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from a Religious Institute with Particular Reference to Nigerian Context**

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**THE APPLICATION OF CANON 702, §2 ON EQUITY AND EVANGELICAL  
CHARITY TOWARDS A MEMBER SEPARATED FROM A RELIGIOUS  
INSTITUTE WITH PARTICULAR REFERENCE TO THE  
NIGERIAN CONTEXT**

by  
Jude Chukwudi OGBENNA

A dissertation submitted to the Faculty of Canon Law  
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## ABBREVIATIONS

<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
<i>ACR</i>	<i>Australasian Catholic Record</i>
<i>AFER</i>	<i>African Ecclesial Review</i>
<i>AG</i>	SECOND VATICAN COUNCIL, Decree, <i>Ad gentes divinitus</i>
<i>ASS</i>	<i>Acta Sanctae Sedis</i>
<i>ATRI</i>	Association of Treasurers of Religious Institutes
<i>ATTIR</i>	Association des trésorières et trésoriers des instituts religieux
<i>BEF</i>	<i>Bolletin ecclesiastico de Filipinas</i>
c.	canon
cc.	canons
<i>CCEO</i>	<i>Codex canonum Ecclesiarum orientalium</i>
<i>CD</i>	SECOND VATICAN COUNCIL, Decree, <i>Christus Dominus</i>
<i>CIC/17</i>	<i>Codex iuris canonici</i> (1917)
<i>CIC/83</i>	<i>Codex iuris canonici</i> (1983)
<i>CLD</i>	<i>Canon Law Digest</i>
<i>CLSA</i>	CANON LAW SOCIETY OF AMERICA
<i>CLSANZ</i>	CANON LAW SOCIETY OF AUSTRALIA AND NEW ZEALAND, <i>Newsletter</i>
<i>CMSM</i>	CONFERENCE OF MAJOR SUPERIORS OF MEN (USA)
<i>CpR</i>	<i>Commentarium pro Religiosis et missionariis</i>
<i>CRC</i>	CANADIAN RELIGIOUS CONFERENCE
<i>CREF</i>	College Retirement Equities Fund
ed.	Editor
eds.	Editors
<i>EE</i>	CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, “Essential Elements in Church Teaching on Religious Life”
<i>ES II</i>	PAUL VI, Motu proprio, <i>Ecclesiae sanctae</i> : Norms II
<i>ET</i>	PAUL VI, Apostolic exhortation, <i>Evangelica testificatio</i>
<i>FLANNERY I</i>	FLANNERY, A. (gen. ed.), Vatican Council II, vol. I
<i>FLANNERY II</i>	FLANNERY, A. (gen. ed.), Vatican Council II, vol. II

## ABBREVIATIONS

<i>GS</i>	SECOND VATICAN COUNCIL, Pastoral constitution, <i>Gaudium et spes</i>
<i>HPR</i>	<i>Homiletic and Pastoral Review</i>
<i>IER</i>	<i>Irish Ecclesiastical Record</i>
<i>IFH</i>	Interim Federal Health programme
<i>IRA</i>	Individual Retirement Account
<i>IRS</i>	Internal Revenue Service
<i>LCWR</i>	LEADERSHIP CONFERENCE OF WOMEN RELIGIOUS (USA)
<i>LG</i>	SECOND VATICAN COUNCIL, Dogmatic constitution, <i>Lumen gentium</i>
<i>ME</i>	<i>Monitor ecclesiasticus</i>
<i>MR</i>	CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES AND CONGREGATION FOR BISHOPS, <i>Mutuae relationes</i>
n.d.	No date
n.p.	No publisher
<i>Normae</i>	CONGREGATION OF BISHOPS AND REGULARS, Instruction, <i>Normae</i>
<i>OHIP</i>	Ontario Health Insurance Plan
<i>OPR</i>	SACRED CONGREGATION FOR DIVINE WORSHIP, Ordo professionis religiosae
<i>PC</i>	SECOND VATICAN COUNCIL, Decree, <i>Perfectae caritatis</i>
<i>CLSA</i>	<i>Proceedings</i> CANON LAW SOCIETY OF AMERICA, <i>Proceedings</i>
<i>RC</i>	CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Instruction on the Renewal of Religious Life, <i>Renovationis causam</i> .
<i>RD</i>	JOHN PAUL II, Apostolic Exhortation on the Theology of Religious Consecration, <i>Redemptionis donum</i>
<i>RfR</i>	<i>Review for Religious</i>
<i>RfR</i>	<i>Religious Life Review</i>
<i>SCRIS</i>	CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES
<i>StC</i>	<i>Studia canonica</i>
<i>TIAA</i>	Teachers Insurance and Annuity Association
<i>UISG</i>	INTERNATIONAL UNION OF SUPERIORS GENERAL
<i>VC</i>	JOHN PAUL II, Post-synodal apostolic exhortation, <i>Vita consecrata</i>
<i>VieC</i>	<i>Vie consacrée</i>

## ABSTRACT

Canon 702 of the 1983 Code of Canon Law, apparently, embodies two ambivalent norms. The first paragraph enunciates that a religious who is legitimately separated from his or her institute cannot make any claim for services rendered while he or she was a member of the institute. The second paragraph urges religious institutes to show equity and evangelical charity towards their separated members. Separation, therefore, engenders practical consequences to a former member as well as to the religious institute.

Our study presents an overview of the Church's teaching on religious life, particularly in the light of the Second Vatican Council, in order to explain the rationale behind the principles established in canon 702. The issue of charitable subsidy to ex-religious as legislated in the 1917 Code and the role of the dowry of religious women that was meant to help ex-religious in the past are considered. The evolution of canon 702 and the concepts of "equity" and "evangelical charity" are discussed. This is followed by an analysis of the practical application of canon 702, §2 by some institutes in Europe and North America.

Since our study focuses on institutes in Nigeria, we directed our attention on the application of canon 702, §2 by the institutes in Nigeria. Our study reveals that while some of the institutes in Nigeria offer some assistance to their separated members, others do not. While some take certain factors into consideration, others simply give a uniform assistance to all separating members. Religious institutes in Nigeria do not have enough funds to extend reasonable assistance to their separated members. Consequently, former members of religious institutes in Nigeria encounter more problems than their counterparts in Europe and North America. Their problems are compounded by the peculiar socio-cultural expectations that are not experienced by their counterparts elsewhere.

Our study concludes by making several important suggestions that are aimed at enabling institutes in Nigeria to extend equitable and charitable assistance to their separated members in accord with the peculiar situation in Nigeria.

## GENERAL INTRODUCTION

Some years ago in Nigeria, I came across some very sad cases of ex-religious from poor and broken families who were dismissed from their religious institutes without offering them any financial assistance. Memories of the economic hardships and socio-cultural trauma they endured raised serious questions in my mind which prompted my choice of this topic which is intended, hopefully, to contribute to a better understanding and application of canon 702, §2 in the Nigerian context.

Canon 702, §2 states that a religious institute is to show equity and evangelical charity towards a member separated from it, whether voluntarily or by legitimate dismissal. This canon clearly imposes both canonical and moral responsibilities on the institute. However, the first paragraph of the same canon (702) establishes that one who is separated from a religious institute cannot make any claim upon it for services rendered during the time the person was a member. Therefore, canon 702 embodies apparently ambivalent norms, because while on the one hand the law rejects any claim made relative to services rendered in the institute, on the other hand, even what is affirmed in terms of equitable and charitable assistance is left to the discretion of the institute. In secular work, the more years of service one puts in, the higher are the benefits or pension. Does the ecclesiastical law then truly reflect charity and equity in the case of a religious, who receives practically nothing at the time of departure from a religious institute?

In applying canon 702, §2 in the Nigerian context, one encounters a number of serious problems. These problems lead to economic, social/cultural hardships to the

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departing members, and they are often the result of a lack of clear understanding and correct interpretation of the law itself.

There are few institutes in Nigeria that are financially self-sufficient. Most of them are so poor that they find it almost impossible even to take care of those who remain in the institute in faithful adherence to their vocation. This immediately suggests that these institutes are unable to provide any financial assistance for those who depart from them. The poor economic situation that has hit Nigeria as a nation for the past several years continues to affect adversely even the religious institutes. Moreover, in the face of a vocation boom in Nigeria, these institutes experience an increase in the number of people leaving and it would cost more money to assist those who leave.

Some separated members are no longer young, while others do not have enough education to secure a decent job subsequent to their departure from the institute. They often return to a secular society that is already gripped by great economic hardships, and to a family that may have little if any resources to help them. Unfortunately, the government at present provides no social services that could help them in making their transition to secular life in a relatively worry-free manner.

In addition to the economic problems of a separated member, we cannot overlook the fact that most Catholics in Nigeria would look at anyone who leaves a religious institute as a social outcast. Moreover, an ex-religious is sometimes regarded as untrustworthy and perhaps even a “big sinner” by many in the secular society. The Nigerian society is status-oriented. Priests and religious are generally held in high social esteem; therefore, when a religious departs from an institute, he/she risks becoming the “salt that has lost its taste” (cf. Matthew 5:13). Within the Nigerian context, departure

## GENERAL INTRODUCTION

from a religious institute could even be compared to a fall from grace. Few people make a distinction between voluntary departure and dismissal; when a religious departs from an institute, whether voluntarily or through dismissal, many people in Nigeria think that the departure must be the consequence of bad or immoral behaviour.

Some concrete examples have revealed an uneven application of canon 702, §2 in the various religious institutes in Nigeria, implying in effect a variety of approaches to the issue. It shows a lack of clear common understanding of the meaning of the law. It seems some have narrowed their understanding of the canon to apply solely to meagre financial assistance. Others give a transport allowance to take the separating member home. Still, some others offer absolutely no help at all. On the other hand, the attitude of most of the separated members also leaves much to be desired; some of them make unreasonable demands on their institutes, even several years after departure, forgetting the commitment they made at their profession. Some former members of religious institutes feel that they have been exploited and then simply returned to a society that is unwilling to receive them. This explains the motive behind the deep resentment and animosity displayed by some ex-religious. Some have in fact suffered severe depression that has ruined them for life. Others are known to have left the Church and, in some cases, to have even lost their faith. Therefore, the main question we hope to answer in this dissertation is: What is the real meaning of the prescript of canon 702, §2 of the 1983 Code of Canon Law and what is the praxis within the religious institutes in Nigeria with regard to the assistance that they give to their departing members? A comprehensive answer to this question necessarily requires that we address the following intrinsically linked sub-questions:

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1. What are the doctrinal and canonical principles on which the Church bases its insistence that a separated member is not entitled to any compensation for work done while in the institute (c. 702, §1), but at the same time requires of the institutes to show equity and evangelical charity to their separated members (c. 702, §2)?

2. What are the historical antecedents of the Church's legislation with regard to the assistance given to separated members of religious institutes prior to the legislation of the 1983 Code?

3. What does the present law prescribe in relation to this issue and how have the religious institutes responded to the implementation of canon 702, §2?

4. How do the institutes in Nigeria practise equity and evangelical charity towards their separated members and what concrete steps can be taken to avoid some important practical problems associated with the separation of religious from their institutes?

In answering these questions, we hope to determine an objectively correct interpretation of canon 702, §2 in order to propose equitable approaches to its application in the Nigerian context.

There are, to date, no major studies done anywhere on canon 702, §2. There are, however, some articles that deal directly with our topic, and we will refer to them *passim* in our project.

Our project will be divided into four chapters. The first chapter will present an overview of the Church's teaching on religious life since the Second Vatican Council, more particularly on those aspects of religious life that would explain the rationale behind the principles established in canon 702. We, therefore, will consider the relevant conciliar and post-conciliar documents that highlight the essential elements common to religious

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life. Most of these documents emphasize the Christological and the ecclesiastical dimensions of religious life. The Christological dimension that is lived out in religious life would elucidate the principle stated in canon 702, §1, and will lead to the conclusion that a separated member has no right to ask for any compensation in justice from his/her former institute for work done by him/her in the institute.

Chapter Two will discuss the issue of charitable subsidy to ex-religious as legislated in the 1917 Code and will highlight the role of the dowry of women religious that was meant to help ex-religious in the past. We will examine some of the jurisprudence of the Roman Dicasteries on this matter, as well as important documents of the Holy See issued prior to the 1983 Code of Canon Law that tried to resolve the issue of charitable subsidy to ex-religious.

Chapter Three will focus on the legislation of the 1983 Code. We shall begin by examining the evolution of canon 702, §2 in its different drafts. The text of the canon will be carefully analyzed, and the concepts of “equity” and “evangelical charity” more clearly defined. This will be followed by the analysis of the practical application of the canon by some institutes in Europe and in North America. This, we hope, will enable us to isolate some of the issues that are taken into consideration in concrete situations while extending equity and charity to separated members.

Chapter Four will attend specifically to the practical application of canon 702, §2 in the Nigerian context. As a background, we shall provide a very brief sketch of the different aspects of the country, with particular reference to its economic situation. This will be followed by a discussion on the economic condition of the religious institutes in the country. In order to determine the current praxis in religious institutes in Nigeria, we

## GENERAL INTRODUCTION

sent out a questionnaire in 2005 to major superiors of all the religious institutes in Nigeria.<sup>1</sup> We will subject the responses elicited by the questionnaire to a critical analysis and see what the religious institutes are actually doing in regard to equitable and charitable assistance to the separated members. We hope to suggest some guidelines that could assist religious institutes in Nigeria to draw up their own policies that would determine concrete measures for assisting members departing from the institutes.

It is important to note that there are certain limitations to our study. First, our project will be restricted to the canonical principles stated in the Latin Code of 1983. The Eastern Churches have a distinctly rich theological, spiritual and cultural tradition with regard to consecrated life. Nevertheless, the principles of canon 702 of the Latin Code are somehow replicated almost verbatim in canon 503 of the Eastern Code.<sup>2</sup> Although this canon of *CCEO* is explicitly directed to the members of a monastery, as J. Abbass points out, in virtue of canon 553 of *CCEO*,<sup>3</sup> its provisions are to be applied also to members of orders and congregations.<sup>4</sup> Because of the identical nature of both relevant

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<sup>1</sup> Our survey was carried out through a questionnaire that was sent to major superiors of all religious institutes in Nigeria. Appendix 1 contains the survey questionnaire.

<sup>2</sup>*CCEO* c. 503, §1. “Qui a monasterio legitime discedit vel ab eo legitime dimissus est, nihil ab eo repetere potest ob quamlibet operam in eo praestitam.

§2. “Monasterium tamen aequitatem et caritatem servet erga sodalem, qui ab eo separatur.”

<sup>3</sup>*CCEO* c. 553 “Ad dimittendum sodalem a votis perpetuis competens est Superior generalis; de cetero observandi sunt cann. 500-503.”

<sup>4</sup>See J. ABBASS, “The Consecrated Life: ‘*donum caritatis*’ in the East and the West,” in CONGREGAZIONE PER LE CHIESE ORIENTALI, *Ius Ecclesiarum, vehiculum caritatis: Atti del simposio internazionale per il decennale dell’entrata in vigore del Codex canonum Ecclesiarum orientalium*, Città del Vaticano, 19-23 novembre 2001, Città del Vaticano, Libreria editrice Vaticana, 2004, pp. 331-361; the reference to this specific issue is on p. 343. The comment on canon 503 by the author consists of only two brief paragraphs. The author points out that the study group drafting *CCEO* c. 503 wanted to avoid “any idea of a possible accumulation of merits

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canons (702 of *CIC* 83 and *CCEO* c. 503), and of the absence of any Eastern Church *sui iuris* in Nigeria at present, our project will be limited solely to the provisions of the Latin Code. It is our hope that our study will inspire someone to embark on a major work on *CCEO* c. 503 in light of the theological, spiritual and cultural heritage of the Eastern Churches. Second, the central core of our project is limited exclusively to the religious institutes presently operating in Nigeria. Third, the subjects of our survey are the major superiors of the religious institutes only. We determined that a survey of separated members themselves would be beyond the scope of our study. The complexity of such a survey would certainly call for a major study in its own right. It is also our hope that our project will yield suggestions that would benefit the religious institutes in Nigeria as well as their departing members

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for an eventual departure from the monastery [order or congregation]” by obliging the monastery to offer support to a separated member out of justice rather than charity. See *ibid.*, footnote 39; also see *Nuntia*, 16 (1989), pp. 70-71 (c. 85).

## CHAPTER ONE

### THEOLOGICAL AND THE JURIDICAL CONTEXT OF CANON 702, §2

#### INTRODUCTION

One of the significant achievements of the Second Vatican Council was providing us with a sound theology of religious life. The nature and purpose of consecrated life in general, enunciated in the conciliar documents *Lumen gentium*<sup>1</sup> and *Perfectae caritatis*,<sup>2</sup> have guided every meaningful discussion on the subject in the years following the Council.<sup>3</sup> This same theology of consecrated life, supplemented by John Paul II's Apostolic Exhortation, *Vita consecrata*, will most likely continue to guide discussions on religious life in the future.<sup>4</sup>

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<sup>1</sup> SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church, *Lumen gentium* (=LG), 21 November 1964, in *AAS*, 57 (1965), pp. 5-75. English translation in A. FLANNERY (gen. ed.), *The Vatican Collection: vol. 1, Vatican Council II: The Conciliar and Post Conciliar Documents*, new revised ed., Northport, Costello, 1996 (= FLANNERY I), pp. 350-426. It is in Chapter VI of LG, numbers 43-47, that the conciliar teaching on religious life is found. [Unless otherwise indicated, all translations of conciliar and post-conciliar documents are taken from FLANNERY, and will henceforth be referred to by the incipit of the document followed by the number].

<sup>2</sup> SECOND VATICAN COUNCIL, Decree on the Up-to-date Renewal of Religious Life, *Perfectae caritatis* (=PC), 28 October 1965, in *AAS*, 58 (1965), pp. 702-712. English translation in FLANNERY I, pp. 611-623.

<sup>3</sup> See A. PARDILLA, "Theological Identity of Religious Life," in *Consecrated Life*, 12 (1987), p. 245. Pardilla says: "In the light of the magisterium, the central element of the theological identity of religious life has been the Christological element, and according to the same magisterium, the Christological dimension continues to be, also for the future, the most fruitful dimension of the theology of religious life."

<sup>4</sup> See JOHN PAUL II, Post-synodal Apostolic Exhortation on Consecrated Life and Its Mission in the Church and the World, *Vita consecrata* (=VC), 25 March 1996, in *AAS*, 88 (1996), pp. 377-486. English translation in *Origins*, 25 (1995-1996), pp. 681, 683-719). Number 13, pp. 685-686 is of particular interest. Here the Pontiff says: "During the Synod, I sought to offer the entire People of God a number of systematic talks on the consecrated life in the Church. In them I

The aim of this first chapter on the theology of religious life is to point out some fundamental elements common to all forms of consecrated life, especially to religious life, as enunciated in the conciliar and some post-conciliar documents. In the same vein, we will refer to the important norms contained in the 1983 Code of Canon Law that are relevant to a proper understanding of the Church's legislation stated in canon 702. This theological and the juridical context will help us understand the *raison d'être* of the principle that the Church has established in canon 702, §1 which reads: "Whoever lawfully leaves a religious institute or is lawfully dismissed from one, cannot claim anything from the institute for any work done in it."<sup>5</sup> If we are able to comprehend the rationale behind the principle established in canon 702, §1, then we will be better prepared to understand the norm enunciated in canon 702, §2, the object of our study that reads: "The institute, however, is to show equity and evangelical charity towards the member separated from it."<sup>6</sup> In other words, the question we propose to answer here is: What is the doctrinal and canonical basis for the Church's teaching that any claim of an ex-member of a religious institute for compensation from the institute for work done in it as one of its members (canon 702, §1) is not to be accepted?

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presented anew the teachings found in the texts of the Second Vatican Council, which was an enlightening point of reference for subsequent doctrinal developments and for the reflections of the synod during the busy weeks of its works." This surely indicates that the Second Vatican Council is a point of reference for any discussion and teachings on religious life. See also J.C. CERVERA, "*Lumen gentium - Perfectae caritatis - Vita consecrata: Dynamic Accord and Innovations in Three Texts of the Magisterium on Consecrated Life*," in *Consecrated Life*, 22 (2000), p. 164.

<sup>5</sup> Canon 702, §1: "Qui ex instituto religioso legitime egrediantur vel ab eo legitime dimissi fuerint, nihil ab eodem repetere possunt ob quamlibet operam in eo praestitam."

<sup>6</sup> Canon 702, §2: "Institutum tamen aequitatem et evangelicam caritatem servet erga sodalem, qui ab eo separetur."

However, an appropriate answer to this question lies in the identification of the central element in the theology of religious life, according to the conciliar documents, namely its Christological character.<sup>7</sup> There is hardly anything about religious life that does not stem from and conform to this Christological centre. Therefore, we shall first explore this Christological centrality of religious life which will invariably reveal the nature and essential elements that will justify the legislation of canon 702, §1.<sup>8</sup>

### 1.1 - CHRISTOLOGICAL DIMENSION OF RELIGIOUS LIFE

The Christological dimension of religious life, as contained in the conciliar and post-conciliar documents, can be expressed in different ways. From one perspective, religious life is the Church's continuation of the earthly life of Jesus Christ. This includes the life Jesus Christ lived, his actions and the teaching he imparted during his earthly ministry.<sup>9</sup> From another perspective, religious life is seen as the Church's attempt to follow the life Jesus Christ proposed to his followers, of which his apostles were the principal proponents.<sup>10</sup> This refers to what Jesus handed over to his disciples and how they actually lived it out in practice. These two perspectives are reflected in the major conciliar and post-conciliar documents that we intend to highlight now.

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<sup>7</sup> *LG*, 44 and 46. See also *VC*, 1, 22.

<sup>8</sup> The Christological dimension of religious life which expresses itself in its nature and essential elements, will lead us to the discussion on the concept of consecration, evangelical counsels, common life, autonomy of institutes, evangelical mission, including obligations and rights of institutes and their members.

<sup>9</sup> See *PC*, 1.

<sup>10</sup> See *LG*, 44. See also PARDILLA, "Theological Identity of Religious Life," p. 245.

### 1.1.1 - Christological Dimension in *Lumen gentium*

The Dogmatic Constitution on the Church, *Lumen gentium*, is one of the first documents to offer an integrated theological identity of religious life. It presents a powerful description of religious consecration by giving it a remarkable Christological dimension. Religious life is described as constituting:

[...] a closer imitation and an abiding re-enactment in the Church of the form of life which the Son of God made his own when he came into the world to do the will of the Father and which he propounded to the disciples who followed him.<sup>11</sup>

Accordingly, it is a lasting way by which the Church puts into practice the type of life that Jesus lived here on earth in obedience to God the Father. Jesus also recommended this style of life to the disciples who followed him.<sup>12</sup>

The opening sentence of chapter six of *Lumen gentium* identifies the Christological character of religious life:

The teaching and example of Christ provide the foundation for the evangelical counsels of chaste self-dedication to God, of poverty and obedience. [...] They therefore constitute a gift of God which the Church has received from her Lord and which by his grace she always safeguards.<sup>13</sup>

In other words, the evangelical counsels, which are part of the distinguishing features of religious life, are not simply abstract realities but are based on concrete and essential features in the life of Jesus Christ himself. As such, religious life is not just a gift to the

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<sup>11</sup> *LG*, 44.

<sup>12</sup> Two main perspectives come out clearly in this teaching: religious life as the imitation, within the Church, of the kind of life that Jesus lived in this world; and the way of life that he proposed to his followers.

<sup>13</sup> *LG*, 43.

individual religious, but more importantly, it is a gift to the entire Church.<sup>14</sup> As a precious gift it received from the Lord, the Church has the right to safeguard and regulate it. In the same document, *Lumen gentium*, the Council Fathers exhort religious to demonstrate to the world that their life is an imitation of the life of Christ on earth, by engaging in those activities for which Christ was known during his public ministry.<sup>15</sup>

### 1.1.2 - Christological Character in *Perfectae caritatis*

The Council Fathers also echoed the same ideas on the Christological nature of religious life in the Decree on the Renewal of Religious Life, *Perfectae caritatis*.<sup>16</sup> While in the document *Lumen gentium*, the Council Fathers were preoccupied with inserting

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<sup>14</sup> See F. WULF, "Religious," in H. VORGRIMLER (ed.), *Commentary on the Documents of Vatican II*, New York, Herder and Herder, 1967, vol. I, p. 274. Wulf comments: "[...] we are told that the counsels of celibacy (virginity), poverty, and obedience are a divine gift which the Church (that is, not primarily the individual) has received from her Lord and by his grace has always kept."

<sup>15</sup> See *LG*, 46. It reads: "Let religious see well to it that the Church truly show forth Christ through them with ever-increasing clarity to believers and unbelievers alike – Christ in contemplation on the mountain, or proclaiming the kingdom of God to the multitudes, or healing the sick and maimed and converting sinners to good life, or blessing children and doing good to all men, always in obedience to the will of the Father who sent him." This quotation is taken from PIUS XII, Encyclical, *Mystici corporis*, 29 June 1943, in *AAS*, 35 (1943), pp. 214-215. We will return to this quotation later in this chapter because it summarises the expectations the Church has of religious in their efforts to follow Christ.

<sup>16</sup> See *PC*, 1; FLANNERY I, p. 611. This particular document begins by endorsing what was said in *Lumen gentium*: "In the constitution, *Lumen gentium*, the holy synod has already shown that the pursuit of perfect charity by means of the evangelical counsels traces its origins to the teaching and example of the Divine Master, and it is a very clear symbol of the heavenly kingdom." See also F. WULF, "Decree on the Appropriate Renewal of the Religious Life," in VORGRIMLER (ed.), *Commentary on the Documents of Vatican II*, p. 333. He notes: "Whereas the representatives of the Congregation for Religious repeatedly stressed that the decree had principally to deal with the juridical questions of religious life (*vita ac disciplina* in the words of the article), because the theological questions had already been dealt with in Chapter VI of the Constitution on the Church, the majority of the Fathers thought that the decree ought to be a religious document as well, in view of the mighty tasks which fall to the orders. Hence, the stress even in the preface upon the charismatic as well as the Christological and the ecclesial character of the religious state."

religious life in the Church's theology, with *Perfectae caritatis* they launched a long process of returning to the sources of consecrated life and especially of updating it.<sup>17</sup> According to *Perfectae caritatis*, the following of Christ is the supreme rule of religious life. Hence, for the Council Fathers, religious life lived in chastity, poverty and obedience has as its exemplar Christ himself.<sup>18</sup>

### 1.1.3 - The Imitation of Christ in *Renovationis causam*

An instruction on the renewal of religious life formation, *Renovationis causam*,<sup>19</sup> published by the Congregation for Religious and Secular Institutes in 1969, was consistent with both *Lumen gentium* and *Perfectae caritatis* in encouraging religious to have their lives centred on the Christ of the Gospel.<sup>20</sup> *Renovationis causam* insists that the period of initial formation is the proper time to inculcate in novices the fact that religious life is Christ-centred, and it challenges novice directors to ensure that their direction is based on the teaching of Vatican II.<sup>21</sup> Consequently, the basic task of

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<sup>17</sup> See CERVERA, "*Lumen gentium - Perfectae caritatis - Vita consecrata*," p. 161. Returning to the sources means returning to the life Jesus lived, to that of Mary his mother and the apostles and disciples of Christ, as well as the minds of the founders of institutes.

<sup>18</sup> See *PC*, 25.

<sup>19</sup> SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Instruction on the Renewal of Religious Life, *Renovationis causam* (=RC), 6 January 1969, in *AAS*, 51 (1969), pp. 103-120. English translation in FLANNERY I, pp. 634-655. This document completely reordered the section of the 1917 Code regarding the novitiate and formation of religious.

<sup>20</sup> *RC*, 5 says: "[...] religious must, above all, according to the teaching of the Council, be in a special manner witnesses to Christ within the Church: 'Religious must make it their careful aim that their efforts improve the Church's real and daily presentation, to be believers and non-believers, of Christ as he meditated on the hillside, proclaimed to the crowds the kingdom of God, healed the sick and the injured, turning sinner to repentance, blessing children, doing good to all, and continuing obeying the will of the Father who sent him'." See also *LG*, 46.

<sup>21</sup> *RC*, 31 states: "In the direction of the novices, particularly during the periods of formative activity, the Novice Master will base his direction on the teaching so clearly enunciated

formators is to bring candidates to a fuller identification with Christ. A more intimate union with Christ will enable novices to be more prepared to serve Christ and his followers in their future apostolates.<sup>22</sup>

#### 1.1.4 - Liturgical Texts

The text for the Mass for religious profession and renewal of vows takes cognisance of the Christological nature of religious life introduced by Vatican II. This is reflected in the prayers, especially the preface of the Mass. Part of the preface says:

[...] He came, the Son of a virgin mother, [...] and taught by his whole life the perfection of chastity. He chose always to fulfil your holy will, and became obedient even to dying for us, offering himself to you as a perfect oblation. He consecrated more closely to your service those who leave all things for your sake, and promise that they will find a heavenly treasure [...].<sup>23</sup>

In 1970 the Congregation for Divine Worship published the Ritual for Religious Profession which contains a variety of texts for religious profession, together with prayers and blessings expressing the conciliar theology of religious life. As early as in the liturgy of reception into the novitiate, candidates are made to understand that their future life as religious will be modelled after the life of Christ. Hence, the candidates request the community: “We ask you to teach us to follow Christ crucified and to live in poverty,

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by the Second Vatican Council [...].” This shows that the Church wishes to make sure that religious recognise fully the implications of religious life *ab initio* before consciously committing themselves through public profession of the evangelical counsels.

<sup>22</sup> See *ibid.*

<sup>23</sup> PAUL VI, *Missale Romanum, ex decreto sacrosancti ecumenici Concilii Vaticani II instauratum, auctoritate Pauli PP. VI promulgatum*, Libreria editrice Vaticana, 1975, p. 767. English translation in: *The New Roman Missal, Revised by the Decree of the Second Vatican Council and Published by the Authority of Pope Paul VI*, Ottawa, Canadian Conference of Catholic Bishops, Ottawa, 1974, p. 478. We observe that the three evangelical counsels by which

obedience and chastity.”<sup>24</sup> In the liturgy of profession, the Presider asks the candidates: “Are you resolved with the help of God, to undertake that life of perfect chastity, obedience, and poverty chosen for themselves by Christ our Lord and his Virgin Mother, and to persevere in it for ever?”<sup>25</sup> In the solemn prayer of blessing or consecration of the professed, the Presider prays that the Lord send the gift of the Holy Spirit upon the candidates who have left everything for the sake of Christ. He also prays that their lives may reveal the face of Christ to those who see them so that all may believe that Christ is ever present in his Church.<sup>26</sup>

### 1.1.5 - Imitation of Christ in *Evangelica testificatio*

Pope Paul VI situates religious life within an ecclesial framework. In his Apostolic Exhortation, *Evangelica testificatio*, he reaffirmed that religious life has a very deep theological meaning that is, above all, Christological.<sup>27</sup> He saw religious life as having a special place in the life of the Church, as it enables religious to be more closely

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religious imitate Christ are all mentioned here, and religious life implies offering oneself just as Christ did, with eyes set on heavenly things.

