it necessary “to place the different houses under one common head and to define and consolidate such jurisdiction,” according to the mind of Benedict XIV [in *Quamvis iusto*]. See *1861 Constitutions*, Introduction, p. 48. For an account of the Institute’s early history, see MACDONALD, *Joyful Mother*, pp. 267-276.

the chapter specifically.²⁰ The power of the general superior was more circumscribed. For the major tasks, e.g., transfer of sisters,

[...] she cannot act without the vote of her council of four mothers, whose decision she is bound to execute, so that any of the above-mentioned acts performed by her without their vote, or contrary to their decision, would be null and void.²¹

A six-year term of office was introduced, multiple reelections permitted, and criteria for eligibility established. Unlike the *1832 Constitutions*, the new Constitutions referred to the elective assembly as the “general chapter.” When the Constitutions were approved *ad experimentum* again in 1867, the general chapter was given the function of electing the consultors.²² However, the most significant development was that, in addition to the *ex officio* vote of the local superior, each local community that affiliated with the motherhouse was empowered to elect a delegate to represent it. Criteria for eligibility were given, with the proviso that the ordinary or his representative would preside at the election. There were two immediate problems with the new arrangement: no reference was made to the houses abroad and the greater representation given to the motherhouse would be a

²⁰ We know that the *1861 Constitutions* were drawn up for the Institute without any consultation with the members by “priests and religious of another order and which in some instances do not accord with the spirit of our rules which are those of St. Ignatius” (M. GONZAGA BARRY [Provincial Superior of Australia], letter to Cardinal Gotti, [n.d.], in CAIB, CwHS, 10/18). M. Teresa Ball had engaged the help of a Dominican priest, Fr. Tom Burke, and with the encouragement of Archbishop Cullen of Dublin, began to draw up these constitutions, which were finalized by her successor, M. Scholastica Somers. See MACDONALD, *Joyful Mother*, pp. 273-274.

²¹ Constitution 32 required the consultors to “assist the chief superior by their counsel and vote *with her* on all matters of importance.” Our understanding is that at this time in IBVM history, the general superior acted collegially with the members of her council. See *1861 Constitutions*, cons. 30, p. 59.

²² The requirements in relation to the archbishop’s consent and approval remained. See SCPF, rescript, 10 May 1867, in CAIB, Correspondence from the Holy See (=CfHS), 2/2/AS/8.

source of contention later on.²³ In addition, because of the role given to the ordinary,²⁴ elections ceased to be the purely internal function established in the first Constitutions.

Although the Constitutions provided for consultation with the chapter members on important matters,²⁵ the evidence suggests that the general chapters of 1868, 1874 and 1880 were elective only.²⁶ Until 1880, therefore, the primary role of the Irish Branch chapter was to elect the officers of the Institute as a body consisting of elected representatives and *ex officio* officers.

4.1.3 – The Representation of Mission Houses at the General Chapter

Government in houses abroad was loosely established initially. Each superior of a new mission received a copy of the Constitutions and in association with the bishop who

²³ Rathfarnham was given four delegates, two *ex officio* (the out-going superior and her assistant) and two elected representatives. Rathfarnham warranted extra representation “on account of the ordinary number of the community, viz., seventy” (P. CULLEN, petition, [n.d.] 1861, in CAIB, CwHS, P2/W/2). In 1898, Rathfarnham got another elected delegate, when the house received its own superior, distinct from the general superior. See SCPF, rescript, 21 December 1898, in CAIB, CfHS, 2/2/AS/8.

²⁴ He was to preside at elections, examine the votes and declare who had been elected. See *1867 Constitutions*, cons. 28-32, pp. 58-62. The lack of clarity regarding the local bishop’s precise authority in other matters became particularly problematic in 1900, when the Archbishop of Calcutta refused to allow the Indian delegates to attend the general chapter and when the Archbishop of Dublin refused permission for the transfer of sisters in Ireland. The provincial superior of India petitioned the Holy See for clarification of India’s status. See M. GONZAGA JOYNT, petition, 6 April 1905, in CAIB, CwHS, 1/1/RSA/5. The response clarified that all IBVM houses, irrespective of where they were, had the same rights; every provincial superior had a vote in the election of the general superior, as did the local superior of houses of 24 members. See SCPF, rescript, 20 April 1907, prot. no. 75381, in CAIB, CfHS, 1/RSA/5/2.

²⁵ “The elections having terminated, if there be anything of great importance to the Congregation and requiring general advice or consultation, the vocals can be assembled and consulted before they separate” (*1861 Constitutions*, cons. 31, p. 61).

²⁶ The 1868 chapter consisted of 22 vocals, 4 from Rathfarnham, with the superior and one elected delegate from the affiliated houses. This chapter elected four consultors. The general superior, M. Scholastica Somers, was reelected twice. See GC 1868 and GC 1874, in CAIB, P1/BC-1. All chapters in the Institute were elective, except for the extraordinary general chapters of 1971 and 1983. It is not always easy to determine the precise date of decisions of chapters or council meetings in both IBVM Branches. Our description therefore refers to those elements necessary and sufficient to locate the source.

had invited the Institute she put it into practice in the new situation.²⁷ The lack of formal juridical connection and provision, however, caused problems. In Canada, for instance, in the absence of guidance from the Constitutions, the local bishop helped M. Teresa Dease to devise a system of government for the Canadian houses. The Bishop of Calcutta did the same for the Indian province.²⁸ The general superior therefore petitioned the Holy See in 1880 to allow the mission houses to affiliate canonically with Rathfarnham. The immediate consequence was the establishment of a separate Branch of the Institute in North America and the gradual formalization of the canonical connection with houses in other areas.²⁹ The rescript gave each foreign house two votes in the election of the general superior. However, the rescript granting affiliated status to India (the first mission to apply for it) gave the province “all the privileges and indulgences of Rathfarnham.” Efforts to ascertain the meaning of these words proved futile initially, as neither the Archbishop of Dublin nor the Holy See responded to requests for clarification.³⁰ As a result, India “voted as Ireland

²⁷ Superiors general took a very practical approach to the problem of distance, empowered by the *1832 Constitutions* that enabled them to delegate power where delay would cause difficulties. This was particularly applicable to “places that are at a distance” (*1832 Constitutions*, part 8, ch. 4, no. 4, pp. 171-172).

²⁸ The general superior, M. Michael Corcoran, described her efforts to get these regulations approved by the Archbishop of Dublin, to the 1907 chapter: “he did not attend to them due to stress of business” (GC, 6 August 1907, in CAIB, P1/BC-1).

²⁹ India was the first to affiliate in 1881. Spain followed in 1900, S. Africa in 1904, Mauritius in 1908, Manchester, England in 1910. The records show that Australia had not formally affiliated in 1906. See CARD. G. JACQUEMIN, letter to M. Michael Corcoran, 11 May 1906, in CAIB, CfHS, 16/3. However, according to Wright, Australia became a province in 1894. See WRIGHT, *Mary Ward's Institute*, p. 139.

³⁰ The general superior wrote on the envelope containing the permission, “we are to experiment.” Although we do not have written records of general council minutes until 1887, M. Michael Corcoran, who was elected to the general council in 1880, explained to the general chapter of 1907 the process used in 1886 and described her efforts to have this rescript of 1881 clarified. A rescript in 1907 from the S.C. for Propagation of the Faith stated that each local superior of foreign houses could vote in the election of the general superior; the provincial and one delegate elected by each province could attend the general chapter. As a result, the election process included votes from the provinces, as well as votes of elected and *ex officio* members of the general chapter. See SCPF, rescript, 20 April 1907, prot. no. 75381, in CAIB, CfHS, 10/19.

did” in the 1886 election.³¹ The general superior, M. Michael Corcoran, recognised that the logical consequence of the rescript given to India was that all the foreign houses could legally demand equal representation with the houses in Ireland and that, as the Institute continued to expand, the system of voting needed examination and reorganisation.

The 1881 rescript allowed the provincial superior and one delegate to attend the chapter in person and bring the votes of the superior and elected delegate of each house of 24 members. In fact, the 1894 general chapter was the first attended by elected delegates and *ex officio* members from India, Spain and Australia. This chapter was also the first to record in detail its purpose and composition. The latter was weighted in favour of the Irish houses. The chapter’s purpose was to discuss government of the foreign houses, finance, the need to modify the Constitutions in relation to enclosure to provide for apostolic needs abroad, to elect the officers for the Institute and to decide the process to be adopted in the event the general superior died during her term of office. The chapter provided a solution to the problem of a tied vote: in this case, the two vocals of each province would vote with the vocals in the Irish houses in a second scrutiny. This procedure provided the Irish houses with more votes, since Ireland was not a province at this period.³² The 1894 chapter, therefore, indicated a further evolution in the chapter’s role: in addition to elections, the chapter made decisions regarding government and its composition was more representative of the Institute worldwide.

³¹ The records indicate Australia voted as India did. See GC, 6 August 1907, in CAIB, P1/BC-1.

³² It is interesting to note that formally, there were, as yet, no provinces in the Institute. Yet, the general chapter minutes use this terminology consistently from 1894.

4.1.4 – The Impact of the *1901 Norms* on the General Chapters of 1907 and 1913

The juridical nature of the general chapter became more pronounced because of the influence of *Conditae a Christo* and the *1901 Norms*. This can be seen clearly in the records of the juridical procedures³³ adopted by the 1907 general chapter.³⁴ The general superior clearly controlled the agenda. She proposed amendments to the Constitutions for the vote of the chapter. She proposed a solution to the problem of representation that clearly favoured a more equitable representation of the provinces.³⁵ To minimize the problems created by distance and the expense of bringing delegates to the general chapter every six years, she proposed a twelve-year term of office. However, additional agenda came from the “billets” sent by the members.³⁶ The 1907 chapter provided our first

³³ See GC, 3–4 August 1907, in CAIB, P1/BC-1. There were 40 vocals present: the general superior and council (5), the provincials of Australia and India and one vocal from each province (4), the superiors of the Missions in Spain and S. Africa, with two local superiors from Spain and one from S. Africa (5), plus two from Gibraltar (2) and twelve superiors and twelve elected delegates from Ireland (24). In this arrangement, mission areas had better representation at the general chapter than provinces, which arrangement caused problems, for the Australian superior in particular, who complained that the ten houses in Australia had only two votes while the Irish province, with 13 houses, had 26. See M. GONZAGA BARRY, Memorial to His Eminence Cardinal Gotti, [n.d.], in CAIB, CwHS, 10/18. The minutes provided a clear picture of chapter procedures, accounts of votes taken to amend the Constitutions and discussions regarding a more equitable division of the Institute into provinces. Since the Constitutions did not provide a procedure for the chapter of affairs, the general superior proposed the adoption of the method used in IBMV houses in Europe; there were rules of secrecy and rules concerning the manner of holding elections; regulations concerning the chapter officials were agreed.

³⁴ The chapter scheduled for 1906 was postponed as a result of visitation by the Archbishop of Dublin in 1905. He blamed the general superior for the unrest in Ireland caused by her efforts to promote general union. She was deposed and a vicar installed. We know from M. Michael's report to the 1907 chapter, which reelected her (unanimously), that the Holy See also wanted to clarify the issue of representation of the houses abroad. See GC, 7 August 1907, in CAIB, P1/BC-1.

³⁵ More representation for the provinces was a constant theme from 1894. M. Michael Corcoran proposed that the communities should vote for two-thirds of the representatives while one third should be *ex officio*, representing superiors and the general consultants. No vote was taken, as she had not ascertained the views in Ireland. Because of the divisions created by discussion of general union in previous years, she postponed discussion on the issue. See GC, 3 August 1907, in CAIB, P1/BC-1.

³⁶ Ten postulates “sent in since the last meeting” were discussed. It is unclear whether these came from the chapter members or from the wider community, but the significance lies in the fact that for the first time, some of the general chapter agenda came from members and not the general superior. See GC, 5 August 1907, in CAIB, P1/BC-1.

example of an IBVM chapter that operated in accordance with clearly defined rules and procedures, approved by the chapter itself. The members influenced the agenda and, although there were problems with equitable representation, the ground was prepared for the solution approved by the following chapter.

The juridical position of the provinces was unclear since the Holy See had not responded to the petition concerning amendments to the Constitutions approved by the 1907 chapter.³⁷ Australia favoured adopting an amended version of the text approved for use in some IBMV houses in Europe.³⁸ Many of the Irish province members strongly disapproved.³⁹ As a result, in addition to potential discord concerning Constitutions,⁴⁰ several issues needed to be addressed: the valid convocation of the 1913 chapter in view of the proposed change in terms of office; the validity of appointments or elections of provincial superiors;⁴¹ the discrepancies in the Constitutions in relation to *Conditae a Christo* and the *1901 Norms*. Another issue to decide was whether the ruling of 1907 in

³⁷ See MINUTES OF GENERAL COUNCIL, 22 April 1912, in CAIB, P1/B2. We know from the chapter minutes that amendments to the *1877 Constitutions* were sent to the Holy See in 1907, but the petition was not answered. See GC, 26 July 1913, in CAIB, P1/B2-2.

³⁸ The Australian provincial, M. Gonzaga Barry prepared a text based on the *Heller Constitutions*, after the union meeting in 1900, for which she sought approval from the Holy See. See M. GONZAGA BARRY, petition, 8 April 1908, prot. no. 1974/17, in the Archives of the S.C. for Institutes of Consecrated Life and Societies of Apostolic Life (=Archives, SCICLSAL), M10/5.

³⁹ The Irish members feared that the Institute would lose the support of the priests and bishops in Ireland. See GC, 25 July 1913, in CAIB, P1/B2-2.

⁴⁰ A letter of the general superior in 1926 described the years between 1900 and 1913 as full of “strife, disunion and painful unrest” because of dissention concerning the Constitutions and the “fear” that the Constitutions were being changed with a view to union with Germany. See M. RAPHAEL DEASY, letter to SCR, [n.d.] May 1926, prot. no. 6570/23, in the Archives, SCICLSAL, M10/7.

⁴¹ Because of lack of regulations, custom had determined that the Indian Province elect the provincial, subject to ratification by the general council. As there was no regulation regarding Australia and Spain, the superiors of the mission were left in office from the foundation of the respective missions. Since that might be declared illegal, the general superior requested permission for them to remain in office until “our affairs are settled” (ibid.).

relation to India pertained in the representation permitted to all the provinces for the general chapter.⁴²

Because of the unrest caused by the question of new Constitutions, the Holy See issued instructions concerning the 1913 chapter and, in this way, influenced its agenda.⁴³ The most urgent issues that required attention concerned the juridical position of the houses abroad and whether to adopt completely new Constitutions or one of those already accepted in other Branches of the Institute.⁴⁴ Since the existing *1877 Constitutions* did not give directions regarding the conduct of chapters of affairs, the general superior proposed the method used in some of the IBMV houses abroad.⁴⁵ In addition, the role of chapter delegates was expanded. A committee was established to prepare the work of the general

⁴² Was representation to be as prescribed for the previous chapter when the superior of each house in the missions sent a written vote and the provincial and one delegate, elected by the province voted in person at the general chapter? The general superior had two suggestions: either to give the missions the same number of votes as Ireland, i.e., two for each house (these written votes would be sent to the general chapter) or allow the same number of representatives in each of the provinces, including Ireland. She favoured the second option as the more equitable one. The general superior had reason to believe that some of the Irish sisters were to petition the Holy See to lessen the votes of the mission areas. She regarded this as a great injustice and quoted the rescript of Leo XIII, which granted the missions the same privileges as Ireland. See M. MICHAEL CORCORAN, letter to Card. Steinhuber, 1 October 1912, in CAIB, CwHS, 16a/17-18.

⁴³ See SCR, instructions [concerning the composition of the 1913 chapter and the Constitutions], [29 January 1913], prot. no. 47/13, in CAIB, CfHS, A32. There are frequent references to the issue of general union among all the Branches in successive general chapters. However, this was abandoned in the 1930's when political issues compounded the negative views of some of the Irish Branch to the question of union with the German Branch. Although general union was not favoured, there was communication among the Branches. For example, the general council minutes for 1915 record the decision to "lend" three sisters to the Roman Branch who had to leave Rome because of the war. See MINUTES OF GENERAL COUNCIL, 15 September 1915, in CAIB, P1/B2. In 1950, the Roman Branch took over a house that the Irish Branch was unable to staff. See MINUTES OF GENERAL COUNCIL, 15 June 1950, in CAIB, P1/B2.

⁴⁴ Five constitutions were presented to the 1913 chapter by the general superior: the *1832 Constitutions*; the Constitutions in use since 1861 and definitively approved in 1877; Fr. Heller's Constitutions approved and in use in Canada, Austria, Prussia; the Bavarian Constitutions observed in Nymphenburg; new constitutions drawn up in accordance with the new legislation "as far as we know it" (GC, 25 July 1913, in CAIB, P1/B2-2).

⁴⁵ The session was to be summarized by the secretary and presented to the next chapter session. After discussion and corrections, the minutes were to be signed by all the capitulars (up to then, minutes were signed by the general superior and secretary only). See GC, 26 July 1913, in CAIB, P1/B3-2.

chapter, to read suggestions sent by the members and to decide if they were to be brought to the chapter. In other words, the members' role in the formulation of agenda was recognised and the committee of delegates authorized to make decisions regarding the relevance of such postulates for the whole chapter.⁴⁶ However, the most important work of the 1913 chapter was the approval of new structures, which were enshrined in new Constitutions "drawn up in accordance with the *1901 Norms* and Decrees of the Holy See."⁴⁷

4.1.5 – Expansion of the Purpose of the General Chapter: *1913 Constitutions*

What most distinguished the Constitutions approved by the 1913 chapter⁴⁸ was the great detail in relation to the supreme authority of both the general superior and chapter over the whole Institute,⁴⁹ a description clearly influenced by the *1901 Norms*.⁵⁰ There

⁴⁶ The 1913 general chapter was significant for a number of reasons: it followed a clearly defined procedure; new constitutions and new government structures for the Institute were agreed; the question of general union, although promoted by the Holy See was deferred because the time was not ripe. From then on, there were frequent references to the law in the minutes of both general council and general chapter meetings.

⁴⁷ See M. MICHAEL CORCORAN, letter to the Holy Father, [n.d.] 1916, in CAIB, CwHS, 10/72.

⁴⁸ See SCR, decree, 29 December 1913, in *1913 Constitutions*, pp. vii-viii. The Appendix to the constitutions contained a rescript regarding confession, granted 13 March 1842 with the note appended "this rescript was extended by apostolic authority to us" (p. 111); the 1877 decree of confirmation of the IBMV Institute; the rescript of 16 June 1913 declaring a provincial superior could not also hold the office of local superior; the rescript approving the division of the Institute into provinces, 8 November 1913; the decree *Quemadmodum*, 20 January 1891, forbidding the practice of manifestation of conscience by those who had no ecclesiastical governance; decrees on daily communion, 20 December 1905, indulgences, [n.d.], and on confessions of nuns, 13 February 1913; instruction on the debts and obligations incurred by religious, 30 July 1909. In other words, the *1913 Constitutions* included all the universal law applicable to religious at that time.

⁴⁹ The length of the government section (201 constitutions), reflected its attention to juridical requirements that were not articulated in previous constitutions. The *1913 Constitutions* provided the first description of chapter as ordinary (one convoked at the expiry of the general superior's term, or after her death), or extraordinary (a necessary convocation, e.g., on account of the resignation or deposition of the general superior, or for some other reason approved by the Holy See [cons. 187]). The *1927 Constitutions*, revised in accordance with *CIC/17*, defined the ordinary chapter as one that occurred at the expiry of the

were lengthy sections on representation,⁵¹ elections of the general superior (cons. 203-207/norms 224-238), the councillors and other officials (cons. 208-214/norms 239-245, 248), the role of the general chapter (cons. 215-222/norm 246),⁵² and the authority of the bishop in relation to all the houses (cons. 380-386/norm 259).⁵³ Because the *1901 Norms* forbade the inclusion of anything that was not strictly juridical, the *1913 Constitutions* provided much detail in relation to law (norms 26-34), while the spirit and charism of the Institute, as in all constitutions of the period, received no attention.⁵⁴

general superior's term (cons. 260). The general superior could be reelected provided she received a two-thirds majority and the approval of the Holy See (cons. 188/norm 236). In the exercise of her authority the general superior's role in relation to the provinces was spelled out. It is interesting to note the requirement to take account of local situations and national law. She was also "recommended to make account of the voice of the province" when appointing provincials (cons. 242), which also required the decisive vote of the councillors (cons. 254). In other words, some of the issues significant today, e.g., subsidiarity, the proper authority of superiors at every level, local culture, and consultation were to be found in the *1913 Constitutions*. The authority of provincials and provincial councillors provided for the exercise of subsidiarity. This is also clear in relation to superiors. The constitutions state that the superior of each house "enjoys that authority which the Constitutions give her. Hence it is not to be said that she only represents the Mother-General or Provincial or that her authority is borrowed for that house" (cons. 365). This provides an interesting understanding of authority, one that accords with *CIC* (c. 618).

⁵⁰ Cf., norm 203 and cons. 185.

⁵¹ Details concerning the election of delegates/substitutes (by secret vote of the provincial chapter) were given. Provision was made for additional representation from provinces of more than 100 members and for *ex officio* representation (cons. 194/norms 213-216).

⁵² There were descriptions concerning when (cons. 186, 191/norm 205), how (cons. 192/norm 211) and where the chapter was to be convoked (cons. 193/norm 211). The matters over which it exercised its authority were named: elections (cons. 186/norm 231); the more important business affecting the whole institute (cons. 215-222/norm 246), and particularly what required permission from the Holy See, which now included specifically, the revision of constitutions (cons. 189, 215/norm 246). In addition to elections, more important business required vote by secret ballot (cons. 216/norm 218).

⁵³ For the role of the local ordinary in women's institutes, see above, pp. 14-15.

⁵⁴ The *1901 Norms* (nos. 26-34) provided detailed instructions as to what was to be excluded from constitutions: references to Scripture, the Fathers of the Church, theology, writers, etc. They mandated that constitutions contain *leges constitutivae* as well as whatever pertained to government, discipline or norms for living the religious life (no. 33). There was even a directive concerning the format in which constitutions were to be written. A comparison of the *1913 Constitutions* and the *1901 Norms* shows that even the headings provided by the *1901 Norms* were encapsulated into the *1913 Constitutions*. However, the *1913 Constitutions* provided a little individuality in the rearrangement of the placing of certain issues, e.g., details concerning the convocation of the chapter were given under the section dealing with the authority of the

The notion of the “supreme authority” of the general chapter, exercised in an extraordinary fashion, contrasted with the absence of a similar description of the authority of the general chapter in the *1877 Constitutions* and reflected the evolving understanding of the concept of authority in religious institutes, the efforts of the Holy See to structure it and the centralization of authority that was a feature of the late 19th and early 20th century Church. By contrast with the brief description of the general chapter in the *1877 Constitutions*, the *1913 Constitutions* provided a much more detailed description of its authority, role and functions. It functioned as a legislative body whose ordinances remained in force until the next chapter as there was a specific reference to the binding force of chapter acts (cons. 221/norm 250). While its authority was not superior to that of the general superior, she was accountable to it (cons. 297). It was a forum for deliberations and decisions on matters of importance to the whole Institute, e.g., the division of the Institute into provinces.⁵⁵ The juridical impact of the *1901 Norms* was evident in the requirement for the validity of the general chapter acts, that at least two-thirds of the vocals must be present (cons. 195). The importance of the chapter was acknowledged in the provision to allow whatever time the chapter needed to conduct its business (cons. 220/norm 249). The limits to its authority were clearly set: it could not modify or authentically interpret the Constitutions, “except such acts are afterwards confirmed by the Holy See” (cons. 222/norm 251).

general superior. However, all substantive issues conformed almost exactly to the *1901 Norms*. The customs of the Institute were published separately in 1914.

⁵⁵ The 1913 general chapter erected five provinces: Ireland (including two houses in Gibraltar), India, Australia, Spain and England and two vice-provinces, Mauritius and the Transvaal in Africa, which were under the jurisdiction of the provincial superior of India. For the first time, Ireland had a major superior who was not the general superior. See SCR, decree, 8 November 1913, in CAIB, CfHS, P1/B1/RS/A1.