<sup>24</sup> SACRA CONGREGATIO PRO CULTU DIVINO, *Ordo professionis religiosae (=OPR)*, 2 February 1970, in Civitate Vaticana, Typis polyglottis Vaticanis, 1975, no. 8. English translation in SACRED CONGREGATION FOR DIVINE WORSHIP, *Rite of Religious Profession: The Roman Ritual Revised by the Decree of the Second Vatican Ecumenical Council and Published by the Authority of Pope Paul VI*, Washington, DC, International Committee on English in the Liturgy, 1974, no. 8, p.12.

<sup>25</sup> *OPR*, no. 57, p. 27.

<sup>26</sup> *Ibid.*, no. 159, p. 104. To reveal the face of Christ in the religious so that all who see them will see Christ present in the Church implies that the religious lead the same kind of life that Christ lived.

<sup>27</sup> See PAUL VI, Apostolic Exhortation on the Renewal of Religious Life, *Evangelica testificatio (=ET)*, 29 June 1971, in *AAS*, 63 (1971), pp. 497-526. English translation in FLANNERY I, pp. 680-706 (n. 2, p. 681). See also *LG*, 46, which adds that the exemplary lives of the holy founders of the different religious institutes testify to this truth.

conformed to that manner of virginal and humble life which Christ the Lord elected for himself, and which his Virgin Mother chose.<sup>28</sup> The Pontiff clearly stated that the supreme rule of religious life and its ultimate norm is the following of Christ according to the teaching of the Gospel.<sup>29</sup> He also reiterated that this preoccupation in the following of Christ has led the Church to demand from religious a life that is chaste, poor and obedient. To sum up, *Evangelica testificatio* reflected on the process, progress and pitfalls of renewal in religious institutes since the close of the Council.

### 1.1.6 - Christological Notion in *Mutuae relationes*

Further emphasising the ecclesial context of religious life, Paul VI approved a document prepared by the Congregation for Religious and Secular Institutes and the Congregation for Bishops on the Directives for the Mutual Relations Between Bishops and Religious in the Church, *Mutuae relationes*.<sup>30</sup> Here we find echoes of *Lumen gentium*, namely, that religious life is to be conceived of as a life of visible testimony of the following of Christ, by a public profession of the evangelical counsels of chastity,

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<sup>28</sup> See *ET*, 2.

<sup>29</sup> See *ET*, 12.

<sup>30</sup> See CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES and CONGREGATION FOR BISHOPS, Directives for the Mutual Relations Between Bishops and Religious in the Church, *Mutuae relationes* (=MR), 23 April 1978, in *AAS*, 70 (1978), pp. 473-506. English translation in *FLANNERY II*, pp. 209-243.

poverty and obedience.<sup>31</sup> Religious are to offer to the world a visible proof of the unfathomable mystery of Christ.<sup>32</sup>

### 1.1.7 - Essential Elements

From the beginning of his pontificate, Pope John Paul II gave evidence of his great respect for religious life, comparing it with the evangelical following proposed by Jesus to his disciples and insisting always on the necessity of modelling it on the very life of Christ.<sup>33</sup> At his request, the Congregation for Religious and for Secular Institutes published a new document in May 1983, entitled, *Essential Elements in the Church's Teaching on Religious Life as Applied to the Institutes Dedicated to the Works of the Apostolate*.<sup>34</sup> On a general note, the document sees religious life as that type of life lived by Christ and practised by his apostles. It says that each of the vows emphasises a

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<sup>31</sup> See *MR*, 10: "The religious state [...] consists in the following of Christ by a public profession of the evangelical counsels of chastity, poverty and obedience in community life [...] the consecration of those who make religious vows has for one of its main purposes to offer to the world a visible witness of the unfathomable mystery of Christ [...]." See also *LG*, 44.

<sup>32</sup> See *MR*, 10.

<sup>33</sup> See PARDILLA, "Theological Identity of Religious Life," p. 249. Of the many occasions on which the Holy Father has reminded religious that their style of life is in imitation of the life of Christ, we could cite three early occasions in his pontificate: (1) JOHN PAUL II, "Religious, a Light for the Church and for Humanity," an address to the International Union of Superiors Generals (=UISG), delivered in Rome on 16 November 1978, in *Consecrated Life*, 4 (1978), p. 381. (2) JOHN PAUL II, "Imitation of Christ in Chastity, Poverty, and Obedience," an address to women religious in Paris on 31 May 1980, in *Consecrated Life*, 6 (1980), pp.167-170. (3) JOHN PAUL II, "The Interior Life is Always the Soul of the Apostolate," a discourse to religious and members of secular institutes, in Madrid on 8 November 1982, in *Consecrated Life*, 9 (1983), pp. 209-213. On each occasion the Holy Father reminded the religious that their style of life is in imitation of the life of Christ. These are all quoted in PARDILLA, "Theological Identity of Religious Life," pp. 249-250.

<sup>34</sup> CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, "Essential Elements in Church Teaching on Religious Life" (=EE), 31 May 1983, in *Origins*, 13 (1983-84), pp. 133-142. Also in *Canon Law Digest* (=CLD), vol. 10, pp. 43-76.

particular aspect of Christ's life.<sup>35</sup> Religious are apostolic, not because they are engaged in an apostolate, but because they live as the apostles lived by following what Christ taught and did.<sup>36</sup>

### 1.1.8 - Christological Dimension in *Redemptionis donum*

Six years into his pontificate, Pope John Paul II addressed an Apostolic Exhortation, *Redemptionis donum*, to the religious on their consecration in the light of the mystery of redemption.<sup>37</sup> Insisting on religious life as a life dedicated to following Christ, John Paul II reiterated that religious should imitate the Christ who was crucified.<sup>38</sup> Imitating the crucified Jesus implies a self-emptying without reservation, and without the least expectation of an earthly reward or compensation, as was the case with Jesus. Through the covenant made in profession of the evangelical counsels, the religious share in Christ's death on the cross.<sup>39</sup> A life in imitation of Christ implies renunciation. While it is true that every Christian in baptism receives a vocation that involves renunciation, religious life implies a deeper level of that renunciation.<sup>40</sup>

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<sup>35</sup> See *EE*, 7, 14 and 15.

<sup>36</sup> See *EE*, 26.

<sup>37</sup> See JOHN PAUL II, Apostolic Exhortation on the Theology of Religious Consecration in Relation to the Mystery of Redemption, *Redemptionis donum* (=RD), 25 March 1984, in *AAS*, 76 (1984), pp. 513-546. English translation in *Origins*, 13 (1983-1984), pp. 721, 723-731.

<sup>38</sup> See *RD*, 10.

<sup>39</sup> See *RD*, 8.

<sup>40</sup> *PC*, 5 and *RD*, 10.

### 1.1.9 - *Vita consecrata*

Following the 1994 Synod, Pope John Paul II issued on 25 March 1996 an Apostolic Exhortation, *Vita consecrata*,<sup>41</sup> which brings out clearly the Christological dimension of consecrated life. It reads:

The consecrated life, deeply rooted in the example and teaching of Christ the Lord, is a gift of God the Father to his Church through the Holy Spirit. By the profession of the evangelical counsels the characteristic features of Jesus – the chaste, poor and obedient one – are made constantly ‘visible’ in the midst of the world and the eyes of the faithful are directed towards the mystery of the kingdom of God already at work in history, even as it awaits its full realisation in heaven.<sup>42</sup>

The Holy Father was saying that religious life is, above all, an imitation of the life of Christ found in the Gospel. He regarded the evangelical counsels as the characteristic features of the life of Jesus Christ. For John Paul II, religious life is a gift of God to the entire Church; therefore the Church has the obligation to safeguard it with the help of the Holy Spirit.<sup>43</sup>

There is no doubt that the Church has been consistent in laying emphasis on the Christological dimension of religious life since the Second Vatican Council, judging from the many documents published on religious life. Everything about consecrated life, especially religious life, makes sense only when seen against this background. If religious life is not seen from this perspective, some of its requirements cannot make sense. Religious life is properly understood as the imitation of the life of Christ. The life of a

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<sup>41</sup> See above p. 1, footnote 4, for details of this document.

<sup>42</sup> *VC*, 1. This quotation from *Vita consecrata* is based on *LG*, 43.

<sup>43</sup> See *LG*, 43. It is the duty of the Church to interpret the counsels and to regulate their practice. No wonder the Church claims the sole responsibility for approving institutes of

religious is so profoundly related to the life of Christ that it is almost impossible to think of one without the other.<sup>44</sup> Consequently, religious are consecrated just as Christ was.<sup>45</sup>

We shall now consider the implications of this consecration.

## 1.2 - RELIGIOUS CONSECRATION

The word “consecration” connotes a total belonging to God, and it is used in relation to something or someone that has been dedicated to God. We speak of baptismal consecration, and we speak of religious consecration. A text of the Congregation for Religious and Secular Institutes describes consecration as follows:

Consecration is at the basis of religious life. By insisting on this, the Church places the first emphasis on the initiative of God and on the transforming relation to him which religious life involves. Consecration is a divine action. God calls a person whom he sets apart for a particular dedication to himself. At the same time, he offers the grace to respond so that consecration is expressed on the human side by profound and free self-surrender. The resulting relationship is pure gift. It is a covenant of mutual love and fidelity, of communion and mission, established for God’s glory, the joy of the person consecrated and the salvation of the world.<sup>46</sup>

According to the language of the Magisterium as well as that of theological literature, we can see two ways of speaking of religious consecration. It is both divine and human. God initiates a gift to the human person whose response includes a total self-surrender. The

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consecrated life, safeguarding them and explaining the implications of the vows or sacred bonds. See also WULF, “Religious,” p. 274.

<sup>44</sup> See PARDILLA, “Theological Identity of Religious Life,” p. 245.

<sup>45</sup> *VC*, 22.

<sup>46</sup> *EE*, 5. See also *CLD*, vol. 10, p. 46.

initiative and the response that follow give rise to a covenant that gives glory to God, gives joy to the one who is consecrated, and salvation to the world of human beings. Therefore, God is the subject, the agent of the action, while the individual religious is the recipient. God is the one who consecrates while the religious is the one consecrated.<sup>47</sup>

From a human point of view, it is the human person who is the agent of the action, while God is the recipient: the religious consecrates himself or herself to God. This manner of speaking of consecration highlights the human element of consecration by stressing the free and irreplaceable contribution of the person whose dignity is respected by God in his intervention of consecration.<sup>48</sup>

The two ways of looking at consecration, therefore, complement each other. In the first one God is the agent; God consecrates the religious in a descending movement of the free divine proposal. In the second, the human person acts as the agent by consecrating himself/herself to God in an ascending movement of the free human response.<sup>49</sup> According to A. Pardilla, this second manner of expression serves to stress the characteristics and implications of free human decisions, because it shows that the consecration is a “self holocaust,” an offering of oneself to God.<sup>50</sup> Mary Linscott

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<sup>47</sup> See PARDILLA, “Theological Identity of Religious Life,” p. 253. In Latin this very form is called “divine passive: *consecratur*.” For Pardilla, “This language puts in the forefront the divine element of consecration, to which also belongs, from the biblical and theological point of view, the real and conceptual priority. In fact, we must recognise that the initiative for the consecration belongs to God; the God, One and Trinity, the Holy God and source of all holiness, of every consecration, every grace and every charism. To be more precise, within the Trinity, it is in the Father that we find the supreme origin of consecration” (pp. 253-254).

<sup>48</sup> *Ibid.*, p. 254.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.* The idea of “self holocaust” or self-immolation is so crucial to this work that we must come back to it. The principle laid down in canon 702, §1 cannot have any meaning without

expresses the same idea by saying that consecration involves, at least implicitly, a choice by God and the double idea of separation for God and dedication to God.<sup>51</sup>

The different ways of understanding consecration are in line with what we read from the conciliar document that reminds religious that professing the evangelical counsels is a response to God's call.<sup>52</sup> Responding to a divine call implies, first and foremost, that there be a call from God which is subsequently followed by a response from an individual religious.

Commenting on the act of consecration, Friedrich Wulf says that it establishes a dedication in a strict theological sense of *consecratio*, always an action of God towards the human being, quite independent of his or her most virtuous action.<sup>53</sup> He asserts that the special dedication (*consecratio*) traditionally associated with the evangelical counsels has three constitutive elements, namely, the gracious call of God, a person's response through profession and the acceptance of his/her vows or promises.<sup>54</sup>

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emphasis on the fact that religious life is totally a willing sacrifice of the whole person. It is the free choice of the individual religious to desire, request to join religious life.

<sup>51</sup> See M. LINSKOTT, "The Consecrated Life of Apostolic Religious Today," in *Consecrated Life*, 47 (1988), p. 9. Linscott and Pardilla express the same idea, although Pardilla presents it more directly.

<sup>52</sup> See *PC*, 5.

<sup>53</sup> See WULF, "Decree on the Appropriate Renewal of Religious Life," p. 344.

<sup>54</sup> *Ibid.*, p. 345. WULF adds a third element, the acceptance of the vows by the Church. This third constitutive element is as essential as the other two. We have already seen that the Church sees religious life as a gift from God to his Church which she safeguards, and possesses the authority to interpret the evangelical counsels and regulates their practice (cf. *LG*, 43). Possessing the sole authority to interpret and determine the practice of the evangelical counsels indicates that the Church is in complete control of religious life and can legislate on the practice of it which does not preclude a legislation like c. 702, §1. This is a more balanced way of understanding consecration.

Summarising what has been said so far, we conclude that the following of Christ through the profession of the evangelical counsels requires a life of special dedication, special consecration to God. Through religious consecration, God calls the individual whose free response is a self-holocaust, an offering of self to God, made within the Church and accepted in the name of the Church. This special consecration made within the Church and accepted in the name of the Church, concretises and affirms the freedom of the religious. Religious consecration is characterised by some constitutive elements that we are about to examine. Among these are the vows and life in common.

### 1.3 - THE VOWS

Among the constitutive elements of religious life we find the profession of the evangelical counsels of chastity (celibacy), poverty and obedience, publicly made in an ecclesiastically approved institute, and received in the name of the Church. In the conciliar documents we read that “the teaching and example of Christ provide for the foundation for the evangelical counsels of chaste self-dedication to God, of poverty and of obedience.”<sup>55</sup> The Christian who pledges him/herself to this kind of life binds him/herself to the practice of the three evangelical counsels by vows.<sup>56</sup> In the Decree on the Renewal of Religious Life, *Perfectae caritatis*, the Council Fathers taught that the evangelical counsels are part and parcel of religious life. Hence, in reference to religious, they said that, “they follow Christ who, virginal and poor (cf. Mt. 8:20; Lk. 9:58),

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<sup>55</sup> *LG*, 43.

<sup>56</sup> *LG*, 44.

redeemed and sanctified men by obedience unto death on the cross (cf. Phil. 2:8).”<sup>57</sup> In his Apostolic Exhortation, *Vita consecrata*, Pope John Paul II, like the Fathers of the Council, saw the evangelical counsels as constitutive elements of religious consecration.<sup>58</sup>

When someone professes the evangelical counsels, he/she does so for a number of reasons. First of all, the individual religious does so in order to be set free from obstacles that could hold him/her back from fervent charity and perfect worship of God.<sup>59</sup> Secondly, a religious seeks to dedicate him/herself in a more special way to the service of God.<sup>60</sup> Profession of the evangelical counsels gives one not only freedom from the cares of earthly existence, but also enables the person to appreciate the heavenly goods that are present in this life and to look forward to the glory of the heavenly kingdom that awaits us in the future.<sup>61</sup> It follows then that the nature of the vows requires a total and unreserved commitment to pleasing the Lord. We shall now turn our attention to discussing each of the vows.

### 1.3.1 - The Vow of Chastity

According to the Council Fathers, outstanding among the counsels is that precious gift of divine grace given to some by the Father (Mt. 19:11; 1 Cor. 7:7), to enable them to devote themselves to God alone more easily with an undivided heart (1 Cor. 7:32-34) in

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<sup>57</sup> *PC*, 1.

<sup>58</sup> See *VC*, 87-92.

<sup>59</sup> *LG*, 44.

<sup>60</sup> *Ibid.* See also PAUL VI, Allocution, *Magno gaudio*, 23 May 1964, in *AAS*, 56 (1964), pp. 567-571.

<sup>61</sup> *LG*, 44.

virginity or celibacy.<sup>62</sup> Through the vow of chastity, taken in imitation of Christ, religious sacrifice marriage and all acts that are unique to the married state. They live a celibate life of perfect continence for the sake of the kingdom of heaven. The vow of chastity is the most clearly founded vow in the scriptures.<sup>63</sup> While answering a question on divorce, and presenting a teaching on continence, Jesus presents the voluntary eunuch as the ideal for his disciples. His teaching was a big challenge: “There are eunuchs born so from their mother’s womb, there are eunuchs made so by human agency and there are eunuchs who have made themselves so for the sake of the kingdom of heaven. Let anyone accept this who can” (Mt. 19: 12). The teaching of Jesus indicates that celibacy is not imposed on anyone, but personally desired and accepted by each celibate. Jesus intimates that it requires a divine gift to make the commitment to celibacy when he says that it is not everyone who can accept his teaching, but only those to whom it is granted (Mt. 19:11). Above all, celibacy is a special gift of God and it is not intended for everyone but it requires the voluntary acceptance of the person to whom this gift is given.<sup>64</sup>

The Council Fathers said that chastity undertaken for the sake of the kingdom of heaven (Mt. 19:22), which the religious profess, must be esteemed as an exceptional gift

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<sup>62</sup> *LG*, 42. See also J. GALOT, “The Great Challenges,” in *Consecrated Life*, 22 (1997), p. 105. Galot says that the most challenging of the evangelical counsels is the vow of chastity and the renunciation of marriage (celibacy).

<sup>63</sup> See D. M. HUOT, “The Evangelical Counsels,” in *Consecrated Life*, 11 (1987), p. 226.

<sup>64</sup> This is in keeping with what we have already seen earlier in this chapter on the two elements and double language on consecration. God appears as the subject or the agent who consecrates the religious, while the individual religious is the recipient. In the second manner of speaking of consecration, it is the human person who appears to be the agent of the action while God is the recipient. In this second manner, the individual religious sees his/her action as a “self holocaust,” an offering of oneself to God who receives the offering.

of grace.<sup>65</sup> It is meant to set free the heart of religious (1 Cor. 7:32-35), so as to enable them to love God as well as other human beings. It is a special gift from heaven that enables one to be dedicated completely to God and to works of the apostolate.<sup>66</sup> The vow of chastity symbolises the marriage between God and his Church that will be fully manifested in the next world, where Jesus Christ will remain the Church's only spouse.<sup>67</sup>

The free gift of consecrated chastity is not merited by anyone. The religious who receives it cannot rest complacently; a religious is expected to appreciate and preserve it. The conciliar document gives various examples of how to protect the vow of chastity, which include practising mortification and custody of the senses.<sup>68</sup> The vowed religious is not supposed to listen to false doctrines that maintain that perfect continence is opposed to human development.<sup>69</sup> In *Vita consecrata*, Pope John Paul II criticises the hedonistic culture that separates sexuality from all objective moral norms.<sup>70</sup> Humility is required to depend on the grace of God if one is to persevere in one's commitment to consecrated chastity.<sup>71</sup> The conciliar document advocates for common life that would

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<sup>65</sup> *PC*, 12.

<sup>66</sup> *PC*, 12. See also *ET*, 13, p. 686. Here we read: "Only the true love of God – it must be repeated – calls in a decisive way to religious chastity. This love moreover makes so uncompromising a demand for fraternal charity that the religious will live more profoundly with his contemporaries in the heart of Christ."

<sup>67</sup> *PC*, 12.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *VC*, 88. This echoes what we read from PAUL VI'S *Evangelica testificatio*: "Thus at the very moment that human love is more than ever threatened by a 'ravaging eroticism', consecrated chastity must be today more than ever understood and lived with uprightness and generosity" (*ET*, 13, p. 687).

<sup>71</sup> See GALOT, "The Great Challenges," p. 106.

enable the religious to keep their vow of chastity.<sup>72</sup> The Council Fathers advise on a number of things to be done before candidates are to be admitted to profess the vow of chastity. Among these, carefully warning candidates against the dangers to chastity, bringing them to realise that through celibacy they are dedicated to God in a way that is beneficial to their personality, and adequately testing to ensure that candidates are psychologically and sufficiently matured.<sup>73</sup> Fidelity to the vow of chastity invariably enables religious to live in poverty.<sup>74</sup>

### 1.3.2 - The Vow of Poverty

According to Vatican II, the vow of poverty is taken for the sake of the kingdom of heaven in imitation and following of Jesus Christ, who made himself poor for us although he was rich by nature (2 Cor. 8:9; Mt. 8:20).<sup>75</sup> John Paul II affirmed that, “the poverty of Christ conceals in itself this infinite richness of God; it is indeed an infallible expression of it.”<sup>76</sup> The religious who have professed the vow of poverty are to be poor in fact and in spirit, having their treasures in heaven (Mt. 6:20).<sup>77</sup> The vow of poverty ought

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<sup>72</sup> *PC*, 12.

<sup>73</sup> *Ibid.* See also *RC*, 11 (3), p. 645, where the same idea is echoed: “If in certain more difficult cases, the Superior feels, with the free agreement of the subject, that he should have recourse to the services of a prudent and qualified psychologist known for his moral principles, it is desirable, in order that this examination may be fully effective, that it should take place after an extended period of probation, so as to enable the specialist to formulate a diagnosis based on experience.”

<sup>74</sup> See *ET*, 16.

<sup>75</sup> *PC*, 13. The poverty of Christ was more radical than anyone would imagine: “Foxes have holes, and birds of the air have nests; but the Son of man has nowhere to lay his head” (Mt. 8:20).

<sup>76</sup> *RD*, 12.

<sup>77</sup> *PC*, 13.

to be reflected in the life of each religious, as well as be reflected in general in the life style of each institute, taking into account the local standards in any given environment.<sup>78</sup> It is not enough for the religious to be subject to superiors in the use of property.<sup>79</sup> Through the vow of poverty religious are encouraged to consider themselves bound by the common law of labour and to go on working for their sustenance while, at the same time, shunning undue solicitude, and placing their trust in the providence of God (Mt. 6:25).<sup>80</sup>

John Paul II taught that the primary meaning of poverty “is to attest that God is the true wealth of the human heart.”<sup>81</sup> The Pontiff sees the vow of poverty as the appropriate answer to our world and its materialistic tendency that craves for possessions and its insensitivity to the poor, including the great injustice in the balance and distribution of natural resources.<sup>82</sup> Consequently, the religious demonstrate their vow of evangelical poverty not only in being poor in fact and in spirit, but also “in an active involvement in the promotion of solidarity and charity.”<sup>83</sup> This explains why the religious “give themselves without reserve in the service of the most disadvantaged [...] fight to

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<sup>78</sup> Ibid. The vow of poverty is one that ought to be relative to local standards; what is considered poor in the developed nations, may not be considered poor in developing nations. Dwellings, reception of guests and the style of living must be simple and modest in order to bring the religious closer to people who are poor, homeless or disadvantaged. Their economic standard of living should not alienate those with whom and among whom the religious live and work.

<sup>79</sup> *PC*, 13.

<sup>80</sup> Ibid. In *Vita consecrata*, 89, John Paul II says that the primary meaning of poverty “is to attest that God is the true wealth of the human heart.”

<sup>81</sup> *VC*, 90.

<sup>82</sup> *VC*, 89.

<sup>83</sup> Ibid.

overcome hunger and its causes [...and] promote a fair distribution of international aid.”<sup>84</sup>

### 1.3.3 - The Vow of Obedience

The vow of obedience is as important as the vows of chastity and poverty. In fact, Saint Thomas Aquinas contends that “the vow of obedience includes the other vows.”<sup>85</sup> In professing obedience, religious make a total offering of their own will as a sacrifice of themselves to God and by so doing they unite themselves more permanently and more securely to God’s saving will.<sup>86</sup> *Perfectae caritatis* taught that the vow of obedience is taken after the pattern of Christ who came to do the will of the Father (cf. Jn. 4:34; 5:30; Heb. 10:7; Ps. 39:9), and, taking the form of a servant (Phil. 2:7), learned obedience through suffering (cf. Heb. 10:8).<sup>87</sup>

Religious are urged to obey their superiors in a spirit of faith and love for God’s will, in accordance with their rules and constitutions.<sup>88</sup> However, religious obedience does not lower the dignity of the human person; rather, it enhances one’s maturity and

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<sup>84</sup> Ibid.

<sup>85</sup> THOMAS AQUINAS, *Summa theologica*, II & II ac, q. 186, a 8, translated by the Fathers of the English Dominican Province, New York, Benziger Brothers, Inc., 1947, p. 1979.

<sup>86</sup> *PC*, 14.

<sup>87</sup> Ibid. John Paul II in his Apostolic Exhortation, *Redemptionis donum*, also echoes this: “The evangelical counsel of obedience is the call which derives from this obedience of Christ ‘unto death’. Those who accept this call, expressed by the words ‘Follow me’ decide – as the Council says – to follow Christ ‘Who, by obedience which carried him even to death on the cross, redeemed humanity and made it holy’. By living out the evangelical counsel of obedience, they reach the rich essence of the entire economy of the redemption” (*RD*, 13). See also J. ARRAGAIN, “The Evangelical Counsels,” in *Consecrated Life*, 11(1986), pp. 234-235.

<sup>88</sup> *PC*, 14.

freedom.<sup>89</sup> It requires a strong will to accept the will of another knowingly and willingly in a spirit of faith and love, but if it is done, it indicates a high degree of maturity. The religious are obliged, making use of the power of their intellect and will, to contribute to the building up of their institute in particular and to the entire Church.<sup>90</sup>

The vow of obedience demands a lot from superiors. Superiors render an account of those under their care (Heb. 13:17), and are docile to the will of God while exercising their authority in a spirit of service.<sup>91</sup> They “should govern their subjects in the realisation that they are sons of God and with respect for them as human persons, fostering in them a spirit of voluntary subjection.”<sup>92</sup> Consequently, superiors should allow their subjects to participate in the working out of projects and decisions, using their own authority to decide and to prescribe what is to be done.<sup>93</sup> In faithfulness to the directives of the Council, the constitutions and chapters of each institute should emphasise the importance and the necessity for dialogue between superiors and members on issues that concern personal life of individual religious or that of the institute as a whole.<sup>94</sup> In all, the

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<sup>89</sup> Ibid. In *VC*, 91 we read: “In an especially vigorous way this obedience re-proposes the obedience of Christ to the Father and, taking this mystery as its point of departure, testifies that there is no contradiction between obedience and freedom.”

<sup>90</sup> *PC*, 14.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid. From this conciliar document it appears that the superior has to be extra careful not to misuse personal authority while commanding his/her subjects. The superior must make sure that any orders are in line with the mind of God and at the same time ensure that the subject is given the respect due to human beings.

<sup>93</sup> Ibid. In fact, *Perfectae caritatis* goes so far as concretely mentioning that superiors should allow the subjects some liberty in areas like the sacrament of penance and in spiritual direction.

<sup>94</sup> Ibid. The Apostolic Exhortation, *Evangelica testificatio*, says: “Thus, far from being in opposition to one another, authority and individual liberty go together in the fulfilment of God’s will, which is sought fraternally through a trustful dialogue between the superior and his brother,

conciliar Fathers see the obedience of the religious as the imitation of the obedience of Christ to the Father (*LG*, 14).

#### 1.4 - COMMON LIFE

Common life is one of the constitutive elements of religious life.<sup>95</sup> The Council Fathers saw communal unity as an indisputable human and Christian value, more than just a value proper to religious life. They pointed out that it is actually the will of God that all people created in his image and likeness and called to one and the same goal (unity of life with God) should form a single family and treat each other as members of the same family.<sup>96</sup> The union of the human family, in turn, is strengthened and completed by the community of God's children, founded on Jesus Christ. Jesus commanded the Apostles to proclaim the Gospel message to all nations, so that the human race might become God's family, in which the fullness of the law would be love.<sup>97</sup>

The united human family of God's children, which the Council Fathers advocate in *Gaudium et spes*, is modelled on the common life practised by religious. "Religious consecration establishes a particular communion between religious and God and, in him,

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in the case of a personal situation, or through a general agreement regarding what concerns the whole community" (*ET*, 25).

<sup>95</sup> *VC*, 92. Here John Paul II says: "This testimony of consecration takes on special meaning in religious life because of the community dimension which marks it (*VC*, 92)." See also *EE*, 18 that refers to common life where it says: "This is a basic element in the unity of an institute."

<sup>96</sup> SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World, *Gaudium et spes* (=GS), 7 December 1965, in *AAS*, 58 (1966), pp. 1025-1115. English translation in FLANNERY I, pp. 903-1001; here at no. 24, p. 925.

<sup>97</sup> *GS*, 32.

between the members of the same institute.”<sup>98</sup> Consequently, “for religious, communion in Christ is expressed in a stable and visible way through community life.”<sup>99</sup> By the profession of the evangelical counsels, religious belong to families who provide their members the assistance they need for their spiritual perfection and the fraternal communion which binds them together in the army of Christ.<sup>100</sup>

Common life requires perseverance in prayer and in unity of spirit, nourished by the Gospels, by the sacred liturgy and above all by the Eucharist (Acts 2:42), after the example of the early Church in which the followers of Jesus Christ were of one heart and soul (Acts 4:32).<sup>101</sup> One heart and one soul of the early Christian community meant that no one claimed private ownership of any possessions because they held everything in common. Rather than being impoverished, the pulling of resources together ensured that none of the members was in need. Religious, as the members of Christ’s family, should live together as brothers and sisters and should give pride of place to one another in esteem (Romans 12:10), carrying one another’s burdens (Galatians 6:12).<sup>102</sup>

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<sup>98</sup> *EE*, 18.

<sup>99</sup> *Ibid.*

<sup>100</sup> *LG*, 43.

<sup>101</sup> *PC*, 15. See also *Vita consecrata*, where John Paul II says: “The fraternal life is the privileged place in which to discern and accept God’s will and to walk together with one mind and heart” (*VC*, 92).

<sup>102</sup> *PC*, 15.

### 1.5 - RELIGIOUS LIFE AND EVANGELICAL MISSION

As stated earlier, religious life, which is a form of consecration, implies following Christ's teaching and life more closely.<sup>103</sup> By professing the evangelical counsels, religious, first and foremost, bear witness to Christ. They are consecrated in a special way "to do the work of God in the power of God,"<sup>104</sup> and consequently they "intend to go where Christ went and to do what he did."<sup>105</sup>

In *Vita consecrata*, John Paul II says that "a sense of mission is essential to every institute, not only those dedicated to the active apostolic life, but also those dedicated to the contemplative life."<sup>106</sup> John Paul II in an earlier message to the Congregation for Religious and for Secular Institutes said that it is not what the religious do that counts most, but the fact that they are persons consecrated to God.<sup>107</sup> No wonder the council Fathers concluded that apostolic and charitable activity are of the very nature of religious life.<sup>108</sup> Just as Christ was consecrated and sent by the Father to bring the salvation of God and was wholly dedicated to the Father in adoration, religious, in like manner, are called to do the same.<sup>109</sup> Therefore, the mission of religious is directed towards the

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<sup>103</sup> *LG*, 46; *ET*, 7.

<sup>104</sup> *EE*, 23.

<sup>105</sup> *VC*, 75.

<sup>106</sup> *VC*, 72.

<sup>107</sup> JOHN PAUL II, Message to the Plenary Assembly of the Congregation for Religious and for Secular Institutes, (March 1980), quoted in *EE*, 33.

<sup>108</sup> *PC*, 8. See also *VC*, 72.

<sup>109</sup> *EE*, 23; *VC*, 76.

reconciliation and salvation of the human race, as was the case with the mission of Jesus.<sup>110</sup>

Religious imitate Jesus in his mission by “announcing God’s kingdom to the multitude, healing the sick and maimed, converting sinners to a good life, blessing children, doing good to all and always obeying the will of the Father who sent him.”<sup>111</sup> In this way, religious through their various apostolates, imitate Christ in washing the feet of their brothers and sisters,<sup>112</sup> that is, through personal witness they make present Christ who is chaste, poor, obedient, prayerful and missionary.<sup>113</sup>

Since the mission of the religious is the continuation of the mission of Christ, it must be in harmony with the mission of the Church at large. The Church approves the mission of religious institutes at the same time their constitutions are approved.<sup>114</sup> Any particular apostolate of any religious institute that runs contrary to the teaching of the Church cannot have its blessing.

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<sup>110</sup> *EE*, 23.

<sup>111</sup> *EE*, 23. This quotation is taken from *LG*, 46. Jesus came to this world out of love to bring salvation to all. During his public ministry, the miracles he performed brought tremendous comfort to the recipients. Jesus made “the blind see again, the lame walk, those suffering from virulent skin-diseases are cleansed, and the deaf hear, the dead are raised to life, the good news is proclaimed to the poor [...]” (Luke 7:22). In their missionary activities, religious try in different ways to do the things that Jesus did. Therefore, religious like Christ in their self-denial, get outside of themselves to think about others and to improve the living conditions of others.

<sup>112</sup> *VC*, 75.

<sup>113</sup> See SECOND VATICAN COUNCIL, Decree on the Church’s Missionary Activity, *Ad gentes divinitus* (=AG), 7 December 1965, in *AAS*, 58 (1966), pp. 947-990. English translation in *FLANNERY I*, pp. 813-856.

<sup>114</sup> *EE*; 24; *LG*, 12, and *VC*, 73.

While engaging in any particular mission religious must display a deep experience of God and take into consideration the challenges of their time.<sup>115</sup> The display of profound union with the Lord and sensitivity to the times will enable religious “to transmit the message of the incarnate word in terms which the world is able to understand.”<sup>116</sup> Religious are expected to have new answers to the problems of the world, and at the same time preserving their original charism.<sup>117</sup>

Respecting the original charism of their founders, religious undertake their mission as a community responsibility.<sup>118</sup> However, taking individual talents into consideration, the works of all members of an institute must be directly related to the common apostolate, which the Church has recognised as expressing concretely the purpose of the institute, and part of its sound traditions.<sup>119</sup> In a document entitled “Religious and Human Promotion,” the Congregation for Religious and Secular Institutes laid down points that should be emphasised when institutes find reasons to renew and revitalise their works. These include fidelity to humanity and to our times, to Christ and the Gospel, to the Church and its mission in the world, to religious life and to the charism of the institute.<sup>120</sup>

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<sup>115</sup> *ET*, 9; *EE*, 24, *VC*, 73.

<sup>116</sup> *Ibid.*

<sup>117</sup> *VC*, 23. It means that while new problems facing religious in their mission may require undertaking new apostolates, these new engagements must be consistent with the original charism of their institutes.

<sup>118</sup> *EE*, 25; *VC*, 72.

<sup>119</sup> *EE*, 25.

<sup>120</sup> CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, *Religious and Human Promotion, Le scelte evangeliche*, 12 August 1980, in FLANNERY II, p. 271. This document resulted from a plenary meeting of the Congregation for Religious and Secular Institutes held on

It is the responsibility of major superiors to supervise common apostolate. They must see that the institute is at once faithful to its traditional mission in the Church and also open to new ways of undertaking it.<sup>121</sup> There may be reasons to renew and revitalise the works of an institute, and this must take cognisance of the institute's approved apostolate in collaboration with the respective ecclesiastical authorities.<sup>122</sup>

### 1.6 - JURIDICAL CONTEXT: RELIGIOUS LIFE IN THE 1983 CODE

The 1983 Code transcribes into canonical norms the rich conciliar and post-conciliar teachings of the Church on religious life.<sup>123</sup> The canons on religious life, particularly those concerning the vows, contain both theological and juridical elements, and as such, show their origin in the Vatican II documents. We will now discuss some of the juridical elements under consecration (c. 573), description of religious life (c. 607), and the patrimony of each institute (c. 578). Others include autonomy and proper law of each institute (c. 586), vow of chastity (c. 599), vow of poverty (c. 600) and vow of obedience (c. 601). References will also be made to solemn and simple vows (c. 1192), common life (cc. 665 & 668, §3), personal property (668, §§1 & 2), and obligations of institutes towards their members (c. 670).

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April 25-28, 1978. It was released by the end of 1980, along with another document on the contemplative dimension of religious life. Since it was officially released, the document (Religious and Human Promotion) has been published in several books and periodicals, with the date given as "January 1981" only. Official Vatican web site, [http://www.vatican.va/roman\\_curia/congregations/ccsrlife/documents/rc\\_con\\_ccsrlife\\_doc\\_1](http://www.vatican.va/roman_curia/congregations/ccsrlife/documents/rc_con_ccsrlife_doc_1), puts the date as 12 August 1980.

<sup>121</sup> See *EE*, 25.

<sup>122</sup> *Ibid.*

<sup>123</sup> *EE*, 53. See also J.A. CORIDEN, *Canon Law as Ministry: Freedom and Good Order for the Church*, New York/Mahwah, NJ, Paulist Press, 2000, pp. 13-19.

### 1.6.1 - The Life of Consecration

The 1983 Code clearly states that consecration is the basis and specific characteristic of religious life.<sup>124</sup> This is contained in the foundational canon (c. 573) as well as in canon 607, the first canon under the title, “Religious Institutes.”

Finding its inspiration in the conciliar documents, canon 573 embodies both theological and juridical elements.<sup>125</sup> From its first paragraph we notice that the life of consecration through the profession of the evangelical counsels is open to the faithful (c. 207, §2),<sup>126</sup> and it is a stable form of living (c. 573, §1). Consequently, the consecrated person should intend permanency. In other words, no one should profess the evangelical counsels in an institute with the intention of being a member for a limited period of time only. In fact, temporary profession was introduced for male orders only in 1857 and was later extended to women’s orders around 1902.<sup>127</sup> However, canon law requires a period

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<sup>124</sup> *EE*, 5.

<sup>125</sup> See *LG*, 43 and *PC*, 1. A similar canon is found also in the *CCEO*, c. 410. It reads: “The religious state is a stable manner of living in common in an institute approved by the Church, by which the Christian faithful, more closely following Christ, Teacher and Exemplar of Holiness, under the influence of the Holy Spirit, are consecrated by a new and special title through the public vows of obedience, chastity and poverty, observed in accord with the norm of the statutes under a legitimate superior, renounce the world and totally dedicate themselves to the attainment of perfect charity in the service of the kingdom of God for the building up of the Church and the salvation of the world as a sign of the foretelling of heavenly glory.”

<sup>126</sup> Canon 573, §1.

<sup>127</sup> See E. O’HARA, “Norms Common to All Institutes of Consecrated Life: Canons 573-606,” in J. HITE et al., *A Handbook on Canons 573-746*, Collegeville, MN, The Liturgical Press, 1985, p. 33. The author writes: “There was really no general legislation on simple vows in the Church until 1857-1858. On March 19, 1857, Pope Pius IX, in *Nemini latet*, decreed that members of male religious orders must make simple vows for three years after novitiate. At the time, the explanation was that the intention was for perpetual vows, but that this would allow either the individual or the community to change their minds after this testing period. In many communities this theology remained, namely, that at the time of the first profession, even though it was legally temporary, the intent should be for permanency in the state of consecrated life. This is why the time spent on temporary vows should not be prolonged unnecessarily” (p. 33).

of temporary profession in order to ensure the freedom of the person prior to perpetual profession (c. 655).

Freedom of choice to enter religious life and to be accepted into a religious institute is emphasised in the 1983 Code.<sup>128</sup> One who has not completed the seventeenth year of age (c. 643, §1) or anyone who enters an institute through force, fear and deceit, or whom the superior accepts under the same influences is invalidly admitted into the novitiate.<sup>129</sup> The purpose of the novitiate is to give novices time to reflect on the implications of their vocation and to decide whether they can live the life proper to their chosen institute (c. 646). In the same vein, the period of novitiate gives the institute an opportunity to test candidates through the supervision of the novice master, to know whether they will be suitable members in the future. Canon 656 lays down a number of requirements for the validity of temporary profession. Temporary profession is not a guarantee for perpetual profession; a religious would need to ask for it freely and be judged suitable to be promoted to perpetual profession.<sup>130</sup> Therefore, the Church shows respect for human dignity and the rights of the individual by insisting on the avoidance of coercion in choosing one's state of life (c. 219).<sup>131</sup>

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<sup>128</sup> Canons 219; 643, §1, 4<sup>o</sup>; 656, §4; 658 and 721, §3.

<sup>129</sup> Canon 643 enumerates other invalidating conditions for admission into the novitiate of an institute. It is absolutely important that one is no longer a minor at the time when making the major decision of freely dedicating oneself totally to God through a religious institute.

<sup>130</sup> Canon 657, §1: "When the period of time for which the profession was made has been completed, a religious who freely asks, and is judged suitable is admitted to a renewal of profession or to perpetual profession. Otherwise the religious is to leave." This clearly shows that at every stage the freedom of the individual is respected, prior to first profession, during renewal of vows and prior to perpetual profession.

<sup>131</sup> See *GS*, 26, 29 and 52. See also *CCEO*, c. 22 which echoes *CIC/83*, c. 219.

Canon 573, §2 clearly stipulates that one becomes a religious in an institute that is canonically established by a competent ecclesiastical authority.<sup>132</sup> Canon 607, §2 identifies a religious institute as a society with its own laws. This canonically means that a religious institute, in virtue of its establishment by a competent ecclesiastical authority, is *ipso iure* a public juridic person.<sup>133</sup> Further to recognising the religious institute as a juridic person, the Church shows respect for the spiritual patrimony of institutes, their autonomy and proper law, which we shall now very briefly discuss.

### 1.6.2 - Spiritual Patrimony

Echoing the conciliar document (*PC*, 2), canon 578 identifies seven elements as constituting the spiritual patrimony of an institute:

The mind of the founders and their dispositions concerning the nature, purpose, spirit and character of the institute which have been approved by the competent ecclesiastical authority, together with its sound traditions, all of which comprise the patrimony of the institute itself, are to be faithfully observed by all.<sup>134</sup>

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<sup>132</sup> See *LG*, 43, 45 and *VC*, 5-11. Consecrated life is a gift of the Spirit to the entire Church, and ecclesiastical authorities supervise all forms of consecrated life. Hence, the approbation and the change in the nature of an institute require the sanction of ecclesiastical authority. Certain criteria must be in place before the Church approves any institute of consecrated life.

<sup>133</sup> Canons 116, 634, §1. See cc. 579, 589 for the beginnings and approval of religious institutes. See also R. MCDERMOTT, "Institutes of Consecrated Life and Societies of Apostolic Life," commentary in J.P. BEAL, J.A. CORIDEN, T.J. GREEN (eds), *New Commentary on the Code of Canon Law (=New Commentary)*, commissioned by the Canon Law Society of America, New York/Mahwah, NJ, Paulist Press, 2000, p. 771.

<sup>134</sup> The source of this canon is *Perfectae caritatis*, 2b, which discusses the general principles required for the renewal of religious life. A corresponding canon is found in the *CCEO*, c. 426. It reads: "Each and every religious, whether superiors or subjects, must not only faithfully and integrally observe the vows that they have professed, but also arrange their lives according to the typicon or statutes, having faithfully observed the mind and designs of the founder, and thereby strive for the perfection of their state."

The mind of the founder refers to the intention or purpose of the founder in establishing an institute. In some cases, it is difficult to know the intention of founders. Some institutes have a history of break-ups and mergers.<sup>135</sup> The nature of the institute refers to whether an institute is clerical or lay (secular),<sup>136</sup> while the purpose is whether it is contemplative or active. The spirit of an institute is its particular spirituality, as found in the life and activity of its members.<sup>137</sup> It must be in keeping with the spirit of Christ because the spirit of Christ animates every institute of consecrated life.<sup>138</sup> The character deals with whether it is monastic, conventual or integrally apostolic.<sup>139</sup> Sound traditions of an institute pertain to those unique points that have marked it from its inception. An example is particular devotion to Mary. Members of an institute are bound to observe faithfully these elements. Competent ecclesiastical authority must examine the elements before the approbation of any institute. To safeguard the patrimony, the Church allows a wide range of autonomy to them (c. 586), which we intend to see next.

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<sup>135</sup> In the process of a merger or fusion (c. 582), and in an attempt to harmonise the intentions of the founders of the merging institutes in question, one of them may give up the original intention of its founder.

<sup>136</sup> Some institutes may have both clerical and lay members. These are classified as mixed institutes, and their members share to some extent in the power of governance.

<sup>137</sup> See P. DELETTER, "Keeping the Rules," in *RfR*, 18 (1959), p. 18. Deletter says: "Actually it is normal that a religious institute develop its own form of spirituality and of apostolate and wish to see in its members, unifying possibly wide individual varieties some common family traits. These are generally summed up in what we call the spirit of the institute – a phrase whose meaning is more easily sensed and grasped from the actual experience of the religious life than expressed in definite concepts and words. It always designates the proper manner in which a religious institute strives for perfection and practices the apostolate."

<sup>138</sup> J. KALLUMKAL, *The Patrimony of an Institute according to the Code of Canon Law*, JCD diss., Roma, Pontificia Universitas Lateranensis, 1989, p. 173. He says that, "Sometimes the spirit of an institute can be termed as the spirit of the beatitudes, because the members of an institute try to assimilate and live one of those teachings in a special way."

<sup>139</sup> See MCDERMOTT, "Institutes of Consecrated Life and Societies of Apostolic Life," p. 747.

### 1.6.3 - Autonomy of Institutes

Deriving from the spiritual patrimony of an institute of consecrated life is the autonomy of the institute that helps to preserve the spiritual patrimony.<sup>140</sup> When we speak of the autonomy of each institute, the canon that comes to mind is canon 586. It says that the law gives a rightful autonomy of life, especially of governance to each institute (c. 586, §1); this should help to protect the patrimony of each institute.<sup>141</sup> Canon 586 draws its inspiration from the conciliar and post-conciliar teaching on the relationship between the local Ordinary and institutes of consecrated life.<sup>142</sup> The autonomy of life applies to the internal life and governance of each institute. Superiors and chapters of different institutes of consecrated life have authority in universal and proper law in areas of governance: formation, profession/incorporation, administration of temporal goods, visitation, and separation from the institute.<sup>143</sup> *Vita consecrata* says that “each institute is recognised as having a rightful autonomy, enabling it to follow its own discipline and to keep intact its spiritual and apostolic patrimony.”<sup>144</sup> Diocesan bishops should have no undue involvement in the internal life and governance of an institute. As a matter of fact, they are obliged by the second paragraph of this canon to preserve and protect the

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<sup>140</sup> See canon 586, §1, which reads: “A true autonomy of life, especially of governance, is recognised for each institute. This autonomy means that each institute has its own discipline in the Church and can preserve whole and entire the patrimony described in canon 578.”

<sup>141</sup> The Church recognises that each institute possesses a unique gift from God, and the Church wishes to preserve the precious gift at all costs.

<sup>142</sup> SECOND VATICAN COUNCIL, Decree on the Pastoral Office of the Bishops in the Church, *Christus Dominus*(=CD), 28 October 1965, in *AAS*, 58 (1966), pp. 673-701. English translation in FLANNERY I, pp. 564-590. See especially §35, nn. 3-4, p. 585. See also *MR*, §13c, p. 219 and §34, p. 231.

<sup>143</sup> MCDERMOTT, “Institutes of Consecrated Life and Societies of Apostolic Life,” p. 753.

autonomy that each institute enjoys (c. 586, §2).<sup>145</sup> The law on exemption (c. 591) is also in keeping with canon 586 to ensure the autonomy of institutes. Each approved institute is a public juridical person (c. 634, §1). The Church's universal law encourages members of each institute to be diligent in preserving their special gift.<sup>146</sup>

However, the autonomy of institutes is not absolute because all institutes of consecrated life are subject to the diocesan bishop in virtue of universal law, especially in matters pertaining to the care of souls, public exercise of divine worship, and other apostolic works (c. 678, §1).<sup>147</sup> *Vita consecrata* says: "It is helpful to recall that, in coordinating their service to the universal Church, institutes may not invoke rightful autonomy, or even the exemption which a number of them enjoy."<sup>148</sup> The autonomy of institutes gives the right to have their own proper law, to set up their structures for internal government.

#### 1.6.4 - Proper Laws of Institutes

Closely related to the autonomy of an institute of consecrated life is the proper law (*ius proprium*). The proper law of each institute protects both its autonomy and its patrimony. It is different from the universal law and the particular law of dioceses and

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<sup>144</sup> *VC*, 48.

<sup>145</sup> *MR*, 13. See also *VC*, 48.

<sup>146</sup> See cc. 661, 662 and 673.

<sup>147</sup> R. McDermott remarks: "However, even in the external works of the institute, the bishop is obliged to respect their autonomy (cc. 674; 678, §2; 680; 681, §1; 683, §1)," in MCDERMOTT, "Institutes of Consecrated Life and Societies of Apostolic Life," p.753.

<sup>148</sup> See *VC*, 49.

episcopal conferences<sup>149</sup> which equally bind on institutes. In the 1983 Code, canon 587 addresses the issue of the proper law of institutes. This canon indicates that the proper law should be contained in several books. The first book is the fundamental code, also called constitutions or “The Rule.” The second and other books should contain statutes, acts and decrees of chapters within the limits of their authority, and legitimate precepts of superiors.

The first book contains all the elements that make up the patrimony of the institute (c. 578). It should also contain fundamental norms pertaining to governance, the general discipline of members, principles for formation, admission of members, the proper object of the sacred bonds and those matters that the Code states are to be found in the constitutions. It is not necessary that they contain the norms of universal law because every institute is bound to observe them.

Canon 587, §2 says that the fundamental Code for an institute of consecrated life requires the approval of the competent ecclesiastical authority<sup>150</sup> and may not be changed without the approval of the same authority. For institutes of pontifical right, the practice today is that this approval generally comes from the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. For an institute of diocesan right, the

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<sup>149</sup> See MCDERMOTT, “Institutes of Consecrated Life and Societies of Apostolic Life,” p. 753.

<sup>150</sup> The canon does not say which “competent ecclesiastical authority” reserves the right to approve the fundamental code or constitutions of an institute, but c. 595, §1 clarifies that. This canon reads: “It is the bishop of the principal house who approves the constitutions, and confirms any changes lawfully introduced into them, except for those matters which the Apostolic See has taken in hand. He also deals with major affairs, which exceed the power of the internal authority of the institute. If the institute has spread to other dioceses, he is in all these matters to consult with the other diocesan bishops concerned.”

approval is to be given by the diocesan bishop in whose diocese the principal house of the institute is situated, after consulting the other bishops where the institute has houses. If the Holy See intervenes at any point, the diocesan bishop would have to stay action (c. 595, §1).<sup>151</sup>

In addition to the fundamental code or constitutions, there are other books that constitute the proper law of an institute and they are given different names by different institutes. Some of them are called “Rules” or Statutes, Directives, Modalities, Directories. These books complement, and cannot be contrary to the constitutions but their contents can be changed with greater ease than those of the constitutions. The General Chapter of an institute or the General Government in some case can review, change and approve the contents. Directories are usually the one approved by the supreme moderator with the consent of the council.<sup>152</sup> It is possible to have a directory that binds only a part of an institute, such as a province. It is then called a provincial directory.<sup>153</sup>

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<sup>151</sup> See c. 591 that reads: “The better to ensure the welfare of institutes and the needs of the apostolate, the Supreme Pontiff, by virtue of his primacy in the universal Church, and with a view to the common good, can withdraw institutes of consecrated life from the governance of local Ordinaries, and subject them to himself alone, or to some other ecclesiastical authority.”

<sup>152</sup> In some institutes, the approval is left to the general chapter. In the Code different types of directories are mentioned: an administrative directory (c. 617); a chapter directory (c. 631, §2); a finance directory (c. 635, §2) and a formation directory (c. 659). If the directory is to change, the authority that approved it could change it.

<sup>153</sup> In this case, the work of compiling the Directory could belong to either the provincial chapter or a committee set up for that purpose. The approval of such a Directory belongs to the supreme moderator and the general council. A Provincial Directory takes into consideration cultural, geographical and political differences of the different areas of the institute. Some institutes may not have any provincial directory because they are too small. Others may use names like regional or district directories, depending on the composition of the institute. In some parts of an institute it is possible to have local directory or manual. A manual may contain

The 1983 Code leaves much to be determined by the proper law (*ius proprium*) of an institute. Any issue that is important or relevant must be contained in the proper law.<sup>154</sup> The vows are regulated by proper law (c. 598). Universal law sets the parameters, yet a number of institutes through their proper law enjoy freedom or flexibility, as long as they operate within the confines of what is allowed by universal law.

### 1.6.5 - Evangelical Counsels

We have already considered the evangelical counsels of chastity, poverty and obedience from a theological point of view as they are presented to us in the conciliar documents. Here we intend to discuss them briefly from a juridical perspective, knowing full well that the Code of Canon Law echoes the teachings of the conciliar documents.<sup>155</sup> Attention will be focused more on the vow of poverty and its implications, especially as it affects religious and religious institutes.

The 1983 Code defines a vow as a deliberate and free promise made to God concerning a better and possible good that must be fulfilled by reason of the virtue of religion (c. 1191, §1). The Code directs that the proper law of each institute is to determine, in accordance with its own special character and purposes, the manner in which the evangelical counsels are to be observed in a given institute (c. 598). While the norms regarding the vow of chastity seem to be the same for all institutes, the norms

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regulations concerning prayer, financial administration, etc. All these come under the term “proper law” of an institute and help in the proper organisation of the institute.

<sup>154</sup> See J. HITE, “Canons That Refer to the Constitutions and Proper Law of Institutes of Consecrated Life and Societies of Apostolic Life,” in *A Handbook on Canons 573-746*, p. 371. There are over a hundred canons that use the expressions “constitutions” and “proper law.”

<sup>155</sup> See *CLD*, vol. 10, p. 67.

regarding poverty and obedience vary from one institute to another. We will discuss the vows of chastity and obedience before the vow of poverty.

#### 1.6.5.1 - The Vow of Chastity

Canon 599 of the 1983 Code, based on the conciliar documents, addresses the vow of chastity.<sup>156</sup> A person who has vowed chastity is expected freely to refrain from marriage and from any acts that would violate chastity. Chastity is embraced for the sake of the Kingdom of heaven, a sign of the world to come, and it enables the individual to serve God with an undivided heart. Canon 599 is similar to canon 277, §1 for clerics in general, with the exception of married deacons.<sup>157</sup> It is true that all Christians are obliged to observe chastity in accord with their lives and any act contrary to chastity is a sin, but for the religious, in addition to being a sin against the virtue of chastity it is also a sin against the virtue of religion. Actions against chastity attract serious consequences for the person under the vow of chastity.<sup>158</sup>

#### 1.6.5.2 - The Vow of Obedience

From what we have already said, the vow of obedience is supernatural because it is in answer to God's will. The obedience of Jesus Christ to God the Father even to the point of his death on the cross (Phil. 2:8) is what consecrated obedience emulates. It is

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<sup>156</sup> *PC*, 12 and *ET*, 13.

<sup>157</sup> See c. 277, §1. This canon reads: "Clerics are obliged to observe perfect and perpetual continence for the sake of the Kingdom of heaven, and are therefore bound to celibacy. Celibacy is a special gift of God by which sacred ministers can more easily remain close to Christ with an undivided heart, and can dedicate themselves more freely to the service of God and their neighbour."

<sup>158</sup> Cfr. cc. 194, §1, 1° & 3°; 694, §1, 2°; 695; 696, §1; 1088; 1394; 1395.

also human because it is humanly sought, as well as imposed by humans.<sup>159</sup> As a result, it is subject to human regulations and provisions; hence, it is juridical. Canon 601 addresses consecrated obedience and its implications.

Members of institutes of consecrated life surrender their will in a spirit of faith and love to their legitimate superiors who receive their authority from God through the ministry of the Church (c. 601).<sup>160</sup> The submission of the will of a religious does not imply a slave-like submission. Religious under the vow of obedience may not accept duties and offices outside their own institute without the permission of a lawful superior (c. 671). Like clerics, religious may not accept public offices which involve the exercise of civil power (c. 285, §3; cf. also c. 672).<sup>161</sup>

In consecrated obedience, the superior acts in place of God. The superior does so in a spirit of service and concern for the members of the institute. It is important for superiors to have respect for human dignity (c. 618). When the superior commands a member to do something, the command must be in tune with universal law as well as the proper law of the institute.<sup>162</sup> Since the superior plays the role of God, any commands

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<sup>159</sup> See G. BATTELLI, *Religious Life in the Light of the New Canon Law*, Nairobi, Kenya, St. Paul Publications – Africa, 1996, p. 70.

<sup>160</sup> *PC*, 14. Canon 618 of the 1983 Code says: “The authority which superiors receive from God through the ministry of the Church is to be exercised by them in a spirit of service. In fulfilling their office they are to be docile to the will of God, and are to govern those subject to them as children of God. By reverence for the human person, they are to promote voluntary obedience. They are to listen willingly to their subjects and foster their co-operation for the good of the institute and the Church, without prejudice however to their authority to decide and to command what is to be done.”

<sup>161</sup> *EE*, 25

<sup>162</sup> *PC*, 14. See also *EC*, 18, which says: “Superiors, therefore, at every level should be given appropriate powers, so as to minimise unnecessary or too frequent recourse to higher authority.”

should be given with that type of love God the Father had for Christ which evokes an attitude from the member that should resemble the obedience of Christ to the Father. However, superiors retain their authority to take the final decision in most cases.<sup>163</sup> Superiors as well as other members must always seek the will of God in a spirit of peace, love and concern for each member, the institute and the Church at large. It is good for a superior to be slow in invoking the vow of obedience while commanding a member to do something. When a superior does invoke the vow of obedience, it must be only on weighty issues that involve the observance of the constitutions or other serious norms of the institute's proper law. It must be clear from the words used that the command is issued under the vow of obedience.<sup>164</sup>

The authority of the superior to command his/her subjects is not absolute. Supreme moderators and all members of institutes of consecrated life obey the Roman Pontiff as their first superior (c. 590). Religious may have good reasons for not carrying out the legitimate orders of their superiors, especially if what superiors ask their subjects to do is immoral or contrary to their constitutions.

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<sup>163</sup> See *PC*, 14. See also *ET*, 25, that reads: "This labour of seeking together must end, when it is the moment, with the decision of the superiors whose presence and acceptance are indispensable in every community." See also *VC*, 43. Echoing the same message, it says: "While authority must be above all fraternal and spiritual, and while those entrusted with it must know how to involve their brothers and sisters in the decision-making process, it should still be remembered that the final word belongs to authority and, consequently, that authority has the right to see that decisions taken are respected."

<sup>164</sup> In most cases, it is when issuing canonical warnings that superiors command their subjects and invoke the vow of obedience (cf. cc. 697, §2; 729; 746).

### 1.6.5.3 - The Vow of Poverty

Canon 600 is devoted to the vow of poverty.<sup>165</sup> Consecrated poverty in imitation of Christ entails a life of labour lived in moderation and in detachment from earthly riches. It entails dependence on superiors, and limitation in the use and disposition of material goods. In addition to universal law, the proper law of each institute regulates the limits, use and disposition of temporal goods by religious. The vow of poverty does not turn one into a destitute who lacks the basic necessities of life. That would be contrary to the mind of Christ who strives, through his Church, to eliminate abject poverty.<sup>166</sup>

### 1.6.5.4 - The Implications of the Vow of Poverty

The vow of poverty presents a number of implications to religious and their institutes. Among the challenges it includes are: a corporate witness to charity and poverty on the part of institutes, proper administration of temporal goods, a noticeable level of simple life-style, etc.

A corporate witness to charity and poverty is required on the part of institutes, as enunciated in canon 640,<sup>167</sup> which is almost a direct quote from the conciliar documents,<sup>168</sup> taking into consideration the differences that exist in various situations.

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<sup>165</sup> Canon 600 is based on conciliar texts like *PC*, 13 and *ET*, 20-21. It is also based on PAUL VI, Norms for Implementing the Decree "On the Up-to-date Renewal of Religious Life," *Ecclesiae sanctae II* (= *ES II*), 6 August 1966, in *AAS*, 57 (1966), pp. 775-782. English translation in FLANNERY I, pp. 624-633. See *ES II*, 23-24.