For our purposes, the importance of the *1913 Constitutions* lies in the acknowledgment of the supreme nature of the authority given the general chapter and their clarification of the authority of the general superior in relation to the chapter. By the beginning of the 20th century, therefore, the experience of government in the Institute and the guidelines provided by the Holy See had clarified several issues. The general chapter exercised supreme authority. Representation at the general chapter was a canonical right of all members. The chapter's function included elections, reform of Constitutions, as well as those internal decisions required for the lives and ministries of the members. At the same time, the *modus operandi* of the chapter had to include some juridical elements prescribed by the Holy See. Unfortunately, because of the strict adherence to the *1901 Norms*, the Constitutions lost some of their individuality.⁵⁶

4.1.6 – Uniformity and Hierarchical Government: The Impact of *CIC/17*

The promulgation of *CIC/17* necessitated another revision of the Constitutions.⁵⁷ Instructions from the Holy See concerning what must be included and excluded and the prohibition against translating norms created an expectation that particular law had to

⁵⁶ There exists in CAIB a copy of the *1911 Constitutions* of the IBVM Munich-Nymphenburg Branch, used by the IBVM Irish Branch general superior, M. Michael Corcoran, in which she compares the *1913 Constitutions* with the *1901 Norms* and the *Heller Constitutions* proposed for the union of all the Branches. There is an extraordinary similarity between these constitutions due mainly to the mandate to follow the *1901 Norms*. See *Constitutions of the Institute of the Blessed Virgin Mary or English Ladies, United under the General Mother-House Munich-Nymphenburg*, Rome, Vatican Polyglot Tipography, 1911, in CAIB, P2/W/M9.

⁵⁷ The general chapter of 1919 amended the constitutions, which were approved *ad experimentum* by the Holy See for seven years. See SCR, decree, 24 July 1928, in CAIB, CfHS, P1/B1/RS/B. Definitive approval was given in 1937. See ID., decree, 2 March 1937, prot. no. 749236 in CAIB, CfHS, P1/B1/RS/B.

conform exactly to the regulations provided.⁵⁸ In addition, institutes of women, in particular, had to rely on canonists to guide them in the formulation of their own law. The *1927 Constitutions* were structurally quite different to the *1913 Constitutions* yet they were very similar in their attention to juridical details.⁵⁹

The section on authority in the institute began with a clear statement concerning the authority of the supreme pontiff and the local ordinary. While always presumed, the *1913 Constitutions* did not make a statement concerning this authority. The *1927 Constitutions* reverted to the definition given in the *Norms* for the ordinary and the extraordinary chapters (cons. 260). The general superior could convoke a chapter of affairs but the phrase is added “with the deliberative vote of the council” (cons. 266), which added to the list of issues for which the general superior required the consent of the council (cons. 366). The juridical effect of *CIC/17* could also be seen in frequent reference to the issue of validity of votes or decisions (e.g., cons. 335) and the even greater attention to detail. As a result of the strict adherence to the requirements of the law, particular laws of institutes lost their individual character: particular law became simply a reflection of the universal law. This trait was evident in IBVM Constitutions. There was also a notable change in relation to elections. Constitution 280 legislated for the practice of *murmuratio* to elicit suitable

⁵⁸ Canon 489 of *CIC/17* abrogated those norms in the particular law of religious congregations that were not in conformity with the universal law. Decrees of the Holy See ensured the process of adjustment was undertaken. In order to acquaint the members with the law, the general superior sent a copy of a text called “Canonical Legislation” to the members in 1918, marking the parts that “do not refer to us” (M. MICHAEL CORCORAN, letter, 30 August 1918, in CAIB, P2/W/M9). See also *Canonical Legislation Concerning Religious*, authorized English translation, Rome, Vatican Printing Office, 1918. The 1918 Declaration further reinforced the authority of general chapters in relation to constitutions. See above, p. 38.

⁵⁹ The *1927 Constitutions* had two main parts. The title of part 2 “Of the Government and Administration of the Institute” indicated clearly that the constitutions were to provide even more details in relation to daily administration than the *1913 Constitutions*. See *1927 Constitutions*, pp. 55-76.

candidates.⁶⁰ A new feature in relation to the reelection of the general superior was the absence of the requirement of approval of the Holy See for the second twelve-year term. This recognised the Institute's autonomy in relation to its internal affairs, in keeping with the evolving understanding of the nature of the dominative power of the chapter.

The rights of members were also acknowledged. Chapter members and each house of the institute could put its wishes forward to the general chapter (cons. 301). This prescript widened the formulation of the agenda to include the input from the membership of the Institute. Representation at chapters was structured by the division of the Institute into provinces, approved by the 1913 chapter. The principle of consultation with the members, which was not alluded to in the *1913 Constitutions*, appeared again in the *1927 Constitutions* (cons. 301).

By their attention to the details of government, the *1913* and *1927 Constitutions*, inspired by the legislation of the Church, created a very strong expression of centralized government in the Institute. As in *CIC/17*, the hierarchical nature of authority was clearly delineated and, because the exercise of governance was modeled strictly on the common law, there was no room for creativity in constitutions. Instead, there was frequent recourse to the Holy See in order to ensure compliance with universal norms. As a result, the following period was characterised by uniformity and an emphasis on the hierarchical nature of authority in the Institute and in the Church.

⁶⁰ The constitution specified that, before the election "it is lawful to discuss privately and discretely among themselves which sister may be more suitable for this or that office, but they must refrain absolutely from direct or indirect canvassing of votes either for themselves or for others" (*1927 Constitutions*). A similar practice had been provided in the *1832 Constitutions*. See *1832 Constitutions*, part 8, nos. 1-2, pp. 154-155.

From 1919 to 1960, elective chapters took place every twelve years.⁶¹ General chapter agenda indicated the main concerns of the period related to the practical expression of government. The records of both general chapter and council deliberations contain frequent references to the law. Because the Constitutions contained detailed rules relating to life and ministry, with regulations concerning *minutiae* such as writing letters, the law became associated with details. These in turn had to be approved by the Holy See and changed only with its permission. Issues that after Vatican II would be confined to the Institute's own law could only be adjusted, changed or removed if the general chapter went through the lengthy process of drawing up new norms that had then to receive the approval of the Holy See.⁶² In addition, because of the prescription of c. 510 of *CIC/17*, the details of government required by the Quinquennial Report, and the additional Annual Report required from 1947, placed an undue emphasis on reporting *minutiae* and further accentuated the hierarchical nature of authority.⁶³ This latter emphasis was evident also in

⁶¹ The number of representatives to the general chapters reflected the actual numerical position in the provinces: 23 vocals attended in 1919; 33 in 1931; 35 in 1936 and 1948; 33 in 1960. See Minutes of General Chapters 1919-1960, in CAIB, P1/BC-3. By 1968, IBVM membership was 1,500.

⁶² One of the notable features of the period concerns the confidence of the provinces to govern themselves. General chapter records indicate that the main concerns of this period, in addition to elections, related to clarifications of Constitutions (GC 1919 and 1931), discussion and agreement regarding the Customs Book (1936), discussions concerning Mary Ward (1948). See Minutes of General Chapters 1919-1948, in CAIB, P1/B3-2. The records for 1948 indicated that permission had to be sought from the Holy See for such as, e.g., permission for members to stay in hospital. See Minutes of General Chapter 1948, in CAIB, GC3/7.

⁶³ As early as 1861, the SCBR asked congregations of religious women to send an occasional report. The 1901 Norms (no. 262) required a Report every three years. An instruction of the SCR in 1906 gave 98 questions to be answered. *CIC/17*, c. 510 changed the requirement to every five years. A new instruction in 1922 provided 105 questions. This was updated in 1947 and there was another request for an annual report in addition. Questions required details concerning material things, e.g., the religious habit, pious exercises, etc. See SCR, decree, 25 March 1922, in *AAS*, 14 (1922), pp. 161-163; ID., Instruction Concerning the Quinquennial Report, in *AAS*, 15 (1923), pp. 459-466; ID., instruction concerning the quinquennial report of Religious *Cum transactis*, 9 July 1947, in *AAS*, 40 (1948), pp. 378-361, English translation in *CLD*, vol. 3, pp. 158-207. See also SCR, letter, 9 February 1950, in *CLD*, vol. 3, pp. 207-212. See also See Minutes of General Chapter 1948, in CAIB, GC 3/7.

the appointment of all superiors by the general superior.⁶⁴ From the 1960 general chapter on, dissatisfaction with this approach and with some of the monastic practices in IBVM provided the first indication that the *status quo* was in conflict with the demands of apostolic life in the modern world.

4.1.7 – The Winds of Change: The Impact of Vatican II

As we have seen, the years before and after the Vatican Council were years of great change in the Church. Belief in the public nature of dominative power gradually enabled general chapters to carry out functions formerly associated with the exercise of jurisdiction.⁶⁵ The discussions of the general chapter of 1960 indicated a new confidence to make changes in relation to liturgical practices, religious dress and terms of office. However, one of the key principles of democracy, i.e., the fundamental equality of all persons, did not impact on the decision to retain degrees of membership in the Institute until the general chapter of 1968, when discussions on equality resulted in the suppression of the class system.⁶⁶ The 1968 chapter was notable for its response to Vatican II, providing expert theologians and canon lawyers to explain the implications of concepts such as subsidiarity for the government of the institute. However, a motion to allow all members to suggest names for the election of the general superior and councillors was

⁶⁴ Although the practice of electing superiors at lower levels of authority was the custom in many religious institutes, the Jesuit model followed in IBVM relied on consultation and appointment by the general superior. Constitution 417 described the appointment of local superiors in terms of an election by the general superior and council on the proposal of the provincial superior and council. See *1937 Constitutions*, cons. 374, 415, pp. 81, 90.

⁶⁵ See above, pp. 42-46.

⁶⁶ See GC, 1 August 1968, in CAIB, P1/BC-3.

defeated.⁶⁷ A significant change was made in the system of determining delegates to the general chapter: 50% of elected representatives would come from an open panel and 50% from different age groups. This decision widened the representation considerably and ensured the presence of younger members at future general chapters.

The most significant debates, however, concerned the function of the chapter and the representation of the provinces. In keeping with the prescripts of *ES II*, “the formulating of general principles and recommendations to guide the continuous renewal of religious life” became a key function of the general chapter.⁶⁸ This recognised one of the fundamental principles of *Perfectae caritatis* that renewal is ongoing, and its dynamic had to be at work in constitutions.⁶⁹ The unprecedented authority given to the general chapter to change the Constitutions enabled it to authorize opportunities for collaboration and participation to the membership at large in the period between 1968 and 1971.⁷⁰ These consultations drew attention to contemporary tension regarding “the hierarchical model in an age that strongly contests it.”⁷¹ Questioning of hierarchical authority and the influence of democratic principles were reflected in reports from the provinces given to the general

⁶⁷ See GC, 29 July 1968, in CAIB, P1/BC-3.

⁶⁸ See GC, 3 August 1968, in CAIB, P1/BC-3.

⁶⁹ The acts of the chapter reflected the values of Vatican II: authority was described as service; leadership as a principle of unity; the principles of subsidiarity and the notion of dialogue, the shared responsibility of members for the Institute, appeared in the acts of the general chapter for the first time. See GC 1968, *Response in Love: Acts of Special General Chapter, Institute of the Blessed Virgin Mary*, Dublin, Elo Press, 1968 (= *Response in Love*).

⁷⁰ For the first time, the membership at large had a role in the formulation of constitutions. See GC, 24 August 1968, in CAIB, P1/B3-4. M. Evangeline MacDonald was appointed Institute Director of the Constitutions Committee and was deputed to go to Rome to study the IBMV Constitutions, evidence of the continued interest in general union. See Minutes of General Council, 15 May 1969, in CAIB, 2 BC/7.

chapter of 1974.⁷² There were also requests for equal representation of provinces, irrespective of the numbers therein, at general chapters.

The general chapters of 1960 and 1968 modified the *1937 Constitutions*, introducing the function of renewal to the areas over which the general chapter had competence.⁷³ The 1968 chapter authorised the general superior, in consultation with the council, to edit, reconcile differences, combine appropriate norms, publish and promulgate the norms of the chapter. She was also authorized, acting with “the deliberative vote of the council,” to initiate, modify and terminate experiments and their expression in the *Constitutions*, i.e., she was required to have the consent of the council to act. She was also authorized, again with “the deliberative vote of the council,” to interpret the

⁷¹ This is the first recorded questioning of hierarchical authority, something that recurred in the 1980's and 1990's. See GC 1971, Examination of General Superior's Report 1971, in CAIB, P1/B7/GC 2/20. See also above, pp. 115-118.

⁷² The English province chapter expressed its concern about the understanding of the concept of authority and the confusion caused by the influence of democratic principles. This chapter specifically addressed the challenge to authority as to its origins, validity and relation to the freedom of the individual. The chapter proposals included that there should be equal representation from all provinces at a general chapter, that observers should attend provincial assemblies and chapters, and the terms of office and reelections should be reviewed. See GC 1974, English Province Report, in CAIB, P1/B8. The Australian chapter proposed greater internal autonomy and equal representation of provinces at the general chapter. The Mauritian chapter were the first to introduce the concept of “team” regarding general consultors from the provinces. S. Africa wanted more representation from “mission lands” on the general council. Arizona, a newly formed region, wanted greater representation and a way to represent the “younger members.” They had a proposal to make assemblies of the region “open to all” and were concerned that chapter delegates would know the views of those they represented. The general superior, when informing the region that they were to have one elected member at the chapter of 1974, authorized all professed members to take part in the election and to prepare the report and proposals for the chapter. The Arizona assembly was the first “open” one in IBVM Irish Branch. See GC 1974, Preparation for GC 1974, in CAIB, CP/2.

⁷³ GC 1968 modified cons. 297, which defined the affairs to be transacted at the chapter: financial decisions, issues related to temporal goods and the means of restoring or perfecting discipline (cons. 297 [6]). The latter function became “the formulating of general principles and recommendations to guide the continuous renewal of religious life” (*Response in Love*, pp. 94-97). The general chapter's function included promotion of vocations, directing formation and the apostolate of the Institute. There was a decree authorizing the admission of expert members of the Institute to a session (s) of the chapter, without the right to vote. Terms of office were changed to six years, with two possible reelections. The first two scrutinies of elections required an absolute majority of votes, the third required two-thirds. The consultors could only be

Constitutions.⁷⁴ Certain constitutions, e.g., on dowries, were brought into line with the new legislation.⁷⁵ However, no new Constitutions were drawn up until the “*Interim Constitutions*” of 1971. These Constitutions described the general chapter as “the supreme internal legislative organ” (cons. 118). Meanwhile, the S.C. for Religious and Secular Institutes drew attention to the need for the individual religious to know her rights. Other aspects addressed were: the consultative and deliberative roles of the general council, the application of subsidiarity in relation to the competence of provincial superiors and the role of the ordinary in some aspects of the administration of temporal goods.⁷⁶

Perhaps the most noteworthy difference in the exercise of government in the Institute was the widespread consultation with the members between 1971 and 1986 when new Constitutions were promulgated. These consultations, as well as enabling the

reelected once. The principle of consultation was adopted in relation to filling offices at provincial and local levels. See GC, 23 August 1968, in CAIB, P1/BC-4.

⁷⁴ It is interesting to note the levels of authority given the general superior by the 1968 chapter and the significance of the role to be played by the council. The latter plays a consultative role in relation to editing documents of the chapter, the supplementary books of proper law, establishment of commissions, etc. However, in such major matters as changing Constitutions or in relation to experiments by the members, she must obtain the deliberative vote of the council. In other words, she cannot act without their authorization. The type of authority was new for the council. It did not become a feature of government in the promulgated Constitutions. See *Response in Love*, pp. 91-93.

⁷⁵ The chapter authorized deletion of the constitutions referring to a dowry (cons. 13, 14, 140); cons. 134-136 on wills and the disposal of property were amended in accordance with the requirements of *Cum admotae* (see above, p. 71); cons. 126 was amended to permit disposal of property in accordance with PC, no. 13; references to degrees of membership were suppressed (e.g., cons. 5). The authority permitted to the general superior by the prescripts of *Cum admotae* and *Religionum laicalium* found expression in the acts she was to carry out in virtue of GC 1968. See above, pp. 72-73. The 1937 *Constitutions* remained in force except where general chapter acts had modified their provisions to bring them into accord with new laws of the Church. Ibid.

⁷⁶ See CRSI, letter to M. Agnes Walsh, general superior, 8 June 1974, prot. no. M.10c, in CAIB, CfHS, CP/27. CRSI had written observations concerning the revision of constitutions in women's institutes in 1972, which drew attention to the need for consultation and collaboration with members while respecting the superior's right to make the final decision, to make provision for collaboration and adequate representation at general chapters, and clarification of powers given to councils whether at local or province level. Given the fact that there was no blueprint from which to work, it is a testament to the knowledge and expertise of these religious women that there were so few recommendations suggested by the Holy See.

involvement of members in commissions and research bodies concerning every aspect of life and ministry of IBVM members, enabled them to participate in and contribute to the making of key decisions regarding their lives and apostolic endeavours. In addition, the changes made to election procedures at local level brought about a better representation of members at provincial chapters, which in turn benefitted the composition of general chapters. However, the decision to take the Constitutions of the Society of Jesus as the model to follow brought the issue of hierarchical government to centre stage in the lives of IBVM members.

4.1.8 – Defining Moments in IBVM History

General chapters have been described as defining moments in the life of an institute.⁷⁷ This is true of the 1980 chapter of IBVM, the preparation for which included worldwide consultations with bishops, priests, parishioners and all associated with the IBVM school apostolate.⁷⁸ During the preparation for revision of the Constitutions, a discernment was initiated that resulted in the general chapter decision to adopt the Constitutions of the Society of Jesus, adapted according to the mind of Mary Ward, as the fundamental law of IBVM, together with a modern document.⁷⁹ This decision prompted

⁷⁷ See P.S. MOFFETT, “Viewing Chapters as ‘Authoring’ Our Congregations’ Narratives,” in *R/R*, 63 (2004), p. 171.

⁷⁸ See GC 1980, Chapter Acts *Veni lumen cordium*, in CAIB, P5/77, p. 8. The chapter minutes were made available to the membership for the first time.

⁷⁹ The impetus for this decision came from a meeting of provincials with the general superior and council in 1979. The whole Institute was consulted at personal, community and province levels and the discernment concluded by the vote of the general chapter in 1980. See GC, 18-20 July 1980, in CAIB, P1/B9, pp. 72-74 and 97. The special general chapter of IBMV, held in 1968, had decided to adapt the Ignatian Constitutions because this was the intention of Mary Ward. Study of the Ignatian text, with the help of Jesuit experts, led to the adoption of those parts that were relevant to the Institute. Three modern documents were also approved: Orientations, Juridical Norms and Particular Decrees. See *Decrees of the General*

much debate concerning the powers of both chapter and general superior. In the Jesuit model, the general chapter is an instrument of unity that represents the whole body and gives priority to the collective wisdom of the congregation. It is convoked for elections and

[...] when it is necessary to deal with long-lasting and important matters, as would be the suppression or transference of houses or colleges, or with other very difficult matters pertaining to the whole body of the Society, or its manner of proceeding, for greater service to God our Lord.⁸⁰

In the exercise of its power, the general chapter is the only legislator in the Society; its legislative capacity is exercised, in the context of the charism as expressed in the “Spiritual Exercises,” by the jurisdiction of the Holy See and by the Constitutions. The guiding principle for holding the general chapter consists in the belief that the chapter is a means to an end,⁸¹ and, therefore, it should be held only when the importance of issues requires it.

In imitation of the Jesuit model, the 1980 chapter designated the general chapter as the supreme legislative authority and described the general superior’s power as “executive,” a position reiterated by the 1983 general chapter and enshrined in the 1986 *Constitutions*.⁸² Accordingly, in IBVM, the general superior has power to initiate, modify

Congregation 1977, Institutum Beatae Mariae Virginis: Orientations for Religious Life in the IBMV, Juridical Norms, Particular Decrees, Rome, IBMV, 1979 and Constitutions, Rome, IBMV, 1979. This decision by the Roman Branch influenced the Irish Branch decision.

⁸⁰ See *SJ Constitutions*, cons. 677 and 680, pp. 294, 295.

⁸¹ See J.W. PADBERG, “The General Congregation of the Society of Jesus,” in *Studies in the Spirituality of Jesuits*, vol. 6, nos. 1-2 (1974), pp. 1-126. See also L. ÖRSY, “Some Questions About the Purpose and Scope of the General Chapter,” in *Studies in the Spirituality of Jesuits*, vol. 4, no. 3 (1972), pp. 90-92 (=ÖRSY, “Some Questions”). For a discussion of the legislative process in the Jesuit general congregation, see T.J. REESE, “The General Congregation of the Society of Jesus: A Study in the Legislative process,” in *The Jurist*, 34 (1974), pp. 356-379.

⁸² A proposal suggested giving an extended council of general superior and provincial superiors legislative power, but this was rejected. The understanding of the 1983 chapter accorded with the

or terminate experiments within the institute, but the general chapter is the sole legislative body.⁸³ Two key differences distinguished the IBVM concept of chapter from the Society: while the general chapter of the Society is an instrument of government that meets when necessary, the general chapter in IBVM, as defined in the *1986 Constitutions*, meets on a regular basis;⁸⁴ the general chapter elects the general superior for life in the Jesuit model, for a term in IBVM.

The preparations for the 1983 extraordinary general chapter reflected the growing influence of democratic principles⁸⁵ among the membership, and there were petitions for open provincial assemblies in Ireland, England, Australia, and calls for the presence of observers at provincial chapters.⁸⁶ The general chapter discussions indicated that areas of

contemporary view that superiors general who were not clerics exercised executive power of governance. See also discussion on cons. 489, GC, 10 July 1983, in CAIB, P1/B10/GC/4. See also, GC, 21 July, in CAIB, P1/B10/GC4.

⁸³ See GC, 8 July 1980, in CAIB, P1/B9, p. 72. See above, pp. 84-110 for the discussion of the legislative role of the general chapter, and for *CIC*'s understanding of the authority of both general superior and chapter in c. 596. Authority "descends" from the general superior in the Ignatian model, thus encapsulating the hierarchical concept. See "The Society's Head and the Government Descending from Him," in *SJ Constitutions*, part 9, pp. 307-330 and "The Institute's Head and the Government Descending from Her," in *1986 Constitutions*, part 9, p. 149.

⁸⁴ Although the general chapter is the supreme legislative authority in the Society of Jesus, it has met on only 34 occasions since the foundation of the Society. See BLANGIARDI, "The General Chapter as an Instrument of Governance," p. 264. Because mission was key to the Jesuit way of life, frequent chapters would "distract the Society from its evangelizing endeavour" (A.M DE ALDAMA, *The Constitutions of the Society of Jesus: An Introductory Commentary on the Constitutions*, A.J. OWEN (translation), Rome, Centrum Ignatianum Spiritualitatis, 1989, p. 282). It is beyond the scope of this study to compare the general chapter of the Society with that of IBVM.

⁸⁵ Difficulties with authority and obedience were indicated in the report concerning the 1983-1985 period, given by the vicar general to the chapter of 1986. She drew attention to the criticism of authority "in the world" and of the Institute's special relationship to the person of the Holy Father. These are some of the issues that caused difficulties in the North American Branch also. See GC 1986, Institute Report, in CAIB, GC/1.