<sup>166</sup> MCDERMOTT, "Institutes of Consecrated Life and Societies of Apostolic Life," p. 765.

<sup>167</sup> Canon 640: "Taking into account the circumstances of the individual places, institutes are to make a special effort to give, as it were, a collective testimony of charity and poverty. They are to do all in their power to donate something from their own resources to help the needs of the Church and the support of the poor."

<sup>168</sup> *PC*, 13 states: "The institutes themselves should endeavour, taking local conditions into account, to bear a quasi-collective witness to poverty. They should willingly contribute part

Even though the Church recognises that institutes will differ from one another in the way they do this, the important point is that they do it. Each institute is obliged to do something for the Church and for the poor, in line with what the 1983 Code sees elsewhere as part of the obligations of Christ's faithful (*christifideles*).<sup>169</sup> The term Christ's faithful in this context refers to all the faithful, whether lay or cleric within the Church.<sup>170</sup>

The obligation of institutes to implement the requirement of canon 640 involves the proper administration of temporal goods. Only superiors, finance officers, or other administrators can do this in the name of the institute (c. 636, §1). Care must be taken not to exceed the limits of ordinary administration (cc. 638, §§ 1, 2, 3 and 1285). In the same vein, institutes must take into consideration the obligations they have towards their members (c. 670), as well as their employees (c. 1286, 2°).<sup>171</sup>

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of what they possess for the other needs of the Church and for the support of the poor, whom all religious should love with the deep yearning of Christ (cf. Mt. 19:21; 25:34-46; Jas. 2:15-16; 1 Jn. 3:17).”

<sup>169</sup> Canon 222, §1: “Christ's faithful have the obligation to provide for the needs of the Church, so that the Church has available to it those things which are necessary for divine worship, for works of the apostolate and of charity and for the worthy support of its ministers.”

Canon 222, §2: “They are also obliged to promote social justice and, mindful of the Lord's precept, to help the poor from their own resources.”

<sup>170</sup> See 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. 295-296; F.J. URRUTIA, “El Pueblo de Dios,” in U. NAVARRETE and F.J. URRUTIA, *Nuevo derecho canónico*, Caracas, Iter, 1987, p. 48. See also G.J. ROCHE, “The Poor and the *Code of Canon Law*: Some Relevant Issues in Book II,” in *Studia canonica (=StC)*, 30 (1996), p. 189. *CIC/17*, c. 537 did encourage institutes to do something but did not present it as an obligation: “donations from the goods of the house, province, or institute are not permitted unless by reason of almsgiving, or other just cause, by the will of the superior and according to the norms of the constitutions.”

<sup>171</sup> Canon 670 reads: “The institute must supply the members with everything that, in accordance with the constitutions, is necessary to fulfil the purpose of their vocation.” Canon

Evangelical poverty, which expects religious to be poor in reality and in spirit (c. 600), underlines the legislation on religious dress or habit found in canon 669.<sup>172</sup> The legislation is based on the conciliar texts that leave it to proper laws of institutes to determine what the habit should look like, when and where it is to be worn. *Perfectae caritatis* gives an idea of certain things to be considered in designing a religious habit.<sup>173</sup> John Paul II in *Vita consecrata* re-echoes the teaching of Vatican II on religious habit as a sign of consecration and a witness to poverty.<sup>174</sup>

#### 1.6.5.5 - Solemn and Simple Vows with regard to Poverty

A clearer distinction was made between solemn and simple vows in the 1917 Code than in the 1983 Code. In the 1917 Code, members of religious orders pronounced solemn vows while members of congregations pronounced simple vows. Acts contrary to

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1286, 2° stipulates that employers “are to pay to those who work for them under contract a just and honest wage which would fittingly provide for their needs and those of their dependants.”

<sup>172</sup> See c. 669, §1, which says: “As a sign of their consecration and as a witness to poverty, religious are to wear the dress of their institute determined in accordance with the institute’s own law.”

§2: “Clerical religious of an institute, which does not have a special habit, are to wear clerical dress in accordance with canon 284.”

<sup>173</sup> *PC*, 17 states: “The religious habit, as a symbol of consecration, must be simple and modest, at once poor and becoming. In addition, it must be in keeping with the requirements of health and it must be suited to the times and place and to the needs of the apostolate. The habits both of men and women, which are not in conformity with these norms ought to be changed.”

<sup>174</sup> *VC*, 25, p. 41. JOHN PAUL II says: “Since the habit is a sign of consecration, poverty and membership in a particular Religious family, I join the Fathers of the Synod in strongly recommending to men and women religious that they wear their proper habit, suitably adapted to the conditions of the time and place. Where valid reasons of their apostolate call for it, Religious, in conformity with the norms of their institute, may also dress in simple and modest manner, with an appropriate symbol, in such a way that their consecration is recognisable.” See also *ET*, 22, which suggests: “While we recognise that certain situations can justify the abandonment of a religious type of dress, we feel that the dress of religious men and women should be, as the Council wishes, a sign of their consecration and that it should be in some way different from the forms that are clearly secular.”

solemn vows were invalid, whereas acts contrary to simple vows were valid but in most cases illegal, depending on the law and circumstances. Those who took the solemn vow of poverty could not validly own property,<sup>175</sup> while those in simple vows could, but were not allowed to administer or use it. Prior to Vatican II, members of religious institutes in simple vows were forbidden to renounce ownership of their possessions even though they were not permitted independent personal use of whatever goods they owned.<sup>176</sup> The council Fathers changed things and permitted religious in simple vows to renounce ownership of their personal goods in whole or in part. This conciliar innovation has been incorporated in canon 668, §4 of the 1983 Code.

In the 1983 Code, religious in institutes whose vows are the equivalent of solemn vows are required to renounce completely the personal ownership of temporal goods (c. 668, §4). Consequently, these religious are canonically incapable of acquiring and possessing personal, temporal goods in the future and acts contrary to the vow of poverty are invalid (c. 668, §5). This juridic consequence is referred to as ‘full’ renunciation of ownership, and the institutes which ‘by their nature’ fall into this category are those where solemn vows are still pronounced according to the constitutions.<sup>177</sup> On the other hand, religious in simple vows may renounce ownership of property in whole or in part,

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<sup>175</sup> *CIC/17*, c. 581.

<sup>176</sup> *CIC/17*, c. 580, §1: “Quilibet professus a votis simplicibus, sive perpetuis sive temporariis, nisi aliud in constitutionibus cautum sit, conservat proprietatem bonorum suorum et capacitatem alia bona acquirendi, salvis quae in c. 569 praescripta sunt.” This norm means that every professed of simple vows kept the ownership of his property, and the right to acquire more property, unless the constitutions declared otherwise (c. 580, §1). If a religious acquired new property, he must again cede the administration of it and dispose of its use and usufruct as explained in c. 569 of the 1917 Code.

<sup>177</sup> See E. MCDONOUGH, “Solemn Vows and Simple Vows,” in *R/R*, 50 (1991), pp. 933-934.

but their type of renunciation is not equivalent to “full” renunciation by members of institutes of solemn vows, as required by the nature of their institute (c. 668, §4).

Therefore, solemn and simple vows do not differ intrinsically because both of them engender obligations in virtue of the fact that a vow is a promise made to God. They differ extrinsically with regard to their effects in universal law. Solemn or simple vows and their consequences are specified in the constitutions of each institute (c. 587, §1). Even though not much attention is given to the distinction between solemn and simple vows in the 1983 Code, the equivalent of such a distinction is still there by implication (c. 668, §4 and §5).

#### **1.6.5.6 - Goods in Common**

Common life is one of the canonical requirements of religious life (c. 607, §2) and of societies of apostolic life (c. 731, §1). As a result, canon 665, §1 prescribes that the members of religious institutes are to live in their own house and are not to be absent from it except with the permission of their superior. If a religious is to be absent from the community for a long period of time, and for a just reason, the major superior, with the consent of the council, could permit a member to live outside a house of the institute.<sup>178</sup> Such permission is not to exceed one year, except for reasons of ill health, studies or for an apostolate exercised in the name of the institute (c. 665, §1). There is no limit, in law, for the length of time that a religious could live away from community for the reasons specified in canon 665, §1. A member who is illegitimately absent from a religious house

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<sup>178</sup> Each institute should spell out in its proper law what “lengthy” absence means. What is considered lengthy for one institute may be different for another. Monastic institutes may allow

with the intention of withdrawing from the authority of superiors should be sought out and encouraged to return and to persevere in his/her vocation (c. 665, §2). Other consequences of common life for religious institutes are articulated in canon 608.

Common life is not defined in the current 1983 Code nor was it defined in the 1917 Code. The two Codes and their commentaries reveal different understandings of the technical term “common life.” In a broad sense, common life is “used in reference to religious as belonging to the same juridic entity or institute and having a determined superior who governs in accord with the determined rule or constitutions by which all members are bound.”<sup>179</sup> In a strict sense, “common life has been consistently referred to members of the same institute as actually living in the same building(s) or general housing facility and as having relatively equal access to the same food, lodging, furnishings, and other resources.”<sup>180</sup> Other authors and commentators understand common life from these two perspectives; namely, the broad sense and the strict sense. One of those who have offered an explanation regarding common life is R. Rolheiser who refers to religious community as a paradox.<sup>181</sup>

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a relatively shorter period than other religious institutes. The reason for being away could be to attend a funeral, or to care for a relative who is ill or quite old or to resolve a vocation crisis.

<sup>179</sup> E. MCDONOUGH, “Common Life,” in *RfR*, 52 (1993), p. 305. Under the 1917 Code, the broad interpretation of common life was tolerated as a minimum requirement for a religious to be considered as fulfilling the canonical obligation of common life, but not as a favoured one.

<sup>180</sup> *Ibid.* See *CIC/17*, c. 594, §1: “In every religious institute, all must carefully observe the common life even in matters of food, clothing, and furniture.”

<sup>181</sup> See R. ROLHEISER, “Religious Life in America Faces a Change of Epoch,” in *Papers Prepared for the Inter American Meeting*, Toronto, Conference of Major Superiors of Men, Leadership Conference of Women Religious, May 1999, p. 13. He says: “On the one hand, biblically and theologically, one-roof community is not prescribed as normative. One heart and the communal sharing of resources, irrespective of communal or solitary roofs, is what is prescribed. Hence, one can live alone and be solidly with community. On the other hand,

### 1.6.5.7 - Personal Goods

In the context of religious life, the word “patrimony” has two meanings: (1) the spiritual legacy of religious institutes (c. 578), and (2) the ‘personal goods’ (*bona sua*) of an individual religious. By personal goods we mean personal property.<sup>182</sup> Personal property consists of the goods owned by religious at the time of profession, as well as those goods legitimately acquired after profession, in some manner recognised by the rules and constitutions of an institute.<sup>183</sup> While canon 600 requires religious to accept limitation and dependence in the use of personal goods as a result of the vow of poverty, canon 688 regulates in practical terms what happens to the personal property of religious.<sup>184</sup>

Canon 668, §1 says that “before their first profession, members are to cede the administration of their goods to whomsoever they wish and, unless the constitutions provide otherwise, they are freely to make dispositions concerning the use and enjoyment of their goods. At least before perpetual profession they are to make a will which is valid also in civil law.” There are three things involved here: (1) the cession of the

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religious life gives its strongest witness to the world, is most transparent and sustains its members the best when it issues forth from one-roof community, when a group can precisely live fully together,” quoted in H. MAMINIMINI, *Maturity and its Assessment for Admission into Religious Life with Particular Reference to Institutes in Zimbabwe*, JCD diss., Faculty of Canon Law, Ottawa, Saint Paul University, 2000, p. 14. For a detailed understanding of common life, see M.D. GALLAGHER, *The Common Life: An Element of Apostolic Religious Institutes of Women*, JCD diss., Faculty of Canon Law, Ottawa, Saint Paul University, 1995.

<sup>182</sup> Personal property includes land, buildings, shares, stocks, money on deposit or other investments, works of art or other goods of value, etc.

<sup>183</sup> See F.G. MORRISEY, “The Vow of Poverty and Personal Patrimony,” in CANON LAW SOCIETY OF GREAT BRITAIN & IRELAND, *Newsletter*, 72 (1987), p. 25.

<sup>184</sup> However, the proper law of each institute spells out the actual practicalities in keeping with the spiritual patrimony of each institute.

administration of property, (2) the disposition of the use of property and revenue coming from it, and (3) the execution of a will that is valid also in civil law.<sup>185</sup>

First of all, cession of administration of property means that novices upon first profession are to hand over the management of their property to a person or a group of persons of their choice. They could appoint a member of their family, a law firm, a bank, the religious institute<sup>186</sup> or any other recognisable group for the management of their personal property. One must not allow any form of coercion or pressure to influence the choice. Secondly, the disposition of the use of property and of the revenue coming from the property means that religious can give instructions to the administrator regarding the income (rent on a house or land, dividends from shares, interest on money on deposit, etc.) that may accrue from the property. An institute may have a norm in proper law that guides dispositions. Finally, making a will implies that religious are expected, before perpetual profession, to make a decision concerning the disposal of their property after death.<sup>187</sup> It is advisable to consult a civil lawyer when making the will so that it will also be valid in civil law.

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<sup>185</sup> The same is required of monks and other religious of the Eastern Churches; *CCEO*, c. 467; c. 525, §2 and c. 530. See also *Communicationes*, 13 (1983), pp. 185, 187-189, all three elements were found in the 1977 Schema (c. 95, §§1-2), but with diverse proposals of consultors, expressions of the canon changed several times in the revision process. Similar legislation was contained in *CIC/17*, c. 569. See also MCDERMOTT, "Institutes of Consecrated Life and Societies of Apostolic Life," p. 835.

<sup>186</sup> It is also known that the proper law of some institutes does not permit their members to accept being designated as the beneficiary of the use and revenue of the property of others. This ensures that candidates are completely free with regard to what they do with their personal property, and that designating the institute is not a pre-requisite for acceptance into a religious institute.

<sup>187</sup> Some people may already have a will drawn up with the help of a civil lawyer before their admission into the novitiate. In that case, they do not need to make another will. Note that

Once a religious has made arrangements regarding disposition of personal property, he/she requires the permission of the competent superior to make any changes, in accordance with the proper law (c. 668, §2). The need for a change in the documents could result from a number of things.<sup>188</sup> Whatever may be the reason to change the disposition, it has to be serious and must be acknowledged as such by the competent superior in accordance with proper law.<sup>189</sup>

The nature of an institute may require religious to renounce their personal property completely (c. 668, §4), or the right to acquire and possess new property after perpetual profession (c. 668, §5). In such cases, any act contrary to the vow of poverty, after renunciation, would be invalid (c. 668, §5).<sup>190</sup>

### 1.7 - OBLIGATIONS AND RIGHTS OF RELIGIOUS

In the 1983 Code, one can easily identify canons that list the “Obligations and Rights” of different categories of Christ’s faithful. A group of canons discuss obligations and rights proper to all Christians (cc. 208-223) by reason of their baptism (c. 204), and to those Christians who are in full communion with the Church (c. 205). Other canons describe obligations and rights of the laity (cc. 224-231) and of the clergy (cc. 273-389),

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while cession of administration of property and disposition regulate personal patrimony while religious are alive, the will determines what happens to their property after death.

<sup>188</sup> See MCDERMOTT, “Institutes of Consecrated Life and Societies of Apostolic Life,” p. 836. McDermott notes that it could be as a result of “substantial alteration in the value of the property, the death of an administrator or an appointee, a family need or even the need of the institute to which the religious wishes to contribute.”

<sup>189</sup> See R.A. HILL, “Patrimony Revisited,” in *RfR*, 49 (1990), p. 139.

<sup>190</sup> See MORRISEY, “The Vow of Poverty and Personal Patrimony,” p. 30. Often affected by the norms of canon 668, §§4 and 5 are those institutes that were in the past known as “orders” with solemn vows as distinct from “congregations” with simple vows.

while the distinction between the laity and the sacred ministers is made in canon 207, §1.<sup>191</sup> Most of the obligations and rights of Christ's faithful apply equally to religious.<sup>192</sup> Specific obligations and rights of religious are contained in the proper law of each institute.

An entire section in the Code is entitled "Obligations and Rights of Institutes and their Members" (cc. 662-672). Surprisingly enough, a close look at this section reveals that the norms in it are mostly obligations and exhortations rather than rights. As a matter of fact, the section reveals a number of restrictions imposed on religious due to their profession, but which are enjoyed by the laity and clerics who belong to the Christian faithful.<sup>193</sup>

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<sup>191</sup> See E. MCDONOUGH, "Understanding 'Obligations and Rights' in Church Law," in *RfR*, 49 (1990), p. 779. See also E. MCDONOUGH, "The Protection of Rights in Religious Institutes," in *The Jurist*, 46 (1986), p. 164. She quotes J.A. ALESANDRO, "Law and Renewal: A Canon Lawyer's Analysis of the Revised Code," in *CLSA Proceedings*, 44 (1982), p. 32, who states that in the proposed revision of the Code of Canon Law, Christians have the right: "[...] to free speech within the Church [...] to the word of God and to the sacraments [...] to follow one's own form of spiritual life in accord with the teaching of the Church [...] of free association [...] to promote or support apostolic activity [...] to Christian education [...] to lawful freedom of inquiry and free expression of opinion [...] to a good reputation [...] to vindicate one's rights and defend them in an ecclesiastical forum." See also J.H. PROVOST, "Ecclesial Rights," in *CLSA Proceedings*, 44 (1982), p. 52.

<sup>192</sup> See D.F. O'CONNOR, "Obligations and Rights: Canons 662-672, 277, 285-287, 289, 279, §2," in J. HITE, S. HOLLAND, D. WARD (eds.), *Religious Institutes, Secular Institutes, Societies of Apostolic Life: A Handbook on Canons 573-746*, (Published under the auspices of the Canon Law Society of America), Collegeville, MN, The Liturgical Press, 1985, p. 169. It is beyond the scope of this study to discuss all the obligations and rights of the religious as they are outlined in the Code; it is sufficient to limit our discussion to those obligations and rights that are considered relevant to this work.

<sup>193</sup> See MCDONOUGH, "Understanding 'Obligations and Rights' in Church Law," p. 780. The author writes: "In other words, in canons 662-672 there are no 'rights' listed per se and, simultaneously, the canons actually restrict some of the rights that religious would otherwise enjoy as lay or cleric members of Christian faithful. This does not mean, however, that the religious have only obligations and no rights. It does mean that the foundation and the understanding of rights in canon law is certainly somewhat different from the foundation and understanding of rights in other legal systems with which we are, perhaps, more familiar."

There are various meanings of the concept of rights. In general, rights can be objective (what is just) or subjective (a public or private moral faculty) or legal (recognised at law). Rights can also be considered as liberties (as choices one has), entitlements (requiring fulfilment if deficient) and social responsibilities (possessed and respected in relation to the common good). In the Church, rights are distinguished as human (flowing from human nature), as ecclesial (flowing from baptism), as ecclesiastical (pertaining to Church order), as communal (pertaining to members of communities) and as vested or acquired if enjoyed because one has fulfilled the legal requirements to possess them.<sup>194</sup> Elizabeth McDonough says that “there are very few rights affirmed in the code, either directly or indirectly, for members of religious institutes [...]. Indeed, the only clearly identifiable rights for religious seem to be: (1) the right to non-manifestation of conscience (c. 630), (2) the right to live religious life (c. 654), and (3) the right to necessities for attaining the end of one’s vocation (c. 670).”<sup>195</sup>

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<sup>194</sup> See MCDONOUGH, “The Protection of Rights in Religious Institutes,” p. 165. See also MCDONOUGH, “Understanding ‘Obligations and Rights’ in Church Law,” pp. 780-781, where the author says: “[...] canon law also distinguishes between rights that are more fundamental human rights, such as the right to worship according to one’s own conscience and the right to choose one’s state in life without coercion, and the rights that arise by mutual agreement, such as the rights one may obtain from entering into a financial contract or from joining a particular group within the Church (like a religious institute). In addition, the canonical terminology used when referring to rights is highly nuanced, ranging from technical words such as *ius*, which indicates a strict right per se, to phrases such as *integrum est*, which indicates more of an inherent ability.” She continues: “Again, in order to be understood properly, obligations and rights in Church law must be considered in the light of fundamental commitments that are ultimately related to God’s initiative and to each person’s response in a communal context of believers” (p. 784).

<sup>195</sup> MCDONOUGH, “The Protection of Rights in Religious Institutes,” p. 197. She continues: “The strength of the first is founded on basic human dignity, and its legal safeguards stem from the long history of the Church in dealing with potential interference in internal forum matters. The inclusiveness of the second is the result of the voluntary nature of religious life, and its procedural protections originated (again) in responses to violations of the right of the professed members to remain religious. The value of the third lies primarily in the strength of the command

Canonically speaking, it is difficult to talk of rights that have no corresponding obligations, or to talk of obligations that do not presuppose rights. For example, each religious has an obligation to live the common life enunciated in c. 665, §1. By the same token, each religious has the right to live the common life in community with others. A community house is expected to have an oratory where the Eucharist is celebrated and reserved under the authority of superior according to the norms of law (c. 608). To live common life in community with others gives one the right to have some basic necessities like food, shelter, and clothing provided by the institute regardless of one's ability to be gainfully employed. Religious have a legal right to a level of privacy. A section of each community is exclusively reserved for members alone in accordance with the institute's own law (c. 667, §1). Other obligations of religious include obedience to proper law (cc. 601 and 671), dependence upon the institute and its superiors concerning the disposition of material things (c. 600), and the fact that whatever a member acquires as a religious is acquired for the institute (c. 668, §3). This includes what comes to a religious through personal labour like salaries, stipends, bonuses, fees from professional works (consultations and lecturing), and royalties from publications as well as anything a religious may receive by way of pension, subsidy or insurance, etc. In short, anything that might bring in money or any valuable asset belongs to the institute. This may not include pensions and other benefits that come in as a result of employment prior to first religious

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(the only *debet* in cc. 662-672), as well as in the locus of the obligation named (the institute), to provide the necessities (*ibid.*).”

profession, as many institutes see them as part of personal property.<sup>196</sup> As a sign that they are consecrated and as a sign of their vow of poverty, religious are to wear a special dress that has been approved by their proper law (c. 669, §1).<sup>197</sup> Religious are not to accept tasks and offices outside their own institute without the express permission of their lawful superior (c. 671).

### 1.7.1 - Obligations and Rights of Religious Institute

Just as obligations presuppose rights, so too it is with regard to obligations and rights of religious institutes. “Some of the obligations which institutes have go beyond canonical categories. Some bind in charity. Others may have their source in a recognised practice or custom.”<sup>198</sup> Some of the obligations of the religious institutes towards their members include: “the obligation to foster the spiritual welfare of members, the obligations related to the apostolic ends of an institute. Others are those which require an institute to provide for the material needs of the members, those which bind in charity, and those which are based on custom or recognised practice in the institute or province.”<sup>199</sup> It might be useful to take a look at some of these obligations and rights of religious institutes towards their members.

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<sup>196</sup> See MCDERMOTT, “Institutes of Consecrated Life and Societies of Apostolic Life,” p. 836.

<sup>197</sup> See *PC*, 17 and *VC*, 25.

<sup>198</sup> D.F. O’CONNOR, “What Does a Religious Institute Owe Its Members,” in *R/R*, 43 (1984), p. 559.

<sup>199</sup> *Ibid.*

### 1.7.1.1 - Fostering the Spiritual Life of Members

The first and foremost duty of religious is the contemplation of divine things and assiduous union with God, as proposed in the gospel and clearly expressed in the constitutions of their own institute (c. 662). Religious are to model themselves on Jesus Christ (c. 575) and to dedicate their whole life to God (cc. 573 and 604). Therefore, every institute has the obligation to foster and promote the spiritual life of its members. This obligation on the part of the institute begins as early as from the novitiate, when the institute helps novices by laying a foundation for a life of dedication to God and his people (c. 646). With the help of the institute, while in the novitiate (c. 652), future religious cultivate human and Christian virtues, the habit of prayer, the contemplation of the mysteries of faith, the meditative reading of the Sacred Scripture, and the worship of God in the sacred liturgy. They are also expected to continue developing these throughout their lives with the help of their religious institute (c. 663). Granted that the obligation to cultivate carefully his or her own spiritual, doctrinal and practical formation rests upon the mature religious, the institute should provide the resources and the time to do this (c. 661). It is the responsibility of each institute to ensure that its members have time for annual spiritual retreats, and to provide them with extended periods for programmes of spirituality (c. 663, §5). As a matter of fact, the primary goals of each religious institute are spiritual ones.<sup>200</sup>

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<sup>200</sup> Ibid., pp. 559-560. O'Connor here says: "The expectations of the institute, as expressed in its rules, regulations, customs, devotions and practices, are to help form a member in the spirituality and traditions of that religious family."

### **1.7.1.2 - Obligations Related to the Apostolic Ends of Institute**

Apostolic action is part-and-parcel of the vocation of the members of institutes dedicated to apostolic work, and the whole life of members should be imbued with an apostolic spirit (c. 675, §1). Apostolic activities are to be carried out in the name of the Church, by command of the Church and in communion with it (c. 675, §3). It proceeds from intimate union with God and ought to confirm and foster this union (c. 675, §2).

As a result of these expectations, institutes must prepare their members as best as they can for the particular apostolates in which they will engage, in the name of the community and the Church. This is why it is advisable for religious to earn appropriate civil and ecclesiastical degrees when opportunity offers (c. 660, §1). The professional preparation of religious for a specific apostolate is to be determined by each institute and its superiors in dialogue with the members who will be engaged in that apostolate. Superiors are to show concern about the personal welfare of the religious; their spiritual, psychic and physical well-being (c. 619).

Religious institutes that engage in apostolic activity are not expected to live as cloistered institutes of nuns and monks. However, they are still expected to live common life. Often a tension evolves as a result of observing the rules of common life and being faithful to the apostolic activity of the institute. It is an obligation on the part of each institute to maintain a balance between observing the values of common life and the demands of apostolic action. This will promote the welfare of the members, as well as the good of the institutes and that of the Church at large.

### **1.7.1.3 - Providing for the Material Needs of Members**

Canon 670 enunciates that it is the obligation of the institute to supply the members with everything that, in accordance with the constitutions, is necessary to fulfil the purpose of their vocation. This canon is most significant because it includes the provision of food, clothing, accommodation, healthcare and everything that will be required for initial and ongoing formation. It also includes the spiritual, intellectual or professional assistance each religious may need. Before establishing any religious house, an institute must ensure that it can suitably provide for the needs of its members (c. 610). It is the obligation of superiors to intervene, at times, and obtain professional help for their members who are not capable of getting it for themselves.<sup>201</sup>

### **1.7.1.4 - Obligations Stemming from Custom or Recognised Practice**

Annual vacations or sabbaticals for religious are not legislated by universal laws. They are often not even treated by the proper laws of institutes. However, religious believe they have a right to annual vacations or periodic sabbaticals with other members of their institutes or with their relatives or friends. In fact, this right is well established in the customs of institutes. Where the custom has been observed for at least thirty years in accord with cc. 24-26, the institute has an obligation to provide the means for vacations and sabbaticals.

Another example of an obligation arising from custom or recognised practice is any form of help given to the family members of religious by their institute if they lose

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<sup>201</sup> See *ibid.*, p. 563. O'Connor is referring here to those religious who become addicted to substances such as alcohol or other drugs and those who manifest serious emotional problems

parents through death.<sup>202</sup> This could stand out as a sign of great solidarity on the part of an institute with the family of one of their own at a time of need. Granted this may not be a law in many places, but it could emerge as a custom apart from law (*praeter legem*), which is not in any way contrary (*contra legem*) to the laws in the Code (c. 5, §2).

#### 1.7.1.5 - Obligations Based on the Virtue of Charity

Situations may arise that may not place any canonical obligation on the institute, but may still put a serious obligation on the institute from the point of view of charity. A typical example is when the immediate relatives of a religious become incapacitated, elderly, or seriously ill and a religious rightly feels that he or she has a personal obligation to help them.<sup>203</sup> A situation of this nature can affect a religious adversely. A religious may lose the concentration he or she requires to fulfil his or her apostolic ministry. It would be unfair and uncharitable for the institute to which the member belongs not to help, either through financial assistance or allowing the religious to take a “leave of absence” or some other appropriate measure to care for an elderly or incapacitated relative.

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that require help. He believes that it is the primary responsibility of the institute to help them and not that of their relatives or friends, understandable as their concern may be.

<sup>202</sup> In the Nigerian province of the Spiritans, (The Congregation of the Holy Ghost under the protection of the Immaculate Heart of Mary), there has been a standing tradition of extending help to the family of a member to assist them with funeral expenses. This gesture is rooted in culture and is practised by some other religious institutes in Nigeria in different ways, respecting their own custom or recognised practice.

<sup>203</sup> See CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, “Aide apportée par les religieux à leurs parents âgés ou malades,” in *Informationes*, 2 (1976), pp. 78-82. English translation in FLANNERY II, “Religious Obligated to Assist Aged or Sick Parents,” pp. 205-208. See also *Consecrated Life*, 1 (1977), pp. 66-69.

Another example of a claim on the charity and magnanimity of the institute is the matter of assisting those members who leave their religious institutes either voluntarily or involuntarily (c. 702, §2). Even though separated members of religious institutes have no juridical right to compensation (c. 702, §1), the Church insists that help be extended to them in a spirit of equity and charity (c. 702, §2).<sup>204</sup> It would definitely be uncharacteristic of the Church or the religious institute to deny any help to separated members of religious institutes; a thing that would force them to feel that they have been treated unjustly or without charity.<sup>205</sup>

#### CONCLUSION

The issue we set out to address in this chapter is the context for the application of the principle laid down in canon 702, §1, namely, that one who lawfully leaves a religious institute or is dismissed from it cannot claim a compensation from the institute for services rendered while the person was a member. One cannot but wonder whether it is fair for the Church to pass such legislation. At first sight, it sounds harsh and insensitive to a former member who may have put in many years in a religious institute as its professed member. It also, on the surface, stands in contrast to the admirable social teachings of the Church, and appears to paint an image of a Church that is not concerned

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<sup>204</sup> See CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Declaration, "On Help to be Given to Those Who Leave Religious Institutes," 24 January 1974, in *Commentarium pro religiosis*, 55 (1974), pp.73-75. English translation in FLANNERY II, pp. 200-202.

<sup>205</sup> See L. RICCERI, "The Economic Subsidy to be Granted Religious Who Leave Their Institute," in *Consecrated Life*, 1 (1977), pp. 165 and 168. On page 168 we read: "It is supremely important that the person leaves with the conviction of having been treated with justice and charity [...] needless to say, an enlightened and well understood charity should not be stingy or restrictive."

about her members who might end up living in abject poverty and hardship, after departing from a religious institute.

Yet, it is obvious that the Church's refusal to grant compensation to a separated member of a religious institute, as established by canon 702, §1, has been greatly influenced by the nature of religious life itself. Conciliar and post-conciliar documents we have seen so far tell us that religious life is in every respect Christological. It is a life lived in imitation of Jesus Christ (*LG*, 43 and 44), in total conformity to him. As a result, religious life has far-reaching implications.

It implies that religious are consecrated just as Christ was. The special consecration of religious is deeply rooted in their baptismal consecration and is a fuller expression of it.<sup>206</sup> One who is consecrated as Jesus was, is preoccupied with doing the will of God (John 6:38 and Hebrews 10:5, 7), for the sake of humanity (John 17:19). In reference to consecration, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life has this to say: "Consecration, a total sacrifice and perfect holocaust, is the way suggested to them [religious] by the Spirit to relive the mystery of the Crucified Christ, who came into the world to give his life as a ransom for many (cf. Mt 20:28; Mk 10:45) and to respond to his infinite love."<sup>207</sup> Consequently, religious life is a configuration to the life of Christ, and expresses itself in the practice of asceticism.<sup>208</sup>

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<sup>206</sup> *PC*, 5. See also *LG*, 44 and *VC*, 22.

<sup>207</sup> CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, Instruction, *Starting Afresh from Christ: A Renewal Commitment to Consecrated Life in the Third Millennium (=Starting Afresh from Christ)*, Libreria editrice Vaticana, 19 May 2002, no. 27, p. 52.

<sup>208</sup> See *VC*, 38. See also *Starting Afresh from Christ*, no. 27, p. 52.

Among the constitutive elements of religious life are the evangelical counsels: the vows of chastity, poverty and obedience (*LG*, 43 and *PC*, 1). “Virginity [chastity] opens the heart to the measure of Christ’s heart and makes it possible to love as he loved. Poverty frees one from the slavery to things and to artificial needs which drive consumer society and leads to the rediscovery of Christ, the only treasure truly worth living for. Obedience places life entirely in Christ’s hands so that he may use it according to God’s design and make it a masterpiece.”<sup>209</sup> The total dedication of religious through the vows is a state of life that is intended to remain permanent throughout their lives (c. 573, §1), especially for those under perpetual vows.

Religious can make their vows only in institutes that have been canonically established by competent ecclesiastical authority (c. 573, §2).<sup>210</sup> Each institute is unique and is guided by its proper laws that help safeguard its spiritual patrimony. Professing the evangelical counsels in a religious institute gives the person the right to living common life with other members of the same institute, among other obligations and rights.

Living common life like Jesus and his disciples did, religious live for others. Through their mission or apostolate, they endeavour to improve the lot of their fellow human beings. They give special attention to the poor and the afflicted of the world in their work. This is in tune with what Christ announced at the beginning of his ministry; that the Spirit of the Lord has consecrated him to preach the good news to the poor, to

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<sup>209</sup> *Starting Afresh from Christ*, no. 22 p. 44. The vows are a clear indication that religious offer their lives unreservedly to Christ and his Church. They have voluntarily sacrificed themselves completely, and the thought of any form of compensation in justice for their sacrifice is out of the question.

<sup>210</sup> See *LG*, 45 and *VC*, 5-11.

proclaim liberty to captives, to give sight to the blind, to set the oppressed free, and to declare a year of favour from the Lord (cf. Luke 4:16-19).<sup>211</sup> It is through their mission or apostolate that they continue to do what Christ did when he walked the earth.

One who lives the type of life that Jesus lived and does the kind of things he did would expect no material or earthly reward, just as Jesus did not expect any earthly reward. *Starting Afresh from Christ* (no. 30) puts it clearly:

Consecrated life does not seek praise and human appreciation, it is repaid by the joy of continuing to work untiringly for the kingdom of God, to be a seed of life which grows in secret, without expecting any reward other than that which the Lord will give in the end (cf. Mt. 6:6). It finds its identity in the call of the Lord, in following him, in unconditional love and service, which are capable of filling a life to the brim and giving it fullness of meaning.

The preoccupation of religious is doing the will of God. Consequently, religious do not seek to be praised or rewarded by human beings, but by God who has called them to serve him unconditionally through consecrated life. Therefore, it is inappropriate to expect that the Church would approve a compensation to be paid to religious, even if they are separated from their institutes.

This chapter has tried to examine the principle established in canon 702, §1 and traced it to the nature and implications of religious life itself. Religious are made aware of these implications during their formative years before they freely request to be professed in a particular institute. In the next chapter, our focus would be on the position of the Church on separated members of religious institutes, from the promulgation of the 1917 Code to the years leading up to the 1983 Code.

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<sup>211</sup> See *VC*, 82.



## CHAPTER TWO

### LEGISLATION AND JURISPRUDENCE PRIOR TO THE 1983 CODE

#### INTRODUCTION

The juridic obligation to offer charitable subsidy to ex-religious is not something that the Church has mandated only in the promulgated Codes of Canon Law.<sup>1</sup> It is, in fact, rooted in natural justice and equity that is founded on the very dignity of the human person, which the Church has articulated consistently in its practice. Therefore, the goal of this chapter is to examine briefly the juridic sources of canon 702, §2 of the 1983 Code of Canon Law, the object of our dissertation. We propose to begin this inquiry by analyzing a pre-1917 Code case in which an ex-religious priest placed recourse before the Congregation for Bishops and Regulars for “compensation” from the religious institute for health related damages he suffered during the time he was its professed member. This analysis will be followed by a discussion of the status of charitable subsidy to ex-religious according to c. 643 of the 1917 Code<sup>2</sup> and other subsequent juridical documents that emanated from the Holy See. Because the institute of “dowry” had played a significant role under the regime of the 1917 Code in the determination of equity and charitable subsidy to ex-religious in concrete cases, we consider it necessary to discuss it in our analysis of the norms contained in the 1917 Code and other related norms. This will lay the foundation for an evaluation of the legislation that followed the 1917 Code.

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<sup>1</sup> We are referring specifically to the 1917 and 1983 Codes of Canon Law.

<sup>2</sup> *Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV, auctoritate promulgatus*, Romae, Typis polyglottis Vaticanis, 1917. All future references to the

Through its practical application, c. 643, §2 of *CIC/17* gave rise to some important jurisprudential principles from cases decided by Roman Dicasteries. Moreover, there were several documents of the Holy See which tried to resolve controversies related to equity and charitable subsidy to be extended to former members of religious institutes. These juridic principles which emerged from the resolution of concrete cases by the Roman Dicasteries and from other ecclesiastical documents will provide the legal basis for the revision of the norms governing the subject matter of our study.

### 2.1 - CONGREGATION FOR BISHOPS AND REGULARS, 11 MARCH 1898

On 11 March 1898, the Congregation for Bishops and Regulars issued a decree conveying its decision on the case involving a cleric who was seeking compensation from his former institute alleging that his health was damaged as a result of an assignment given to him while he was a member.<sup>3</sup> The following is a summary of the case.

Augustus Onesimo Cailleton, a priest of the diocese of Luçon, made his religious profession in the abbey of Saint Michael of Frigolet, of the Order of the Norbertines, also known as Premonstratensians, in the diocese of Aix in France. He was given the religious name, Laurent. Two and a half years after renewing his religious profession, he was dismissed from the institute by a decree dated 26 October 1894 issued by the Ordinary of the diocese, Apostolic visitor of the aforementioned abbey. Father Laurent placed

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1917 Code will be prefixed with *CIC/17*, followed by c. for canon or cc. for canons as the case may be.

<sup>3</sup> SACRA CONGREGATIO EPISCOPORUM ET REGULARIUM, *Aquen seu Lucionen*, 11 March 1898, in *Acta Sanctae Sedis (=ASS)*, 30 (1897-98), pp. 727-731. See also P. GASPARRI (ed.), *Codicis iuris canonici fontes*, vol. IV, Romae, Typis polyglottis Vaticanis, 1926, n. 2035, pp. 1084-1087. The *fontes* for *CIC/17*, c. 643 refer to this particular case alone, and, it is mentioned under *CIC/17*, c. 643, §1.

recourse against this decree before the Congregation for Bishops and Regulars asking: (1) that his profession be recognised as valid, and (2) since a renewal of profession he had made had been declared null, that it be sanated (*sanari in radice*).

The petition was rejected by the Congregation for Bishops and Regulars by its decree of 14 May 1895. The reply was negative to both petitions. Father Laurent then filed a new suit with the same Congregation, seeking reparation of damages. He presented the following reasons for his request: (1) He had been sent by the superiors of his Order to complete his novitiate in England, where he had contracted an illness. (2) Because of his dismissal by the Order, he had lost his means of obtaining necessary sustenance of life and he was not able to obtain any means of support from the secular clergy. The question was proposed as to whether there should be room for repair of damages in the case. If there will be a repair for damages, how could this be accomplished in practical terms? Again, the reply of the Congregation dated 8 May 1896, was negative to both questions.

Against this resolution, Father Laurent sought the benefit of a new hearing and, at the same time, requested the intervention in the case of the ex-Superior General, Father Paulinus, who, according to Father Laurent, had been the cause of harm. The Congregation for Bishops and Regulars decided to allow a new discussion of the case and informed him of this decision on 9 March 1897.

In his presentation, the advocate of the ex-religious argued that the Order of the Premonstratensians was bound to provide his client with compensation out of justice and equity. He noted that because his client received no severance pay from his former

institute, he had been forced into heavy expenses to look after his health and had no access to the funds of the diocese of Luçon earmarked for priests who were ill. However, in his closing argument, he stated that if suitable compensation was not given out of justice, it should be granted to his client at least out of equity. He further argued that, because the Order of the Premonstratensians was quite wealthy, such an act would be in keeping with Christian charity towards a needy priest who served the Order for many years with little personal benefit. On the other hand, the Order of Premonstratenensians argued against concession of any type of compensation. Most of the reasons they adduced in support of their argument were related to the conduct of the priest before and after his dismissal. His conduct prior to his dismissal was the basis for the Congregation's decision to confirm his dismissal from religious life. After both sides presented their arguments, the panel posed the following question:

*Dubium:* Whether the decision made in the case must stand, or whether it should be overturned. Ruling: On 11 March 1898, the Sacred Congregation for Bishops and Regulars, after giving due and well thought out deliberation declared: AFFIRMATIVE to the first part, NEGATIVE to the second.<sup>4</sup>

To sum up, the Congregation for Bishops and Regulars denied compensation to the ex-religious in spite of the strong arguments presented by his advocate. It is interesting to note that, as early as 1898, the advocate of the ex-religious, in this context, used the words "equity" and "Christian charity." We must admit, however, that this decision of the Congregation for Bishops and Regulars paved the way for legislation on the treatment of religious when they are dismissed or when they seek voluntary departure

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<sup>4</sup> Unfortunately, there is no recognised English translation of this case.

from their institutes. Such legislation first appeared in the 1917 Code of Canon Law in c. 643, which we shall now consider.

## 2.2 - CANON 643 OF THE 1917 CODE

Canon 643 of the 1917 Code reads as follows:

§1 Whoever leaves the Institute, whether on the expiration of the term of temporary vows or by virtue of an indult of secularisation, or whoever has been dismissed, cannot seek compensation for the services he/she had rendered to the institute.

§2 In the case of a female religious who has been received without a dowry, and who cannot provide for herself out of her own resources, the Institute should in charity give her what is necessary for her to return safely and becomingly to her home, and provide her for a certain period with the means, to be determined by mutual consent or, in the case of disagreement, by the local Ordinary, of an honest livelihood, in accordance with natural equity.<sup>5</sup>

The first paragraph of c. 643 of the 1917 Code expresses the principle underlying the decision of 11 March 1898. Religious who leave their institute voluntarily or who have been dismissed from it are not entitled to any compensation.

Commenting on this legislation, T.L. Bouscaren and associates note: “This provision of the canon law is readily understood by the civil courts in the case of religious who have received their education or training in a religious institute; but it is not understood by them in the case of lay-religious, that is, those who have been employed in

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<sup>5</sup> *Codex iuris canonici, Canonical Legislation Concerning Religious*, Authorised English translation, Città del Vaticano, Libreria editrice Vaticana, 1949.

Canon 643, “§1: Qui e religione, expleto votorum temporariorum tempore aut obtento saecularizationis indulto, egrediantur vel ex eadem fuerint dimissi, nihil possunt repetere ob quamlibet operam religioni praestitam.

“§2: Si tamen religiosa sine dote recepta fuerit nec ex propriis bonis sibimet providere valeat, religio ex caritate eidem dare debet ea quae requiruntur ut modo tuto ac convenienti

the household duties.”<sup>6</sup> This view, which is shared also by other authors, implies that each case has its own peculiarities, and therefore, they must be handled individually, considering a number of factors. The case of one who has received education or training in an institute is different from that of a person who has received no training at all that could be helpful in adapting to a life in the world.

Francis J. O’Neill believed that there is no obligation on the part of an institute to pay compensation to an ex-religious for services rendered while he/she was a religious (c. 643, §1).<sup>7</sup> He sees religious profession as a bilateral contract; the religious voluntarily vowed to obey the Superiors of the institute, while the institute agreed to support the religious.<sup>8</sup> O’Neill thinks that it is unfair for an ex-religious to demand compensation from an institute for services rendered to it, just as it is also unfair for an institute to demand reimbursement from an ex-religious for special or extraordinary expenses made on his/her behalf, unless it is proved beyond reasonable doubt that the ex-religious

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domum redeat, ac providere ut, naturali aequitate servata, per aliquod tempus, mutuo consensu vel in casu dissensus ab Ordinario loci determinandum, honeste vivere possit.”

<sup>6</sup> T.L. BOUSCAREN, A.C. ELLIS and F.N. KORTH, *Canon Law: A Text and Commentary*, Fourth rev. ed., Milwaukee, The Bruce Publishing Company, 1966, p. 321. See also C. AUGUSTINE, *A Commentary on the New Code of Canon Law*, vol. III, St. Louis, MO, B. Herder Book Co., 1938, p. 381. Augustine says: “Hence a member will appeal in vain to the civil court if this canon is properly incorporated in the by-laws.” Chas Augustine also referred to C. ZOLLMANN, *American Civil Church Law*, New York, AMS Press Inc., p. 80. Zollmann argues that the charters or the constitutions of religious institutes are to the institutes what the Constitution is to the federal government of the United States of America.

<sup>7</sup> See F.J. O’NEILL, *The Dismissal of Religious in Temporary Vows: An Historical Conspectus and Commentary*, CLS, No. 166, Washington, DC, Catholic University of America Press, 1942, p. 156.

<sup>8</sup> Ibid.

entered with the intention to cheat.<sup>9</sup> If a former member can sue a religious institute for services rendered, by the same token, an institute could equally sue an ex-religious for the expenses incurred.<sup>10</sup> What about a situation where, after dismissal, it is proved that the profession of a religious was invalid; could the religious ask for remuneration of services rendered? O'Neill feels that if an 'ex-religious' can sue an institute because it has been proved that his/her profession was invalid, the institute could in turn sue for everything spent on supporting that person.<sup>11</sup> The two claims, O'Neill believes, cancel each other out.<sup>12</sup> Therefore, O'Neill maintains that from whatever perspective one looks at this situation, there is no reason why religious institutes should pay compensation to former members for services rendered.

C.G. O'Leary argued that religious institutes do not owe anything to their former members since the Code states nothing about monetary assistance from the funds of an institute, except for the charitable sustenance mentioned in cc. 643, §2 and 671, 5°. Interestingly, he states: "Lack of sustenance or support is one of the punishments involved in dismissal. It is meant primarily as an incentive to urge the dismissed subject

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<sup>9</sup> Ibid. O'Neill is referring to a possible case of an individual who enters an institute with the intention of leaving the institute after acquiring some skills or any form of education. One could also add the case of an individual who hides a serious health condition in order to obtain medical treatment, and once it is completed leaves religious life.

<sup>10</sup> See *ibid.* See also S. GOYENECHÉ, "Consultatio," in *Commentarium pro religiosus (=CpR)*, 12 (1931), pp. 134-135. See T. SCHÄFER (ed.), *Compendium de religiosus ad normam Codicis iuris canonici*, ed. 4a, Roma, Typis polyglottis Vaticanis, 1947, p. 951.

<sup>11</sup> See O'NEILL, *The Dismissal of Religious in Temporary Vows*, p. 156. See also GOYENECHÉ, "Consultatio," pp. 134-135.

<sup>12</sup> See O'NEILL, *The Dismissal of Religious in Temporary Vows*, p. 156.

to repent and return.”<sup>13</sup> If denying sustenance or support to an ex-religious is primarily intended as an incentive to force a dismissed religious to return to the institute, we could ask whether this includes also those who were subject to automatic dismissal (CIC/17, c. 646). Are they equally expected to return to religious life and to their institutes? Unfortunately, the author did not consider or respond to a situation like this.<sup>14</sup>

Concerning dismissed men religious, O’Leary contends that the Code made no mention of any monetary assistance towards transportation fare to return to their home. The only exception was the charitable sustenance given to dismissed religious clerics who were obedient to the commands of the Holy See and who wished to prove their amendment.<sup>15</sup> Apart from this case scenario, no other ex-religious had a legal right to demand any assistance or support from the institute.<sup>16</sup>

Canon 643, §2 of the 1917 Code spoke of women religious only.<sup>17</sup> It referred to a religious who was received into an institute without a dowry. Such a person would be incapable of providing for herself out of her own resources. The institute was bound in charity to provide what was necessary for her to return home safely and becomingly. The

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<sup>13</sup> See C.G. O’LEARY, *Religious Dismissed after Perpetual Profession: An Historical Conspectus and Commentary*, CLS, No. 184, Washington, DC, The Catholic University of America Press, 1943, p. 139.

<sup>14</sup> Even though O’Leary gave no answer to such a situation, one might not be wrong to think that denying sustenance or support, primarily as an incentive to urge the dismissed religious to return to the institute, would not apply in all cases, especially in all cases of dismissal.

<sup>15</sup> *CIC/17*, c. 671, 5°.

<sup>16</sup> See S. GOYENECHÉ, *Iuris canonici summa principia: de religiosis*, Romae, Tip. Pol., “Cuore di Maria,” 1938, n. 126. See L. FANFANI, *De iure religiosorum*, 2 ed., Taurini, Romae, Marietti, 1925, n. 519. See also O’LEARY, *Religious Dismissed after Perpetual Profession*, p. 139.

<sup>17</sup> See BOUSCAREN et al., *Canon Law: A Text and Commentary*, p. 322.

assistance was to cover a period of time that was to be determined by mutual agreement between the institute and the affected member. Where there was difficulty in reaching an agreement, the local Ordinary was to ensure that the institute provided sufficient assistance for a decent livelihood in accordance with natural equity. C. Augustine commented: “Natural equity must take into consideration the usefulness of the member as well as the material condition in which she finds herself at the moment of leaving.”<sup>18</sup> Therefore, the charitable subsidy was all about fairness to enable a dismissed member to return to secular society. The assistance given was also based on charity. Augustine stated: “Note the phrase, ‘*ex caritate*’, as an act of charity, not justice.”<sup>19</sup>

Therefore, the 1917 legislation dealt explicitly with women religious, and the nature of assistance called for was quite circumscribed.<sup>20</sup> Since c. 643, §2 of the 1917 Code, to a large extent, revolved around the issue of the dowry, we shall take a brief look at the concept of dowry in the 1917 legislation.

### 2.2.1 - Dowry

The word “dowry,” according to the dictionary definition, is the property or money brought by a woman to her husband at the time of marriage.<sup>21</sup> Dowry is a translation of the Latin “*dos*,” which in Roman law, as well as in civil law, is the

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<sup>18</sup> AUGUSTINE, *A Commentary on the New Code of Canon Law*, vol. III, p. 381. This already tells us that each case is unique, and a number of factors would have to be taken into consideration to ensure that equity and charity are observed.

<sup>19</sup>*Ibid.*, p. 381.

<sup>20</sup> See S. HOLLAND, “Policies When a Member Leaves the Religious Institute,” in *Informationes*, 26 (2000), p. 126.

contribution made by a wife, or by someone else on her behalf, to the husband in view of marriage.<sup>22</sup> “In Canon Law, the word ‘*dos*’ finds application to three distinct canonical entities: Benefices, pious foundations and religious institutes of women.”<sup>23</sup> However, the dowry under discussion in this study is neither the marriage dowry nor a benefice or a pious foundation; rather, it is the dowry of women religious (c. 643, §2).

Authors define religious dowry as a definite sum of money or its equivalent paid by a postulant to a convent in which she wishes to make her profession, which money is destined primarily for her support as long as she remains in the community. Therefore, the purpose of the dowry is for the support of the woman as long as she remains in the institute.<sup>24</sup> Some people have tried to advance theological reasons to justify the dowry of religious women, but this issue is beyond the scope of our study.<sup>25</sup>

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<sup>21</sup> See D. TREFFRY et al. (eds.), *Collins New English Dictionary*, Glasgow, Omnia Books Limited, 2000, p. 223. See also J. PEARSALL (ed.), *The Concise Oxford Dictionary*, New York, Oxford University Press, Inc., 2001, p. 431.

<sup>22</sup> See T.M. KEALY, *Dowry of Women Religious: A Historical Synopsis and Commentary*, CLS, No. 134, Washington, DC, The Catholic University of America Press, 1941, p. viii. See B.A. GARNER et al (eds.) *Black’s Law Dictionary*, 7<sup>th</sup> ed., St. Paul, MN, West Group, 1999, p. 508. This law dictionary notes that it is also known as “marriage portion.”

<sup>23</sup> *Ibid.*

<sup>24</sup> See F.X. WERNZ and P. VIDAL, *Ius canonicum ad Codicis normam exactum*, vol. 3, *De religiosis*, Romae, Universitas Gregoriana, 1933, no. 267, p. 221. See A. VERMEERSCH and J. CREUSEN, *Epitome iuris canonici*, vol. 1, Mechliniae et Romae, H. Dessain, 1937, no. 698, p. 497. Dowry is also defined as security in money or its equivalent for the purpose of maintaining a religious institute. See AUGUSTINE, *A Commentary on the New Code of Canon Law*, vol. III, p. 224. See also M. CONTE A CORONATA, *Institutiones iuris canonici*, Taurini, Marietti, 1939, vol. I, no. 577, p. 724.

<sup>25</sup> See KEALY, *Dowry of Women Religious*, p. 2. Kealy writes: “Religious dowry received its name from its analogy to the dowry which a woman brings to her husband in marriage. Virgins were from the earliest times called spouses of Christ. United to God as they were by the consecration of their lives, they were considered as having accepted Christ for their Spouse. So real did the Fathers consider the bond of this spiritual matrimony that they called a virgin who had broken her vows an ‘adulteress’. Since the woman who entered a carnal marriage was required to bring a dowry to her husband, it was proper that those virgins who consecrated

### 2.2.2 - Historical Development of Dowry

A number of factors “contributed to the origin and spread of the canonical institute known as religious dowry.”<sup>26</sup> Among these was the fact that monasteries accepted more nuns than they could support from their meagre resources. Another reason was that monasteries were so poor that it became necessary in some cases for nuns to leave the cloister and seek support elsewhere.<sup>27</sup> Most of the early monasteries depended on what they grew in their own gardens to subsist.<sup>28</sup> Yet, a third factor stemmed out of certain abuses in the years when admission was free. Many parents literally forced their children to join the convent so as to leave a greater inheritance to their other children.<sup>29</sup> However, early monastic rules permitted prospective candidates to dispose of their goods prior to joining a monastic institute. Candidates were free to donate part or all their goods to the monastery, although such donations to a monastery were not obligatory or a prerequisite for admission. However, with time, some superiors required that candidates who sought admission bring something with them. There was no uniform practice.<sup>30</sup>

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themselves to Christ should bring a dowry to the monastery in the name of their Spiritual Spouse.” Definitely, not everyone would subscribe to this explanation.

<sup>26</sup> Ibid.

<sup>27</sup> See J. CABASSUTIUS, *Theoria et praxis iuris canonici*, Lugduni, P. Borde, J & P. Arnaud, 1691, lib. V, c. V, nn. 13 and 18, cited in KEALY, *Dowry of Women Religious*, p. 2.

<sup>28</sup> See T.W. ALLIES, *The Monastic Life: From the Fathers to Charlemagne*, London, Kegan Paul, Trench, Trübner & Co. Ltd., 1896, pp. 2-3.

<sup>29</sup> WERNZ and VIDAL, *Ius canonicum ad Codicis normam exactum*, vol. 3, n. 228, p. 218. See also KEALY, *Dowry of Women Religious*, p. 3.

<sup>30</sup> See ALLIES, *The Monastic Life*, p. 3. St. Pachomius (292-346) forbade money or presents being taken from those who sought admission, lest it become a source of vanity to the rich or of false shame to the poor. On the other hand, St. Basil (329-379) did not explicitly forbid a monastery from accepting some of these goods. See KEALY, *Dowry of Women Religious*, p. 5. St. Augustine of Hippo (354-430) required that if candidates for admission had possessions in the

The dowry of women religious made its appearance in canonical sources only in the sixteenth century.<sup>31</sup> Kealy notes: "In the ecclesiastical legislation for religious institutes of men there has never been any question of bringing a dowry, although it was permitted for the monastery, if it was poor, to demand that those entering bring something to help pay for their support."<sup>32</sup>

Roman law had some provisions regarding the property of those who entered or left religious life. Entrance into a monastery did not affect a person's right of inheritance. But a person who left the monastic life had to forfeit personal property to the monastery.<sup>33</sup> In 535, Emperor Justinian passed a law which allowed those who embraced religious life to dispose of their property as they wished, but any goods that had not been disposed of before entrance automatically became the property of the monastery, unless one had a wife or children.<sup>34</sup> In 535 and 546, Justinian enacted two separate laws that required the property of a monk who left one monastery for another to be left with the first monastery.<sup>35</sup> In 546, another law stated that the monastery was entitled to the estate of anyone who had no children before entering. However, if they had children before

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world, they should transfer them to the monastery upon entering. See KEALY, *Dowry of Women Religious*, pp. 5-6. For the practice in other early institutes, see *ibid.*, pp. 6 and 7.

<sup>31</sup> See KEALY, *Dowry of Women Religious*, p. 8.

<sup>32</sup> *Ibid.*

<sup>33</sup> See WERNZ and VIDAL, *Ius canonicum*, vol. 3 (*De religiosis*), n. 267, p. 222. This is also cited by KEALY, *Dowry of Women Religious*, p. 8.

<sup>34</sup> See KEALY, *Dowry of Women Religious*, p. 8. Kealy wrote: "If he had a wife and left her to enter a monastery, he was to refund the marriage dowry to her and whatever else had been agreed upon in case of his death. Justinian added that the provisions of this law applied not only to monks, but also to women who took up the monastic life." See T. MOMMSEN, P. KRUEGER and A. WATSON (eds.), *The Digest of Justinian*, vol. II, Latin and English Edition, Philadelphia, University of Pennsylvania, c1985, n. 5.5, p. 743.

embracing monastic life and did not dispose of their property prior to entering, they were free to do so even after they had entered.<sup>36</sup> If one died before dividing the estate, the children received a reasonable portion, while the remainder became the property of the monastery.<sup>37</sup>

The Second Council of Nicaea (787 AD), the Seventh General Council of the Church, in addressing simoniacal abuses that were prevalent at the time, also severely condemned the apparent avarice and greed among monks and nuns in monasteries. Canon 19 of this Council stated:

Avarice has made such inroads among the rulers of Churches that some of them, calling themselves religious men and women, demand money from those who present themselves for the sacerdotal order and the monastic life [...]. If the offender be a *hegumena* (abbess), she shall be removed from her monastery and placed in another in a subordinate position [...]. With regard to what has been given by parents to their children in the monastery as a dowry, or what such persons themselves have contributed from their own means, with a declaration that such gifts are made to God, we have decided that whether such persons continue in the monastery or not, the gifts are to remain with the monastery in accordance with their original declaration; unless there be good ground for complaint against the superior (for a person's departure).<sup>38</sup>

Although this canon of the Second Council of Nicaea vigorously denounced the practice of asking candidates to pay a price, the Council approved voluntary offerings of parents to their children in the form of a dowry.<sup>39</sup> If parents made no voluntary offerings,

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<sup>35</sup> See KEALY, *Dowry of Women Religious*, p. 9.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

<sup>38</sup> J.D. MANSI, *Sacrorum conciliorum nova et amplissima collectio*, vol. 13, Parisiis, H. Welter, 1902, p. 436. English translation in H.J. SCHROEDER, *Disciplinary Decrees of the General Councils: Text, Translation and Commentary*, St. Louis, MO, B. Herder Co., 1937, pp. 152-153.

<sup>39</sup> See KEALY, *Dowry of Women Religious*, p. 10.

the monastery would not ask for any. If voluntary offerings were made, they became the property of the monastery and were not returned to the candidate even if he/she returned to the world, unless the superior was responsible for the departure of the religious.<sup>40</sup> Kealy noted that canon 19 of the Second Council of Nicaea was “adopted in substance by numerous particular councils and was urged by decrees of the Roman Pontiffs for centuries afterwards.”<sup>41</sup>

In the *Decree of Gratian*, there is a question regarding the lawfulness of exacting money from candidates who apply to enter the monastery. The conclusion of the author is in line with the law passed by the Second Council of Nicaea, which did not allow monasteries to accept anything other than what was offered voluntarily to the monastery.<sup>42</sup> In the *Decretals*, a number of chapters contain legislation against simoniacal practices of monasteries.<sup>43</sup> Many Popes and General Councils judged the practice of having candidates for religious life bring a dowry to religious institutes as simony, and condemned it.<sup>44</sup> The Fourth Lateran Council (1215) vehemently condemned the practice of demanding money from girls who wished to enter monasteries. This Council revealed that the practice of demanding money from women who entered the monasteries was so rampant that it tainted the reception of almost every nun. Therefore, the Council condemned the practice in the following words:

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<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> See *Dictum Gratiani*, C. I. q. 2. See also KEALY, *Dowry of Women Religious*, p. 11.