⁸⁶ The English province submission regarding open chapters said that the Jesuit model was not suitable for IBVM and that "as women, we have a different attitude and sensitivity to this kind of involvement which we see as necessary" (Collation of Findings on Draft Constitutions from Provincial Chapters, January

concern to the members included the hierarchical model of Church and the place of IBVM within this kind of structure.⁸⁷ A proposal from an Australian community regarding the presence of the whole province as voting members of the provincial chapter received serious attention because it verbalised the desire in many provinces for more inclusive involvement of the members, particularly in decision-making bodies in the Institute. However, in fairness to all members, the traditional structure of representation at chapters was retained.⁸⁸

The Constitutions were approved in 1985 and promulgated by the vicar general on 1st January 1986.⁸⁹ The general chapter was described as “a help towards union of minds and hearts” (con. 389), an occasion for renewal for the entire membership, because of the involvement of all in its preparation (cons. 404), the “supreme authority in accordance with the Constitutions” (cons. 405).⁹⁰ Its functions included holding elections, safeguarding the spiritual patrimony of the Institute, formulating principles and recommendations for continuous renewal, ensuring unity in the diversity of apostolic needs, considering

1983, in CAIB, 1/10/15, pp. 69-70). This reference to the difficulties experienced by women with hierarchical government, was a criticism that recurred at the 1992 and 1998 chapters.

⁸⁷ See GC, 20 July 1986, in CAIB, P1/B10/GC1986.

⁸⁸ The general chapter decided that pre-chapter and chapter involvement and participation of members would answer the need for the recognition of the gifts of all and the commitment to the province's future, while retaining elected delegates for formal voting, in accordance with the law. See GC, 27 July 1986, in CAIB, GC/1. Post-chapter experience differed with some provinces allowing observers to speak at assemblies (Australia, England, Ireland, Kenya, S. Africa, Spain), while Mauritius allowed attendance but not participation. In Ireland, where observers had been admitted to the 1983 chapters and assemblies, 280 attended which led to difficulty regarding sharing. Small group sessions sorted out this problem. However, time constraints limited contributions to the full assembly. See Province Assemblies [1986], in CAIB, 10d/PA/5.

⁸⁹ See CRSI, decree, 31 July 1985, prot. no. M 10c-1/83, in *1986 Constitutions*, p. 3, and VICAR GENERAL [M. Patricia Hickey], decree, 1 January 1986, in CAIB, CL 2/7. The general superior, M. Agnes Walsh, was in a coma at this time. She died on 7 January 1986, one week after the promulgation of the Constitutions. These constitutions are currently under review.

formation at every level, assessing the situation regarding vocations, reviewing financial affairs, making changes in Constitutions with the approval of the Holy See and revising the Directory (cons. 415). The values of consultation⁹¹ and representation⁹² were enshrined in the legislation. However the decidedly hierarchical tone to the Constitutions caused difficulties with its reception by the members. This was partly due to the language of the excerpts taken from the rule of St. Ignatius, despite the contemporary language of the modern document.⁹³ This hierarchical expression of strong central authority seemed reinforced by the provision that “the provincial congregation is not a legislative body in the Institute” (cons. 429).⁹⁴ Reclaiming the Mary Ward heritage by taking the Constitutions of the Society of Jesus emphasized the centralized hierarchical model of government. However, the tension between this type of government and contemporary trends,

⁹⁰ See Appendix 1 for the text of the modern document on general government.

⁹¹ For the consultative process in preparation for the general chapter and in the appointments of provincial superiors, see *1986 Constitutions*, cons. 404 and 518 [d], pp. 138 and 167.

⁹² Procedures for representation, elections, chapter *modus operandi*, etc., were spelled out in the Constitutions (cons. 398-425) and Directory (nos. 38-46).

⁹³ For example, the general superior had “complete authority” (cons. 459); “lower superiors” had “the part of this authority which she communicates to them” (cons. 463); she was “to exercise this authority personally” (cons. 464); she had “complete authority” over the missions (cons. 465); if she communicated her own authority to provincial superiors for local appointments “it will remain her part to confirm or remove them” (cons. 469); she “may command in virtue of obedience” and although she communicated her authority to others, “she may approve or revoke what they did and regulate everything according to what seems good to her” (cons. 472).

⁹⁴ However, a provincial assembly was authorized “to make decisions about the implementation” of the general chapter acts in the province (cons. 435). In IBVM, the function of the provincial congregation (this term replaced “chapter” from 8 July 1983 in imitation of the Jesuits) is to study matters for consideration at the general congregation; to draw up a report; elect delegates to the general congregation and “consider” the concerns of the province in relation to renewal, assessment of apostolic activity, formation, financial affairs, promotion of vocations, etc. (cons. 429). The province assembly, on the other hand, is the body called subsequent to a general congregation to promulgate its acts. The chapter of 1971 defined assembly as “a meeting representative of the whole province, e.g., after a general chapter” (GC, 28 August 1971, in CAIB, P1/B3-4).

particularly in Europe and Australia, provoked much debate concerning the relevance of “a male, hierarchical model of government for women” in the contemporary world.⁹⁵

4.1.9 – The Modern Expression of Hierarchical Government: 1986-1998

Dissatisfaction with hierarchical forms of government in the Institute was a recurrent theme after the 1986 general chapter. Particular difficulties with the language and structure of the Constitutions did not mean, however, that the members wanted to renounce either the heritage of Mary Ward or St. Ignatius. Rather, there was a growing consensus that there was a need to feminise the hierarchical forms of government derived from the Jesuits. This would necessitate replacing the centralized, militaristic model of the Jesuits with more democratic and consultative models, which were more in keeping with the collaborative model favoured by most women, particularly in the modern world.⁹⁶ One of the models proposed for central government in 1986 therefore was that of “team,” which would enable the Institute to move from the hierarchical/institutional model of government to a horizontal, shared responsibility approach, while remaining true to the Ignatian

⁹⁵ Cf., GC 1986, in CAIB, P1/B3-4. We understand that there are many schools of thought regarding what constitutes the notion of feminism. It is beyond the scope of this study to examine those notions. The use of “feminist” in our text derives from the notion and context as expressed in the archival evidence of the IBVM. A description that accords with this understanding reads: “In the feminist model, information and power flow in a circular rather than hierarchical motion. Relationships are dynamic, synergistic, respectful and creative, inclusive and purposeful” (A. FRIES, “Transformative Leadership: Key to Viability,” in *R/R*, 55 [1996], p. 24). The description we use arises from the insight gained from the behavioural sciences that the male approach to consultation and decision-making is more logical and rational than the average female and that the male psyche favours structure leading to conclusions. The female, on the other hand, places a greater value on working with others, networking, collaborating, which processes are more important than arriving at the solution. In addition, the militaristic language of the Constitutions of the Society of Jesus (e.g., “general” superior) promoted a “male” image of governance, to which members objected. For a helpful index of feminist theology and the main themes associated with it, see N.K. WATSON, *Feminist Theology*, Cambridge, UK, Grand Rapids, MI, Wm. B. Eerdmans Pub. Co., 2003.

⁹⁶ See above, pp. 180-189.

heritage of making decisions by discernment.⁹⁷ Material from the provinces not only influenced the agenda of the 1986 chapter but also determined one of the directions set for the 1992-1998 period: to explore and come to terms with the principles of Ignatian government that are appropriate and fruitful for the Institute as Mary Ward women.⁹⁸ This direction gathered momentum in the local situation where the freedom given by the general chapter to explore practices of government began to move some provinces from hierarchical to more collaborative structures between 1992 and 1998.⁹⁹

The general report of the years 1986 to 1992, which indicated the steps taken by the central government to implement a team approach to government, included making decisions by discernment leading to consensus, and participation and consultation were the normal channels of communication in the general administration.¹⁰⁰ However, in view of the questions among the members concerning the hierarchical expression of

⁹⁷ See Provincial Congregation Reports 1992, in CAIB, 1/18/PC.

⁹⁸ See GC, 19 July 1992, in CAIB, 1/18a/GC. In recognition of the multiculturalism of the Institute, Spanish was used as well as English for the first time at a general chapter as the official languages of the Institute. Provision was made for the French-speaking participants in all written material.

⁹⁹ The steps taken to make government more participative included the establishment of the Government Commission to examine structures; experimentation with authority roles at local level; examination of terms of office and methods of nomination of general councillors; meetings with provincial leadership which were described as "necessary for adequate exercise of international leadership;" participative, reflective processes to examine the IBVM way of governing as Mary Ward women; the establishment of the GC 1998 Planning Group described as "a major step towards inclusive government;" considerable development of team government at province and general level. See M. NONI MITCHELL, General Report 1992-1998, in CAIB, GC 1998, box 20, GC 1998/5.

¹⁰⁰ It was pointed out that "active creative obedience which is our way" might require the members to take a different stance to that of other congregations, and that the particular IBVM approach to obedience "has a mystical quality as well as being the bond of unity." This was a reference to the model of government inherited from the Society of Jesus, with its strong emphasis on obedience and central government. However, the reports from the provinces suggested that a way had to be found to harmonize the principles of Ignatian obedience, to which members subscribed as part of the IBVM charism, with a feminine way of reaching decisions and governing. As the general superior pointed out, this approach does not necessarily conflict with the Ignatian heritage, principally because of the use of discernment in the decision-making

government,¹⁰¹ the general superior articulated a crucial problem that had to be solved by the chapter: does the style of government need to change or the structures that embody authority?¹⁰² As there was no easy answer to this question, the 1992 chapter was described as “a work in progress” and “a direction-setting chapter.”¹⁰³ Accordingly, the provinces were mandated to continue the reflection on the IBVM interpretation of government and obedience, and to explore the concept of government “as women by women for women.”¹⁰⁴

The description of the chapter as a direction-setting one indicated the shift that was taking place concerning the function of the general chapter. In addition, the chapter mandated a working group to examine Constitutions with a view to establishing what needed updating/amendment in light of current practice and developments in the Institute. The practice of eliciting the agenda of the chapters from the membership, evident since the 1986 chapter, was taken a step further in preparation for the 1998 chapter when a major decision was taken to delegate planning for GC 1998 to an inter-province Institute group, thus providing an opportunity for participation in governance in a way not practiced

process. The challenge lay in discovering how to live this maturely and freely as women who are equals. See GC 1992, General Report, in CAIB, 1/18c/GC.

¹⁰¹ See M. NONI MITCHELL, General Report 1986-1992, in CAIB, 1/18A/GC 1992.

¹⁰² We believe that the question posed by the general superior is a crucial one for the Institute. Since the IBVM system of government is not a democratic one, can the members remain true to themselves and to the insights and values of the Gospel by using the structures in a more participative, inclusive and consultative fashion for apostolic discernment in common? Or is there a need to change the system? The question has become more critical in view of the reunion of the Branches.

¹⁰³ The resource material sent to the provinces described two forms of chapter: the first, a “linear” approach focused on proposals that began from a certain point and arrived at a desired end. The second form, a “spiral” approach concentrated on setting directions, which focused on a particular path that allows for change, growth and adjustment as implementation takes place. See M. NONI MITCHELL, “Setting Directions (A),” in *GC’98: Resource Material for Provincial Congregations*, in CAIB, PC/98/A (=GC’98, *Resources*).

heretofore in the Institute.¹⁰⁵ One of the proposals that came from this committee was the proposal to establish a standing committee to revise the Constitutions and Directory - a mere twelve years after their promulgation.¹⁰⁶ Reflecting on governance, the general council provided the insight that “a growing awareness of group process and progress in communications are the impetus for the development of more inclusive, consultative and participatory ways of governance.”¹⁰⁷ For the first time, the general superior sent the general report to all the members before the chapter, a move that heightened the expression of the nature of the general chapter as the bond of union in the Institute.¹⁰⁸

The Government Commission established by the 1992 chapter articulated the fundamental difficulty the members had concerning government: its hierarchical nature.¹⁰⁹

¹⁰⁴ See GC, 18 July 1992, in CAIB, 1/18a/GC.

¹⁰⁵ See M. NONI MITCHELL, letter, 28 June 1996, in CAIB, GC 1998/5.

¹⁰⁶ See PLANNING GROUP, Proposals 1, 6, 51, in “Proposals for GC 1998 to be Presented at Provincial Congregations”, pp. 2-3, in GC’98, *Resources*. The Government Commission undertook extensive research in relation to the issue of terms of office at all levels and regarding the general secretary in particular. The general leadership also contributed separate reflections. See GOVERNMENT COMMISSION, GC 1998: Background Material for Provincial Congregations (F, G, H), and GC 1998: General Government: Background Material (K, L, M), in GC’98, *Resources*.

¹⁰⁷ See GENERAL COUNCIL, Reflections on Governance in the Institute (J), in GC’98, *Resources*. The general superior’s reflection on governance summarised the approach to participative and consultative government as “a two-way communication and governance with appropriate subsidiarity, delegation and accountability,” which is “strengthened by our prayer together and our mutual efforts to share and discern” (M. NONI MITCHELL, Thoughts on General Government [K], in GC’98, *Resources*). The general consultors description of their role included the ability to work as a team and reflected the general superior’s approach to government in the period 1986-1998. See GENERAL COUNCIL, Role and Tasks of General Consultors (M), in GC’98, *Resources*. See also above, pp. 199-201 (theological reflection); pp. 194-198 (discernment); pp. 175-180 (representation); pp. 180-189 (participation).

¹⁰⁸ She referred to the difficulties experienced by women in relation to the Church, the sexism and gender discrimination that still powerfully affect the lives of women and the challenge of taking an active part in necessary changes taking place in the Church while remaining loyal to the Church in spite of her deficiencies. See M. NONI MITCHELL, General Report 1992-1998, in CAIB, GC 1998/7. See also the reaction in the USA to the consultation to the 1994 Synod of Bishops, pp. 126-129.

¹⁰⁹ The Government Commission proposals gave as underlying principles feminine models of government (as opposed to hierarchical models), that are characterized by networking, communication and

This difficulty was expressed in the province reports from Australia, England, Ireland, and S. Africa.¹¹⁰ It was reinforced by the contribution from invited delegates from North America who described the conflict inherent in living IBVM feminist values of inclusion, collaboration, connectedness, mutuality and respect for the earth, particularly in an hierarchical Church.¹¹¹

The exercise of general government reflected a more participative approach between 1986 and 1992. The task that remained to be accomplished was to establish a similar process at local and province levels. As a result, some of the recommendations of the Government Commission were adopted.¹¹² In addition, one of the chapter directions for 1998-2006 was the study, development and sharing of Mary Ward's feminine interpretation of the Spiritual Exercises.¹¹³ However, the decision of GC 1998 to respond

interdependence and the use of language that is inclusive, collaborative and participative (e.g. "leadership" as opposed to "government" that has hierarchical overtones). The Commission called for more participative government at province and local level, creating opportunities for participation in decision-making; that the concept and practice of team leadership be developed at all levels and that there be openness to new forms of leadership that must flow gradually and naturally from discernment regarding mission in local contexts; that "the leadership gift of each individual be formally called forth for the sake of the whole body" (GOVERNMENT COMMISSION, Proposals on Government, in CAIB, PC/98/D).

¹¹⁰ See GC 1998, Reports from Provinces, in CAIB, Box 20, GC 1998/7.

¹¹¹ The North American contribution spoke of the new approach to local community, the "Open Circle" approach of communal discernment for decision-making, which had been working for seven years in North America. See *ibid.* See also below, p. 281.

¹¹² For example, the chapter made several constitutional changes in relation to terms of office at all levels (8 years for general superior and consultors with no immediate renewal) and there was much discussion about authority at the local level. Representation at the general chapter was a contested issue so the chapter mandated the general leadership team to review the number of delegates in 2005 and to make the appropriate changes for the chapter of 2006. The chapter also mandated the general leadership to establish a standing committee to review the Constitutions and Directory. There was a strong proposal in relation to participative government: that on-going education and evaluation of efforts at participative government be promoted. The chapter was careful to maintain authority structures at local level while also allowing experimentation, e.g., with "sisters-in-charge." Organisational changes included yearly meetings between the general leadership and provincials for on-going planning and evaluation. See GC 1998, Proposals and Decisions of GC 1998, in CAIB, GC 1998/7.

¹¹³ See GC 1998, IBVM Directions, in CAIB, GC 1998/7.

to the North American Branch's invitation to pursue some form of unification meant that this focus was preeminent after 1998.¹¹⁴

The years immediately following GC 1998 were devoted to investigating the notion of a juridic union with the North American Branch. As a result of the participation of all the members of both Branches, fusion occurred on 16th September 2003.¹¹⁵ The former North American Branch was divided into two provinces, Canada and the USA, and a commitment made to write new Constitutions for the new IBVM Loreto Branch.¹¹⁶ As a result of the mid-term review and the Provincials' Meeting in 2004, the focus for IBVM Loreto Branch until the next general chapter in 2006, is to establish a province process to explore the feminine way of living Ignatian spirituality today.¹¹⁷ In other words, the priority for IBVM members in the modern world is to move from hierarchical structures to collaborative, participative structures in government at all levels, while at the same time remaining true to the particular characteristic of obedience to superiors (and the Church) that is part of the identity of IBVM. As we shall see, a similar move in IBVM North

¹¹⁴ See *ibid.*

¹¹⁵ See CICLSAL, decree, 16 September 2003, prot. no. T. 60-1/2003, in CAIB, CwHS.

¹¹⁶ An inter-province constitutions review commission was established in 2004. This work is ongoing. A mid-term review of the 1998 chapter directions was undertaken in 2003 at individual, community and province levels. See IBVM, IRISH BRANCH, *Mid Term Review 1998-2002*, Kolkata, India, 2003. This review did not cover the area of governance. However, the Irish Province Report for the period 1998-2004 gives some indication of the significant issues in that province during these years. The brief drawn up for the term of the Irish provincial superior from 1998 to 2004 included "to explore new structures of government at community and province levels." Trends and attitudes identified included: more participative and feminine ways of governance; the need for formation in discernment, accountability, consultation and communication; more teamwork at provincial council level; approaching the role of local leader in a new way and sharing leadership in the province with committees and commissions. See [PROVINCIAL LEADERSHIP], Ireland: Province Report 1998-2004, Dublin, [Loreto House], 2005.

¹¹⁷ Two other directions were given: to explore how members can be women in the Church in the spirit of Mary Ward, and to explore the "theology of enough and the one purse" ([IBVM], GENERAL LEADERSHIP, *Report from the Provincials' Meeting, Arizona, 18 April – 2 May 2004*, [Rome, IBVM, 2004].

America rendered the general chapter of less significance than the assembly of the whole Institute. It remains to be seen if this will happen also in the new Loreto Branch.

The most significant development in the function and nature of the general chapter as experienced in IBVM since 1986 has occurred as a result of the authority given by *CIC* in relation to internal autonomy. The fact that the implementation of subsidiarity left so much to proper law greatly enhanced the role of the general chapter, particularly in relation to exploring more participative ways of governing. The experience of chapters since the promulgation of *CIC* indicates a new confidence in IBVM chapters in the authority to legislate for the members and to provide directions and vision for the future, with minimum reference to the Holy See. However, that freedom has also drawn attention to the tension that exists between the ideal of hierarchical government as expressed in the Constitutions and the reality of the lived experience of the members.

4.2 – GENERAL CHAPTER IN THE FORMER NORTH AMERICAN BRANCH

The evolution of general chapters in the North American Branch followed the same pattern as the Irish Branch. However, the influence of democratic principles was evident at an earlier stage and was reflected in the approach to government at all levels in the *1986 Constitutions*. In practice, the opening of the general chapter to all members removed some of the mystique surrounding it. However, this changed the nature of the chapter, with the result that it assumed a less central role in the lives of the members.

4.2.1 – Transplanting a European System in the New World: 1847-1881

Because of their common origin, government in North America was initially modelled on that of the Institute in Ireland, that is, the superior of the first foundation in Toronto governed new foundations made. As there was no constitutional provision for jurisdiction, there was a rather loose connection between the Toronto foundation and Rathfarnham, sustained by letters between them, and two visits of the superior of the mission to the motherhouse.¹¹⁸ The superior appointed by the foundress was clearly in charge of the new mission. The authority of the local ordinary was unclear.¹¹⁹ For example, Bishop de Charbonnel appointed a vicar when the first superior of the mission, M. Ignatia Hutchinson, was dying in 1851. However, he wrote to M. Teresa Ball seeking approval for his choice.¹²⁰ In other words, the expectation was that it was the responsibility of the superior of Rathfarnham to make the appointment. It was clear that Bishop Lynch, appointed in 1860, wanted the Toronto foundation to be united to the motherhouse and

¹¹⁸ Cf. M. TERESA DEASE, letter to M. Teresa Ball, 17 March 1881, in CAIB, Correspondence of Superiors General, asking permission for sisters to teach in parochial schools, thereby breaking the rules of enclosure; M. TERESA DEASE, letter to M. Teresa Ball, 20 April 1851, in CAIB, Correspondence of Superiors General, explaining her confusion regarding the jurisdiction of the bishop. Some of our information concerning the early years of the foundation in Canada comes from a “Chronicle” of selected events written by M. Teresa Dease for the motherhouse in 1876. See M. TERESA DEASE, Chronicle, in Correspondence of Superiors General.

¹¹⁹ It must be remembered that the diocese of Toronto was only established in 1841. The first bishop, Michael Power, arrived in 1842. He died of typhus in 1847 and was replaced in 1850 by Bishop de Charbonnel. In other words, in the earliest years of the new foundation, there was little assistance from the diocese, which itself was in the throes of becoming established. In addition, the Loretto sisters were the only resident religious community of women in Toronto. The connection with the local ordinary was symbolized by the formula for the vows used in Canada and the USA: it contained the phrase “under the jurisdiction of the ordinary” until 1908 when the North American Branch took new constitutions. The Toronto archives contains a summary of the history of the Institute written for the Congress of Union in 1900, which described IBVM in North America as “a diocesan institute until the rescript of 1881” which made the Toronto house “headhouse in America forever” (Notes on Roman Congress, in CAT, General Chapters 1877-1961).

¹²⁰ For her reply, see M. TERESA BALL, letter to Bishop Charbonnel, 19 March 1851, in CAIB, Correspondence of Superiors General.

dependent on it.¹²¹ However, the rescript of 1861, granting canonical connection to the Irish houses, made no provision for the mission houses. As a result, in 1862, the bishop, in association with the superior of the mission, drew up regulations that provided a system of government for the Canadian foundations. The model adopted appears to have been drawn from the new *1861 Constitutions* followed in Rathfarnham. It included a type of central government under a provincial superior (although IBVM in Canada was not formally defined as a province), to whom all the houses were subject.¹²² The bishop's jurisdiction over houses outside the diocese of Toronto was unclear.

The difficulties surrounding the establishment of a European foundation in the new world became apparent in relation to the way of life and the apostolate. For example, where in Ireland schools were attached to convents, in Canada the sisters were obliged to go outside the cloister to teach wherever the Bishop required them.¹²³ This new situation

¹²¹ See M. TERESA DEASE, letter to M. Teresa Ball, 20 April 1851, in CAIB, Correspondence of Superiors General.

¹²² Other provisions included that no house could secede from the province without the approval of the provincial council, unless by order of the Holy Father; the provincial council was to consist of the superiors of the houses, the assistant of the mother house and the mistress of novices, thus broadening the government of the province. Financial arrangements and the establishment of a motherhouse and novitiate in Toronto were the other issues decided at that time. See Minutes [of Council], [n.d.] September 1862, in CAT, General Council Meetings, 1847-1925.

¹²³ A letter from Fr. Jamot who accompanied the Archbishop of Toronto to the First Vatican Council, to the Toronto superior, Teresa Dease, indicated that the Archbishop believed the distance between Ireland and Canada made it more feasible to have the Canadian foundations under the superior of Toronto. See J. JAMOT, [n.d.] 1870, letter, in CAT, Correspondence of Superiors General. See also K. MCGOVERN, *Something More Than Ordinary: The Early History of Mary Ward's Institute in North America*, Richmond Hill, ON, The I Team Publishers, 1989, pp. 184-185 (=MCGOVERN, *Something More*). As the Institute grew and developed in Canada, difficulties in relation to issues, e.g., teaching in parochial schools and conflicts with local ordinaries in relation to jurisdiction became apparent with the absence of direction from the constitutions. The problems created by distance, was one factor that led to the establishment of an independent North American Branch of the Institute in 1881.

impacted on lifestyle, but was in fact more true to the heritage of the Institute.¹²⁴ With guidance from the general superior in Dublin and the local ordinary, the early members of the Institute in Canada gradually adapted their Irish way of life to the different demands, particularly apostolic demands, in Canada.¹²⁵ The lack of juridical definition was further complicated when the Institute moved into the USA, where they became part of the parish school system.¹²⁶ The impracticality of obtaining permission from a far distant superior in relation to new questions eventually made it more suitable to establish an independent foundation. By 1880, this was the general consensus.¹²⁷

4.2.2 – The Establishment of IBVM North America in 1881

The pontifical rescript of 1881¹²⁸ gave the mission houses a choice in relation to jurisdiction.¹²⁹ We have no formal, recorded explanation of the reasons Toronto chose to

¹²⁴ Mary Ward had endured the suppression of the Institute, rather than accept the rules of enclosure, which prevented the Institute from living an active apostolic lifestyle. However, some measure of enclosure was accepted by her successors as the price to be paid to gain recognition from the Church. See CHAMBERS, *Mary Ward*, pp. 541-542.