<sup>43</sup> See KEALY, *Dowry of Women Religious*, p. 11.

Since the stain of simony has so infected many nuns that scarcely any are received into the community without a price, doing this on the plea of poverty to conceal that evil, we strictly forbid that this be done in the future, decreeing that whoever in the future shall be guilty of such irregularity, both the one receiving and the one received, whether subject or superioress, shall, without hope of restoration, be removed from their monastery to one of stricter observance to do penance for the remainder of their life. Those nuns, however, who have been so received before the publication of this decree, are to be removed from the monasteries which they entered in a wrong manner and placed in others of the same order [...].<sup>45</sup>

Every piece of legislation, with regard to the abuse of demanding money or any other temporal good from women who entered the monastery, was geared towards the eradication of simony. The same abuse of demanding money or any other temporal good as a prerequisite for a woman to enter a monastery was also condemned by Urban IV (1261-1264), by St. Thomas Aquinas<sup>46</sup> and St. Bonaventure.<sup>47</sup> The Council of Sens (1528), in its decree No. 28, required each monastery to admit only the number it could comfortably support. It refused to allow anything under the pretext of custom or any other title to be used as a reason to demand anything from postulants. The same decree

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<sup>44</sup> See *ibid.*, pp. 11-13. The obligation of the dowry was condemned by Pope Alexander III (1159-1181), during the Council of Tours (1163). The Lateran Council III (1179) condemned it, as did Pope Innocent III (1198-1216) and the Council of Rouen (1214).

<sup>45</sup> C. HEFELE and H. LECLERCQ, *Histoire des Conciles*, Tome V, Paris, Letouzey et Ané, 1913, pp. 1383-1384. English translation in SCHROEDER, *Disciplinary Decrees of the General Councils*, p. 288.

<sup>46</sup> See THOMAS AQUINAS, *Summa theologiae*, IIa - IIae, q. 100, a. 3, obj. 4, p. 1626. Here we read: "Obj. 4. Further, religion is the state of spiritual perfection. Now in certain monasteries something is demanded from those who are received there. Therefore it is lawful to demand something for spiritual things." The answer is as follows: "[...]. It is absolutely forbidden to make a charge for what is acquired by the consolation of invisible grace, whether by demanding a price or by seeking any kind of return whatever."

<sup>47</sup> See ST. BONAVENTURE, "Cur Fratres permittant, ut plures praedictarum non recipiantur sine pecunia," in *Opera omnia*, Ad Claras Aquas (Quaracchi ed.), 1898, Tomus VIII, pars II, q.18. pp. 369-370.

made the provision that if a monastery would admit more than the number it could look after, then the monastery could admit the extra postulants if they brought a pension sufficient enough to provide for their support.<sup>48</sup> The Council of Trent (1545-1563) repeated the law of the past regarding religious dowry and it forbade taking in more members than a monastery could support.<sup>49</sup>

A completely new era in the history of dowry of women religious began with St. Charles Borromeo in the first and second Provincial Councils of Milan. In the First Provincial Council (1565), it was decreed that a candidate for religious life would have to deposit a sum of money with a reliable person before being clothed with the religious habit. The money would be handed over to the monastery only after her religious profession for her support.<sup>50</sup> The Second Provincial Council of Milan (1569) confirmed this legislation. It further recommended that the diocesan bishop determine the amount of money that would constitute the dowry in each case.<sup>51</sup> The bishop was to use his

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<sup>48</sup> MANSI, vol. 32, p. 1195, where we read: "Si qua tamen ultra eas hujusmodi monasteriis se recipi petat, id non interdicimus, dummodo congruam secum afferat pensionem, qua cum ceteris religiosis numerariis alatur. Non tamen in locum numerariorum succedat; sed decedentibus numerariis aliae novae et pauperes subrogentur." Those who were admitted free were known as the numerary nuns, while those who were required to pay enough compensation for their support were called supernumeraries.

<sup>49</sup> See H.J. SCHROEDER, *Canons and Decrees of the Council of Trent: Original Text with English Translation*, p. 219 See also KEALY, *Dowry of Women Religious*, p. 16. Kealy cites Sessio XXV, *De regularibus et monialibus*, canon 3: "In predictis autem monasteriis et domibus, tam virorum quam mulierum, bona immobilia possidentibus vel non possidentibus, is tantum numerus constitutatur ac in posterum conservetur, qui ex redditibus propriis monasteriorum, vel ex consuetis eleemosynis commode possit sustentari."

<sup>50</sup> MANSI, vol. 34, p. 84: "Quod professione facta, eleemosynae gratia ad professam sustentandam monasterio datur, id quo tempore puella religionis habitum suscipiet, apud virum, monialibus et earum superiori probatum, deponatur, ut nullo impedimento tum monialibus praesto esse possit." See also KEALY, *Dowry of Women Religious*, pp. 17-18.

<sup>51</sup> See MANSI, vol. 34, p. 130.

discretion to dispense from the payment of a dowry if in his judgement the income of the monastery was sufficient.<sup>52</sup> Therefore, the first and second Provincial Councils of Milan offered the first instance of an official law that exacted a dowry from candidates who applied to enter religious life.<sup>53</sup> There were other particular councils at the end of the sixteenth century that followed either the norms of Sens or those of Milan.<sup>54</sup> The Provincial Council of Mexico in 1585 discussed the type of investment that could be made with the funds paid by postulants at the point of their entrance into the monastery, an indication of its approval of religious dowry.<sup>55</sup> “The practice [of the payment of dowry by women] soon received the recognition and approval of the Holy See through responses given by the Sacred Congregation for Bishops and Regulars. Thus the Holy See, allowing the custom to be introduced into monasteries, controlled and developed it through legislation.”<sup>56</sup>

In 1901, the Congregation for Bishops and Regulars issued a document comprising three hundred and twenty five articles.<sup>57</sup> Articles 91 to 95 relate specifically

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<sup>52</sup> Ibid., vol. 34, p. 130: “Episcopus praeterea tum impensas aestimet, quae et in religionis ingressu, et tempore professionis fieri solent pro vestitu, aut pro aliis rebus, ad ipsius puellae, vel monasterii usum commoditatemve pertinentibus; tum pecuniae etiam summam prescribit, quam puella alimentorum nomine monasterio det; nisi census, aut alia bona immobilia, quorum annui fructus, eiusdem iudicio, ad ea alimenta satis sint, monasterio attribuantur.”

<sup>53</sup> See KEALY, *Dowry of Women Religious*, p. 45.

<sup>54</sup> See MANSI, vol. 34, for the following: The Council of Rheims (1583), p. 710 and the Council of Avignon (1594), p. 1359. These two councils followed the legislation of I and II Councils of Milan. The Council of Tours (1583), p. 846, followed the legislation of the Council of Sens. Cited in KEALY, *Dowry of Women Religious*, p. 19.

<sup>55</sup> MANSI, vol. 34, p. 1119.

<sup>56</sup> KEALY, *Dowry of Women Religious*, p. 45.

<sup>57</sup> CONGREGATION OF BISHOPS AND REGULARS, *Normae secundum quas Sacra Congregatio Episcoporum et Regularium procedere solet in approbandis novis institutis votorum*

to the dowry. These norms codified all that the Holy See required of institutes concerning dowry before approving constitutions. Article 91 required every institute of sisters of simple vows to fix the quantity of dowry to be paid by postulants. It also required that all sisters of the same rank pay the same amount. However, it noted that the sum paid by lay sisters would be lower than that paid by the choir sisters.<sup>58</sup> Article 92 reserved to the Congregation for Bishops and Regulars the power to dispense from the established dowry or to diminish it. Neither the religious superior nor the Ordinary could remit the dowry either in whole or in part, without special authorisation from the Holy See.<sup>59</sup> Article 93 stipulated that the dowry be made secure for the institute by a reliable guaranty before the vesting of the candidate with the religious habit. It also required that the dowry be delivered to the institute immediately before profession.<sup>60</sup> Article 94 forbade the alienation of the dowry. It also expected institutes to put it in a lawful, safe and productive investment.<sup>61</sup> Finally, article 95 said that if a sister left the convent or was dismissed, her dowry was to be returned to her. However, the interest earned from the investment of the dowry during the period she remained in the convent was to be

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*simplicium*, Romae, Typis Sacra Congregatio de Propaganda Fide, 1901. This instruction is generally known as the *Normae* of 28 June 1901.

<sup>58</sup> *Normae*, Article 91: “Quodlibet Institutum Sororum praefigere debet dotem solvendam, aequalem, pro sororibus chori; et etiam pro sororibus conversis seu coadiutricibus dotem quidem minorem, sed pro harum singulis aequalem.”

<sup>59</sup> *Normae*, Article 92: “Statutam dotem moderatrix non potest remittere neque imminuere sine licentia Sacrae Congregationis.”

<sup>60</sup> *Normae*, Article 93: “Statuta dos tuta reddatur favore instituti per solidam cautionem, antequam candidata habitu induatur; tradenda est autem instituto proxime ante professionem.”

<sup>61</sup> *Normae*, Article 94: “Tradita dos alienari non potest, sed probe, tuto ac fructuose collocari debet.”

acquired by the institute.<sup>62</sup> The capital of the dowry was acquired irrevocably by the religious congregation only if a sister died.<sup>63</sup> The ban on the alienation of the dowry, as stated in article 94 of the *Normae*, was reaffirmed in the 1909 Instruction *Inter ea* of the Congregation for Religious.<sup>64</sup>

The Holy See saw religious dowry as something intended to ensure the proper maintenance of women religious and to promote the welfare of those who joined religious life. The dowry was even expected to help in re-establishing these women in the world, should they decide to leave or were dismissed. However, Kealy noted that the interest from the dowries served to promote and perpetuate the particular pious or charitable work to which the members of each institute had consecrated their lives.<sup>65</sup>

The *Normae* of 1901 summarised and made clear the Church's official stand on the dowry of religious women. The legislation made its way into the 1917 Code, which we now intend to consider.

### 2.2.3 - Norms on Dowry in the 1917 Code

Since the Church had already adopted dotal legislation before the promulgation of the 1917 Code, it was no surprise to see special norms on dowry in that Code. A close look at the 1917 Code reveals that the norms of 1901, which concerned religious institutes with simple vows were incorporated into the Code.

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<sup>62</sup> *Normae*, Article 95: "Si aliqua soror ab instituto discedat vel dimittatur, dos sua ipsi, sine fructibus tamen, restituatur."

<sup>63</sup> See KEALY, *Dowry of Women Religious*, p. 44.

<sup>64</sup> SACRED CONGREGATION FOR RELIGIOUS, Instruction, *Inter ea*, 30 July 1909, in GASPARRI, *Fontes*, vol. VI, n. 4394, pp. 987-990. Kealy notes that this instruction was directed to all religious institutes, whether of solemn or simple vows.

Canon 547, §1 of the 1917 Code required postulants seeking admission into the monastery of nuns to provide a dowry established in the constitutions or by legitimate custom.<sup>66</sup> The exact amount of the dowry was determined by the proper law of each institute, but the obligation as a prerequisite for entrance was imposed by common law on all monasteries of nuns.<sup>67</sup> Although the law applied directly to monasteries in which the members had solemn vows, it was extended to those institutes whose vows were solemn but whose members in some places, by order of the Holy See, took simple vows.<sup>68</sup> While the first paragraph of the canon imposed the obligation of a dowry in all monasteries of women with solemn vows, c. 547, §2 stated that the dowry must be handed over to the monastery before receiving the habit, or at least, its transfer assured in a form valid in civil law.<sup>69</sup> This meant that two acceptable methods of payment of the dowry were provided; one was direct delivery to the monastery and the second method was giving

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<sup>65</sup> See KEALY, *Dowry of Women Religious*, p. 44.

<sup>66</sup> *CIC/17*, c. 547, §1: "In monasteriis monialium postulans afferat dotem in constitutionibus statutam aut legitima consuetudine determinatam." This was implied in Article 91 of the *Normae*. Dowry had now officially become a prerequisite for becoming a religious in any given monastery. Each institute was to ensure that dotal legislation was reflected in its constitutions or legitimate custom.

<sup>67</sup> See G. VROMANT, *De bonis Ecclesiae temporalibus ad usum praesertim missionariorum*, Louvain, Museum Lessianum, 1927, no. 252, p. 267; VERMEERSCH-CREUSEN, *Epitome iuris canonici*, vol. 1, no. 698, p. 497. See also WERNZ-VIDAL, *Ius canonicum*, vol. 3, no. 268, p. 222.

<sup>68</sup> *CIC/17*, c. 488, 7°: "Religious, all those who have made profession of vows in any Institute; Religious with simple vows, those who have made profession of vows in a religious Congregation; Regulars, those who have made profession of vows in an Order; Sisters, religious women with simple vows; Nuns, religious women with solemn vows or, unless it appears otherwise from the nature of the case or from the context, religious women whose vows are normally solemn, but which, by a disposition of the Holy See, are simple in certain regions."

<sup>69</sup> *CIC/17*, c. 547, §2: "Haec dos ante susceptionem habitus monasterio tradatur aut saltem eius traditio tuta reddatur forma iure civili valida." Article 92 of the *Normae* said the same thing.

assurance of payment to the monastery in a way that was recognised and enforceable in civil law.<sup>70</sup> Canon 547, §3, unlike the first two paragraphs, spoke about religious institutes with simple vows. It demanded the constitutions be obeyed in all matters regarding dowries of women religious.<sup>71</sup> The prescribed dowry could not be waived in whole or in part without an indult from the Holy See in the case of a religious institute of pontifical right, or without the consent of the local Ordinary if it was a religious congregation of diocesan right (*CIC/17*, c. 547, §4).<sup>72</sup> Why did c. 547, §4 prohibit the waiving of the dowry either completely or partially? Charles Augustine was of the opinion that “the reason is that it would be alienation, which is prohibited, and derogate from the authority of the Holy See, which had approved the constitutions.”<sup>73</sup> Canon 548 regulated that a monastery or a religious institute irrevocably acquired a dowry on the death of the religious, even though she had made profession of only temporary vows.<sup>74</sup> Canon 549<sup>75</sup> required that after the first profession of a religious, her dowry be placed in a safe, lawful and fruitful investment by the superior, acting with the consent of the Council. The superior had to obtain the consent of the local Ordinary for such investment.

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<sup>70</sup> The wording of the canon indicates that the first method was preferable.

<sup>71</sup> *CIC/17*, c. 547, §3: “In religionibus votorum simplicium, quod ad religiosarum dotem pertinet, standum constitutionibus.”

<sup>72</sup> *CIC/17*, c. 547, §4: “Dos praescripta condonari ex toto vel ex parte nequit sine indulto Sanctae Sedis, si agatur de religione iuris pontificii; sine venia Ordinarii loci, si de religione iuris dioecesiani.” This is implied in Article 92 of the *Normae* of 1901.

<sup>73</sup> AUGUSTINE, *A Commentary on the New Code of Canon Law*, vol. III, p. 225.

<sup>74</sup> *CIC/17*, c. 548: “Dos monasterio seu religioni irrevocabiliter acquiritur per obitum religiosae, licet haec non nisi vota temporaria nuncupaverit.”

<sup>75</sup> *CIC/17*, c. 549: “Post primam religiosae professionem dos in tutis, licitis ac fructiferis nominibus collocetur ab Antistita cum suo Consilio, de consensu Ordinarii loci et Superioris

In the case of a monastery of nuns, subject to the jurisdiction of a regular superior, the consent of both the bishop and the superior were required. Furthermore, it was absolutely forbidden to expend the dowry in any way before the death of a sister, even for the building of a convent or the payment of debts (*CIC/17*, c. 549). If a superior did anything in violation of c. 549, she was to be punished by the local Ordinary according to the gravity of her offence, even with removal from office (*CIC/17*, c. 2412).<sup>76</sup> Canon 550 stipulated that dowries must be carefully and integrally administered at the monastery or house of the habitual residence of the Superior General or Provincial. It also required that the local Ordinaries diligently see that the dowries of the religious were conserved; and they were to exact an account on the subject, especially at the time of pastoral visitation.<sup>77</sup> Another canon of the 1917 Code that is of importance to our subject is c. 551:

§1 – If, from whatever cause, a professed religious, with either solemn or simple vows leaves the Institute, her dowry must be returned to her intact but not the interest already derived therefrom.

§2 – But if, by virtue of an apostolic indult, the professed religious joins another institute, the interest on the dowry, during her new novitiate,

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regularis, si domus ab hoc dependeat; omnino autem prohibetur eam quoquo modo ante religiosae obitum impendi, ne ad aedificandam quidem domum aut ad aes alienum exstinguendum.”

<sup>76</sup> *CIC/17*, c. 2412: “Religiosarum etiam exemptarum Antistitae pro gravitate culpae, non exclusae, si res ferat, officii privatione, ab Ordinario loci puniantur:

“1° Si contra praescriptum can. 549 dotes puellarum receptarum quoquo modo impendere praesumpserint, salva semper obligatione de qua in can. 551;

“2° Si contra praescriptum can. 552 omiserint Ordinarium loci certiore facere de proxima alicuius admissione ad novitiatum vel ad professionem.”

<sup>77</sup> *CIC/17*, c. 550, “§1: Dotes caute et integre administrantur apud monasterium vel domum habitualis residentiae supremae Moderatricis aut Antistitae provincialis.

“§2. Ordinarii locorum conservandis religiosarum dotibus sedulo invigilent; et praesertim in sacra visitatione de eisdem rationem exigant.”

without prejudice to the prescription of canon 570, §1, and, after the new profession, the dowry itself must be given to the latter Institute; if the religious passes to another monastery of the same Order, the dowry is due to it from the day the change takes place.<sup>78</sup>

Canon 551, §1 demands that if a religious in either solemn or simple vows leaves an institute for whatever reason, the dowry must be returned to her in its entirety, but not the interest derived from it.<sup>79</sup> It is immaterial whether the religious leaves voluntarily or is dismissed, just as it is irrelevant whether the religious was in solemn or simple vows. Canon 551, §2 speaks about the issue of transfer by apostolic indult. If a religious is transferring from institute A to institute B, the interest from the dowry passes over to the second institute, even though the dowry proper is kept by institute A, while she is doing her novitiate in the second institute. This norm must take cognisance of canon 570, which declares that no compensation may be claimed for the maintenance of novices, unless the constitutions or an explicit contract authorise a claim for food and clothing. However, upon making her profession in the new institute, the dowry is also to be transferred to it. If a religious transfers from monastery A to monastery B, both of the same Order, the dowry is transferred to monastery B from the day the transfer takes effect.

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<sup>78</sup> *CIC/17*, c. 551, “§1: *Dos religiosae sive votorum sollemnium sive votorum simplicium quavis de causa discedenti integra restituenda est fructibus iam maturis.*”

“§2. *Si vero religiosa professa ad aliam religionem ex apostolico indulto transeat, durante novitiatu, fructus, salvo praescripto can. 570, §1; emissa vero nova professione, dos ipsa huic religioni debentur; si ad aliud eiusdem Ordinis monasterium, huic debetur ipsa dos a die transitus.*”

<sup>79</sup> The interest is supposed to provide for her upkeep all the time she remains a member, but the main dowry is recognised to be exclusively her property, and justice demands that it follow her.

### 2.3 - INTERIM LEGISLATION

The legislation regarding the dowry of religious did not stop with the 1917 Code. Between 1917 and 1983 a number of pieces of legislation continued to come out from the Holy See to clarify points for institutes grappling with the problems posed by departure and dismissal of their members. Some of the legislation took the form of decrees, norms, or, circular letters, while other documents were replies from the Apostolic Signatura to concrete cases. The Congregation for Religious issued most of these documents, while others came from the Congregation for the Doctrine of the Faith. We shall now look into some of the important pieces of legislation which emanated from the Holy See between the 1917 Code and immediately before the promulgation of the 1983 Code.

#### 2.3.1 - Reply of the Sacred Congregation for Religious, 2 March 1924

The Congregation for Religious was asked whether a religious institute is relieved of all obligations towards a departing member by a mere restitution of the dowry, in a situation where the dowry does not amount to the reasonably estimated charitable subsidy. Or whether, on the contrary, the institute is bound to supply the amount that is wanting to make up a fitting charitable subsidy according to canon 643, §2. On 2 March 1924 the Congregation issued a private reply that required the religious institute to supplement an insufficient dowry.<sup>80</sup>

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<sup>80</sup> SACRA CONGREGATIO DE RELIGIOSIS, Responsio, "Circa dotem religiosarum," in *AAS*, 16 (1924), pp. 165-166. This is a response to a question concerning the dowry of religious. One can also translate the title as: "The Doubt Concerning Religious and Charitable Subsidy." English translation in *CLD*, vol. 1, p. 300, gives the title as: "If Dowry Insufficient, Charitable Subsidy Must Be Given to Departing Religious."

Two things are implied in the question that the Congregation was asked. The first is whether the religious institute has fulfilled its obligation by simply giving back the dowry to an ex-member. The second question is whether the institute is obliged to add something to the dowry, if it is insufficient to be of help to an ex-member. It is interesting to note that the Congregation considers the restitution of dowry as an obligation on the part of the institute. This private reply, in effect, meant that it was not enough to restore just the dowry alone, because if the dowry was insufficient, the religious institute was obliged to make up what was lacking. This was to ensure that the religious was able to return home safely and becomingly, and even to provide for her for a period of time, observing natural equity (c. 643, §2). This reply of 2 March 1924 influenced some of the commentaries on the 1917 Code that we now wish to examine.

### **2.3.2 - Opinions on the Restitution of the Dowry and Charitable Subsidy**

Before the Congregation for Religious issued the private reply, D.I. Lanslots suggested that both dowry and furniture brought into the religious institute be returned to the departing member to facilitate her safe and decent return.<sup>81</sup> He further suggested that those who have left the religious institute, who have no property of their own, be provided with the necessary means for a safe and decent return to their families.<sup>82</sup> Since Lanslots' suggestion comes under the check list of questions to be answered by Superiors

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<sup>81</sup> See D.I. LANSLOTS, *Handbook of Canon Law for Congregations of Women Under Simple Vows*, New York, Frederick Pustet Co., Inc., Publishers, 1920, p. 264. The question which appears under number 32 of the check-list reads: "Has the entire dowry, however invested, and the furniture they brought, in its present condition been returned to those leaving for any reason whatsoever?"

General of Congregations professing simple vows, in their report to the Holy See, it means that the practice was already tacitly in place before the reply of March 1924.

Commenting on the conditions required for dismissal, Hector Papi noted that the requirements of c. 643, § 2 must be observed.<sup>83</sup> He emphasised that the religious institute “must provide her [the religious in question] with the means of an honest livelihood for a certain period of time, as natural equity may suggest in each particular case.”<sup>84</sup> He further noted: “The time for which the charitable allowance should last has to be determined by mutual agreement and in the case of dissent it has to be determined by the Ordinary of the place.”<sup>85</sup> By using the word “livelihood,” Papi implied that the help given to an ex-member out of charity was much more than money, thereby widening the scope of the needed assistance.

Fintan Geser, in his question and answer style, had a few questions on the return of dowry to an ex-religious.<sup>86</sup> Among the questions he asked was this: “What is to be done in case the dowry returned by the community [religious institute] to the secularized or dismissed sister is so small that it is insufficient to meet her needs?” He answered: “If the dowry is not large enough (and if a sister has no other means) to provide for present

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<sup>82</sup> Ibid. The question that appears as number 33, p. 264, of Lanslots reads: “Have those who have left the institute, having no property of their own, been provided with the necessary means, for their safe and decent return to their families?”

<sup>83</sup> See H. PAPI, *Religious in Church Law: An Exposition of Canon Law Concerning Religious*, New York, P.J. Kenedy & Sons, 1924, p. 82. See c. 647, §2, 5°, that reads: “In the case of religious women, the prescriptions of canon 643, §2 must be observed.”

<sup>84</sup> PAPI, *Religious in Church Law*, p. 82. See also AUGUSTINE, *A Commentary on the New Code of Canon Law*, vol. III, p. 381. Augustine also uses the phrase “honest livelihood.”

<sup>85</sup> PAPI, *Religious in Church Law*, p. 82.

<sup>86</sup> See F. GESER, *The Canon Law Governing the Communities of Sisters*, St. Louis, MO, B. Herder Book Co., 1939, pp. 349-350.

needs, the religious community must make up for the insufficiency of her resources or must give her [the ex-religious] whatever she needs to live decently until she can find suitable employment.”<sup>87</sup> Geser also suggested that if the ex-religious is old and in poor health and without resources, she must agree to enter an institution for persons of that condition.<sup>88</sup> However, Geser restricted the assistance to be given by saying, “it need never have the character of a pension for life.”<sup>89</sup> Therefore, it is an obligation on the part of the institute, not just to return the dowry and any other personal property to an ex-religious, nor just to extend charitable subsidy to her if she was received into a community without a dowry, but also to supply whatever is lacking if the dowry is insufficient.

Francis J. O’Neill contended that “the amount of help to be given to a religious who has either no dowry or not a sufficient dowry depends greatly upon circumstances of person, time and place.”<sup>90</sup> He believed that any attempt to establish a set sum, which could be considered as an absolutely sufficient charitable subsidy in each case, would be futile.<sup>91</sup> In the same vein, it would be futile to try to establish an absolute minimum

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<sup>87</sup> GESER, *The Canon Law Governing the Communities of Sisters*, p. 349. This answer is largely taken from the response of the Congregation for Religious of 2 March 1924. Expecting the religious institute to continue to support the ex-member until she can find suitable employment hides a lot of implications, because it makes room for indefinite period of support. It could take years for the separated member to find employment, and she could find one that may not qualify for a ‘suitable employment’.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid., p. 350. To say that the help is not a pension for life is more in line with the mind of the legislator.

<sup>90</sup> O’NEILL, *The Dismissal of Religious in Temporary Vows*, p. 160. O’Neill expresses the idea that certain factors ought to be considered by a religious institute that is extending charitable subsidy to its former member.

<sup>91</sup> Ibid.

subsidy for a former member of a religious institute.<sup>92</sup> O'Neill was conscious of the variety of cases. He argued that you could have the case of a young woman who spent only one year as a religious before exiting religious life. This person could have parents who are still alive and wealthy, and be living a short distance away from the convent. She may even secure an employment soon after she leaves religious life. A scenario like this is different from that of a former religious, who had spent many years in an institute, whose parents are dead and who has no family to which she can return. This second situation may be compounded by the fact that this person is far away from home or even from homeland.<sup>93</sup> O'Neill also proposed that the constitution of each institute should determine who takes responsibility for paying the charitable subsidy, for instance, the generalate, the province or the house to which the former religious was attached before her exit.<sup>94</sup> He observed that "the Code by positive law deals only with the institutes of religious women in the matter of charitable subsidy, but natural equity demands that the same prescription of law be applied also in Institutes of religious men if the dismissed religious really needs such charitable help."<sup>95</sup>

In the opinion of Charles G. O'Leary, restoring dowry to a dismissed religious woman is not an obligation of equity or charity, but one of justice.<sup>96</sup> For O'Leary, the reply of 2 March 1924 has "a further obligation in charity to extend funds in certain

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<sup>92</sup> Ibid.

<sup>93</sup> Ibid. A typical example would be the case of a religious who leaves religious life while on an assignment in a foreign country.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid

<sup>96</sup> See O'LEARY, *Religious Dismissed after Perpetual Profession*, p. 143.

circumstances, which funds are over and above the sum of the dowry.”<sup>97</sup> O’Leary cited Vermeersch and Creusen who in their application of c. 643, §2 propose a minimum equitable sum of between one hundred and fifty and two hundred dollars.<sup>98</sup> O’Leary was of the opinion that not every dismissed religious should receive the amount proposed by Vermeersch and Creusen, because not every dismissed member has equal needs.<sup>99</sup> Each situation is unique. O’Leary feels that a further obligation arises on the part of the institute if a dismissed religious fails to find employment or a means of support. However, he quickly added that “there is no obligation present if she neglects to accept suitable work when it is procurable or if she has squandered the amount given for a determined period.”<sup>100</sup> O’Leary considered the case of a dismissed religious who is old, infirm, without resources and without relatives or friends with whom she could live in the world. He concluded that such a religious must agree to enter a suitable institute intended for persons in similar conditions.<sup>101</sup> O’Leary suggested that even though the Congregation for Religious states nothing concerning these matters that are supplementary to the restoration of the dowry, religious institutes ought to observe them

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<sup>97</sup> Ibid.

<sup>98</sup> Ibid., p.147. This must be one of the earliest attempts to specify a particular amount as fulfilling the charitable subsidy prescribed in c. 643, §2, and which the Congregation for Religious clarified by the response of 2 March 1924. Although the proposed amount may look relatively small, one has to bear in mind the economic situation at that time. O’Leary cites VERMEERSCH-CREUSEN, *Epitome iuris canonici*, vol. 1, n. 801, p. 592.

<sup>99</sup> See O’LEARY, *Religious Dismissed after Perpetual Profession*, p. 147.

<sup>100</sup> Ibid., p. 148.

<sup>101</sup> See *ibid.*

at the dismissal of their members.<sup>102</sup> However, he believed that charitable support of an ex-religious must be temporary and should not be prolonged. He opined: “Lack of support from the religious institute is one of the punishments of dismissal and therefore if this temporary provision should become a regular means of support over a long period, one of the purposes of dismissal, namely, the amendment of the guilty party, might be defeated. There would be little incentive to conversion and to return to the religious life if the dismissed subject could remain freely in the world, enjoying the support of the religious institute which dismissed her.”<sup>103</sup>

As we can see, most of the commentaries are in agreement with the charitable support to ex-religious. It is an obligation on the part of the institute. Some of the authors indicate that the charitable subsidy is not a pension for life. Each case determines in what the charitable subsidy consists, since no two cases are alike. The 1924 reply did not answer the entire question about charitable subsidy, as it seems evident from subsequent documents and replies from the Holy See.

### **2.3.3 - Congregation for the Doctrine of the Faith, 13 January 1971**

On 13 January 1971, the Congregation for the Doctrine of the Faith issued Procedural Norms for the return of clerics to the lay state. A paragraph in the procedural norms placed an obligation of pastoral charity on Ordinaries, including major religious superiors of pontifical religious institutes of men. It reads as follows:

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<sup>102</sup> See *ibid.* See also J. PALOMBO, *De dimissione religiosorum*, 3<sup>rd</sup> ed., Romae, Marietti, 1931, n. 138, p. 153.

<sup>103</sup> O’LEARY, *Religious Dismissed after Perpetual Profession*, p. 148.

The Ordinaries concerned, among whom is the major religious superior, should, with fatherly, pastoral charity, keep in touch with priests who have been reduced to the lay state and dispensed from the obligations connected with sacred ordination and, if possible, come to their aid in the necessities for maintaining an upright life.<sup>104</sup>

Coming to the aid of priests who have been returned to the lay state with the necessities for maintaining an upright life includes financial assistance. While it is true that the Congregation for the Doctrine of the Faith encouraged Ordinaries to treat former members with fatherly and pastoral charity by coming to their aid in the necessities for maintaining an upright life, it did not say exactly how this ought to be done in practical terms. We need to take a look at a concrete case in order to know the mind of the Church with regard to the issue of subsidy to an ex-religious.

#### **2.3.4 - Signatura's Decision on Charitable Subsidy to Ex-religious, 6 July 1971**

On 6 July 1971, the Apostolic Signatura handed down a decision in the case of Maria, a perpetually professed religious in a diocesan congregation, who was seeking compensation from her religious institute.<sup>105</sup> Maria had been lawfully dismissed from her institute. She interposed recourse to the Congregation for Religious and Secular Institutes, but the recourse was rejected. She accepted her fate as a dismissed religious

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<sup>104</sup> CONGREGATION FOR THE DOCTRINE OF THE FAITH, "Reduction to Lay State: Procedural Norms," 13 January 1971, in *AAS*, 63, (1971), pp. 303-308. Section VI, §5, p. 308, reads: "Ordinarii quorum interest, inter quos Superior maior religiosorum, paterna et pastorali caritate prosequantur sacerdotes redactos ad statum laicalem et dispensatos ab oneribus cum sacra ordinatione conexis, et pro posse in necessariis ad vitam honeste sustentandam subveniant." English translation in *CLD*, vol. 7, pp. 116-117.

<sup>105</sup> SIGNATURA APOSTOLICA, Decision, "De subsidio caritativo religiosis mulieribus dando quae e Religione dimittuntur," in *Apollinaris*, 44 (1971), pp. 625-627. Reported also in *CpR*, 53 (1972), pp. 181-183. English translation in *CLD*, vol. 7, pp. 560-562. Note that everything about the facts, the law and the decision on this case is reported in detail in the sources that are cited. We provide here only a summary.

because she did not request the revocation of the decree of dismissal. However, rejecting as insufficient the sum of 1,500,000 Italian lire set by the Ordinary as the charitable subsidy specified in canon 643, §2, Maria addressed a petition to the Roman Pontiff. In it, she requested either “a life annuity in her favour of 70,000 lire per month” or “one sole sum of 12,000,000 lire whose payment she agrees to a legal instalment of 50,000 lire per month.”<sup>106</sup> She then made recourse to the Signatura. She wrote: “I propose that the institute pay the sum of 70,000 lire per month, (the sum of 60,000 lire is absolutely insufficient for living) until I am eligible for a pension. When the pension shall have been paid to me, the institute – for the whole rest of my life – will pay the difference between the 70,000 lire and the sum that I shall receive under the title of pension. This my request is based precisely on canon 643, understood in its just worth, on natural equity, on the constitution, *Gaudium et spes*, n. 26 of [Vatican] Council II.”<sup>107</sup> The recourse was transmitted to Apostolic Signatura for examination. The Signatura made an interim provision that Maria be paid a limited amount of 60,000 Italian lire pending a decision in the case.<sup>108</sup>

The Apostolic Signatura asked the local Ordinary to make an effort to find a peaceful solution to the controversy, while “safeguarding the legitimate interests of the defendant who is not to be subjected to too great a burden but at the same time the indispensable needs of the party making recourse must be met within the limits of civil-

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<sup>106</sup> *CLD*, vol. 7, p. 560.

<sup>107</sup> *Ibid.*, pp. 560-561. Note that the party making the recourse refers to what she would be granted under charitable subsidy as “pension.” It is unclear whether the party was alone in this understanding, or whether she was influenced by the language used by the Signatura in ordering that she be paid a limited sum until the case was finally resolved.

law norms of social security in analogous cases.”<sup>109</sup> The Apostolic Signatura also wrote to the Ordinary of the place where the party making recourse was residing: “Please bear in mind that an excessive condescension towards the party making recourse, besides injuring the interests of the other party, could bring harm to the discipline of the institute.”<sup>110</sup> The Signatura noted that a religious institute is not bound by any obligation out of justice, as is clearly evident from canon 643, §1.<sup>111</sup> Moreover, canon 580, §2 prescribes: “Whatever any religious acquires by his own industry or in view of his religious institute, he acquires for the institute.”<sup>112</sup> The Signatura also noted that the party who took recourse personally signed a document that noted the following in bold letters: “She who leaves the institute of her own free will or with permission, has no right to any compensation for any work rendered it.”<sup>113</sup>

The Signatura reiterated that the institute is bound by an obligation to provide a former member with a charitable subsidy, as enunciated in canon 643, §2. However, the Signatura argued that this charitable subsidy does not include providing for the dismissed religious for the rest of her life, even if she is advanced in years and incapable of

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<sup>108</sup> Ibid., p. 562.

<sup>109</sup> Ibid., p. 560. The Signatura is apparently advocating a compromise solution that is not far from the natural equity demanded by *CIC/17*, c. 643, §2. It is interesting to note that the Signatura is giving a clear indication that civil-law norms on social security cases could be employed in determining what charitable subsidy would amount to.

<sup>110</sup> Ibid., p. 560. Again it is understood from this that the Signatura wants neither an ex-religious nor a religious institute to suffer unnecessarily in the process of granting and accepting a charitable subsidy.

<sup>111</sup> Ibid., p. 561. This is contrary to the commentary of O’Leary, who opined that help from a religious institute to an ex-member is not an act of natural equity or charity, but of justice. O’Leary stands alone with this opinion.

<sup>112</sup> *CIC/17*, c. 580, §2.

working.<sup>114</sup> The Signatura, in its judgement, quoted eminent authors who wrote: “This subsidy has a temporary character, and is not to have the character of a life pension, even if the religious woman becomes infirm or grows old. In such a case, the secularised person will have to accept with resignation internment in some appropriate institution.”<sup>115</sup> Furthermore, the Signatura noted that “the institute has expended for her the really giant sum of 3,669,800 Italian lire and there is no doubt that the charity and equity mentioned in canon 643, §2, were more than amply observed if the religious institute were to pay a monthly pension of 60,000 Italian lire only to the end of that current year, 1971.”<sup>116</sup>

After spelling out the law and the facts, the Signatura decided the case. “In the session of 6 July 1971, held in the presence of his Eminence, the Cardinal Prefect, when the recourse interposed by Maria, formerly a religious, was proposed for her to obtain from the religious institute from which she was dismissed, a monthly life pension of 70,000 Italian lire or one sole sum of 12,000,000 Italian lire, it was decreed: The recourse must be rejected; however, the monthly pension of 60,000 Italian lire which was allotted the plaintiff by the decree of 31 August 1970, must be continued in favour of the plaintiff until the 31<sup>st</sup> day of December, 1971.”<sup>117</sup>

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<sup>113</sup> *CLD*, vol. 7, p. 561.

<sup>114</sup> See *ibid.*

<sup>115</sup> A. TABERA, G.M. ANTONANA and G. ESCUDERO, *Il diritto dei religiosi*, Romae, [no publishers indicated], 1961, n. 396, letter c, p. 537. Quoted in *CLD*, vol. 7, p. 562.

<sup>116</sup> See *CLD*, vol. 7, p. 562. This sum of 3,669,800 is made up of the 1,500,000 Italian lire given to her as charitable subsidy, the 1,629,800 Italian lire that the institute spent on her between 7 July 1968 to 7 March 1970 for her accommodation, her food, her health, her clothes, etc. Furthermore, the institute gave her the sum of 540,000 Italian lire, computing together all the monthly allowance that the Apostolic Signatura ordered paid to her.

<sup>117</sup> *Ibid.*

Note that the law was strictly followed in this case, from the time of her dismissal to the handling of the recourse. It is interesting to note that canon 643 was applied in this case. The argument of the Signatura took into consideration both the ex-religious as well as the religious institute from which she was dismissed. One strong message contained in the Signatura's decision is that the charitable subsidy has a temporary character and is not a life pension. Another very strong message is that something has to be done by an institute to assist a former member in need of help even if what she is given is not to her/his satisfaction. The decision of the Signatura is in keeping with the demands of justice, canonical equity and respect for the human person. Still what surprises us is that, even in 1971, the Apostolic Signatura in its decision referred to charitable subsidy in this case as "monthly pension."<sup>118</sup> However, this language quickly changed, as we shall now see from another document of great import from the Congregation for Religious and Secular Institutes.

### **2.3.5 - Congregation for Religious and Secular Institutes on Charitable Subsidy**

The most significant interpretation of canon 643 of the 1917 Code was provided by the Congregation for Religious and Secular Institutes (=SCRIS) in its declaration of 25 January 1974.<sup>119</sup> This declaration presented a balanced interpretation of canon 643,

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<sup>118</sup> Ibid.

<sup>119</sup> CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES (= SCRIS), Declaration, "On Help to Be Given to Those Who Leave Religious Institutes," *Sacra congregatio*, 25 January 1974, in FLANNERY II, pp. 200-202. Flannery has this to say about this declaration: "This documentation first appeared in French, when it was sent as a letter to Father Pedro Arrupe, S.J., by the Congregation for Religious and Secular Institutes, who asked Father Arrupe, as president of the Union of Superiors General, to circulate it to all major superiors, male and female. The French version was published in *Documentation catholique*, 2 June 1974. An English text was circulated to English-language superiors and was published in one or two periodicals.

and expanded the understanding of the Church's legislation with regard to the help to be given to those who leave religious institutes. The Congregation took cognisance of the difficulties facing religious institutes due to the increased number of their members who were leaving and the subsequent claims made on institutes. It said: "The Sacred Congregation is aware of the difficulties facing Institutes themselves both on account of the considerable increase in the numbers of those who leave and by reason of the criteria by which those who leave would justify their claims."<sup>120</sup> The declaration upheld the principle of canon 643, §1 that those who leave religious life cannot make any claims from the institute for work done as members of it. The declaration offered a reason for the Church's legislation:

Those who enter religious life freely and voluntarily place themselves in a situation which is entirely special. Religious profession is a fact of a spiritual nature which implies the total surrender to God of all that one can earn during one's religious life, even if this implies some uncertainty regarding the future. It would be contrary to the nature of religious life to equate it with a business or a factory or to put the relations between

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Subsequently, *Commentarium pro Religiosis*, volume 55, fasc. 1, pp. 73-75, published the document in Latin as a decree of the Congregation for Religious and Secular Institutes [...]. This document was also published in *Origins*, 3 (1974), pp. 646-647). See also *CLD*, vol. 8, pp. 424-427. *CLD* adds more clarification to this document by saying that it came out as a declaration on 24 January 1974, but was sent as a circular letter from Cardinal A. Tabera, Prefect of the Congregation, to Father Pedro Arrupe, president of the Union of Superiors General on 30 January 1974. This document is the product of the Plenary Assembly of the Sacred Congregation in its session of October 23-25, as is indicated in the text. Appendix 2 contains both the Latin text as well as the English translation of the declaration.

<sup>120</sup> FLANNERY II, p. 200. We must remember that the participants of the Plenary Assembly were simply realistic because of what religious institutes were witnessing at the time. The exodus from religious institutes was overwhelming, particularly in the northern hemisphere. In Canada alone, 823 women religious left religious life in 1972. Statistics show that over a four-year period, the numbers increased from 361 in 1968 to 547 in 1970 and 726 in 1971. See CANADA RELIGIOUS CONFERENCE [CRC], *Statistics of the Religious Congregations of Canada*, Ottawa, CRC, 1991, p. 28.

institutes and members on a par with relations between employers and employees.<sup>121</sup>

Embracing religious life freely and voluntarily, religious know that whatever they acquire as religious, either by personal labour or on behalf of the institute, belongs to their institute (*CIC/17*, c. 580, §2). Commenting on this, Luigi Ricceri noted:

By his profession the religious acquires no juridical right for salaried compensation. One must not confuse religious Institutes with commercial enterprises, or Superiors of the former with directors of the latter, or religious with employees. There does not exist any labor contract between a religious Institute and a religious on which to build a claim of commutative justice.<sup>122</sup>

If a religious institute were a factory or business, then a religious who becomes an employee would deserve a pension or compensation. Religious institutes and the religious do not have the semblance of employer and employee.

The declaration focuses on canon 643, §2. However, in providing a balanced interpretation of the existing legislation, the Congregation for Religious and Secular Institutes widened the scope of the understanding of canon 643, §2:

Every religious family has the obligation of providing for the spiritual, moral and social, as well as temporal well-being of its members while they retain their membership. This obligation extends also in some fashion, though for a different reason, and within certain limits, to those who leave the Institute and who find themselves faced with the necessity of inserting themselves into society as lay people after having spent, perhaps, many years in religious life.<sup>123</sup>

The first obligation of the religious institute is to provide for all the needs of its members who remain faithful to their vocation. SCRIS expanded the horizon of assistance to

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<sup>121</sup> FLANNERY II, p. 200. We have already established this fact in the preceding chapter.

<sup>122</sup> D.L. RICCERI, "The Economic Subsidy to be Granted to Religious Who Leave Their Institute," in *Consecrated Life*, 1 (1977), p. 166.

include spiritual, moral and social, as well as temporal assistance to former members. Whereas the obligation to members who remain faithful is based on their rights as members, the obligation to those who have left is based on charity. The former obligation continues, while the latter is temporary.<sup>124</sup>

The Congregation was aware of the difficulty that goes with transfer or departure, and advocates that the person leaving religious life be “treated with all the respect due to a person.”<sup>125</sup> Ex-religious must be treated as human beings, who possess human dignity. The Congregation for Religious and Secular Institutes, while referring to an earlier document,<sup>126</sup> also spoke of the respect for the human person in yet another document that addressed the expulsion of religious with perpetual vows from an exempt clerical institute. In that decree, the Congregation made it clear that the decree of dismissal will be recognised if it is “in keeping with the demands of justice, canonical equity and respect for the person.”<sup>127</sup> Religious institutes are encouraged to act justly, following carefully the principles that have been laid down in ecclesiastical law.<sup>128</sup> Everything that

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<sup>123</sup> FLANNERY II, p. 200.

<sup>124</sup> See *ibid.*

<sup>125</sup> *Ibid.* Departure or dismissal from religious life is a very sensitive issue. Often those who leave are resentful. The Congregation for Religious and Secular Institutes is right in emphasising the need for tact at the moment of departure or dismissal. The bitterness nursed by the one leaving religious life affects his/her entire person.

<sup>126</sup> See PAUL VI, Norms for Implementing the Decree: On Up-to-Date Renewal of Religious Life, *Ecclesiae sanctae II*, 6 August 1966, in *AAS*, 58 (1966), pp. 775-782. English translation in FLANNERY I, pp. 624-633.

<sup>127</sup> CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Decree on the Expulsion of Religious Who Have Taken Perpetual Vows in an Exempt Clerical Religious Institute, *Processus iudicialis*, 2 March 1974, in *AAS*, 66 (1966), pp. 215-216. English translation in FLANNERY II, pp. 203-204.

<sup>128</sup> *Ibid.*

religious institutes do at the moment of departure or dismissal of members must be procedurally correct, respecting the norms that have been approved by the Church, including the prescript of c. 643, §2.

However, the Congregation acknowledges the fact that the prescripts of canon 643, §2, which were originally directed to women ex-religious but by analogy were extended also to men ex-religious, “appear inadequate in view of the new social conditions obtaining today and in the light of the contemporary social conscience.”<sup>129</sup> If the participants of the Plenary Assembly rightly felt that the prescripts of c. 643, §2 of the 1917 Code were inadequate in 1972 because of the new social conditions at the time, and considering the social conscience of the time, one wonders whether those prescripts are adequate today. Considering that more than thirty years have elapsed since *Sacra congregatio* was issued, one may not be completely wrong to suggest that even the 1974 document is ripe for a review. The application of the provision of “charitable subsidy” presents difficulties for several reasons. Firstly, it is to be given only to those men and women ex-religious who cannot provide for their livelihood from their own resources.<sup>130</sup>

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<sup>129</sup> Ibid. See also RICCERI, “Economic Subsidy to be Granted to Religious,” p. 162. Ricceri identifies two major problems that most institutes face with the exit of their members. The first is the increased number of religious that have left religious institutes since the Second Vatican Council, even though the document of the Sacred Congregation mentions this too. The second is a whole new mentality or a certain frame of mind regarding social security, which was not noticeable among religious in the past. Ricceri concludes that, considering the sensitivity to social problems of recent times, the provision of the charitable subsidy that responded to the need of the times in which it was decreed, was no longer sufficient in our day.

<sup>130</sup> An institute may conclude that its ex-member is well equipped to provide for his or her livelihood, while the former member in question feels it is not true. It could be a case of one who is healthy, has acquired some educational degrees and obviously has the potential for job opportunities. A situation like this would still generate bad blood between the ex-member and the institute, because while the institute feels it has acted fairly, the ex-member may feel victimised.

Secondly, the nature and extent of the subsidy are to be agreed upon by both the ex-religious and the institute.<sup>131</sup>

SCRIS offered useful suggestions to institutes to enable them to provide charitable subsidy to their members who leave religious life. Among these suggestions are, “the establishment of programs of social security at the Community level or with the intervention of the National Conferences, as well as enrolment of members in the already existing organisations of social security and insurance.”<sup>132</sup>

The Congregation formulated the following directives:

1. As a matter of principle, the norm laid down in paragraph 1 of canon 643 remains in force.
2. Every religious family is urged to provide properly for the spiritual, moral, social and economic well being of those who leave the institute.
3. Religious Institutes should study and adopt suitable measures to provide for the future of their religious and consequently of those who return to the secular state.<sup>133</sup>

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<sup>131</sup> RICCERI, “Economic Subsidy to be Granted to Religious,” p. 162. Ricceri says: “With the modern mentality which tends to assure every citizen a certain continuous economic security, any form of assistance limited in duration, although consistent with the law which uses the more generic phrase ‘some time’ often leaves unsatisfied the interested party, who in various cases was engaged for many years in gainful service to the advantage of the Institute.”

<sup>132</sup> FLANNERY II, pp. 201-202. See RICCERI, “Economic Subsidy to be Granted to Religious,” pp. 168-169. Ricceri notes: “A very interesting experiment has been going on in France since March 1, 1971: the social service of the E.M.I. (Entraide des Missions et des Instituts), created by a permanent commission of the religious of France to help those who leave the religious state. The social service of the E.M.I. is a qualified and competent service, carried on by lay people. (The direction is entrusted at present [1971] to Madame Villot). Its function is to welcome, counsel and give practical direction to ex-religious in order to prepare and help them requalify for adequate employment. The service is given only as a professional agency. It is at the disposition of Superiors and of religious who leave. Its function does not in the least diminish the responsibility of Superiors. (For more information about its structure and operation, see Circular, March 1, 1971; Circular, July, 1972. Address: Madame Villot, Consellière du travail, chef du service social de E.M.I., 119, rue du Président Wilson 92, Levallois – tel. 270.87.52 et 53).”

<sup>133</sup> FLANNERY II, p. 202.

These directives reveal both the consistency and flexibility of the Church in the interpretation of canon 643 of the 1917 Code. There is consistency, because not only does canon 643, §1 remain in force, but also there is an explanation given to buttress this norm. There is no room provided for exceptions to the norm, no concessions to be granted in any situation. On the other hand, there is flexibility because the help to be given to former members has been widened by this document to go beyond financial assistance to include other things (spiritual and moral) that were not mentioned in the past. Furthermore, the Congregation has, by analogy, extended the charitable subsidy to ex-religious equally to men, unlike the 1917 Code that limited it to women religious.

The 25 January 1974 declaration of the Congregation for Religious and Secular Institutes is balanced, trying to be fair both to religious institutes and to the former members who are trying to re-establish themselves in the secular society. The document insists that it is incumbent on institutes to give appropriate assistance to those leaving religious life in order to enable them to find the place in the lay state which is best suited to their capabilities.<sup>134</sup> On the other hand, religious institutes and those who remain faithful to their vocation should not be burdened “with unjustifiable obligations caused by an ill-proportioned generosity towards those who leave the community.”<sup>135</sup> *Sacra congregatio* recommended that the measure of assistance, the financial help to be provided, would have to be weighed according to each individual case.<sup>136</sup> Due to the complexity of the issue of charitable subsidy, the 1974 document concluded that “it is

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<sup>134</sup> See FLANNERY II, p. 201.

<sup>135</sup> Ibid.

<sup>136</sup> See *ibid.*

neither possible nor advisable to formulate general norms applicable to all cases.”<sup>137</sup> The document shows respect for human dignity. It has proved to be helpful to religious superiors and their councils who see it as a yardstick when negotiating an equitable and charitable settlement with their former members. However, this all-important document was not the last that dealt with the issue. Other pronouncements followed and we shall now discuss some of them.

### 2.3.6 - Apostolic Signatura on Exclaustration *ad nutum Sanctae Sedis*

On 28 November 1975, the Apostolic Signatura issued its decision in the case of a religious woman on whom exclaustration *ad nutum* of the Holy See (*exclaustratio ad nutum Sanctae Sedis*) had been imposed.<sup>138</sup> One may question the relevance of imposed exclaustration here, when we should be addressing definitive departure and dismissal from religious life. This case is of interest to our study because, prior to it, there was hardly any formal procedure to be followed in exclaustration *ad nutum Sanctae Sedis*.

The document stated:

The procedure to be followed to impose exclaustration at pleasure on a religious woman in perpetual vows is nowhere prescribed in the Code. However, the practice has developed with the Sacred Congregation for Religious and for Secular Institutes that the same mode of procedure be used as in the case of dismissal of a religious woman but with less rigor as is right [...].<sup>139</sup>

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<sup>137</sup> Ibid.

<sup>138</sup> APOSTOLIC SIGNATURA, Exclaustration imposed by *ad nutum* of the Holy See, 28 November 1975, in *CpR*, 59 (1978), pp. 66-75. English translation in *CLD*, vol. 9, pp. 456-468. This type of exclaustration is imposed on a religious who proves stubborn and incorrigible. The Supreme Moderator would have to establish the incorrigibility on the part of the religious. When this is done the Supreme Moderator is to refer the matter to the Congregation for Religious and Secular Institutes, with the *acta* and documents and the defenses of the religious in question.

<sup>139</sup> *CLD*, vol. 9, p. 459.

Since the same mode of procedure is to be followed as in the case of dismissal, part of what ought to be considered would be the maintenance of the religious on whom exclaustation has been imposed. In the case of the sister in the November 1975 case, the letter written by the Mother General to the Congregation for Religious and Secular Institutes on 23 September 1975, Prot. N. 768/75, disclosed the amount spent on the sister. The Mother General wrote: “[...] I am mindful of my duty to notify you that, with the approval of my Council, I have arranged to the credit of Sister N. N., in consideration of the academic degrees obtained in the institute and of her real needs, adequate economic assistance consisting: in the sum of 300,000 lire to be given to her initially at her departure from the Congregation; in successive monthly payments totalling 150,000 lire for one year; and in the payment of fees and textbooks if she will attend a qualifying course of studies.”<sup>140</sup> At the end of the case, the Apostolic Signatura approved this. Even though this is not a case of departure or dismissal, it still gives us an idea that the Church is concerned with the welfare of any religious who has lost active and passive voice in her institute either temporarily or permanently.

The case of the sister in question was an eye-opener because it revealed that there was no official provision in the 1917 Code for the treatment of religious who were forced to accept exclaustation *ad nutum* of the Holy See. However, shortly after that particular case, the Holy See clarified the procedure to be followed in the dismissal of religious women.

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<sup>140</sup> Ibid.

### 2.3.7 - Procedure for the Dismissal of Religious Women

At the end of 1976, the Congregation for Religious and Secular Institutes issued a circular letter regarding the procedure to be followed in the dismissal of religious women.<sup>141</sup> This is one of the three documents cited in the *Fontes* for the 1983 Code.<sup>142</sup> The letter provides that “every dismissal procedure must be conducted with truly Christian charity, equity and respect for the human person.”<sup>143</sup> Equity, Christian charity and respect for the human person are the most important elements that should also characterise the charitable subsidy.

The December 1976 document concluded:

When the decree of dismissal has gone into effect, the institute shall not fail to assist the departing religious to weave herself into society in the sense of canon 643, §2 and the circular of the Sacred Congregation for Religious issued on 25 January 1974, on the charitable subsidy.<sup>144</sup>

Apart from the detailed procedure for the dismissal of religious women, this document reiterated what canon 643, §2 and the 1974 document said. To assist an ex-religious to weave herself into society entails a lot, depending on each concrete case. The means

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<sup>141</sup> CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Procedure in Dismissal of Religious Women, December 1976, in *CLD*, vol. 8, pp. 448-452. See X. OCHOA, *Leges Ecclesiae post Codicem iuris canonici editae*, collegit, digessit notisque ornavit Xaverius Ochoa, vol. V, no. 4484, Roma, *Commentarium pro Religiosis*, 1973-1978, pp. 7278-7280. This was also reported in *CpR*, 57 (1976), pp. 371-373.

<sup>142</sup> PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Codex iuris canonici, fontium annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1989. The other two have already been mentioned: (1) Circular Letter to local Ordinaries from the Congregation for the Doctrine of the Faith, 13 January 1971, and (2) “On Help to be Given to Those Who Leave Religious Life,” from the Congregation for Religious and Secular Institutes, 25 January 1974.

<sup>143</sup> *CLD*, vol. 8, p. 452. It is interesting to note that this document uses the word “equity.” While the previous document issued on 25 January 1974 advocated fairness towards both the institute and departing members, it did not use the term “equity.”

<sup>144</sup> *Ibid.*

suggested by the 1974 document was “the establishment of programs of social security at the Community level or with the intervention of the National Conferences, as well as enrolment of members in the already existing organisations of social security and insurance.”<sup>145</sup> It also recommended “that institutes set up or support offices for the moral and economic assistance of those who leave, in order to give them advice and help them, according to their qualifications, to find as soon as possible a position and earn a salary in order to maintain themselves decently and properly.”<sup>146</sup> All this requires long-term planning on the part of religious institutes, to establish good projects that would enable them to extend assistance to their ex-members. One method of long-term planning to realise this objective that was emphasised by the Holy See was the establishment of pension plans for religious.

### **2.3.8 - Pensions for Religious (1977)**

One of the projects that could enable religious institutes to extend assistance to their ex-members is a pension plan. It can be either private or established by the State. Religious, like other citizens, have access to various types of pensions. The Congregation for Religious and Secular Institutes addressed this issue in its 1977 guidelines.<sup>147</sup> The document reads:

In point of principle, not only has the Sacred Congregation not objected to pension plans but it has recommended them, pointing out that in certain circumstances this system can prove a solution to the difficulties often

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<sup>145</sup> SCRIS, *Sacra congregatio*, in FLANNERY II, pp. 201-202.

<sup>146</sup> *Ibid.*, p. 202.

<sup>147</sup> SCRIS, “Pensions for Religious,” in *CLD*, vol. 8, pp. 371-372. This undated document was published in 1977. An English translation was published in *Consecrated Life*, 2 (1977-78), pp. 152-153.

created by the economic needs of members of religious institutes who abandon their calling.<sup>148</sup>

Why did the Congregation note that “in certain circumstances this system can prove a solution to the difficulties created by the economic needs of members of religious institutes who abandon their calling?” This is because pensions are not available to religious around the globe; therefore, if they are not available, the system cannot be employed while handling the cases of religious who abandon their calling.<sup>149</sup> Why did the Congregation use the expression “those who abandon their calling?” Does this refer to those who leave voluntarily only? No; the Congregation is addressing a concrete way to help all separated members of religious institutes who are in need of support, whether they left on their own or were dismissed.<sup>150</sup> The Congregation further explained the advantage of such an approach: “Any type of pension follows its holder wherever he/she goes and, therefore, the ex-religious pensioner has the right to collect it and enjoy the use of it personally.”<sup>151</sup> There should be no problem associated with collecting pension benefits by an ex-religious. All that is required is for the ex-religious to notify the appropriate office of any change in his/her address or the address of a duly delegated person, in order to facilitate channelling the pension to him/her when the time comes.<sup>152</sup>

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<sup>148</sup> SCRIS, “Pensions for Religious,” p. 371.

<sup>149</sup> While in the developed nations of the world pension plans are common and most religious benefit from a variety of such plans, the situation is different in many developing nations. We shall say more on this in chapter four, where we shall use Nigeria as an example of a developing nation where most religious do not have any pension plan.

<sup>150</sup> Since pension follows the holder, dismissal from religious life cannot deny one the use of his or her pension.

<sup>151</sup> SCRIS, “Pensions for Religious,” p. 371.

<sup>152</sup> In some cases, however, an ex-religious may be required to notify the appropriate office of any change of name to facilitate the enjoyment of his or her pension. What do we mean

However, problems are often created by some religious who are pension-holders, who claim to reserve the right to dispose of such pensions at their discretion or with the permission of their superiors. Some of them try to circumvent the law by considering their pension as adventitious patrimonial property. The 1977 document observed that this creates tensions between pensioners and their religious superiors, as well as with ecclesiastical administrators.<sup>153</sup> The document goes on to say that the “determination will depend on the type of pension and the type of religious in question (with solemn vows or with simple vows, of societies of common life, and so forth).”<sup>154</sup> However, the document clarifies the issue:

It is also obvious that in no case will it be compatible with the law in effect in this matter that the holder dispose, either at his discretion or even with the permission of the superiors, of the amounts that constitute the monthly, the semi-monthly payment, etc., of the pension. The reason is that, even in the rather rare case where such amounts may be considered as income from patrimonial capital or as adventitious capital, the religious can neither exercise the administration nor enjoy the use and usufruct of such amounts.<sup>155</sup>

Hence, the pension, like other funds that come to a religious, belongs to the religious institute. Pensions are likened to stipends paid to a religious for work done or

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by this? In the past, and even till recently, many religious changed their names at their first religious profession. For example, someone who was originally born and baptized with the names Veronica Kelly, may at her first profession change her name to Sister Mary Paul. Prior to her first religious profession, all her official documents bore Veronica Kelly, while after her profession she changed all official documents to Sister Mary Paul. After leaving religious life the same person may prefer to switch back to her original name, Veronica Kelly. Where this is the case, the new reality ought to be officially registered with the pension plan before she could enjoy her pension.