¹²⁵ The question of adaptation did not provide the same challenge in India, Spain and Australia. In these areas, schools and religious houses were established side by side in imitation of the pattern in Ireland. However, in the new world, the situation was different and, at first, sisters had difficulty adapting. The Chronicle records a visit made by M. Teresa Dease to the Ursuline nuns in Québec City, after which some modifications were made in the schools after the example of the Ursulines. See M. TERESA DEASE, Chronicle, in CAT, Correspondence of Superiors General.

¹²⁶ A letter sent to M. Xaveria Fallon in 1880, indicated, that “we have as yet not received the rescript, which becomes a greater necessity now that we have gone into the United States” (M. TERESA DEASE, letter to general superior, 17 September 1880, in CAIB, Correspondence of Superiors General). Difficulties also arose in the USA where Catholic schools were funded by parishoners and stipends were very small.

¹²⁷ Even Archbishop Lynch had come to the realization that all foundations in North America would be better under the immediate jurisdiction of the superior of Canada. See J. JAMOT, letter, [n.d.] 1870, in CAT, Correspondence of Superiors General. See also MCGOVERN, *Something More*, pp. 184-185.

¹²⁸ See SCPF, decree, 25 April 1881, in CAIB, CfHS, A 13; see also [Archbishop] J. LYNCH, letter to M. Teresa Dease, 24 May 1881, in CAT, Correspondence of Superiors General.

become independent, but it seems fair to suggest that the problems and circumstances of mission in the new world necessitated it. Since the new Branch followed the Irish Constitutions initially,¹³⁰ government practices were similar, e.g., the superior and a delegate chosen by the members of each local community voted in the election of the general superior.¹³¹ These elections appear to have been conducted by written vote, as there is no record of general chapters until 1910. The general council minutes provide some indication of the issues that were significant during this time. For example, because the Holy See actively promoted it, there was great interest in pursuing juridical union among all the Mary Ward houses, a movement that gathered momentum when the general superior attended the Roman Congress of Union in 1900.¹³² Although general union was not feasible at that time, the Constitutions promoted by the Cardinal Protector as a means to facilitate it were discussed. There is no record of a general chapter decision to take these

¹²⁹ A letter written to the Irish Branch general superior, M. Michael Corcoran, in 1889 showed that during the term of M. Scholastica Somers [1861-1880], the question of separation had arisen. The general superior thought it would be for the best, but the superior of the mission wanted to retain the link with Rathfarnham. The same letter gave some indication of the difficulty of following the Constitutions in Canada: the members had to go out to school and they were required to teach boys! See M. TERESA DEASE, letter, [Easter Sunday] 1889, in CAIB, Correspondence of Superiors General.

¹³⁰ There is evidence to suggest the Institute in North America considered taking the rules of the house in York, but the council decided that "certain regulations are not suitable in this country where canon law is not enforced in all its parts" (Minutes of General Council, 5 February 1891, in CAT, General Council Meetings, 1889-1896).

¹³¹ The records show that M. Teresa Dease resigned and was elected again for life on 25 January 1877. She resigned again in 1883, but was reelected in 1883 and remained in office until her death on 1 July 1889. Her successor, M. Ignatia Lynn, was elected for life on 8 August 1898. She remained in office until her resignation, due to ill health, in 1910. The first chapter designated as "general" was convened on 30 June 1910. See GC, Elections 1877, 1883, 1889, in CAT, General Chapters 1877-1961.

¹³² For example, the general council minutes for September 1898 record discussion regarding the advantages of being under one general superior who would reside in Rome. See Minutes of General Council, [n.d.] September 1890, in CAT, General Council Meetings, 1877-1925. The superior of the Australian province of the Irish Branch, M. Gonzaga Barry, was elected president of the Congress. The agenda concerned common constitutions and the division of the entire Institute into 8 provinces. General chapter minutes of IBVM North America indicated general union was discussed at chapters from 1910 onwards.

Constitutions. Rather, it seemed the general superior and council made the decision on behalf of the members. As a result, prior to answering the petition for approval, the Holy See instructed the bishops, in whose dioceses there were IBVM houses, to ascertain if all the members were in favour of this decision.¹³³

The adoption of new Constitutions did not change the system of government. Like all constitutions drawn up in response to the *1901 Norms*, the *1908 Constitutions* contained much legal detail. In place of the “authority” of the general chapter, the *1908 Constitutions* spoke of “The Power Exercised by the General Chapter,” i.e., the emphasis was on the acts of the chapter.¹³⁴ The general chapter was “endowed with the authority of the universal institute” (cons. 802), implying that authority resided in the members. The chapter’s functions were similar to those expressed in the Irish Constitutions.¹³⁵ However, the language of “rights” was reflected in the prescription that all “senior professed” members

However, the chapter of 1931-1932 (like the Irish Branch chapter, 1936) decided the question was not opportune. See GC, [30] December 1931, in CAT, file 2.

¹³³ The records show that “almost all save three or four unanimously signed” (Notes on Roman Congress, 1900, in CAT). See also M. IGNATIA LYNN, petition, 13 August 1906, in CAT, Constitutions, box 2, file 1. The Apostolic See did not respond initially to the request for approval of the North American Constitutions (there are two further copies of letters of petition in the Archives, 2 February 1907 and 27 May 1907). See SCPF, decree, 18 January 1908, prot. no. 78564, in CAT, Constitutions, box 2, file 1. The Toronto archives contain copies of the Irish Branch Constitutions of 1832, 1861, and 1877 with amendments approved by the general chapter of 1911, as well as constitutions from the IBMV house, St. Pölten (1903), and the emended St. Pölten Constitutions (*1908 Constitutions*). See IBVM *Constitutions*, in CAT, PC 4/21. The *1908 Constitutions* were based on the 1703 Rules approved for IBMV, which made them very different to the Constitutions in use in the Irish Branch at the time. It also kept alive the concept of general union, which has yet to be realised.

¹³⁴ See *1908 Constitutions*, part 3, section 3, ch. 1, p. 272. In recognition of the fact that in a small Institute, members might know one another very well, provision was made for prepared ballot papers and to disguise hand-writing when casting votes (cons. 761, 783). There was great detail concerning the election of the general superior, giving the form of words to be used in the oath (cons. 784) and the Tridentine profession of faith to be made by the newly elected general superior (cons. 790).

¹³⁵ See *1986 Constitutions*, cons. 415, p. 140. The *1908 Constitutions* included a provision not mentioned in the Irish Constitutions: “to discover abuses, identify their cause, deliberate on them and consider the means to correct them” (cons. 836).

had the “right” (a concept that will reappear) to send postulates to the chapter (cons. 756, 803). Acts of the chapter were to be signed by all the chapter members (cons. 807), an act that symbolized the equality of the participants. In other words, in their earliest Constitutions, the North American Branch provided evidence of values that were important in North America: equality and the rights of individuals.

Nonetheless, the centralized model of government was similar to that of the Irish Branch. However, despite the “great authority” (cons. 563) of the general superior, her exercise of authority “is more or less restricted in many cases” (cons. 564, 633) by the prominence given the general council. There was provision, too, against an over concentration of power in one person, which was considered as “the worst form of government” (cons. 621).¹³⁶ Dependence on the Holy See was apparent in the provision that each assistant to the general superior was to write a report to the Sacred Congregation every six months or “as often as she thinks necessary” (cons. 643). This apparently was apart from the duty to do so if three of them agreed the general superior was remiss in some important matter, or if there were reason to remove the general superior from office. The dependence on the ordinary was more evident in internal affairs, for example, the general superior and council had to ensure superiors were “acceptable to the Ordinary” (cons. 690). Probably because of the relatively small size of the Institute, the general

¹³⁶ If there were important matters to be decided outside the time of general chapter, provision was made for consultation with local superiors, assistants and others “noted for their good judgement” (cons. 641). This provision widened the exercise of authority and was in keeping with the values of the new world.

superior was more actively involved in local affairs than her counterpart in the Irish Branch.¹³⁷

The first election of the general superior of the autonomous Branch occurred in 1883 when M. Teresa Dease was elected.¹³⁸ Representation of the members followed the pattern established in the Irish houses, i.e., the superior and an elected delegate from each house voted.¹³⁹ The 1889 chapter elected the general superior for life. By 1910, when the general superior died, there had been significant expansion of the Institute in North America. Perhaps because the *1901 Norms* mandated an actual assembly and determined its agenda, the 1910 chapter held to elect a new general superior was described as “the first general chapter” of IBVM North America. Its agenda included business matters as well as elections of the general superior, four assistants, secretary general, procurator general and admonisher of the general superior.¹⁴⁰ All subsequent chapters included both business and

¹³⁷ For example, the local superior required the approval of the general superior for the daily timetable (cons. 699).

¹³⁸ The first recorded chapter, a local one, took place in 1866. The chapter consisted of the superiors of the houses, the novice mistress and the assistant superior of Bond Street, the house where M. Teresa Dease was superior, and the assistant councillor of the same house. The account of this chapter indicated its purpose was to elect the superior of the mission, because M. Teresa Dease had resigned. The 1877 chapter was called for the same purpose. As Canada was subject to Rathfarnham at this time, one can only assume this way of proceeding imitated the procedure for the election of a general superior, as established in the *1861 Constitutions* of the motherhouse. There is no evidence to suggest chapters made decisions, other than in relation to elections.

¹³⁹ As defined in the *1901 Norms*, houses were defined in terms of twelve members. Sometimes disputes arose concerning the grouping of smaller houses. For example, the general council minutes for October 1911 record difficulties with grouping the houses in Bond Street and Wellesley and also discussed whether a lay sister could make up the twelve who constituted a house. See Minutes of General Council, 18 October 1911, in CAT, Minutes of General Councils, September 1910-December 1930.

¹⁴⁰ See GC, 30 June 1910, in CAT, file 2.

elections, and because of the decision taken in 1917 to reduce the general superior's term to six years, chapters took place every six years from 1919 to 1967.¹⁴¹

4.2.3 – The Consolidation of Central Government in North America

There is no evidence to suggest that the general chapter made a decision to revise the Constitutions to accord with *CIC/17*. Rather, the task was given to a Jesuit priest.¹⁴² In addition, when Constitutions prepared for the IBMV generalates in Europe were received in Toronto in 1926, the general council, not the general chapter, made the decision “to adhere to our present text.”¹⁴³ The council considered unified Constitutions again in 1937, but this time sent copies to all members in preparation for the general chapter of 1937, which approved them, with amendments to suit North America. These actions emphasize the role of the council in government. As happened with the *1908 Constitutions*, the Holy See did not respond to several petitions for approval.¹⁴⁴ It later transpired that the Holy See wished the Institute in North America to take the Constitutions approved for the three

¹⁴¹ The renewal chapter, mandated by *ES II*, met for its first session in 1967; the second session met in 1969. From 1971, terms of office were four years. However, an indult was given for a six-year term from 1981-1987 to facilitate the drawing up of new constitutions. Chapters took place every four years from 1973-1999. For all elective offices, only two consecutive terms in office were permitted under the Constitutions.

¹⁴² See Draft Slater Texts VI (f) and VI (g), in CAT, PC 4/21.

¹⁴³ See Minutes of General Council, [n.d.] September 1926, in CAT, General Council Minutes, September 1910-December 1930.

¹⁴⁴ See Minutes of General Council, 21 March 1937, in CAT, General Council Minutes, 1931-1967, pp. 83-84. In 1933 when the Holy See acknowledged the reception of the Quinquennial report, a request was made that constitutions be brought up to date. The general council minutes record “as we sent our Constitutions thus brought into accordance with canon law by Fr. Slater SJ eight years ago and several reminders since, it was decided to make this known to the Sacred Congregation” (Minutes of General Council, 23 February 1933, in CAT, General Council Meetings 1933-1967, pp. 48-49).

IBMV generalates in Europe.¹⁴⁵ Approval eventually arrived in North America in 1940, but the text had to be translated and receive the approval of the archbishop. These *1942 Constitutions* remained in effect until 1986.

While the *1942 Constitutions* expressed the central government model in existence in the Institute since its inception, there were nonetheless some innovative features that expressed the North American context in which the Constitutions were lived. The supreme power of the general chapter was described as “the legitimate gathering of those professed who have the *right* to take part in elections and in judging and deciding affairs of the Institute which are of greater moment” (cons. 210). Every member had the *right* to present petitions to the general chapter (cons. 246). The general superior’s report on the status of the Institute gave a clear indication of the accountability of the general superior (cons. 230). The chapter decided “the cases in which the local superior must refer to the general council” (not the general superior).¹⁴⁶ In other words, while the authority of the general superior was clear, great care was taken to ensure its exercise was not arbitrary, and the democratic values on which North America was founded were to be found in the emphasis

¹⁴⁵ The Holy See’s continued interest in the union of all the Institute houses was evident in 1922 when Cardinal Merry del Val sent a copy of the Constitutions “arranged for the Institute throughout the world” to Toronto. The council obviously considered these Constitutions seriously, but decided in 1924 to defer the decision about unified Constitutions until the 1925 chapter. However, the Council decision in 1927 that “we have decided to make no change in our present constitutions and therefore have no further interest in the matter” closed the matter for a number of years. See Minutes of General Council, 17 August 1922, 11 May 1924 and 18 September 1927, in CAT, General Council Minutes, September 1910-December 1930. However, in 1937, because the Holy See approved unified Constitutions for IBMV, the matter was discussed again. The general chapter of 1937 adopted these Constitutions adapted to North America, but it took until 1942 to get approval for an English text. See Minutes of General Councils, 1933-1967, pp. 83-86, 91, 96-97, 99-100, 105-106, 123-125, in CAT, General Council Minutes 1933-1967, and CRSI, decree, 18 March 1940, prot. no. 654-38, T. 60, in CAT, Constitutions, box 2, file 1 and *1942 Constitutions*, in CAT, PC 4/21.

¹⁴⁶ See *1942 Constitutions*, cons. 245, p. 108. This constitution recognised the growing importance of the council in the North America. Referring important matters to “the council” as opposed to the “general superior” presaged the belief that it will become increasingly important in the Institute as well as in society at large, that government ought to be shared and that no one individual should be given all the power.

on the rights of members and structures that recognised the right to be involved in government.

Indications of unease with the traditional approach to authority were evident from the 1925 chapter onwards. This chapter dealt with “postulates” sent by the members, and the first steps were taken to give the American members the right to govern themselves.¹⁴⁷ The question of postulates arose again in 1937 and the chapter agreed on a procedure for dealing with them.¹⁴⁸ This chapter also agreed to the abolition of the two-tier membership system. The chapters of the 1940’s provided evidence that the members had questions about authority and the way of life, and the American members wanted a separate American province. Instead, an American consultor was elected with the specific brief to represent American schools.¹⁴⁹ Questions arose concerning the power of the general chapter in 1949.¹⁵⁰ Encouraged by addresses of Pope Pius XII to modify outdated customs, to adapt cloister restrictions¹⁵¹ and to equip their members with professional training on a

¹⁴⁷ Archival sources use “American” when referring to members in the USA. This description is used unless otherwise indicated in the thesis. The 1925 chapter agreed separate financing for the houses in the USA, however, canonical separation of the USA, as a region, did not occur until 1969. In 1925 also, after repeated requests, the Archbishop of Chicago gave permission for the opening of an IBVM novitiate in Chicago. Discussions of the general council indicated their reluctance to allow a separate novitiate for the USA stemmed from the fear this would lead to a separation of the area from the jurisdiction of the central government. By 1925, however, there was consensus about the need for a USA novitiate. This would enable the formation of the American members in their own culture. See GC, [30] December 1925, in CAT, file 1. See also Minutes of General Council, 5 July 1898, in CAT, General Council Meetings, 1898-1909.

¹⁴⁸ Uncertainty as to how postulates should be made to the general chapter and questions concerning who made the decision to include or exclude them were clarified by F. Vermeesch, SJ (a member of the PCAIC). He explained the process in the Society of Jesus: delegates or a committee of three, chosen by the chapter for that purpose, decided whether to present a particular petition to the chapter or not. See GC, [n.d.] January 1937, Postulates for General Chapter 1937, in CAT, file 2.

¹⁴⁹ See GC, 22-31 December 1943, in CAT, file 2.

¹⁵⁰ See GC, 31 December 1949, in CAT, file 2. It is interesting to note that the question concerning the power of the general chapter was raised as early as 1949.

¹⁵¹ See above, p. 44, footnote 131.

par with their lay colleagues,¹⁵² the general chapters of 1955 and 1961 began the process of change. The supreme authority of the chapter was implicit in the general superior's request to the 1955 chapter for "clear directives" regarding government for the administration.¹⁵³ This chapter also tried to remove the legitimacy of birth criterion from the Constitutions, but the Holy See refused permission. The establishment of the Sisters Formation Conference in the USA in 1954, the Conference for the Major Superiors of Men and the Conference for the Major Superiors of Women in the USA in 1956, provided *fora* for education and the development of thought in relation to religious life in North America.¹⁵⁴ The influence of contemporary thought was so much evident that in the homily given at the opening of the 1961 general chapter the celebrant thought it fit to remind the members that "religious life, like the Church, is not a democracy in which the majority prevails but is governed by a hierarchy."¹⁵⁵

The development of their independence undoubtedly enabled the North American exercise of government to be more direct. However, internal difficulties were created by the Holy See's lack of response to certain key requests, that is, permission to change terms of office, permission to adopt Constitutions and approval of constitutional changes made

¹⁵² See above, p. 44, footnote 132.

¹⁵³ See GC, [n.d.] July 1955, in CAT, file 2.

¹⁵⁴ The Sisters Formation Conference was established when a survey undertaken by religious leaders identified that prohibitive costs (stipends paid to those in the Catholic school system were minimal) prevented religious women from receiving the benefits of higher education. See M.L. SCHNEIDER, "The Transformation of American Women Religious: The Sisters Formation Conference As a Catalyst for Change, 1954-1964," in *Cushwa Center Working Paper Series*, vol. 17, no. 1 (1986), pp. 6-7.

¹⁵⁵ See GC, homily, 20 June 1961, in CAT, file 2. This chapter also discussed such issues as the use of English in the liturgy, the question of religious dress and whether it was appropriate for such issues to be decided by the Cardinal, whom the Holy See authorized to investigate and make the appropriate decision.

by the general chapter.¹⁵⁶ It was no great surprise, therefore, that the freedom given by *Ecclesiae sanctae* was embraced wholeheartedly in IBVM, North America.

Until Vatican II, therefore, the nature of the general chapter as a representative body of the membership with supreme power to carry out authoritative functions such as elections, decisions concerning the lives and ministries of members and modifications to the Constitutions, resembled the general chapter in the Irish Branch. However, the issue of rights and the general council's role were more prominent and every house had representation in the general chapter.

4.2.4 – The North American Response to Vatican II

The image of Church as *communio*, promoted by Vatican II, with its focus on the fundamental equality of each person and the responsibility of each to participate in building the body of the Church, had a particular relevance in North America. The associated principles of subsidiarity, coresponsibility and collegiality, i.e., the capacity to make decisions by participating together in accordance with the law and Constitutions, and legitimate diversity, with the rights associated with each principle, were taken seriously in IBVM.¹⁵⁷ This was evident from 1967 when the first part of the special chapter authorized

¹⁵⁶ For example, the chapter minutes of 1917 and 1919 provide evidence of the lack of response regarding terms of office; the general council minutes of 1934 record it was nine years since the first petition concerning temporary vows; the 1943 record summarises the attempts made to get an answer from the Holy See in relation to Constitutions. See GC, [29] December 1917, GC, [30] December 1919, and [24] December 1943 in CAT, file 2 and Minutes of General Council, 21 October 1934, in CAT, General Council Meetings 1931-1967, p. 63.

¹⁵⁷ Provost pointed out the difficulties associated with the implementation of this model within the hierarchical structure of the Church. See J.H. PROVOST, "Structuring the Church as a *Communio*," in *The Jurist*, 36 (1976), pp. 91-245.

by *Ecclesiae sanctae* took place. Successive general chapters took steps to implement a model of government that reflected the principle of *communio*.

The 1967 chapter was significantly different to all that had gone before. Pre-chapter commissions introduced a whole new type of discussion and participation “to involve the members in what is for us a new type of coresponsibility.” The material gathered from the members would summarize the sisters’ “collegial thinking.”¹⁵⁸ To emphasise the coresponsibility of all, no superiors were appointed to these commissions. The chapter itself lifted the rule of secrecy; regular bulletins were published to the rest of the community; the minutes showed the desire to be “more flexible, trusting and realistic rather than prescriptive and idealistic” in the period of experimentation mandated by *Ecclesiae sanctae*; the chairperson of the sessions rotated and voting rights were given to the temporary professed (both active and passive voice).¹⁵⁹ Individual responsibility was a key theme and procedures reflected the values of collaboration and participation. The two sessions of the chapter showed a shift in the Institute’s self-understanding. Because members were coresponsible for the life of the Institute, there were major implications for the concept of hierarchical government, initially at local level where the concept of collegial government was introduced. However, there was confusion in relation to the

¹⁵⁸ See M. CONSTANCE MACMAHON, letter, 1 January 1965, in CAT, file 3.

¹⁵⁹ GC 1967 had the first reference to observers: the government commission suggested that those superiors who were not chapter members and the chairpersons of pre-chapter commissions should be admitted to certain sessions as observers. The commission also suggested rotating the office of local superior and questioned whether smaller communities needed one and that government should involve the participation of all. The questionnaire sent by the government commission revealed that the Americans wanted an American general councillor elected by Americans. See GC 1967, GOVERNMENT COMMISSION, Report, in CAT, file 3. There was a long discussion on “the new concept of obedience” and proposals for experimentation in relation to electing local councillors, and establishing a committee to study a more satisfactory method of election of delegates to the next chapter. See GC, 7 July 1967, in CAT, file 3.

meaning of government and the exercise of authority¹⁶⁰ in this context as, for instance, there was reference to the fact that the general superior and council should function in a collegial manner.¹⁶¹ There was much discussion regarding delegates and other assemblies that would involve everyone.¹⁶²

The significance of this chapter for the development of the understanding of governance cannot be over-emphasized. The application of the principle of subsidiarity decentralized government considerably. Experiments authorized by the chapter revolutionized local government and introduced the principle of collegial government into local communities. These concepts, although revolutionary, were not clearly defined, thus leaving much scope for interpretation at the local level.¹⁶³ Chapter ordinances concerning the apostolate were statements of principles rather than clear decisions, indicating the expectation that decisions in their regard would be made by the members themselves.¹⁶⁴ The decision to establish a separate American Board decentralized the responsibility for

¹⁶⁰ For example, views expressed included that the role of the superior is to be the “executor of the decisions taken by the community” or there should be “delegated authority” with one person acting as “coordinator.” See GC 1967, COMMUNITY LIFE COMMISSION, in CAT, file 3, and pp. 118-125 above.

¹⁶¹ Reports from the USA and Canada reflect the confusion in relation to authority that was common in North America in the 1960’s and 1970’s. The general superior herself commented that she would like to know what her function was as it “was evolving from day to day” (GC, 17 July 1967, in CAT, file 4). The Congregation noted the confusion in its description of those years. See above, p. 67, footnote 55.

¹⁶² A letter from the general superior said that research into the subject indicated that observers could not have voting rights. She received permission to add two or three to the number of voting delegates. See CRSI, rescript, 9 June 1969, prot. no. 6887/69, in CAIB, CwHS; M. BERNADETTE CULNAN, letter, [n.d.] January 1969, and ID., Information Regarding the Status of Participants, 4 July 1969, in CAIB, CwHS. The second session, which met in 1969, included many younger delegates and the presence of non-voting participants.

¹⁶³ Small groups in large communities were to function in a collegial manner: these could elect a superior or have none; small group living was authorized where feasible. See GC, 18 July 1969, in CAT, file 1.

¹⁶⁴ The ordinances were published in conjunction with the quotations from Vatican II that had inspired them. See GC 1967, The Blue Book, in CAT, file 4.

placement and finance of USA members to the Americans themselves.¹⁶⁵ When the question of revising Constitutions arose, members wanted expert assistance from IBVM rather than “male” input. In other words, in 1969, the North American Branch saw the need to feminize the expression of governance, to participate in the creation of their legislative documents, and to provide more inclusive forms of government at the local level.¹⁶⁶

4.2.5 – Developing an Inclusive Model of Government

The movement towards openness and inclusivity of all the members was taken a step further in preparation for the chapter of 1971. At the heart of this chapter was the pre-chapter Community Congress that brought together, for prayer and discussion, more than 300 IBVM’s. This was an attempt to give the whole Institute an experience of chapter and thus have ownership of its decisions. In addition, in contrast with the past, anyone who wished to become a member of pre-chapter commissions was free to do so. In keeping with belief in the right of all to participate in government, the 1971 chapter proposed that the membership would indicate their preference as to future general superior and council. These “nominations” were to provide “an index” of community thinking but the chapter was free to elect whomever it chose. This was the first step taken away from the system of secret ballot, a system that evolved further in 1984 when the USA members proposed that those sisters whose names surfaced as candidates for the office of general superior should be asked to speak at the beginning of the chapter giving their vision for the Institute in the

¹⁶⁵ There was no parallel structure for Canadians until 1977.

¹⁶⁶ This need was also articulated in the 1980’s and 1990’s in the Irish Branch. See above, pp. 250-251.

Church and in the world. This system evolved into a self-selection of candidates willing to serve in leadership roles, which became the norm until 1999.¹⁶⁷

The 1971 chapter discussed the meaning of authority and whether the office of superior was “necessary today.”¹⁶⁸ The move towards personal responsibility in decision-making had a parallel in the way in which the general chapter began to be viewed in the 1970’s.¹⁶⁹ The implication was that the real work of the general chapter was accomplished before the assembly actually met. The general chapter would then authorize the decisions of the members, in much the same way as the superior authorized the personal decisions of the members. This way of proceeding was shifting real authority from the general chapter to the membership at large.

In a bulletin sent to members, the “dynamic evolution” of general chapters was described as a gradual shift from a legislative body that “handed down” directives to a body that reviewed and brought together different points of view, and, finally, to a body whose heart was the community congress. In this evolution, the concept of representation gave way to a more inclusive form of participation. The next phase of this evolution was

¹⁶⁷ The Canadian Regional Assembly of 1991 recognised the problems inherent in self-selection. As a result, they made a formal proposal to the general chapter of 1991: “That future regional government elections be conducted in a manner which includes some elements of formal communal discernment” ([CANADIAN] REGIONAL ASSEMBLY, 5-9 July 1990, in CAT, Minutes of Regional Assemblies, file 11). The lack of candidates willing to come forward had to be addressed by the chapter of 1999. A letter from the leadership drew attention to the LCWR’s evaluation instrument that listed leadership as one of the critical elements for the life and growth of religious institutes into the future. Lack of an adequate leadership pool, therefore, had implications for the viability of the Institute. See NORTH AMERICAN GENERAL LEADERSHIP (=NAGL), letter to members, 27 January 1999, in CAT, file 14.

¹⁶⁸ See GC, 7 August 1971, in CAT, file 5, folder 4.

¹⁶⁹ In a communication to the members, the general superior posed the question: “would it not follow that the role of the chapter would evolve in a somewhat similar way? (M. BERNADETTE CULNAN, letter, 12 February 1971, in CAT, file 5, folder 1).

the vision of chapter as the “coming together” of the larger body of the members whose task was to provide “inspiration and information” and to elect delegates to carry out “business tasks assigned by the larger body.”¹⁷⁰ The belief behind this statement was that the chapter would only be a real instrument of renewal when it reflected the convening of as many members as could be present. This inevitably led to the desire for open chapters, or at least to have some parts of the chapter open to all.¹⁷¹

Preparation for the 1973 chapter included an evaluation of the function of the general chapter, which was understood not in terms of making decisions about how the members were to live their commitment but rather to set up the means by which the entire community could share in making the decisions necessary for continued development. As a result, motivational directives were deemed to be more appropriate than decisions made by the few for the whole institute.¹⁷² In this understanding, the role of the general chapter was to inspire and provide vision to the membership.

Difficulties with the collegial approach to government were articulated in evaluations carried out before the 1973 and 1976 general chapters. While collegial government respected the dignity of each person and was a vehicle for individual initiative and responsibility, it had, in certain instances, promoted individualism. As a result, the

¹⁷⁰ See GC 1971, Bulletin 5 on Chapter of Affairs, pp. 1-2, in CAT, file 5, folder 8.

¹⁷¹ The understanding of general chapter articulated here foreshadows the description of the general chapter that will be given in the *1986 Constitutions*, cons. 83-84, p. 16. It describes a movement away from the legislative function exercised by the few, albeit on behalf of all and towards a function that is more inspirational and inclusive of all. However, the need for “someone” to make decisions is recognised in the latter part of the Bulletin.

¹⁷² Six bulletins were sent to members during the chapter of 1973. Bulletin 1 discussed chapters in general; Bulletin 5 recognised there were two aspects to chapter, namely, the legislative and the revitalizing:

Canadian region requested clear guidelines from the 1976 general chapter in relation to the exercise of authority, responsibility, subsidiarity and collegiality.¹⁷³

The 1976 chapter followed the pattern set in 1971. The Institute Congress of 1975 had the task “to bring forward the fruit of Institute-wide consultation.” The American report to this Congress questioned whether it was constitutive of religious governance to have authority in one person or could authority be exercised through group discernment.¹⁷⁴ The issue of rights was prominent, particularly as to whether there should be a written statement regarding the rights and responsibilities of each member.¹⁷⁵ As there were divided opinions in this regard, it was left to the Constitutions committee to examine the question further.¹⁷⁶ Committees did the groundwork, including revision of the Constitutions, and members of these commissions were permitted to attend chapter

research indicated the first was better accomplished by elected representatives, the second in the shared experience of the total community. See GC, 14 August 1973, in CAT, file 5, folder 8, Bulletins 1, 5.

¹⁷³ Difficulties named were: accountability, the relationship between local communities and the general administration, personal problems that made the exercise of collegial government difficult, e.g., lack of maturity and the presence of people in the group who did not want collegial government. However, collegial government also respected the dignity of each person and was a vehicle for individual initiative and responsibility. See GC 1973, Report on Collegiality, in CAT, file 5, folder 1. See also GENERAL COUNCIL, Special Requests [re Collegiality], [n.d.] September 1974, in CAT, file 5. See also GC 1976, Community Congress Report, 15-19 August 1976, in CAT, file 6, folder 1.

¹⁷⁴ Since 1975 was International Women’s Year, there was much input on feminist issues. There was also an interesting description of the role of the superior: in the past, a spiritual leader who accepted vows, settled problems, handled placements, gave permissions; in the present, a spiritual leader who initiates, interprets the “signs of the times,” accepts vows, delegates authority, encourages and supports people in apostolic decisions and shares decision-making. On the other hand, the superior of the future was described as a spiritual leader who would be a catalyst, would accept vows, establish a structure for accountability regarding the vows, give direction in relation to mission (a description that accorded with contemporary views but appears very different to what will be articulated in *CIC*, c. 618). There was also recognition of the tensions inherent in different attitudes to law. See GC 1976, Community Congress Report, 15-19 August 1976, in CAT, file 6, folder 1.

¹⁷⁵ See *ibid.*

¹⁷⁶ See GC 1976, Final Report to the Delegates of the Chapter-Congress Commission, pp. 7-8, in CAT, file 7.

sessions related to their work, even if they were not delegates. However, confusion in relation to the role of the chapter and representatives was evident in an American recommendation to the chapter of elections in 1976 that, before the election of chapter delegates, the community should receive education regarding the role of a chapter and the responsibilities of delegates.¹⁷⁷ There was a postulate that open chapter should be implemented and there was a strong recommendation for a Canadian Board similar to the American one established in 1969.¹⁷⁸ Confusion regarding authority was further illustrated in the request of the general superior for guidelines from the chapter in relation to the role of the general superior and the role of superiors generally and for clarification regarding collegial government.¹⁷⁹

The research undertaken, in addition to the debates and discussions at each chapter from 1967, concerning the role and function of the general chapter were summarized by the general superior and sent to the members in 1979: the membership believed the *purpose* of general chapters was to establish goals, provide guidelines, assess needs, make policies, set directions, evaluate spiritual and apostolic aspects of religious life and project the future, giving vision, hope and trust. The *function* of chapter was described as a

¹⁷⁷ Input from communities revealed a need for education in relation to the exercise of collegial government, definitions of roles of those in authority, and the practice of shared decision-making. See GC, 28-30 December 1976, in CAT, file 7. The 1977 chapter adopted a recommendation regarding open chapters. See GC 1977, Recommendations and Experimental Ordinances General Chapter 1977, in CAT, file 7. Before the 1981 chapter, a questionnaire was sent to the members on the issue of general chapter. See GC 1979, 29 October 1979, Questionnaire Regarding Chapter Education, in CAT, file 7.

¹⁷⁸ See GC, 1-11 August 1977, in CAT, file 7.

¹⁷⁹ See ANGELINA SHANNON, address to 1977 chapter, in CAT, file 7. The understanding of the office of superior provided in one of the commission reports to the chapter, contains the notion that authority resides in the general superior and that she delegates her authority to elected local superiors, appointed superiors and collegial government. This notion was to be rejected in *CIC*, which recognised the proper, personal authority of superiors in c. 618. See GC 1977, Placement Commission Report, in CAT, file 7.

legislative body that must involve more of the total membership, provide knowledgeable councillors, elect the general superior, promulgate decisions that are binding, be accountable, and be an experience for all by means of open chapter.¹⁸⁰ Given this understanding of the authority of the general chapter, it was inevitable that a decision was taken at the chapter of elections, 1981, “that the chapter of affairs, 1981, be open to any of the membership who attend the total proceedings. Those attending may participate in the discussions with consultative vote.”¹⁸¹ The opening remarks of the newly elected general superior, Frederica Boyle,¹⁸² indicated that this chapter marked a turning point in IBVM history, because the chapter preparation was designed “to provide each sister with the opportunity to influence the chapter in a manner not previously possible.”¹⁸³

¹⁸⁰ The assets of the chapter as a vehicle to move the membership into the future for mission in the Church included the practice of collegial government established at local level; deficits were described in terms of “ultra independence and individualism,” and confusion in relation to government structures. See ANGELINA SHANNON, address, 29 October 1979, in GC 1981, Collated Responses to Questionnaire [on general chapters], in CAT, file 7.

¹⁸¹ See GENERAL ADMINISTRATION, letter, 5 January 1981, in CAT, file 8. The involvement of so many led to procedural difficulties at the chapter. Rule 8 of the rules and procedures for the chapter explained how the open system was to work: “the chapter shall have elected delegates and voluntary participants. All members may attend committee hearings, offer proposals, alternatives (amendments), main or procedural motions to the plenary session, debate, discuss or otherwise engage in active consideration of all substantive issues before the meeting. However, only elected delegates shall vote and thus decide all substantive and procedural issues of the chapter” (GC 1981, Responsibilities and Standing Rules of the General Chapter of Affairs of the Institute of the Blessed Virgin Mary 1981, no. 8, in CAT, file 10, folder 1).

¹⁸² “Never before in our history in North America have so many of us prepared so thoroughly and in such depth for this chapter” (FREDERICA BOYLE, address to GC 1981, [n.d.] July 1981, in CAT, file 10.), a description confirmed by the researcher who worked with the members.

¹⁸³ The delegates were joined by a huge number of “observer-participants.” The 1981 chapter is popularly known as the “Ruhmkorff Chapter” after the facilitator hired to facilitate the participation of the entire Institute in preparing proposals for it. The Toronto Archives contain much material on the preparation for the chapter, using Ruhmkorff’s methodology. Proposal documents reveal a clear demand for total participation, the recognition of the need for role definitions, the need to develop a new model of government, the necessity of clarification in relation to authority, and some guidelines regarding collegial government. There was recognition of cultural differences between Canada and the USA. See D. RUHMKORFF, Preparation Material, 1980-1981, in CAT, file 10. The considerations of Dr. Ruhmkorff on open chapter described the process begun with the pre-chapter meetings in spring 1980, through the Charism and Personal Resources and Needs Assessment workshops, the Church Needs Survey and the projected

The role of the general chapter was enunciated as establishing decision-making and evaluative processes that were clear in relation to who made decisions and to establish a process of corporate decision-making for use in the chapter.¹⁸⁴ The chapter decrees on government defined the general level of government in terms of “policy as its main thrust. It [the general chapter] will remain operational as required by Canons, IBVM Constitutions and Chapter mandates.”¹⁸⁵ This seemed to indicate that the general chapter’s role became less important than the gathering of the membership, which inevitably led to the revolutionary decision to provide an open chapter of affairs in 1984, with “professed members who attend all sessions” having a deliberative vote.¹⁸⁶

4.2.6 – A New Model of Government: Extraordinary General Chapter 1984

The 1984 chapter was the first extraordinary chapter in the history of IBVM, North America. Its purpose was to evaluate the revised versions of the proposed Constitutions and Directory. The pre-chapter American Regional Assembly revealed on-going preoccupation with the involvement of the total membership and a commitment to

Proposal Development Training as “designed to provide each sister with the opportunity to influence the chapter in a manner not previously possible.” The information and data developed in the processes “is a new source of influence not available to previous chapters” (D. RUHMKORFF, Open Chapter Considerations, in CAT, file 10).

¹⁸⁴ See FREDERICA BOYLE, [concluding] address to GC 1981, 24 July 1981 in CAT, file 8, folder 2.

¹⁸⁵ See GC 1981, Government Mandate 1, in IBVM Chapter Decrees 1981, p. 16, in CAT, file 8, folder 2. Regional and local government were to make decisions by delegated authority within the parameters established by the general superior and council and chapter mandates. See GC 1981, government mandate 2, in IBVM Chapter Decrees 1981, p. 16, in CAT, file 8, folder 8.

¹⁸⁶ The general council was to implement an appropriate method of selection of the delegates that would ensure the widest possible participation by establishing a commission, which would determine a canonically valid method. See GC 1981, Government Mandates on Elections, nos. 1-3, in IBVM Chapter Decrees 1981, p. 17, in CAT, file 8, folder 8. A clear description of the general chapter as a policy-making body was given to the Canadian Regional Assembly. See C. DAWSON, Remembering the Themes of Community and Ministry in IBVM Chapters 1847-1981, in CAT, file 1.

evaluating the possibility of a change in the hierarchical structure of government from the personal authority of superiors to a team authority.¹⁸⁷ The Constitutions approved by the chapter¹⁸⁸ reflected the principle of the coresponsibility of each member for government,¹⁸⁹ and while the description of government¹⁹⁰ accorded with the principles established in *CIC*, cc. 631-633, the manner in which they were articulated gave scope for further development: each member accepts responsibility to contribute to government and because of this “we are encouraged to undertake, direct and carry out whatever action seems appropriate in accordance with the Constitutions and the principle of subsidiarity” (cons. 83). The enhanced role given to proper law by *CIC* enabled this development to take place without the frequent recourse to the Holy See, as it was common prior to Vatican II.¹⁹¹ The

¹⁸⁷ The first regional assemblies of the Institute were held in 1986. See Minutes of Regional Assemblies, 1986, in CAT, file 9.

¹⁸⁸ A lengthy study as well as several consultations with the members and workshops to educate them in the new thinking, resulted in the production of successive working papers: the Blue Book (1967); the Brown Book (1969); Working Paper of Chapter 1979; Revisions (1981); Proposed Constitutions and Directory (1984), revised later in same year; Revised Constitutions for Congress of 1985; Revised Constitutions for Congress of 1986. All these consultations led to the promulgation of the new Constitutions in 1986. See CRSI, decree, 18 May 1986, prot. no. T 60-1/84, in *1986 Constitutions [North America]*, p. (i). See Appendix 2 for the text of the Constitutions on central government.

¹⁸⁹ The superior’s role was defined in terms of keeping before the community “their responsibility for shared decision-making, mutual support and accountability” (cons. 110). The significance of the equality principle can be seen, for example, in the procedure taken in the event of a tied vote: if there was a tie in the third ballot, the two eligible for election in the fourth were chosen by lot; if the fourth ballot resulted in a tie, the election was determined in the same way. In other words, the principle of seniority was eliminated (cons. 89).

¹⁹⁰ The purpose of government is to provide structures to enable the members, individually and corporately, “to live the Christian vocation of apostolic love in the contemporary world” (cons. 82). In addition, the functions of the general chapter were articulated in terms of two major roles: to elect the general superior and council and to regulate the affairs of the Institute (cons. 84). The general chapter “includes in its responsibilities” a list of functions similar to that found in c. 631 § 1. The agenda for the chapter was to result from Institute-wide consultation and preparation (cons. 86).

¹⁹¹ A “Policies and Procedures” Handbook was issued in 1990, described as “a companion volume containing those aspects of our law which will undergo development and adjustment as circumstances change” (ELEANOR HOLLAND, letter, 15 June 1990, in CAT, Correspondence of General Superiors). Revision of these policies and procedures continued after 1990, in keeping with the dynamic principle of renewal promoted by *ES II* and *CIC*.

principle of consensus was articulated for each level of government (cons. 98, 107, 110): a principle that became enshrined in the team approach to central government that developed from 1987 onwards.

Both Constitutions and proper law in North America, therefore, reflected the importance of democratic structures and principles,¹⁹² especially in relation to the importance of the person and her right to participate in making those decisions that concerned her. These values were apparent in structures at local, regional and general level. In addition, references to the “general council,” as opposed to the “general superior,” indicated a move away from the strictly hierarchical approach to government. This expression of authority created a different model of government, one that recognized the values apparent in contemporary North American society.¹⁹³

The general chapter of 1987 was the first open chapter in the Institute, a practice that continued. In order to fulfil the requirements of the universal law, those willing to be

¹⁹² For example, Directive 6, no. 1 of the 1991 chapter stated that “the principle of subsidiarity requires that all possible resources at the local level are to be used at reaching and implementing decisions; only after this is done is appeal to be made to the next highest authority.” The directive also reinforced the principle of recourse that had been enunciated at the 1981 chapter. An interesting difference appears in the description given the Regional government model. The American Regional Administration handbook has a different connotation to the Canadian Regional Government Handbook, namely the Canadians had a *Regional Government Handbook*, while the Americans had a *General Administration Handbook*. In our opinion, government suggests a more juridical approach, with juridically competent officers and system of government. Administration suggests a more flexible approach that allows for creative interpretations of government structures and a broader understanding of competence. The Directives spelled out the authority (delegated), elections (by the region), responsibilities, method of government (to strive for consensus on all major issues). See GC 1991, *IBVM Directives*, Toronto, 1991, pp. 2-6.

¹⁹³ Furthermore, cons. 86 specifically provided for the general chapter agenda to be determined after Institute-wide consultation and preparation. This constitution established that the general council (general superior is not mentioned) “has the responsibility to provide effective means by which all members participate in this consultation.”

delegates were listed separately and voted in by the membership.¹⁹⁴ In her general report, the general superior explained the “consultative mode” of governing and the consensual model of making decisions used as a result of the chapter acts of 1984 and the Constitutions approved for the Institute. Her description of the general chapter indicated clearly the belief that the purpose of the chapter was to provide vision. Legislative matters would become the work of regional assemblies gradually, as the members became more familiar with the structures of government provided by the Constitutions, at the local, regional and general level.¹⁹⁵ If implemented, this would radically change the nature, role and juridical status of the general chapter. In addition, removing the legislative function of the general chapter would pose major canonical problems, since one of the defined purposes of the general chapter is to issue norms all must obey (c. 631 § 1).

4.2.7 – Attempts to Legislate an Organic Feminist Model Within the Hierarchical Structure

By the 1990’s, many elements of an inclusive, collaborative approach to government had been put in place by the general chapter: collegial government had been established in many local communities; the regional government structures for Canada and the USA enabled subsidiarity to function more effectively; the general superior and council worked as a team, using the consensus model of decision-making. However, there was dissatisfaction with some elements of government, particularly the lack of formal structure for decision-making at local level and also the lack of formal discernment processes for

¹⁹⁴ See GC, 2-7 April 1991, in CAT, file 11. Concern was expressed in preparation for the 1995 chapter that this process did not provide “informed” delegates. See ELEANOR HOLLAND, letter, 13 January 1994, in GC 1995, in CAT, file 12.

¹⁹⁵ See FREDERICA BOYLE, General Report to GC 1987, in CAT, file 10.

elections. This latter weakness meant that decisions were often made by majority vote rather than by a real commitment to discernment. Consequently, the 1991 general chapter adopted an “Open Circle”¹⁹⁶ approach to decision-making, an inclusive, collaborative model, which introduced an element of formal communal discernment into the decision-making process at local level. The 1995 chapter further developed this approach, deciding it would be the *modus operandi* for decision-making for regional elections also. In other words, the Institute took steps to avoid a practice of government that was both individualistic and relied on majority vote.¹⁹⁷ In addition, a specific feminist approach to practices, structure and language was articulated as a chapter challenge: “We will *examine* language, structures and practices within our Institute life and our ministries that are *in conflict with* our feminist values of inclusiveness, collaboration, connectedness, mutuality and respect for the earth, and then we *will work to revise, replace or reject them.*”¹⁹⁸ The concept of hierarchical government did not fit easily into this type of model.

Preparations for the general chapter of 1995 revealed further concerns regarding government. Despite the constitutional provision that government was the responsibility of

¹⁹⁶ One of the most influential images in IBVM history is the painting that depicts the foundress, Mary Ward, in conversation with her early followers. The group sits in an open circle. This image was adopted to reflect the Institute’s commitment to its history, as well as to reflect the modern approach to governing that is open and inclusive. The aim of Open Circles was to initiate a way of communal discernment as a process for decision-making; to facilitate the communal support necessary to sustain community for mission; to live the constitutions more deeply; to integrate IBVM spirituality, active apostolic spirituality/community for mission, with the Institute’s expressed conviction that IBVM mission is to stand, in a direct way, with the powerless and those on the fringes of society. See GC, 2-7 April 1991, in CAT, file 11. The 1999 general chapter reaffirmed this mode of governing. See GC 1999, Challenge Statements and Commitments to Action (=GC’99, Challenges and Commitments), no. 8, p. 2, in CAT, file 14. A letter sent by the leadership in 2000 called for assistance in the “further development” of the Open Circle practice. See NAGL, letter, 3 April 2000, in CAT, Correspondence of General Leadership.

¹⁹⁷ See GC, 6-14 May 1995, in CAT, file 12.

¹⁹⁸ See GC 1995, Documents, in CAT, file 12 (emphasis in original).

everyone (cons. 83, 86), not all the members chose to participate, particularly in the exercise of government at the general chapter. As a consequence, a concerted effort was made to involve everyone in chapter preparation.¹⁹⁹ The diminished enthusiasm for involvement in the general chapter seemed to be in direct proportion to the increased involvement of the members in government at all other levels. The theological reflection approach of this chapter included the use of a formal discernment process for the elections, with an address to the chapter from those in discernment for leadership.²⁰⁰

In response to the chapter challenges, and because of on-going concerns regarding government, particularly in the areas of accountability and recommending and electing leaders, the Government Commission invited the membership to “dream” an alternative government structure with a view to making a proposal at the 1999 chapter.²⁰¹ The model postulated one central government (rather than separate regions), consisting of five sisters elected by the members, who “would govern out of an organic feminist model.” This model was defined in terms of five elements: consensus as the way of proceeding; discernment for major decisions; wide consultation; collaboration as a priority and a non-hierarchical approach to government. Each member of the leadership team would have a specific area of responsibility. There would be a general leader and a vicar general. The

¹⁹⁹ See *ibid.*, in CAT, file 12. We believe that concern for the lack of representation of those who chose not to participate, or were otherwise unable to, motivated this directive.

²⁰⁰ See *ibid.*

²⁰¹ In a letter sent to members, the Government Commission differentiated between government and governance: government referred to “the structure of governing, which may enable or impede governance;” governance was “the art of governing within the structures” (GOVERNMENT COMMISSION, letter, 7 November 1996, in CAT, file 13). The commission identified problems expressed by the members in relation to government. These were both structural and personal and led to further questions. As a result, in 1998 the commission devised strategies for the membership to help them reflect on what kind of government the

areas of responsibility would be sorted out among those elected. This kind of leadership, according to the Government Commission, was based on cons. 83 (which enabled the chapter to undertake whatever action seemed appropriate for good government) and fulfilled canonical requirements, e.g., for an elected leader. However, in our opinion, the implementation of a model which appears to give equal responsibility to each member of the general team, weakens the personal authority of the general superior. If, on the other hand, the personal authority of the general superior is not negated, the implementation of a team approach to major decisions may work very well, without prejudice always to the superior's right to decide what must be done (c. 618).²⁰² The same principles were to apply to government at local level and the Open Circle approach would be an integral part of the process of decision-making. Titles would change to reflect the values.²⁰³ This model would not require a change in Constitutions but the Directives would need to be revised. The proposal (if accepted) would be effective immediately after the chapter.²⁰⁴ This model did not renounce the principle of hierarchical government (which would be contrary to the law). It did not renounce the personal authority of the superior (c. 618). Rather, it provided an alternative mode of exercising hierarchical government, one in which the members at

Institute needed as it moved into the future. The commission clearly favoured an organic, feminine model. See GOVERNMENT COMMISSION, letter, 26 March 1998, in CAT, file 13.

²⁰² It appears to us that some recently approved constitutions express a more collaborative approach to government and while the personal authority of superiors is not negated, at least on paper, in practice, team leadership functions. For example, while the introductory constitution on government in the Missionary Sisters of the Precious Blood proclaims the principle of authority exercised as service, the accompanying directive states "team leadership is exercised at all levels of our administration as specified in our Constitutions" (*Constitutions of the Missionary Sisters of the Precious Blood*, Rome, Istituto Salesiano Pio XI, 2002, cons. 701, pp. 55-56; Directory, 701, D1, p. 14).

²⁰³ The "general administration" would become "IBVM North American Leadership;" "general superior" would be replaced by "Institute leader," "council members" would be "leadership members" and "superiors" would be "community ministers." The underlying principle was that of collaborative government, which reflected the participation of everyone in decision-making.

every level were responsible for shared decision-making under the leadership of the superior who had the “serious responsibility” to keep before herself and the community “their responsibility” in this regard (cons. 110). The general superior’s report to the 1999 chapter indicated this was the approach taken to government by the leadership 1995-1999.²⁰⁵ The report identified the lengthy discernment process regarding regional leadership as an obstacle to planning and implementing the 1995 chapter directions and suggested that ways to lessen the number of discernment processes had to be found, as well as the exploration of new understandings of chapter and decision-making. Developing a feminist model while working within an existing hierarchical structure had created tensions at each level of government. In other words, the collaborative, participative approach, while fulfilling the members’ need for involvement, delayed the decision-making process at every level. This report, in other words, summarized both the advantages and the disadvantages of the participation of all in the decisions that affected the Institute.²⁰⁶

There was energetic debate concerning the strengths and weakness of both the Central model and the Central/Regional model of government, but the decision was to stay with the Central/Regional model as the one “we experience and know best serves the life

²⁰⁴ See NAGL, letter to Government Commission, 8 April 1998, in CAT, file 13.

²⁰⁵ The “Open Circle” approach was taken as the guiding image in the search for more inclusive ways of governing. This had moved the leadership from a hierarchical structure of governance to a feminist, circular way of being together. This model did not negate the role of authority, but it stressed “leadership” rather than a single leader and “enabled a dynamic interdependence among members of the leadership group.” Leadership aims to motivate others to interiorize values freely, to develop teamwork, to involve the whole group in problem solving. See G.A. ARBUCKLE, “General Government: Its Leadership Role Today,” in *R/R*, 43 (1984), pp. 827-828.

²⁰⁶ See NAGL, letter to Government Commission, 8 April 1998, in CAT, file 13.

and mission of the Institute, however, with recognition that it does need some work.”²⁰⁷ The choice was heavily influenced by the decision to pursue juridic relationships with the Irish Branch, a decision of the 1995 chapter.²⁰⁸ The discussion concerning regional government and the Irish Branch policy of consultation and appointment, which by 1995 was counter-cultural for the North American Branch, revealed considerable support for the practice.²⁰⁹ In other words, a key element in the exercise of hierarchical government as practised in the Irish Branch, i.e., consultation followed by the decision of the superior, appeared to find more acceptance in the North American Branch than the practice of nomination, whether by self or another, followed by election on the majority vote of the members. It is our opinion that a certain disenchantment with the human difficulties associated with the collaborative and/or collegial approach to government adopted by most communities, perhaps prompted a new acceptance for a model where authority is exercised more overtly and literally.

²⁰⁷ The pre-chapter commission had reached the same conclusion. See GOVERNMENT COMMISSION, letter [with results of survey on government models], [n.d.] January 1999, in CAT, file 14. We believe that cultural differences were a factor in retaining the separate juridical structures for Canada and the USA, together with the desire to retain their own structures of government that had taken many years to obtain. See GC 1999, Leadership Report 1996-1999, in CAT, file 14.

²⁰⁸ As a result of the directive of the chapter, the general superior, Jane McDonell, presented a petition to the 1998 Irish Branch general chapter and the process of union of the two Branches began its juridic journey. Although canonically a merger took place (c. 582), IBVM chose to describe the process as “reunion” in view of the fact that IBVM North America was rejoining the founding Institute. To symbolise this concept, the title IBVM, Loreto Branch was adopted. See CICLSAL, rescript, 16 September 2003, prot. no. T. 60-1/2003, in CAIB, CwHS.

²⁰⁹ This surprising support was perhaps influenced by the difficulties experienced in getting people to come forward for leadership in the pre-chapter process. See GC, 15 April 1999, in CAT, file 14.

The 1999 chapter Challenge Statements/Commitments placed the pursuit of juridic relationships with the Irish Branch at the top of its agenda for the coming years.²¹⁰ The juridic union of the two Institutes was approved on 16th September 2003.²¹¹ In 2004, a standing committee was appointed to undertake a review of the Constitutions and directory and to make recommendations to the next general chapter. There was a two-fold commitment to revise the Constitutions in the light of the recent revision completed by the Roman IBMV Branch to take the Constitutions of St. Ignatius *ad maximum*²¹² and to write a new “modern document” in the light of the lived experience of the members.²¹³ We believe the crucial challenge of this task lies in the integration of the type of government structures operative in the former IBVM North America, with the hierarchical model of the former Irish Branch Constitutions.

4.3 – CHALLENGES FOR THE NEW IBVM LORETO BRANCH

The evolution of the institution of the chapter in both Branches contains many similarities. However, there are significant differences also. Some relate to dynamics,

²¹⁰ The chapter acts included statements of intent to work towards a more inclusive Church and to “claim the voice, the power and the visibility of women” (GC 1999, Challenges and Commitments, no. 5, p. 2, in CAT, file 14).

²¹¹ The North American Branch used the period set aside for a mid-term review to celebrate “The Feast of Minds and Hearts” with representatives from every province of the Institute they planned to rejoin. See IBVM NORTH AMERICA, Report on Feast of Minds and Hearts, July 2002, in CAT, Correspondence of Superior Generals.

²¹² At their 2002 general chapter, which was attended by the general superiors and one member of both Irish and North American Branches, a decision was taken to take the constitutions of St. Ignatius “*ad maximum*.” In the words of the general superior, this decision “brought to completion the process of foundation begun by Mary Ward in St. Omer in 1609” (M. MECHTILDE MECHLE, letter to members of IBMV, 29 August 2002). See also INSTITUTUM BEATAE MARIAE VIRGINIS, *Decrees of General Congregation 2002*, Rome, 2003.

others to the essence of the role of the general chapter. We can distinguish those elements that are different and estimate whether the differences are a potential source of enrichment or a possible source of conflict.

4.3.1 – Representation and Total Participation

In their historical evolution, both Branches reflected the values of participation and the collaboration of the members, values that were enshrined in the principle of representation of each house at the general chapter. When the growth and expansion of the Irish Branch necessitated new governmental units (provinces/missions/regions), participation at general chapters changed: under the influence of universal law, the number of members determined the representation of the province. This system had two main consequences: it reduced the number of delegates to the chapter and it rendered representation less immediate to the membership. In North America, where the general chapter continued to consist of the superiors and one elected delegate from each house (or group of houses if the numbers warranted that arrangement), participation in chapters was more immediate, but nevertheless restricted.²¹⁴ Therefore, the call of *PC*, no. 14 to the chapter to “give expression to the involvement and concern of all for the good of the whole” was embraced enthusiastically. Both Branches developed participative structures that involved the whole membership in pre-chapter preparation. Moreover, because of the

²¹³ This work is ongoing. The final text will be decided by the extraordinary general chapter planned for 2009, the year of the 400th anniversary of the founding of the original Mary Ward Institute.

²¹⁴ The system of representation with one *ex officio* and one elected delegate from the houses was the practice until 1967 when the Institute in North America sought permission to change the system. Permission was given to elect one delegate for every 15 members in the community. See Minutes of General Council, 11 January 1966, in CAT, General Council Meetings, 1931-1967 and SCR, rescript, prot. no. 15738/62, in CAT, CfHS.

decision of the 1983 Irish Branch chapter, for the first time, each member of the Institute could nominate three candidates for the office of general consultor and communicate their names to the provincial superior and council. They in turn were to forward the names of candidates to the chapter of 1986. This practice evolved so that by 1998, in those provinces that had open chapters, the nominations for consultors were voted by the membership. Therefore, there was a movement from formal nomination of candidates chosen in the provinces by their respective delegates, to providing a list composed of candidates from all provinces for the chapter to consider, as happened in 1998.²¹⁵ Key areas that were once the concern solely of the general chapter were delegated to commissions of the members. This can be seen most clearly in the revision of Constitutions after Vatican II and in the approach taken to the provision of new Constitutions after the juridic union of the two Branches in 2003; in chapter agenda, which came from the membership; and in the Irish Branch decision to delegate planning for the general chapter of 1998 to an inter-province planning group.²¹⁶ The principle of consultation for all local appointments for the government of the Irish Branch was enshrined in cons. 518 d;²¹⁷ experiments with voting patterns at local level ensured a more representative group participating in general

²¹⁵ The process did not elicit nominations from every province in 1992. The general superior asked provinces to reflect on why there was reluctance to offer members for the service of leadership. The system worked better in 1998 and a list of nominees was circulated before the chapter. The system did not evolve into a process of self-nomination, as happened in the North American Branch. Instead the delegates were free to “murmur” among themselves as part of the discernment process. The 1998 chapter drew up a list of names of those suitable for the office of general superior. The delegates considered this panel once those nominated indicated their willingness to stay on the list. This process was distinct from the process of nominating consultors, since it took place at the chapter.

²¹⁶ The general superior described this decision as a major policy shift. See M. NONI MITCHELL, letter, 28 June 1996, in CAIB, GC 98/7, file 20.

²¹⁷ This principle promoted the collaboration of the members in the appointment of local and provincial superiors. In keeping with the hierarchical nature of authority in the Irish Branch, superiors at every level are appointed, not elected.

chapters,²¹⁸ and the gradual movement towards open chapters at province/region level answered the need in some provinces for total participation.²¹⁹ However, attempts to obtain equal representation from the provinces to the general chapter failed.²²⁰ While the general movement towards consultation appeared in both Branches, the North Americans described it in terms of “coresponsibility” for government, “an inalienable right,” the inevitable outcome of which was the establishment of separate Boards in the USA and Canada, and the implementation of collegial government (first at local level, then as the pattern for all government), and ultimately, the introduction of open general chapters.²²¹

As the move to include the whole community in the general chapter gathered momentum in North America in the 1970's,²²² a distinction was made between the two aspects of the chapter: its revitalizing function and its legislative function. Because research, study and the experience of members led to the conclusion that the revitalizing aspect was best accomplished in the shared experience of the total community, and because the Holy See did not favour “total participation” chapters, the community congress

²¹⁸ See GC, 21 July 1968, in CAIB, P1/B3-4.

²¹⁹ Comments on the draft constitutions from Ireland and England in 1983 indicated the desire to open the membership of provincial chapters. The decision to have open province assemblies was left to the provincial chapter by the 1983 general chapter. This was (and is) an emotive issue in some provinces where distance and expense renders it very difficult to implement. In Ireland, the provincial chapter of 1986 voted to open the post-general chapter assembly to all. See GC 1983, Collation of Findings on Draft Constitutions from Provinces, in CAIB, GC 1983/12, Document 1/10/15.

²²⁰ See GC, 7 August 1971, in CAIB, P1/B3-4. The question of representation was debated in successive chapters. The 1998 chapter authorized the general superior and council to approve a new scheme for the 2006 chapter. The new arrangement increased representation in every province, according to the number of members. See MARY WRIGHT, letter, 2 July 2005, in CAIB, Correspondence of Superiors General, 1998-.

²²¹ See GC 1973, Bulletin 3, in CAT, file 5, folder 6. See also GC, 1-11 August 1977, in CAT, file 7.

²²² The minutes of the 1971 chapter indicated that the purpose of the Community Congress of 1971 was “to have the whole community experience the spirit of chapter” (GC, 5-6 August 1971, in CAT, file 5).

assumed great importance.²²³ This movement of the 1970's led to the decision to have observers, then observer-participants and eventually open general chapters in the 1980's, with consultative voice in 1981 and deliberative vote in 1983.²²⁴ However, concerns regarding the representation of those who did not participate were expressed in successive chapters. One of the key differences between the Branches, therefore, lies in the nature of the chapter as representative of the members in the Irish Branch, compared with the total participation approach or direct involvement in government taken in North America.

4.3.2 – Selection of Office-Holders by the General Chapter

The movement to improve representation in both Branches had an effect on elections also. American members fought for the right to be vitally involved in decisions that concerned them.²²⁵ The 1971 North American chapter approved a motion allowing the membership to nominate candidates for the offices of general superior and council. In 1986, this process developed further: an American proposal that nominees should speak to the chapter concerning their vision for the Institute in the Church and in the world was adopted. The final evolution occurred in the 1990's when those who felt “called to leadership” were invited to put their names forward. The poor response prior to the 1999

²²³ A petition to increase the number of delegates was refused. The rescript of 1969 gave permission to have “at most three” additional delegates. See CRSI, rescript, 9 June 1969, prot. no. 6887/69, in CAT, file 4. See also GC 1973, Ordinances of GC 1973, in CAT, file 5.

²²⁴ The 1981 chapter had two groups of participants: elected delegates and voluntary participants. The latter category participated fully, except in voting on substantive and procedural issues. See GC 1981, Responsibilities and Standing Rules of the General Chapter of Affairs of the Institute of the Blessed Virgin Mary 1981, in CAT, file 10, folder 1 and GC, 5-8 October 1983, in CAT, file 2, folder 8. The move to include everyone extended to affiliate members in 1990, when the Americans permitted them to participate in their Regional Assembly. See REGIONAL ASSEMBLY [USA], 15-19 June 1990, in CAT, file 11.

²²⁵ Cf. GC, 26 December-6 January 1925, and GC, 24 December 1949-2 January 1950, in CAT, file 2.

chapter indicated another approach to eliciting leadership was necessary. In addition, unease with the lack of formal discernment procedures in the election process was articulated in a Canadian proposal to the general chapter of 1991.²²⁶ The process of nomination and self-selection removed from the general chapter one of the functions traditionally associated with it. However, since the actual election took place by vote in the general chapter, the letter of the law was fulfilled (cc. 625 § 1, 631 § 1).

The Irish Branch general chapter of 1983 made two changes to the traditional procedure to obtain nominations for the offices of general superior and consultors: although formal nominations were to be made at the chapter by delegates, with the election following after a suitable interval, nevertheless provinces were mandated to explore processes to provide suggestions for general consultors.²²⁷ The process of nomination began in 1986 and provided candidates from some of the provinces, which resulted in a more representative general council. However, the general superior and council were unhappy with the procedure “as the base was too narrow.”²²⁸ This was evident again in 1992 in the reluctance of some provinces to offer members for the service of leadership.²²⁹ Prior to the 1998 chapter, the list of those who had been nominated by the provinces for the service of leadership was sent to the whole membership. In addition, a decision was

²²⁶ Although the proposal addressed regional government elections, it indicated Canadian dissatisfaction with the rather informal approach to elections that had developed. The chapter adopted the Open Circle approach to communal decision-making as a result. See REGIONAL ASSEMBLY [Canada], 5-9 July 1990, in CAT, file 11.

²²⁷ In accordance with tradition, names for the general superior surfaced at the general chapter and the practice of *murmuratio* was followed by formal elections.

²²⁸ See VICAR GENERAL, letter, 23 January 1987, in CAIB, Correspondence of Superiors General, 1986-1998.

taken by the 1998 chapter to circulate the list of nominations for general superior that surfaced at the chapter.²³⁰ There was no decision to allow nominees to speak, although the traditional process of *murmuratio* whereby delegates consulted prayerfully about names of the candidates for the offices of leadership that surfaced at the chapter, whether by nomination of provinces or proposals of chapter delegates, continued to be used. Needless to say, in both Branches, delegates exercised their canonical right to vote freely. Both approaches, be it the restriction of the slate to those who put themselves forward and perhaps by-pass the formal discernment process, or the narrowing of the slate to those nominated in provinces, in practice limit the freedom of the elective process and give a less prominent role to the general chapter.²³¹

4.3.3 – The Expression of Authority: Creativity and the Law

The expression of authority in the Constitutions produced by both Branches demonstrates most clearly the different approaches to the exercise of authority. The same principles underlie the approach: belief in the fundamental equality of every person,²³² the right to participate and collaborate, the expression of authority as service,²³³ the importance of dialogue and subsidiarity and the authority to experiment with structures and

²²⁹ See M. NONI MITCHELL, letter, [n.d.] September 1992, in CAIB, Correspondence of Superiors General, 1986-1998.

²³⁰ See GC, 6 August 1998, in CAIB, GC98/5.

²³¹ It must be admitted that the Code merely mandates the election of the supreme moderator by the general chapter. Proper law determines the way in which this is done. As a result, the two Branches developed different approaches.

²³² See above, pp. 51-53.

²³³ See above, pp. 55-64.

procedures.²³⁴ However, the Branches differ in their expression of the nature of this authority.

The influence of democratic principles, particularly the right to elect those who govern, led to questions regarding hierarchical authority, equality and concern for rights, particularly in the aftermath of Vatican II. This was evident in IBVM North America at an earlier date.²³⁵ Indeed, the Government Commission submissions to the special chapter of 1967 revealed confusion in relation to what government meant.²³⁶ The experimental ordinances of the North American Branch chapters in the 1960's and 1970's included experiments with collegial government at local level, and the belief that the general superior and council should function in a collegial manner.²³⁷ There was much discussion about the best form of administration "in an age when the person is so important."²³⁸ In an attempt to decentralize authority, the provisional draft of revised Rules and Constitutions

²³⁴ See above, pp. 61-71.

²³⁵ See above, pp. 110-120. The first indication the records give of a change in the expression of the dominative authority of the general chapter is to be found in the 1931 North American chapter, which discussed whether the permission of the Holy See was "necessary" to change religious dress. The chapter of 1949-1950 provided the first indication that the American houses wanted their own administrative structures, an issue that arose again in 1955. This chapter also dealt with a query questioning the extent of the general chapter's authority. The general superior believed she had no function in relation to chapter decrees other than to promulgate them as "the group assembled here is, for the time being, the supreme authority of the Institute." Petitions to the 1961 North American chapter dealt with authority issues. The discussion regarding "the fairness" of rotating superiors and reappointing them underlies a problem regarding the exercise of authority. See Minutes of GC 1961, in CAT, file 2. See also Minutes of GC 1931, 1949, 1955, in CAT, file 2.

²³⁶ Suggestions included that the superior executes the decisions of the community or co-ordinates the community and that government should be a participation of all. See GC 1967, Government Commission Report, in CAT, file 3. This chapter had a great deal of discussion on the exercise of subsidiarity and decided to establish a committee to study a satisfactory way of electing chapter delegates to the next chapter.

²³⁷ This perception was perhaps culled from *ES II*, part 1, no. 7, which gave the faculty to general councils acting collegially with the general superior to authorize experiments between the two chapters that followed the special chapter.

²³⁸ See GC, 17-18 July 1969, in CAT, file 4 and also Interim Guide for Consecrated Life in IBVM: Statements and Experimental Ordinances 1967 (the Blue Book) and 1969 (the Brown Book) in CAT, file 4.

for the 1969 session proposed chapters of affairs every two years to elicit the opinions of all, the establishment of regional boards and the extension of the vote to the temporary professed. Attempts to widen the number of active participants in the chapter were not accepted by the Holy See, but the Institute continued to explore the issue, which led to the institution of the community congress. In other words, the North American Branch placed such an emphasis on the value of participation and the right of members to contribute to the decision-making process formerly associated solely with the general chapter, that they found a forum in which this would be possible.²³⁹ Because of the belief, articulated in 1967, that members were coresponsible for the life of the Institute, the assemblies of the total membership, which began in the 1970's, appear to have assumed more significance than the general chapter. Creativity in the interpretation of law enabled the North Americans to move away from the hierarchical expression of law and to explore a model more acceptable to their culture and to the feminist approach to government.

Because of the decision to adopt the Constitutions of the Society of Jesus, the 1986 Irish Branch *Constitutions* were decidedly hierarchical in structure and in tone. The personal authority of superiors was unambiguously stated.²⁴⁰ The general superior's authority was clearly defined, and in spite of the fact that there were many issues for which she needed the advice or consent of the general consultors, their role was defined in a

²³⁹ The discussion of 18 July referred to the possibility of open sessions, the importance of subsidiarity, regional government as a means of decentralization and the whole question of sharing in authority. See GC, 18 July 1969, in CAT, file 4.

²⁴⁰ Dialogue between superiors and members, is an essential element in the decision-making process, but when the consultation is over, the superior makes the decisions. See cons. 470, in 1986 Irish *Constitutions*. See also *SJ Constitutions*, cons. 131, 666 and 667, pp. 117, 290.

vague way (cons. 509).²⁴¹ However, in the IBVM understanding, the general superior's authority is executive. Neither the general superior nor the provincial chapter possesses legislative authority. This function belongs to the general chapter alone. In contrast, the 1986 North American *Constitutions* expressed their understanding of authority in a less hierarchical way. In place of "supreme authority in an ordinary way" (1986 Irish *Constitutions*, cons. 489), the general superior "has particular responsibility" (cons. 95) for a number of key areas. Instead of "assisting" the general superior (Irish *Constitutions*, cons. 509), the general council "strives to reach consensus" with her on all major matters (cons. 98). While the Irish *Constitutions* list the functions of the general chapter in terms of the provisions of c. 631 § 1 (cons. 415), names its authority as supreme and provides for indirect participation in government, the language of the North American *Constitutions* articulates the principle of coresponsibility for government (cons. 88). While details of procedure are spelled out in the Irish *Constitutions* (cons. 416-425), the North American *Constitutions* provide a minimum of detail, leaving the details to the Directory and Policies and Procedures Handbook (cons. 89-92). Unlike the North American *Constitutions*, there is a clear statement of the juridical effect of chapter ordinances in the Irish Branch (cons. 425).²⁴² The North American *Constitutions* provide broad principles in relation to

²⁴¹ Councillors did not have a definite role in the Irish Branch until after the 1986 chapter when the new general superior, Noni Mitchel, assigned areas of competence to her council. From this period, councillors not only took care of certain aspects of government, e.g., in relation to formation, but also took a prominent role in the consultative processes in each province for the office of provincial. The general report for 1992-1998 was a combined effort of the general superior and council and was presented jointly. This kind of practice gives credence to our belief that the style of leadership can mitigate the perceived difficulties with hierarchical government. See GC 1998, General Report 1992-1998, in CAIB, GC 98/5, box 20.

²⁴² There is also a difference in the expression of provincial /regional government: the provincial superior's office in the province is akin to the general superior's in relation to the Institute (cons. 520); the authority of the North American regional superior was delegated by the general superior and described in the Directory (cons. 107). This latter provision provides a greater autonomy for Irish Branch provinces, but in the

government, but leave the details to other proper law. In this way, experiments continued in relation to the expression of authority at every level of government. This included the means to enable total participation at general chapters, despite the prescriptions of the law and the preference of the Holy See.

4.3.4 – The Concept of General Chapter: Supreme Legislative Body or a Forum for Legislation

Questions concerning the authority of the general chapter began in North America already in the 1930's.²⁴³ Again, the purpose of the general chapter received attention at successive general chapters in the 1970's and 1980's and its “evolving” role noted, that is, for the members, the notion of general chapter was changing, just as the concept of authority itself was changing. Confusion concerning government expressed at the special chapter sessions of 1967 and 1969 affected the chapter to the extent that belief in the right of members to participate and collaborate in government gradually changed its nature.²⁴⁴ The experiments authorized by this chapter introduced the principle of collegial government at local level. One of the effects of this experimentation was evident in the chapter of 1971, which questioned whether the office of superior “is necessary today.”²⁴⁵ The general superior drew a parallel between the evolving notion of authority whereby the

context of a pronounced hierarchical structure. However, the expression of regional authority in the Directory gives the North American Branch greater freedom to change the structures.

²⁴³ The 1937 chapter queried the authority of the chapter to legislate. The specific problem related to postulates. The Constitutions (which had not yet received formal approval) had stated that one of the functions of the chapter was to “to inquire into and deliberate upon [...] petitions which may have been lodged by members” (cons. 211). See GC 1937, Postulates for General Chapter 1937, in CAT, file 2.

²⁴⁴ The belief prevalent in North America, that the role of the superior was to be “the executor of the decisions taken by the community” was expressed by the commission on community life in 1967. See GC 1967, Report from Community Life Commission, in CAT, file 3.

superior authorized the discernment of the individual, and the general chapter, which would authorize the decisions of the members formulated in pre-chapter assemblies.²⁴⁶ In this scenario, the general chapter's function was to execute the decisions of members. A 1973 chapter bulletin described the "dynamic evolution" of the general chapter:

[...] from a *legislative body* handing down directives [pre 1967], to four years ago, a *reviewing body* of articulated points of view [of the members] bringing poles together through compromise, to a body which stated that '*at the heart of the Chapter of Affairs, 1971, was the Community Congress*' [...] now to continue this evolution towards increasing individual involvement, a general chapter should be the convening of a larger body of members *to give inspiration and information* for greater enrichment and opportunity for nurturing freedom, responsibility and unity, from which is *elected* delegates to carry out *business tasks assigned* by the larger body.²⁴⁷

The juridic nature of the general chapter was not denied. The North American Branch adopted those principles associated with the general chapter, i.e., its collegial manner of acting, its juridic nature, and its normative function and applied the principles to the gathering of all the members.²⁴⁸ However, in this understanding, the general chapter exercises merely executive function. Real authority resides in the members. Providing motivation and direction and "carrying out business tasks assigned by the larger group" made the general chapter the executive arm of the membership. This is not the role envisaged by c. 631. The American report to the 1976 chapter of elections indicated the confusion in the Institute regarding the role of the chapter and the responsibilities of

²⁴⁵ See, GC, 7 August 1971, in CAT, file 5, folder 4.

²⁴⁶ See M. BERNADETTE CULNAN, letter, 12 February 1971 in CAT, file 5, folder 1.

²⁴⁷ See GC 1973 [Chapter of Affairs,] Bulletin 5, pp. 1-2, in CAT, file 5, folder 8. The emphases are those of the author.

²⁴⁸ See above, pp. 265-283.

delegates to it.²⁴⁹ By 1981, there was a measure of clarity: the purpose and function of general chapters were differentiated, but authority was seen to derive from the assembly of the whole membership.²⁵⁰ The new Constitutions would reflect this belief (cons. 83).

The role of the general chapter as the supreme legislative body in the Institute was not questioned in the Irish Branch. However, the nature of its authority received much attention after the promulgation of the *1986 Constitutions*. As a result, the chapters of 1992 and 1998 mandated the search for ways to “feminize” the Constitutions, an euphemism for articulating an inclusive, collaborative approach to government at all levels. This search, while incomplete, has already produced a more inclusive approach to government, particularly at the local level. As we have seen, a similar search by the North American Branch in the 1960’s and 1970’s led ultimately to the formation of open chapters and to the lessening of the significance of the general chapter. It remains to be seen if this will happen in the Irish Branch.

4.3.5 – Challenges for the New Loreto Branch

The union of any two groups poses major challenges. Two key challenges confront the new IBVM Loreto Branch: the exercise of representative government by the general chapter and the articulation of principles of government in Constitutions. The importance of the person and her right to participate in the government of the Institute was interpreted

²⁴⁹ See ANGELINA SHANNON, address to GC 1977, in CAT, file 7.

²⁵⁰ See ANGELINA SHANNON, Collated Responses to the Questionnaire [on general chapters], 5 January 1981, in CAT, file 8.

in IBVM North America as the right to participate directly.²⁵¹ Because of its relatively small size and its North American cultural identity that predisposed it for direct involvement, the Institute moved quickly from indirect participation in government by means of representation to direct participation, despite the stance of the Holy See on this issue. Some members, therefore, have years of experience of direct participation in government at the highest level in the general chapter. In addition, the extension of the collegial principle to local communities has reinforced the principle of the right to participate in government. Although the participative, collaborative approach to government is not without difficulties and the open general chapter does not, in fact, consist of the total membership, the right to participate directly is deeply embedded in the North American psyche.

One of the major challenges, therefore, will be to accommodate this practice of direct participation within the representative system of IBVM Loreto Branch. However, a similar move towards direct participation in government has already resulted in open chapters at provincial level in some of the former Irish Branch provinces. It is our opinion that when the members are involved fully at local level, when they can influence the agenda of the general chapter and can nominate members to the leadership roles in the Institute, then the representative system of the general chapter can function as that instrument of discernment and unity as it was intended to be by the Constitutions.

²⁵¹ Similar sentiments can be found in other constitutions, e.g., the Constitutions of the Sisters of Namur, who describe one of the functions of government as “to recognise and ensure the rights of individuals and groups” (cons. 99 [d]) and to establish structures that “enable authority to be exercised in a collaborative style [...] making informed, participative decisions more possible” (*Constitutions and Directory: Sisters of Notre Dame de Namur*, cons. 99 and 100, [Rome], [Sisters of Notre Dame], 1989, p. 45).

The writing of Constitutions poses the second major challenge to IBVM. The membership of the former Irish Branch has indicated strongly the need to “feminize” the hierarchical Constitutions adopted in 1986, a process in which the North Americans have much experience. This has been a chapter direction in the general chapters of 1992 and 1998. The simple statement of general principles in the 1986 North American *Constitutions*, allowed for the creative expression of government in the local situation. In the Irish Branch, the general superior and council adopted a team approach to government from 1986 and from 1992 this same approach was encouraged at local level. However, the major difference consists in the fact that in the Irish Branch, while the members have input into decisions that concern them, e.g., the appointment of superiors, nevertheless they do not vote them into office. The traditional “consultation followed by appointment” procedure is followed. While the harmonization of these two approaches remains a challenge, there are indications that perhaps a less hierarchical approach is now acceptable to the Holy See.

4.4 – CONCLUSIONS

In its historical manifestation, the general chapter was an instrument of government that functioned collegially to carry out elections and to formulate major decisions in relation to life and mission. Under the influence of the Holy See, one of the key tasks became the revision of Constitutions to accord with the guidelines and/or legislation of the Church. Because of the values of Vatican II, this representative instrument became the agent of renewal in which each member had a real stake, and due to the unprecedented authority given it by *ES II*, it assumed, albeit temporarily, the authority to experiment with

the style of government. This freedom had different consequences in both IBVM Branches.

In their return to the sources of IBVM charism, the Irish Branch adopted the hierarchical Constitutions of the Society of Jesus, in which the general chapter is the highest authority and the sole legislator in the Institute; the office of the general superior is for life and the chapter meets only for certain important matters that affect the entire Society. In IBVM, the general superior's term is defined and therefore the general chapter takes place at certain predetermined intervals. Representation has been a contested issue since the beginning of the Irish Branch. However, the adopted method ensures that each province and mission area participates directly in the working of the legislative body that is representative of the whole Institute. Since 1986, chapters have provided directions, thus extending the functions associated with the exercise of government by the general chapter.

In the North American Branch, the collegial *modus operandi* of the general chapter became one of the options for local government after the 1967 general chapter. This direct participation in government at local level, together with the practice of electing local leaders, ultimately resulted in the establishment of open general chapters, where, in theory, each member can participate directly in government.²⁵² Experiments with governance structures drew the Institute's attention to the difficulties inherent in a participative approach to government that focuses on the member's right "to contribute to the government of the Institute" (cons. 83). This was articulated in the general chapters of the

²⁵² Members can choose their level of participation, whether to support by prayer, to collaborate in study, research, meetings, or to exercise deliberative vote. Everyone is offered the possibility of voting and discerning, therefore an individual's ability to shape the future of the group is dependent on personal choice. See T. DUNN, "Election and Communal Discernment: Goals, Myths, and Gifts," in *RfR*, 63 (2004), p. 238.

1970's when "individualism" was named as a difficulty particularly in the local situation. The Institute also recognised that lack of formal discernment processes resulted in decisions made by majority rather than by discernment and took steps to remedy this situation in the general chapters of the 1990's.

The election of the general superior in the North American Branch follows a self-nominating process that is open to all members. These collaborative, inclusive processes were made possible because of the general nature of the principles of government in the Constitutions and the creative use of proper law. The main difference in the general chapter, therefore, derives from the fact that it is a representative instrument for one Branch and a means of direct participation in government for the other Branch. By the fact of juridical union, the former North American Branch has taken on a system that is counter-cultural for them and, with its acceptance and incorporation of different cultures and nationalities, a new IBVM congregational culture has already come into being: a culture that in many ways is more than just the sum of its old and new parts.²⁵³ It remains to be seen whether the new Loreto Branch can rise to the challenge of integrating the North American vision of collaborative, inclusive government with the hierarchical mode of the former Irish Branch. The last two general chapters of the former Irish Branch indicate that a significant proportion of the membership want a collaborative, inclusive expression of government. The statement issued by the general leadership as a result of the mid-term review in 2004 requested the establishment of a province process to explore the feminine way of living Ignatian spirituality today and exploration of how IBVM members can be

²⁵³ For an approach to coping with internationality, see J. MALONE, "Internationality: Consciousness Raising and Conversion," in *R/R*, 55 (1996), pp. 365- 372 and F. MCGINN, "Towards Multiculturalizing a Religious Community," in *ibid.*, pp. 373-387.

women in the Church in the spirit of Mary Ward. This provides hope that a collaborative, inclusive, participative model of government can be accommodated in the new Loreto Branch. Given the possibilities of some new technologies, it is even possible to dream a vision of direct participation in government for all members. It will be the task of the general chapter to facilitate this new vision of government, whereby the general chapter is at one and the same time an expression of democratic principles and an instrument of hierarchical government, and to approve Constitutions that make this expression possible.

GENERAL CONCLUSIONS

The general chapter finds its origin within the monastery as an instrument of government. The understanding of authority was influenced by the Councils of the Church and characterized as dominative, at a time in history when the hierarchical expression of authority prevailed. Vatican II changed the understanding of authority, even in the context of hierarchy, to one of “service.” Authority as service necessarily involves participation and therefore, by extension, participative, consultative and, where appropriate, collegial forms of decision-making. This is all premised on the common search for the will of God and depends inalienably on a true spirit and practice of discernment by all involved, whether leader or member. The problem, therefore, is not hierarchy vs more democratic structures but rather the way the power vested in people who have authority is exercised, i.e., as non-consultative, non-participatory and authoritarian rather than as participatory, consultative and collegial. The former Branches of IBVM grappled with this problem, introducing more participative modes of government at all levels. The challenge for the new Loreto Branch will be to express this approach to government within the hierarchical framework of the Constitutions of the Society of Jesus and of the Church.

In his opening address to Vatican Council II, Pope John XXIII described history as “the teacher of life.” This sentiment has a particular application to the general chapter in institutes of consecrated life. Recognised by the Church as a vehicle not only for good government, but also for renewal and fidelity to the mission of the Church, the general chapter became a permanent feature of the structure of religious government from the year 1215 onwards. With its inbuilt processes for the application of the principles of

consultation and participation, representation, a collegial approach to decision-making and the capacity to adjust and conform to contemporary needs, the general chapter provides a model of good government that finds, however, limited application in *CIC* and in the life of the Church outside religious institutes. It must be acknowledged, however, that the nature of the religious institute as a collegial juridic person differs from the non-collegial juridic person of the diocese. Consequently, the comparison falls short. However, it is our opinion that just as the structures of the religious institute protect and preserve the participative approach to government, so too, for example, would the requirement to establish a pastoral council in the diocese enshrine in law the value of the participation of laypersons in the governance of dioceses, at least in a consultative fashion. This would require a change in the law, which presently describes the pastoral council as optional (c. 511).

The Church through her oversight of religious institutes and because of the work of her medieval canonists largely shaped the idea of representation. However, the Church, which ensured equity for all members of religious institutes by means of representation as a mechanism for participation in government, does not apply the principle liberally in her own organisational structures. Particularly in relation to the laity, there is a gap between the value promoted and actual practice. Despite the proliferation of references to participation in the documents of Vatican II, there are only five references in *CIC*.¹ In addition, the only representative organ that requires the actual participation of laypersons, the pastoral council, is an optional organism in the diocese (c. 511). It seems strange that

¹ Two of these relate to religious. See cc. 633, 717 § 3, 837, 906, 1331 § 1, 1°.

the bishop, whose office is pastoral, can in theory exercise it without ever consulting those who are the primary constitutents of his diocese (c. 381).

Perhaps the most fundamental change enunciated by Vatican II and repeated in *Sacrae disciplinae leges* was the concept of hierarchical authority as service, a concept that articulates a true image of the Church. Authority as service necessarily involves the participation of the faithful in a common search for the will of God. Nevertheless, among the hundreds of references to power and authority in *CIC*, the only explicit reference to authority as service occurs in c. 618, where the authority of the religious superior is described in these terms.² Is it any wonder that confusion developed on the part of some religious institutes, especially in the USA, in relation to authority? The principles enunciated for religious institutes, the emphasis on the organic communion of the whole Church, the fact religious life has no meaning outside its connection to the Church, have produced a sort of schizophrenia among some religious because the principles religious are called to live within, and which were implemented so enthusiastically by the general chapters of so many institutes in the wake of Vatican II, are not the observable values with which the Church functions in the external sphere. How can the Church be truly credible when in her own practice she fails to implement some of the same principles she upholds so eloquently in relation to religious institutes and secular society? Perhaps the most striking example of this schizophrenia occurs as a result of the ambivalence towards the participation of laypersons, and women in particular, in the governance of the Church. Despite repeated assertions of the Holy See and bishops in North America, in particular,

² Of course, the idea of authority as service is implicit in *CIC*'s description of the authority of the Roman Pontiff (cc. 333 § 2, 334), the authority of the bishop (cc. 383, 384, 387) and the authority of the pastor (c. 528).

that laypersons, especially women, must be involved in decision-making processes in the Church, little canonical progress has been made in this area, and this in spite of the growing preponderance of women who actually exercise quasi-governance functions in dioceses and parishes. While the mistake made in relation to the 1994 Synod on Consecrated Life, which initially had no female participants (despite the fact that in 1994, 72% of religious were female), is not likely to be repeated, there is a discernible reluctance on the part of the Holy See to involve laypersons in governance functions. For example, despite *de facto* evidence of a contrary need, the recent Instruction concerning marriage tribunals *Dignitas connubii*, confirms that a cleric must preside over the collegiate tribunal (art. 30 § 4) and that a layperson cannot exercise the judicial function except as a member of a college (art. 46 § 1).³

While the religious law of *CIC* lacks most of the discriminating legislation regarding inequality evident in *CIC/17*, some of the contradictions therein have given conflicting messages that impact on the government of religious. For example, the principle of autonomy regarding life, governance, discipline and the preservation of the institute's patrimony (c. 586), and the right, taking account of its own special character, to define in its constitutions the manner in which the evangelical counsels are to be observed in its way of life (c. 598 § 1) are difficult to reconcile with the "prerogative" of the competent authority to "interpret" the evangelical counsels and to "legislate" for their practice (c. 576). Because of the changed if somewhat ambivalent understanding of the

³ PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, instruction for marriage tribunals *Dignitas connubii*, 25 January 2005, Vatican City, Libreria editrice Vaticana, 2005, English translation *Instruction to Be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage Dignitas connubii*, Bangalore, India, St. Peter's Pontifical Institute, 2005.

power of governance in *CIC*, the exercise of authority by the general chapter is a participation in the governing power of the Church, an exercise of communion in which all the members participate, either directly or indirectly. This is achieved particularly by faithfulness to the charism and by fostering appropriate renewal (c. 631 § 1). This is not to say the legislative nature is denied; rather, its purpose is to be seen in the wider context of renewal and fidelity, all for the sake of the institute's mission in the Church. This ecclesial aspect of its nature renders the general chapter an instrument of revitalization not only of the members but also of the Church (*Mutual Relations*, no. 13). The difficulty lies in living the principles within the context of an hierarchical structure that appears ambivalent and does not admit in practice the principle of equality as lived in institutes of consecrated life.

Examination of the power and authority exercised by superiors and general chapters has led to the conclusion that this exercise is in fact a participation in the exercise of the power of governance. Despite the unnamed power exercised by superiors and general chapters in c. 596 § 1, certain acts, e.g., issuing a decree of dismissal (c. 699 § 1), require executive power of governance (c. 35). This provides an example of that cooperation in the exercise of power of governance envisaged by c. 129 § 2 and given by law, rather than by delegation, to the superiors and general chapters of non-clerical institutes. Studies such as that undertaken by LCWR in 2001 provide evidence of the *de facto* participation of women in selected Church leadership roles, through which they exercise jurisdiction in many dioceses in the USA.⁴ This in turn reflects the efforts of US

⁴ See A. MUNLEY et al., *Women and Jurisdiction, An Unfolding Reality: The LCWR Study of Selected Church Leadership Roles*, Silver Spring, MD, LCWR, 2001.

bishops to involve laypersons in decision-making in the Church.⁵ The work of many eminent canonists supports the conclusion that the exclusion of laypersons from participation in governance in the Church is no longer sustainable.

The general chapter holds the key to historical stability, continuity and legitimate constitutional change in every institute.⁶ Although history demonstrates that there were times when the Church adopted an overly protective attitude, culminating in the type of uniformity imposed by the interpretation of *CIC/17*, Vatican II and in particular the encapsulating of its values in *CIC*, recognised the principle of the on-going work of the Holy Spirit in the Church and in the world. It recognised, too, that institutions cannot be cast in stone but must allow for growth and development. This principle found expression in the Pontifical Commission's approach to the revision of religious law. As a result, *CIC* provides individual institutes with the procedures with which to manage on-going revision. *CIC* ensures that proper law exercises its crucial role as the force that gives a particular kind of life to each individual congregation and therefore to the Church. This flexibility does not find expression in the Church's universal law. For example, the preface to *CIC/17* appeared to provide a mechanism to revise the law, but this mechanism was never used.⁷ As a result, in the aftermath of *CIC/17*, a huge body of *extra codicem* law developed.

⁵ See NCCB (Committee on Women in Church and Society), statement *From Words to Deeds: Continuing Reflections on the Role of Women in Society and in the Church*, 13 October 1998, in *Origins*, 28 (1998), pp. 354-359. See also P.J. MURNION and D. DE LAMBO, *Parishes and Parish Ministry: A Study of Parish Ministry*, New York, National Pastoral Life Centre, 1992, a study conducted on behalf of the Lay Ministry Subcommittee of the Committee on the Laity of NCCB. The 2001 *Official Catholic Directory* shows that 668 parishes in the USA are entrusted to laypersons and of the 2241 parishes entrusted to non-resident priest pastors, many are in fact run by laypersons.

⁶ See ÖRSY, "Some Questions," p. 93.

⁷ See BENEDICT XV, motu proprio *Cum iuris canonici*, 15 September 1917, in [introduction to] *CIC/17*, p. 26.

Because of the lack of an in-built revision process, it seems as if this will happen with *CIC* also. In fact, as Coriden points out, despite the values of consultation promoted by Vatican II, the first amendment to *CIC* concerning c. 751, *Ad tuendam fidem*, was imposed, without consultation, at the request of the Congregation for the Doctrine of the Faith.⁸ The law concerning religious, both universal and proper, prohibits this arbitrary exercise of authority in religious institutes.

The 1992 USA survey on religious pointed to the fact that a shift in understanding authority began before the Vatican Council. The survey, which our own findings validate for IBVM, situates this change in the disillusionment of American society generally with authority in Church as well as state. The so-called deconstruction of American society led to a re-examination of the former structures that supported a hierarchical world-view. This deconstruction was influenced by such contemporary phenomena as the raising of feminist consciousness, the social and political unrest of the 1960's and 1970's, the advances in the human sciences and the increasing intellectual stature of religious. The consequence for religious communities was a movement towards greater participation, collaboration and collegiality that manifested itself in a consensus approach to decision-making and the establishment of more democratic structures of government at all levels. In other words, the good practices of collegial government by the general chapter were extended to the practice of government at other levels also. This begs the question: is hierarchical

⁸ See CORIDEN, *Canon Law*, pp. 159-163. In addition, *Leges Ecclesiae post Codicem iuris canonici editae*, vols. 8 and 9, Rome, Edicla, 1997-, cites 789 documents that have been issued by the Roman Pontiff and/or Curia between 1986 and 1999. In other words, a large body of *extra codicem* law has already been built up.

government a constitutive element of the exercise of government in religious institutes, even in the Church?

We believe that Vatican II attempted to address this issue in the debates about collegiality, in the ecclesiology of communion that attempted to resolve the issues concerning papal primacy and the college of bishops, the relations between the universal and particular Church and the individual bishop and the conference of bishops, in the description of Church as People of God and in the emphasis on authority as service. Although the debates did not lead to a coherent exposition of the exercise of government in the Church as communion, they opened the door to a different interpretation of government, wherein the communion of the faithful (the Church as People of God, *LG*, chapter 2), and the communion of the churches, which is expressed and served by the hierarchical office (*LG*, chapter 3), exist side by side. Neither can exist without the other, but the relationship between them has been changed by the right acknowledged for the communion of the faithful to have its own juridically inculturated forms and the requirement that hierarchical authority be exercised as service.⁹

The general chapter of every religious institute provides one example of the model of *communio* that Vatican II attempted to recapture. The nature of the institution as a collegial body that represents the institute, whose primary purpose is to foster unity or communion, a meeting of participants who are equals and act as equals for the common good of the whole, preserving the patrimony and making those decisions that will ensure

⁹ See J.J. BURKHARD, "The Interpretation and Application of Subsidiarity in Ecclesiology: An Overview of the Theological and Canonical Literature," in *The Jurist*, 58 (1998), pp. 328-331; A. LEYS, "Structuring Communion: The Importance of the Principle of Subsidiarity," in *The Jurist*, 58 (1998), pp. 84-123.

its life into the future, is akin to the model of Church presented by Sacred Scripture.¹⁰ This image, together with the evidence of history, would seem to suggest that the hierarchical structure was conditioned by culture and arose out of the identification of Church with state. In attempting to articulate an ecclesiology of communion, Vatican II took a major step towards restating the model of Church as the community of the faithful found in Sacred Scripture (for example, Acts, 4:32-34). In this model, differences of function, not an hierarchy of roles, determine the exercise of authority (cf. Rom. 12:5). The leaders appointed by Jesus are a constitutive part of the assembly. However, they exercise their roles in service to the community. It is our contention that the general chapter in many religious institutes, including that of IBVM, is attempting to implement such a model at all levels of government.

Our first conclusions, therefore, concern the recognition that the institute of general chapter, which was so carefully crafted by the Church from the beginnings of organised religious institutes to provide the members with a means of participation in the more important affairs of the institute, has a great deal to teach other organisms in the Church about the practical implementation of principles such as consultation and representation, the collegial approach to decision-making and the mechanisms necessary for the on-going revision of law to suit contemporary needs.

Our examination of the practical issues related to the exercise of authority by the general chapter in chapter 3 revealed a number of areas that require further investigation.

¹⁰ For example, Luke 22: 24-27 provides an example of how authority ought to be exercised; 1 Cor. 12 describes the Church in terms of a body, all of whose parts play a necessary role in its working; Acts 15 illustrates how controversy can be solved in dialogue with the elders and leaders.

The question of the exercise of collegial government, which finds such fine expression in religious institutes as well as in the Eastern Churches, must be developed, particularly in relation to the ecumenical agenda. The inclusion of the section on the rights of religious in *CIC* is compromised by the difficulties surrounding their protection and vindication and the absence of structures, except in the area of hierarchical recourse (cc. 1732-1739) and the dismissal of a member (cc. 694-704). This makes this inclusion a sort of window-dressing that has no real substance. However, the wording of c. 617, “superiors are to fulfil their office and exercise their authority in accordance with the norms of the universal law and of their own law,” as Morrissey believes, perhaps provides an opportunity for the preparation of an administrative directory wherein policies would be outlined and procedures spelled out, always within the context of the freely given commitment of the individual religious to the particular way of life in an individual institute.

The inclusion of the section on juridic acts in *CIC* (cc. 124-128) draws our attention to the paucity of canonical doctrine in the area. This is particularly true in relation to collegial acts, also those of the general chapter. Questions concerning valid/invalid juridic acts placed by a college and the possibility of recourse against them require further examination and research. The lack of permanence precludes the grant of juridic personality to the general chapter. However, given the complexity of life in the modern world, the question arises whether a permanent structure with the wide-ranging powers of the general chapter might assist the general superior and council, e.g., in the manner of the Conference of Bishops (cc. 447-459). Other issues that require further study include the canonical status of members on unauthorized leave of absence (c. 665 § 2); the extension of full rights to those temporarily professed in view of the authentic interpretation of the

the term “religious” (c. 684 § 3) in 1987; canonical evaluation of the procedures of nomination and self-selection used in many institutes to compose the general chapter and to elect the general superior; problems concerning eliciting consensus and decision-making in large groups; the use of technology as a vehicle for legitimate assembly; creative uses of proper law and its relationship to constitutions; processes for ensuring that the general chapter represents the multicultural nature of the international institute in view of the belief that the religious community is perhaps the only one that can meet this challenge;¹¹ canonical analysis of the procedures used to implement the goals concerning collaborative government articulated by the National Conferences of Religious in North and South America in 1989 (for implementation by 2010) and the evaluation of the widespread use of consensual processes and team leadership in view of the finding that such approaches represent the least common denominator in the organisation and can paralyze visionary leadership.¹²

Our study of the respective developments of the two former Branches of IBVM in chapter 4 revealed an evolution in the nature and function of the general chapter that paralleled evolution of general chapters generally, particularly in North America.¹³ This evolution saw the general chapter in IBVM evolve from an event that occurred periodically, with the emphasis on its legislative and elective roles, to a much richer understanding of its nature, as the body that has the fundamental duty to protect the

¹¹ McGinn cites the values inherent in community living, i.e., conversion, forgiveness, sacrifice, patience, understanding, and charity, as those necessary to make any institution multicultural. See F. MCGINN, “Towards Multiculturalizing a Religious Community,” in *RfR*, 55 (1996), p. 386.

¹² See NYGREN and UKERITIS, “Future of Religious Orders,” p. 267.

¹³ See GC 1998, Resource Material – C, in CAIB, GC’98, *Resources*.”

patrimony of the institute and to foster ongoing renewal. Where once power was understood as vested in authority, now power is understood to be in persons and is shared where possible between members and leaders. The general chapter composed of delegates only, whose agenda was provided by the leadership and augmented by the postulates of the members, has given way to a chapter in which all the members have a real stake because of their participation in pre-chapter processes and agenda-making, and in the case of North America, in the general chapter itself. The parliamentary type processes of discussion and vote have been replaced by discernment, theological reflection, and a consensus approach to major decisions, which while focused on an agenda, allow for response to the actual group process, which in turn provides great flexibility in relation to procedures and outcomes. Where in the past, there was a greater uniformity in relation to ministry, community and structures of government, the modern chapter's context is more varied and, in the case of the former Irish Branch, reflects the multicultural nature of the Institute. Decisions and acts of the general chapter have become directions or guidelines for the period between chapters. Since 1967 in the case of North America, and 1986 in the Irish Branch, the focus of these chapter acts has been to introduce the more participative methods associated with the general chapter into the exercise of government at all levels of the Institute. Because of this, the general chapter is, at one and the same time, an instrument of hierarchical government and an expression of democratic principles. This apparent dichotomy derives from the fact that principles associated with the democratic process today, namely, representation, consultation, and decisions made collegially, reflect the composition and the *modus operandi* of the general chapter, while at the same time, as the supreme legislative authority in the Institute, the general chapter is at the apex of the

pyramidal structure that is hierarchical government. The difference is that the general chapter of IBVM has legislated for those very principles of equality and collaboration that characterize its own *modus operandi* at all levels of government, with the result that the strictly pyramidal approach to government no longer pertains in practice in the former Branches. Because of the very general nature of the principles of government expressed in the 1986 North American *Constitutions*, the movement into collaborative structures did not necessitate changing them. The 1986 Irish Branch *Constitutions*, on the other hand, retained their hierarchical approach, despite the changes in practice, which in turn prompted their review currently taking place in the new Loreto Branch.

The juridic union of the Branches brought together two apparently different approaches to the exercise of government. Our analysis of the respective Constitutions demonstrates that amply. However, our examination of the different emphases in the exercise of government in both Branches leads to the conclusion that differences are more cosmetic than real. The deconstruction of the hierarchical model of government that began in 1967 in North America has its counterpart in the actions undertaken in the former Irish Branch since 1986. That is to say, the ways of governing have become more collaborative and participative, but always within the context of an hierarchical structure. This is because of the right of leadership to make the more important decisions, based on the fact that leadership, because of its overarching role, is privy to the bigger picture of the Institute and its patterns than most ordinary members.

There are significant differences nonetheless. The right of North American members to participate indirectly in government by the general chapter had become a “right” to participate directly by means of open chapter by 1983. This principle was

enshrined in the Constitutions as the “coresponsibility” of each member for government (cf. cons. 110), and the principle of consensus was articulated as the means by which this might come about (cf. cons. 98, 107, 110). The democratic approach to government, in other words, was very evident in the procedures, practices and the language of government, all of which were facilitated by the general chapter. In the former Irish Branch, on the other hand, despite the modification of the structures since 1992, the fundamentally hierarchical approach remains, since this is understood to be part of the IBVM charism. This can be seen, in particular, in the approach to the appointment of superiors and councillors by the general superior and council, after consultation with the members. In addition, since the Congregatio Jesu has adopted the Constitutions of St. Ignatius *ad maximum*, if IBVM Loreto Branch wants to reunite with the original Mary Ward Institute (and the evidence suggests that it does), then hierarchical government must be embraced. It is our contention that participative, consultative and, where appropriate, the collegial style of leadership within a context of hierarchy interpreted as authority of service is a much stronger and more appropriate way forward for religious than consensus and democratic structures. These latter, as the North American Branch discovered, tend to play more into individualism and perhaps more importantly majoritarianism than a commitment to real discernment and following the movement of the Spirit within the Institute.¹⁴ This is especially true where that movement is challenging or at least not appealing to many members or to the more vocal members.

One must acknowledge the impact of culture on the hierarchical expression of government in IBVM, whose charism derived from a period when the Church, under attack

¹⁴ See above, pp. 276-282.

from reformers, defined itself categorically in hierarchical terms. Under the impetus of ongoing renewal, the Church in Vatican II has, we believe, begun the journey towards redefining its authority as service in terms of the original vision of Jesus Christ. That same impetus is working in IBVM and has resulted in the contemporary movement away from hierarchy of roles. This is not to deny the legitimate role of superiors and general chapters in decision-making. It simply questions the way in which these decisions are made. This is true of religious institutes as well as the Church. Since the Church is an organic communion in which religious institutes play an important role, we believe that the Church has much to learn from this charismatic part of its own structure.

Another challenge for IBVM concerns the nature of the general chapter as a representative body. The chapter lost its representative function in the former North American Branch. We believe a key challenge for the new Loreto Branch concerns making the general chapter truly representative of the Institute. This means ensuring full involvement at local level in the preparatory stages, accepting the agenda that comes from the provinces as indicative of the main concerns of a given area, structuring the provision of nominations for leadership roles in such a way as to ensure the greatest possible participation in the process at local level, articulating the principles of government in such a way as to honour the participative, collaborative, consensus approach that is more conducive to women's ways of working, including, where appropriate, and despite the preference of the Jesuit Constitutions, the practice of election of leaders, followed by confirmation by the leadership. The multicultural nature of IBVM, Loreto Branch also demands that the requirements of culture be taken on board, especially in decision-making processes. Because of the involvement of the whole community in the long-term

preparation for the general chapter, in discernment, sharing, listening and articulating where the Spirit is leading, the actual formal assembly of the chapter can provide the actualization of a consensus that has been emerging among the members.¹⁵ The challenge is to ensure that leadership styles, whether individually or corporately in chapter, accord, where appropriate, with the participative values of authority as service in today's world.

The role of leadership is crucial: that of the general chapter, which formulates directions and guidelines, provides vision and the legislation or other regulations necessary to make real that vision, and that of the general superior and council, who promulgate and are responsible for the implementation of the general chapter's norms and decisions. Because of the different approach to authority and the greater involvement of the members in decision-making, the role of government is of vital importance in the life of religious and, as a result, for their contribution to the life of the Church. The change reflected in the Constitutions of IBVM indicate a shift from the more monastic form mandated by *CIC/17* to the more charismatic form derived from the study of the Institute's charism in the light of Vatican II and *CIC*. If the emphasis on participation and participative structures has diminished clarity concerning the role of authority and leadership, this struggle reflects the human condition, the paschal mystery, the mystery of the Trinity, to which religious are called to be a sign.

Although some of the practices of business, or politics, and the insights gained from the human and behavioural sciences have undoubtedly helped in the organisation and structure of chapters, in the final analysis, the chapter is above all an experience of faith,

¹⁵ See MOFFETT, "Viewing Chapters," p. 176.

founded on the faith of the members, and dependent on that faith to be a true and authentic manifestation of what the Holy Spirit is saying to a particular institute for service in the Church at a given time. The nature of the chapter as a faith experience is further expanded by the theological and ecclesial values that underpin its existence. In this context, the majority vote does not always constitute the best option. To reduce the chapter to what is voted by majority is to reduce the chapter to the level of a business meeting. In religious government we are concerned with discerning the will of God as reflected in unity and not necessarily majority. Consequently, the place of on-going prayer and reflection are essential elements of all aspects of the chapter, from its official convocation to its formal conclusion. Indeed, since ordinary government must implement its decisions and directions, the experience of chapter and its process of discernment becomes an on-going dynamic in the life of members, an ecclesial act, since the whole ecclesial body benefits from the fruits of the chapter.¹⁶

This study has analysed the importance of general chapters in the life of religious institutes, particularly in IBVM. As an essential element in the government of every institute, the general chapter provides an excellent example of that model of government described by St. Paul in 1 Cor. 12:4-28. The distortion associated with the hierarchical expression of authority in history was redressed somewhat by Vatican II, particularly in its insistence on the rightful participation of the members. As Beal says

To adopt a governance style conducive to effective consultation is not to abdicate hierarchical authority or to democratize the Church. Rather, it is to recover the governance style of Cyprian of Carthage who could both insist that nothing was to be done in the Church without the bishop and

¹⁶ See PIRONIO, "Reflections," p. 9.

acknowledging that as bishop he did nothing “*sine consilio vestro et consensu plebis*.”¹⁷

It is our contention that general chapters provide a model of government that has been tried and tested by centuries of experience. They are the vehicle by which religious congregations have ensured their faithfulness to mission and their relevance to the Church and the world. The general chapter provides a model that would bear testing in parishes, dioceses, even in the Holy See, and it requires an understanding of and thoroughgoing commitment to prayerful discernment. Perhaps this is a gift that religious institutes might give anew to the rest of the Church in this era of individualism?

¹⁷ See J. BEAL, “Lay People and Church Governance: Oxymoron or Opportunity,” in *NCCB: Together in God's Service, Towards a Theology of Ecclesial Ministry*, Washington, DC, NCCB, 1998, p. 122.

APPENDICES

APPENDIX 1

CONSTITUTIONS OF THE INSTITUTE OF THE BLESSED VIRGIN MARY [IRISH BRANCH] 1986

PART VIII: HELPS TOWARDS UNITING THE DISTANT MEMBERS WITH THEIR HEAD AND AMONG THEMSELVES [MODERN DOCUMENT].

404 Union of minds and hearts among all the members of the Institute is expressed and intensified through the general congregation. Since each community is involved in its preparation through prayer and preliminary discussions, the general congregation is an occasion of renewal for the whole Institute.

405 The general congregation, while in session, exercises supreme authority in the Institute in accordance with the Constitutions (cf. Canon 631 § 1).

406 An ordinary general congregation shall be convoked every six years or whenever the office of general superior becomes vacant before the end of her term of office, in such wise that normally the office be not allowed to remain vacant more than six months, and in no case longer than twelve months.

407 An extraordinary general congregation shall be convoked whenever the general superior, with the consent of her council, should deem it required for the good of the Institute.

408 The general congregation shall be convoked by the general superior, or should the office have become vacant, by the vicar general.

409 Convocation of a general chapter shall be by means of a circular letter to each of the houses of the Institute, issued in the case of an ordinary general congregation not less than six months in advance which shall state the date and the place at which the congregation shall meet. The letter should direct that special prayers and Masses be offered to implore God's blessing on the work of the congregation.

410 The venue of the general congregation will ordinarily be where the general superior resides, unless another more suitable place be chosen by the general superior, with the consent of her council and after consultation with the provincial superiors.

411 The members of the general congregation shall be (cf. Canon 631 § 1):

- a) the general superior
- b) the general consultors
- c) the general secretary
- d) the general bursar
- e) the provincial superiors
- f) the regional superiors
- g) the delegates elected from the perpetually professed members of each province
- h) one delegate elected from the perpetually professed members of each region
- i) the former general superior – *ex officio* member of the next general congregation only.

The number of elected members shall be greater than the number of *ex officio* members

412 The number of delegates to the congregation to be elected from a province shall be determined on the basis of the number of professed sisters who belong to the province. The number will be according to the ratio laid down in the Directory.

413 The general superior, the general consultors and the general secretary shall remain members of an assembled general congregation even if other sisters are, in the course of the prescribed elections, elected by the congregation in their stead.

414 The agenda and rules of procedure of the general congregation shall be determined by the general superior after consultation with the general council but shall be subject to ratification by an absolute majority of the congregation

415 Without prejudice to the provisions of Constitution 414, it shall belong to the ordinary general congregation:

- To hold elections in accordance with the Constitutions
- To safeguard the nature, end, spirit and sound traditions of the Institute

- To formulate general principles and recommendations for the continuous renewal of the religious life of the Institute
- To ensure unity in the diversity of our apostolate according to the changing needs and the life and growth of the Institute
- To consider formation at every level in the Institute and to assess the situation in regard to vocations
- To review the financial affairs of the Institute, its provinces and regions
- With the approval of the Holy See, to make needed changes in the Constitutions
- To revise the Directory, when necessary.

PROCEDURE AT THE GENERAL CONGREGATION

416 a) The general congregation first elects scrutators and secretaries in accordance with Directory norms. At an ordinary general congregation, the general superior next presents to the congregation a written report of the religious life, the apostolate and the financial state of the Institute since the preceding general congregation.

b) The section of this report dealing with the financial state of the Institute shall be prepared by the general bursar. It shall be submitted before the congregation, to the general superior and her council and be signed by them.

c) The congregation shall elect by a relative majority of votes, a commission of three of its members other than the general superior and the general consultors. This commission shall examine the report of the general superior on the religious and apostolate of the Institute and submit to the congregation such observations thereon as it may think appropriate. A further commission of three members, similiarly constituted and excluding the general bursar, will deal likewise with the financial state of the Institute.

417 Having fulfilled the prescriptions of Constitution 416, the general congregation proceeds with the agenda as agreed in accordance with Constitution 414.

418 a) If a general superior is to be elected, the general congregation shall spend some time in prayer and reflection before proceeding to the election (cf 400 ff).

b) Each one is obliged to vote for the sister whom before God she considers most fitted to fulfil the role of the general superior for the good of the Institute and of the Church.

c) That sister shall be, and be declared, elected who shall have received the votes of an absolute majority of the vocals present, if not at the first, then at either the second or the third scrutiny; if the third scrutiny is inconclusive a vote is to be taken between the two sisters with the highest number of votes, or, if there are more than two, between the two senior by profession, or, if equal by profession, senior by age. At the fourth and final scrutiny the sister with the highest number of votes shall be deemed elected. Should the votes be equally divided in this scrutiny, the sister senior by profession, or if they be equal by profession, the sister senior by age shall be deemed elected.

d) Should there be elected to the office of general superior a sister who is not a member of the congregation she shall be summoned at once, and the congregation shall be suspended pending her arrival.

419 a) The separate elections of the four general consultors and of the vicar general (504) shall be held after that of the general superior, at a time to be determined by the congregation. The procedure at these elections shall be as in Constitution 418 (c) above.

b) Should there be elected to any of these offices a sister who is not a member of the congregation she shall be summoned at once, but the congregation shall not be suspended pending her arrival nor shall she have active voice in the voting sessions of the congregation.

420 For the validity of the acts of any congregation at least two-thirds of the vocal sisters should be present, but all must be summoned to the meeting of the congregation.

421 a) No matter shall be deemed to have been determined by the general congregation unless it shall have been supported by the votes of an absolute majority of the vocals present

b) Where there is an equality of votes in any affair of the general congregation requiring an absolute majority, the general superior has a casting vote and can decide the issue.

c) In cases, however, where it is proposed to make any alteration whatever in the Constitutions a two-thirds majority shall be required.

d) No proposal deemed to have been adopted in virtue of © of this article shall be of any effect whatever until it shall have been approved by the Holy See.

e) Without the permission of the Holy See, it is forbidden to change the end of the Institute as it is described in *Institutum 1*.

422 The general superior has the power necessary for the practical interpretation of the Constitutions as well as the authentic interpretation the Directory and of congregation decisions in the interval between one congregation and the next. Such power will be used with the consent of the general council. The authentic interpretation of the Constitutions is reserved to the Holy See.

423 On the completion of its business the congregation shall be dissolved by the general superior, with the consent of the majority of the members.

424 In due course after the dissolution of the general congregation the general superior shall promulgate the ordinances to the Institute. The prescriptions of Constitutions 421 (d) having been observed, these ordinances shall come into effect as from the date of their promulgation.

425 The ordinances of the general congregation shall remain in effect until such time as they may be modified or rescinded by a subsequent general congregation.

APPENDIX 2

CONSTITUTIONS OF THE INSTITUTE OF THE BLESSED VIRGIN MARY IN NORTH AMERICA

CHAPTER 6: GOVERNMENT OF THE INSTITUTE

INSPIRATIONAL TEXTS

1. From Sacred Scripture

You have already been told what is right and what Yahweh wants of you. Only this, to do what is right, to love loyalty and to walk humbly with your God (MICAH 6:8)

2. From MARY WARD, *Ratio Instituti*

Not only the Chief Superior, but all those, moreover, who are appointed to govern, should ever have before their eyes the burning charity of Christ our Lord, the profound and illimitable humility of the Blessed Virgin, and the example of all the saints, and to this model, they should, as far as possible, conform themselves in all their actions. (CHAMBERS, *Mary Ward*, vol. 1, p. 383).

PURPOSE OF GOVERNMENT

82 The purpose of government in the Institute is to provide structures, which enable us, individually and corporately, to live the Christian vocation of apostolic love in the contemporary world. Authority, wisely understood and exercised, fosters the life of inner freedom much cherished by Mary Ward.

83 Since good government is a means of attaining the purpose of the Institute, the promotion of the greater glory of God, each of us accepts responsibility to contribute to the governing of the Institute. In keeping with this understanding, we are encouraged to undertake, direct, and carry out, whatever action seems appropriate, in accordance with the Constitutions and the principle of subsidiarity.

CENTRAL GOVERNMENT

GENERAL CHAPTER

84 The General Chapter, when it is in session, is the highest authority in the Institute. It has two major functions: to elect the General Superior and the General Council and to regulate the affairs of the Institute.

85 The General Chapter is convoked every four years by the General Superior to examine the Institute's present condition in the light of its charism and tradition, to plan and make decisions for the future life of the Institute, and to elect the General Superior and the General Council. If the affairs of the Institute require it, the General Superior, with the consent of her Council, may convoke an extraordinary Chapter.

86 The agenda for the General Chapter is determined after Institute-wide consultation and preparation. The General Council has the responsibility to provide effective means by which all members participate in this consultation.

87 At the General Chapter the incumbent General Superior, whose term is ending, (or, in her absence, the Assistant to the General Superior) reports on the condition of the Institute and its administration since the last chapter.

88 The General Chapter includes in its responsibilities:

- a) The protection of the spiritual patrimony of the Institute;
- b) A review of the Institute's goals and priorities and an evaluation of our life in relation to them;

- c) An examination of both immediate and future needs of the Institute's mission to service;
- d) An evaluation of the personal and material resources of the Institute in the light of our apostolic call;
- e) A consideration of suggestions and petitions presented in writing or through delegates to the chapter;
- f) An evaluation and revision of the Constitutions and Directory as needed;
- g) Assessment and decisions regarding the financial affairs of the Institute;
- h) Decisions regarding procedures for the next General Chapter;
- i) The election of the General Superior and the General Council.

89 A Sister chosen by the capitulars presides at the election of the General Superior. The incumbent General Superior presides at the election of the General Council. An absolute majority is necessary in each case. If such a majority has not been attained after three ballots, a fourth ballot is conducted; the two sisters with the highest number of votes on the third ballot are eligible for election. If there is a tie on the third ballot, the two sisters eligible for election on the fourth ballot will be determined by lot. In the case of a tie on the fourth ballot, the election will be determined by lot.

90 The General Councillor first elected is the Assistant to the General Superior; she must have completed seven years since final profession in the Institute.

91 Each Chapter decides the method for determining the membership of the next General Chapter. The incumbent General Superior and the members of the General Council are *ex officio* capitulars. More than half of the capitulars must be elected delegates. In the election of the delegates all members professed three or more years have active and passive voice unless deprived of such a right according to the norms of Common Law of the Church. Members professed less than three years have active voice only in the election of delegates.

92 If the office of the General Superior becomes vacant, a General Chapter is called as soon as possible and is held within three months. It is convoked by the Assistant to the General Superior. If the General Superior wishes to resign when the Chapter is not in session, or is permanently unable to carry out her functions, the matter is referred to the Congregation for Religious and Secular Institutes.

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