<sup>153</sup> See SCRIS, “Pensions for Religious,” p. 371.

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*, pp. 371-372.

services performed and are received by the institute to which the religious belongs.<sup>156</sup> Any amount that comes to a religious as recompense for works and services is to be deposited with a local bank or in the bank of the higher administration, as is spelled out in the proper law of the institute, or determined by the competent superior.<sup>157</sup> The Congregation clearly stated that such monies may not in any way be considered as capital to be added to the patrimony whose ownership is retained by religious with simple vows.<sup>158</sup> This document of the Holy See comes as no surprise, since it is consistent with existing ecclesiastical laws. Such norms are *CIC/17*, c. 580, §2<sup>159</sup> and c. 594, §2.<sup>160</sup> For more clarity, the document mentioned different types of pensions generally referred to as professional, old age security, disability compensation. All these are to be rightly considered as the property of the institute. Pensions that are granted by civil authorities as well as legal entities for religious who are ill also belong to the institute, even though these are granted directly to the religious in question and not to the institute.<sup>161</sup> It must be borne in mind that these “are meant to satisfy the fundamental needs of the holder which

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<sup>156</sup> See *ibid.*, p. 372.

<sup>157</sup> See *ibid.* The “local bank” in this context refers either to the bank account of a house of the institute, or to that of a district, or to that of a region. The “bank of the higher administration” refers to the Provincial bank account or that of the General administration.

<sup>158</sup> See *ibid.*

<sup>159</sup> *CIC/17*, c. 580, §2: “Quidquid autem industria sua vel intuitu religionis acquirit, religioni acquirit.” “But whatever the religious acquires by his/her own industry or in respect of his Institute, belongs to the Institute.”

<sup>160</sup> *CIC/17*, c. 594, §2: “Quidquid a religiosis, etiam a Superioribus, acquiritur ad normam can. 580, §2, et can. 582, n. 1, bonis domus, provinciae vel religionis admisceatur, et pecunia quaelibet omnesque tituli in capsam communi deponantur.” “Whatever is acquired by a religious, including the Superiors, according to the terms of canons 580, §2, and 582, 1°, must be incorporated in the goods of the house, or of the province, or of the Institute; and all the monies and titles (*tituli*) shall be deposited in the common safe.”

<sup>161</sup> See *SCRIS*, “Pensions for Religious,” p. 372.

are directly incumbent upon the institute.”<sup>162</sup> Even if a religious receives a pension from his or her patrimony, it is to be treated as interest, respecting the norms enunciated in the institute’s proper law.

The 1977 document was unique and important; it pointed out a practical way by which institutes could raise money to help their ex-members. It aimed at clarifying the confusion of institutes on matters related to internal pensions, but it also succeeded in suggesting concretely what could happen with external pensions (pensions set up by the State). Nevertheless, questions from institutes regarding pensions prompted yet another reply in 1979.

### **2.3.9 - Pensions for Religious (1979)**

An undated letter published in 1979 presented a private response to a question from a Major Superior to the Congregation for Religious and Secular Institutes regarding property and the use of pensions received by women religious with simple, perpetual vows.<sup>163</sup> SCRIS reiterated the guidelines of its 1977 document. The Congregation replied that “pensions granted by a public or private entity as a benefit regularly paid for a job, must, on the basis of can. 580, §2, be turned over to the religious institute. As a result, no right is had by a Sister to dispose of this amount independently of her superior.”<sup>164</sup> Furthermore, social security or health pensions granted either by the State or by another

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<sup>162</sup> Ibid.

<sup>163</sup> SCRIS, “Pensions for Religious,” in *CLD*, vol. 9, pp. 377-378. Also published in *Informationes SCRIS*, 5 (1979), p. 256.

<sup>164</sup> *CLD*, vol. 9, p. 377.

public entity are to be transferred to the institute on whom lies the onus of providing for the needs of its members.<sup>165</sup>

For the first time, SCRIS addressed the issue of revertible pensions (*le pensioni di reversibilità*).<sup>166</sup> It noted that “common law does not provide for a clear and decisive conclusion” on revertible pensions.<sup>167</sup> Therefore, it directed that the issue be researched in the particular law of each institute.<sup>168</sup> However, considering the proper law of the institute that asked the question, the Congregation gave this reply:

From the tenor of this article, we deduce that the religious are obliged to turn over to the institute revertible pensions also, which they will be able to dispose of on occasion only with the permission of the superior.<sup>169</sup>

Once again, there is nothing significantly new with this reply because it only reaffirms the fact that whatever comes to religious belongs to the religious institute, unless the proper law states otherwise on issues regarding pensions, insurance and subsidies. Consequently, while the ideal remains that anything that comes to religious belongs to their institutes, this document equally empowers the proper law of each institute to determine how pensions, insurance and subsidies are to be handled.

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<sup>165</sup> See *ibid.*, p. 377.

<sup>166</sup> See SCRIS, “Pensions for Religious,” in *CLD*, vol. 9, p. 377. A footnote in the document explains: “According to the Consulate General of Italy at Chicago, this is a pension due to a given person, but, after this person’s death, goes to another specified person, e.g., the pension due to a husband, upon his death, goes to his wife.”

<sup>167</sup> See *ibid.*

<sup>168</sup> See *ibid.* It would be interesting to find out how many institutes have actually researched into the issue of revertible pension, as the Congregation had directed. Perhaps, the reason why many have not done anything might be that the issue of revertible pension is not a common occurrence in religious institutes. It could also be that since this document was an answer to a question posed by a Superior General of a particular institute, many institutes may not be aware of this document. It is also possible that some do not see the document as important.

<sup>169</sup> *Ibid.*, p. 378.

While the Holy See encourages religious institutes to engage in activities and works that would qualify them for pensions, it is very careful in setting the parameters right, so that accruing pensions would not force religious to do anything that would militate against their vow of poverty. It concluded by encouraging religious “to cultivate with joy the spirit of poverty in the full renunciation of material goods.”<sup>170</sup>

### CONCLUSION

The aim of this chapter, as we indicated at the beginning, was to equip ourselves with the knowledge of the practice of the Church with regard to charitable subsidy to ex-religious prior to the 1983 Code. We started with a case in France that was resolved on 11 March 1898, which stands out as a landmark before the 1917 Code, to give us an idea of the position of the Church on those who have left religious life or have been dismissed from it. Considering all we have seen in this chapter, one can conclude that the attitude of the Church towards ex-religious has been characterised by some degree of consistency, flexibility and genuine concern.

First among those qualities that characterise the attitude of the Church towards ex-religious is consistency. Why do we say consistency? In spite of the powerful argument presented by the advocate of the ex-religious priest, that his client deserved an indemnity on the basis of “equity” and “Christian charity,” his appeal was rejected by the Congregation for Bishops and Regulars. In other words, the decision of the Holy See in this case implied that an ex-religious is not entitled to any form of compensation from his former institute. It is obvious that the reason for the refusal of that appeal was not

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<sup>170</sup> Ibid.

necessarily based on the theology of religious life as on the attitude of the dismissed religious priest. The decision handed down by the Holy See in that case before the 1917 Code has, in a way, stood the test of time.

Official legislation of the Church on charitable subsidy was found in the 1917 Code of Canon Law as canon 643. The first paragraph of that canon, as already seen, stipulates that anyone who leaves a religious institute either on the expiration of the term of his/her temporary vows or by virtue of an indult of secularisation, or whoever has been dismissed, cannot seek compensation for the services rendered by him/her to the institute (c. 643, §1).

The 1974 declaration, *Sacra congregatio*, devoted to the help to be given to those who leave religious institutes, reiterated that the norm laid down in canon 643, §1 remained in force; there can be no compensation to ex-religious for services rendered to their religious institutes when they were members. This placed another firm stamp of approval on “no compensation” to ex-religious by the former religious institutes, even though the declaration was visibly in great sympathy with ex-religious. All the cases that ex-religious brought to the attention of the Holy See, requesting compensation for work done while they were members of their former institutes, were turned down. None of the two pronouncements on pension plans disagreed with the stand of the Church on “no compensation” to ex-religious.

On the other hand, the second quality that characterises the attitude of the Church towards ex-religious is also a noticeable degree of flexibility over the years with regard to the obligations of religious institutes towards their former members from the moment of

legal separation from their institutes. While the Holy See denied every assistance to the ex-religious priest in its 11 March 1898 decision, the 1917 Code came out with a provision for women religious who have been received without dowry and who could not provide for themselves out of their own resources (c. 643, §2).<sup>171</sup> In 1924, there was another concession granted to those women religious who, though admitted with dowry, on leaving religious life, the dowry was judged insufficient to qualify for a reasonably estimated charitable subsidy. In 1974, *Sacra congregatio* provided even more flexibility. Charitable subsidy was no longer circumscribed to women religious; it was officially extended to men religious.<sup>172</sup> The 1974 declaration clearly made it an obligation for religious institutes to take care of their members and, within certain limits, of their former members. The declaration went so far as to suggest what religious institutes might do to ensure that they possess the resources to assist their former members in their needs.

The third quality that characterises the attitude of the Church towards ex-religious is “concern” for them. We have already observed that even though the Church battled with the question of religious dowry because it was originally thought to be simony, it was finally endorsed by the Church to ensure that women who were admitted into religious life were well looked after, and that if they left religious life, the restitution of the dowry would help to re-establish them in society. The 1974 document noted that the moment of departure from religious life is so sensitive that it involves the whole person,

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<sup>171</sup> This is a remarkable shift from the decision of the Holy See in 1898 in the case of the priest who was denied any help, not even on the basis of “equity” and “Christian charity.”

<sup>172</sup> There is no doubt that it was already extended to men by analogy prior to the 1974 document. However, it was from this document that we observe that an official pronouncement from the Holy See did not restrict charitable subsidy to women religious only.

therefore it requires that the “person leaving should depart feeling that he or she is being treated with all the respect due to a person.”<sup>173</sup> The same requirement for respect for human dignity has been noted in jurisprudence of the Holy See. As a matter of fact, the whole idea of assisting an ex-religious, who legally has no right to ask for compensation from her institute but can expect assistance in the nature of charitable subsidy, has respect for human dignity as its underlying principle. The 1976 circular letter on the procedure to be followed in the dismissal of religious women, as well as the two documents on pensions, published in 1977 and 1979, show the Church’s efforts to protect and promote human dignity.

Apart from the level of consistency, flexibility and concern for ex-religious which characterise the attitude of the Church towards them, the various documents on charitable subsidy from the Holy See raise some other issues of great import. The 1974 declaration, *Sacra congregatio*, attempted to provide an objective interpretation of canon 643. As already seen, it obliged every religious institute to provide for the spiritual, moral, social and temporal welfare of its members. No attempt is made by the declaration to provide examples of the things that fall under these categories. Furthermore, it clearly stated that the same obligation should be extended to separated members “in some fashion,” and “within certain limits.” What does it exactly mean by “in some fashion” and “within certain limits”? The declaration leaves much room for interpretation.

The same 1974 declaration said that “the measure of assistance [to ex-religious] depends on the possibility of the Institute itself and of its obligations of charity, equity

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<sup>173</sup> SCRIS, *Sacra congregatio*, in FLANNERY II, p. 201.

and justice towards its members who persevere in the community, not to burden them with unjustifiable obligations caused by ill-proportioned generosity towards those who leave the community.”<sup>174</sup> Does it mean that if a religious institute does not have enough resources to take care of those who are faithful to their vocation, it should not bother to do anything by way of charitable subsidy to separated members? This is far from being the case. In the same declaration it had earlier been established that while a separated member has no right to ask for remuneration, it does not free an institute from its duty, based on the principles of charity, equity, justice and social responsibility, of assisting those who leave.

To enable religious institutes to extend a charitable subsidy to former members, the Holy See floated some helpful ideas. It encouraged religious institutes to explore and employ programmes of social security at different levels for their members. It also directed them to establish offices to give moral and economic assistance in order to provide former members with good advice.<sup>175</sup> *Sacra congregatio* recommended: “Religious institutes should study and adopt suitable measures to provide for the future of their religious and consequently of those who return to the secular state.”<sup>176</sup> In the thirty years since this declaration was issued, it would be interesting to see the measures that the Holy See is taking to ensure that religious institutes are implementing the directives.

In referring to *CIC/17*, canon 643, §2, originally meant for the benefit of ex-religious women and subsequently applied also to ex-religious men, *Sacra congregatio*

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<sup>174</sup> Ibid.

<sup>175</sup> It might be interesting to carry out a survey to see how many institutes, especially those in Africa and in other developing nations, have implemented these recommendations.

noted: “But the prescripts of this canon appear inadequate in view of the new social conditions obtaining today and in the light of the contemporary social conscience.”<sup>177</sup> If the Holy See saw the prescripts of *CIC/17*, c. 643, §2 as inadequate about fifty-six years after the promulgation of that Code, it may not be unreasonable to say that *Sacra congregatio* may be inadequate for our present world, thirty years after its publication. The world has seen more rapid social changes since the Plenary Assembly of the Congregation for Religious and Secular Institutes in October 1972 and *Sacra congregatio* which was a direct result and product of that Plenary Assembly. One may not be expecting too much by desiring to see the issue of charitable subsidy to ex-religious revisited by the present Congregation for Institutes of Consecrated Life and Societies of Apostolic Life (=CICLSAL), after thirty years of *Sacra congregatio*.

However, one has to appreciate the concern the Holy See has for both religious institutes and ex-religious. The Congregation for Religious and Secular Institutes took a step forward by publishing some guidelines that encouraged institutes to register their members in various types of pension plans. The Congregation made it clear that the reason for encouraging pension plans for religious was to “provide a solution to the difficulties often created by the economic needs of members of religious institutes who abandon their calling.”<sup>178</sup> The 1977 and the 1979 documents on pensions for religious have proved to contain valuable practical suggestions that have been helping many religious institutes, especially in the developed world, to extend charitable subsidy to

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<sup>176</sup> SCRIS, *Sacra congregatio*, in FLANNERY II, p. 202.

<sup>177</sup> *Ibid.*, p. 201.

<sup>178</sup> SCRIS, “Pensions for Religious,” in *CLD*, vol. 8, p. 371.

their former members. Unfortunately, the story is not exactly the same in most of the developing nations.

We can conclude by saying that although ex-religious have no right to any form of compensation in the strict sense of the word, religious institutes are morally and canonically obliged to extend assistance to their former members. The charitable subsidy to ex-religious has a temporary character; it is not a life pension. No two cases are the same; a number of factors ought to be taken into consideration to determine the amount of help required in each case.

Having acquainted ourselves with the legislation of the Holy See prior to and since the promulgation of the 1917 Code, including the interim legislation that followed, we now proceed to discuss the issue of charitable subsidy in the 1983 Code. We will examine in detail the factors that impinge on practical decisions related to extending equity and evangelical charity towards separated members of religious institutes.

## **CHAPTER THREE**

### **CANON 702 OF THE 1983 CODE AND ITS APPLICATION**

#### **INTRODUCTION**

The focus of this chapter is on the application of canon 702 of the 1983 Code, especially on its second paragraph, given that the issue of charitable subsidy extended to separated members of religious institutes is addressed in this canon. While this canon is based on canon 643 of the 1917 Code, it differs significantly from the previous law. Therefore, we shall first discuss the development and drafting of our chosen canon. We will take cognisance of what the commentaries on this canon are saying, with particular attention given to the second paragraph. The two essential requirements of canon 702, §2 are equity and evangelical charity towards separated members of religious institutes. We will discuss both concepts within the context of this norm.

After analyzing the norm, and knowing that the Code often tells us what to do but not how to accomplish it, we will consider how some religious institutes have tried to put the recommendations of this canon into practice. Examples will be drawn from the North American context (the United States of America and Canada), and from a couple of other countries. We will point out those institutes that have developed appropriate guidelines or those which have proposed guidelines to assist them in extending a charitable subsidy towards separated members of religious institutes.

### 3.1 - THE DRAFTING OF CANON 702

The 1977 Schema,<sup>1</sup> in its draft text of canon 702, §1 of the 1983 Code, repeats almost verbatim canon 643, §1 of the 1917 Code with only a minor but nonetheless important modification. In the Schema itself, the text that corresponds to the present canon 702, §1 was initially c. 80, but in its printed text it was designated as canon 87.

When it was revised at the April 1980 session, the text read as follows:

Whoever lawfully leaves a religious institute or is lawfully dismissed from one, cannot claim anything from the institute for any work rendered to it (from the point of admission into the institute).<sup>2</sup>

The draft canon spoke of the one who lawfully left a religious institute or was lawfully dismissed from one. Canon 643, §1 of the 1917 Code spoke of one who left “at the expiration of temporary vows or by virtue of an indult of secularization.” The draft text applied to all separated members, irrespective of the point where they left or were dismissed. However, both the former law and the draft assert the principle that one who leaves or is dismissed cannot ask for any compensation from the institute.

At a later meeting of the *coetus*, the consultants had another opportunity to modify the former draft. One of the consultants suggested that the first paragraph of the canon would read better if the phrase “[...] work rendered to,” were replaced with “[...]”

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<sup>1</sup> PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema canonum de Institutis vitae consecratae per professionem consiliorum evangelicorum*, [Romae], Typis polyglottis Vaticanis, 1977, pp. 26-28.

<sup>2</sup> PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, “Acta Commissionis: Canon 80,” in *Communicationes*, 13 (1981), p. 360. This canon reads: “Qui ab Instituto religioso legitime egrediantur vel ab eodem legitime dimissi fuerint, nihil ab eo repetere possunt ob quamlibet operam illi praestitam (inde ab admissione in Institutum).”

work rendered in” the institute.<sup>3</sup> The same consultant also suggested that the words in brackets (“from the point of admission into the institute”)<sup>4</sup> be dropped. Another consultant was of the same opinion.<sup>5</sup> The same consultant also wanted the canon to read thus: “[...] the service rendered in it in virtue of religious profession,”<sup>6</sup> in order to emphasise that it is God, not the institute, for whom the work is done.<sup>7</sup> The Secretary was of the opinion, however, that it was not necessary to give the reason.<sup>8</sup> Another consultant was interested in the implications of the word “work.” He was of the opinion that “the cases are so different that it seems better to use a generic formula of whatever work they have accomplished.”<sup>9</sup> In this way, the problem of defining what is meant by work is completely avoided.

At the final vote the consultants were asked if they approved paragraph one with the amendment that “*in eo*” replace “*illi*,” and to suppress the parenthesis or words in

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<sup>3</sup> Ibid. The consultant prefers “[...] *in eo praestitam*” to “[...] *illi praestitam*.” There is much sense to this suggestion because to talk of “service rendered to the institute” would have significant legal implications. If one renders a service to another or to an organisation, that person naturally is entitled to his or her pay. But to see it as “service rendered in the institute,” automatically shows that the person is a member and the service rendered is better understood as service rendered to oneself. Consequently, the person cannot be asking another person or an organisation to pay him or her for service rendered to himself/herself.

<sup>4</sup> Ibid. : “[...] *inde ab admissione in institutum*.”

<sup>5</sup> Ibid.

<sup>6</sup> Ibid. : “[...] *in eo vi professionis religiosae praestitam*.”

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid. “[...] *ob quamlibet operam*.” Even though this is not explained anywhere in the Schema, the question may arise what qualifies as “work.” The Code does not define it. Is it administrative, physical or mental? Does it refer only to work that attracted some financial payment or does it also include work performed by those religious who were assigned to take care of domestic or household chores? Any attempt to define work could create problems.

brackets. Eight of the consultants agreed. Taking cognisance of the amendments, the final text, which is now c. 702, §1 of the 1983 Code, reads:

Whoever lawfully leaves a religious institute or is lawfully dismissed from one, cannot claim anything from the institute for any work done in it.<sup>10</sup>

This text shows that there was no substantial change between canon 643, §1 of the 1917 Code and c. 702, §1 of the 1983 Code. The emphasis on looking at the work done by a former member as work done “in” the institute, and not as work done “for” the institute, is a significant distinction. Having established the principle in canon 702, §1, the *coetus* now directed its attention to the second paragraph.

The draft text that was tabled for discussion at the final meeting of the *coetus* read thus:

The institute, however, should observe equity and evangelical charity towards the member who is separated from it as well as treat this member with appropriate solicitude.<sup>11</sup>

This draft differed significantly from canon 643, §2 of the 1917 Code. While the earlier canon restricted charitable subsidy to women religious only, this draft abolished such a

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<sup>10</sup> Canon 702, §1. The Latin text of this prescript reads: “Qui ex instituto religioso legitime egrediantur vel ab eo legitime dimissi fuerint, nihil ab eodem repetere possunt ob quamlibet operam in eo praestitam.”

<sup>11</sup> The Latin text as contained in *Communicationes*, 13 (1981), p. 360 reads: “Institutum tamen aequitatem et evangelicam caritatem servet erga sodalem qui ab eo separatur necnon congruentem sollicitudinem adhibeat.” The word “*tamen*” is missing in the version of the Schema published in America. PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Schema of Canons on Institutes of Life Consecrated by Profession of the Evangelical Counsels: Draft*, Washington, DC, Publications Office, United States Catholic Conference, 1977, p. 52. The English translation from this reads: “The institute should observe equity and evangelical charity toward the member who has left the institute and, moreover, treat him with proper concern.”

restriction.<sup>12</sup> The draft contains no mention of the dowry, or of the need for mutual agreement between the institute and the separated member. Consequently, any reference to the role of the local Ordinary in the case of disagreement was equally removed.

The consultors considered further refinement. One suggested the removal of the phrase “as well as should make use of congruent (appropriate) solicitude (*‘necnon congruentem sollicitudinem adhibeat’*). Another consultant was of the opinion that the word “*caritas*” comprises “*sollicitudo*.” This was to buttress the argument that the final phrase ought to be dropped. In the end it was put to a vote; the members of the Commission were asked if they approved of paragraph two with the suppression of the final phrase, “*necnon congruentem sollicitudinem adhibeat*.” Nine agreed. Consequently, canon 702, §2 reads: “The institute, however, is to show equity and evangelical charity towards the member who is separated from it.”

### 3.2 - INTERPRETATION OF CANON 702

Generally speaking, commentaries on canon 702 of the 1983 Code appear scanty or vague.<sup>13</sup> A few do not even have any word of explanation on this canon.<sup>14</sup> Most commentators are greatly influenced by the theology of religious life as found in conciliar

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<sup>12</sup> We have already seen that documents from the Holy See and actual practice between the promulgation of the previous Code and the 1983 Code by analogy extended charitable subsidy to men as well.

<sup>13</sup> See J.F. GALLEN, *Canon Law for Religious: An Explanation*, New York, Alba House, 1983, pp. 206-207.

<sup>14</sup> See E. CAPARROS, M. THÉRIAULT (†), J. THORN (†) (eds.), *Code of Canon Law Annotated*, Second edition revised and updated of the 6<sup>th</sup> Spanish language edition of the commentary prepared under the responsibility of the Instituto Martín de Azpilcueta, Montréal, Wilson & Lafleur Limitée, 2004, p. 557. See also T. PAZHAYAMPALLIL, *A Commentary on the New Code of Canon Law*, Bangalore, KJC Publications, 1985, pp. 471-478.

documents which is reflected in the new Code. Most therefore devote more space to the first paragraph than to the second because the norm in the second paragraph flows from the first and makes sense only when read in conjunction with it.

Canon 702 of the 1983 Code appears simple and uncomplicated.<sup>15</sup> Most commentaries agree that the reason for this norm is based on the theological implications of religious profession that have both a spiritual and a moral aim.<sup>16</sup>

R. McDermott agrees with J.M. Lozano who thinks that canon 702, §1 is in support of the traditional teaching of the Church as well as that of Saint Thomas Aquinas who sees religious life as a total self donation to the Lord (“*totaliter, totam suam vitam*”).<sup>17</sup> This conclusion conforms to the concept found in the dogmatic constitution on the Church, *Lumen gentium*, which reads:

The Christian who pledges himself to this kind of life binds himself to the practice of the three evangelical counsels by vows or by other sacred ties of a similar nature. He consecrates himself wholly to God his supreme love. In a new and special way he makes himself over to God, to serve and honor him. True, as a baptized Christian, he is dead to sin and dedicated to God; but he desires to derive still more abundant fruit from the grace of his baptism. For this purpose he makes profession in the Church of the evangelical counsels. He does so for two reasons: first, in order to be set free from hindrances that could hold him back from fervent charity and

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<sup>15</sup> See HOLLAND, “Policies When a Member Leaves the Religious Institute,” p. 128.

<sup>16</sup> See E. GAMBARI, *Religious Life According to Vatican II and the New Code of Canon Law*, Boston, MA, Daughters of Saint Paul, 1986, p. 588. See also SHEEHY et al (eds.), *The Canon Law, Letter & Spirit*, p. 394; F. G. MORRISSEY, “The Dismissal of Members,” in Á. MARZOA, and J. MIRAS and R. RODRÍGUEZ-OCAÑA (eds.), *Exegetical Commentary on the Code of Canon Law*, vol. II, prepared under the responsibility of the Martin de Azpilcueta Institute, Faculty of Canon Law, University of Navarre.. English language ed., E. CAPARROS (ed.), Montréal, Canada, Wilson & Lafleur, 2004, pp. 1886-1887.

<sup>17</sup> See R. MCDERMOTT, “Canon 702, §2 - Equity and Charity to Separated Members,” in *CLSA Proceedings*, 52 (1990), p. 121. McDermott cites J.M. LOZANO, *Discipleship: Towards an Understanding of Religious Life*, translated by B. WILCZYNSKI, Chicago, Claret Center for Resources in Spirituality, 1983, pp. 88-89.

perfect worship of God, and secondly, in order to consecrate himself in a more thoroughgoing way to the service of God.<sup>18</sup>

This conciliar teaching is also expressed in canon 607, §1 of the 1983 Code:

Religious life, as a consecration of the whole person, manifests in the Church the marvellous marriage established by God as a sign of the world to come. Religious thus consummate a full gift of themselves as a sacrifice offered to God, so that their whole existence becomes a continuous worship of God in charity.<sup>19</sup>

By their profession, religious consecrate themselves to God in a particular religious family through the ministry of the Church. Therefore, they consciously make a free donation of themselves to God through their profession and they accept the consequences of this profession.<sup>20</sup> Canon 654 further explains the implications of religious profession in this way: “By religious profession members make a public vow to observe the three evangelical counsels. Through the ministry of the Church, they are consecrated to God and are incorporated into the institute with rights and duties defined by law.”<sup>21</sup>

The obligations and rights that derive from religious profession, as far as our study is concerned, include canons 668, §3 and 670.<sup>22</sup> Canon 668, §3 regulates that whatever a religious acquires through personal labour or on behalf of the institute automatically belongs to the institute, unless the proper law of the institute states otherwise in matters related to pensions, grants or insurance. Canon 670, on the other

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<sup>18</sup> *LG*, 44.

<sup>19</sup> *CIC/83*, c. 607, §1. See also MCDERMOTT, “Canon 702, §2 – Equity and Charity to Separated Members,” p. 122.

<sup>20</sup> See MCDERMOTT, “Canon 702, §2 – Equity and Charity to Separated Members,” p. 123.

<sup>21</sup> *CIC/83*, c. 654.

<sup>22</sup> See HOLLAND, “Policies When a Member Leaves the Religious Institute,” in p. 129.

hand, establishes that the institute is to provide the members with everything that is necessary for them to live out their vocation, in accordance with the proper law of the institute.<sup>23</sup> As a result of these norms, religious do not own their earnings, and consequently, if they were to leave the institute cannot ask to be given back anything they earned as members of the institute.

McDermott also holds that one who leaves religious life “has not owned his or her earnings and has accumulated nothing.”<sup>24</sup> She further argues that a separated member of a religious institute “has received formation, education, food, shelter, and all that was reasonably necessary to fulfil his or her vocation. Thus one who leaves the institute has received much, but aside from possible personal property, he or she has nothing.”<sup>25</sup>

Canon 701 establishes that by lawful dismissal, the vows, the obligations and rights that derive from religious profession cease.<sup>26</sup> This being so, the *right* of separated members to obtain support from the institute is equally lost. There is no doubt that the norm of canon 702, §1 apparently, but only apparently, leaves an ex-religious without the

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<sup>23</sup> Ibid. Here Sharon Holland explains thus: “In terms of normal human needs, the institute provides shelter, food, clothing, health care, travel, etc. In terms specific to a vocation in a particular institute, it must provide formation, preparation for particular apostolates or missions, retreat opportunities, etc.”

<sup>24</sup> R.M. MCDERMOTT, “Institutes of Consecrated Life and Societies of Apostolic Life,” in J.P. BEAL, J.A. CORIDEN, T.J. GREEN (eds.), *New Commentary on the Code of Canon Law*, Commissioned by the Canon Law Society of America, New York, NY/Mahwah, NJ, Paulist Press, 2000, p. 872.

<sup>25</sup> Ibid.

<sup>26</sup> Canon 701: “By lawful dismissal both the vows and the rights and the duties deriving from profession automatically cease. If the member is a cleric he may not exercise sacred orders until he finds a Bishop who will, after a suitable probation, receive him into his diocese in accordance with can. 693, or who will at least allow him to exercise his sacred orders.” See MORRISEY, “De dimissione sodalium,” p. 1792. See also SHEEHY et al. (eds.), *The Canon Law, Letter & Spirit*, p. 394; MCDERMOTT, “Institutes of Consecrated Life and Societies of Apostolic Life,” p. 871.

much-needed support, while it protects religious institutes against the unreasonable demands of ex-members.<sup>27</sup>

Canon 702, §2<sup>28</sup> provides the required balance to the first paragraph: granted, the religious who leaves an institute has no right to compensation, yet the institute is expected to show equity and evangelical charity towards the ex-member. This canon, therefore, is said to be more pastoral than canon 643, §2 of the 1917 Code.<sup>29</sup>

Most of the commentaries on canon 702, §2 fall back on the 1974 document from the Congregation for Religious and Secular Institutes that we have already seen. The assistance should not be reduced to economic or material needs only but should also include the spiritual, moral and social dimensions of the person's life.<sup>30</sup> In the application of equity and evangelical charity, commentators agree that a number of factors would have to be taken into consideration. Some of these factors include "age [of the separated religious], health, education, employable skills, personal property, investment in work-related and/or government pension programs, the financial status of the institute, and its capacity to support all its members into the future."<sup>31</sup> It is interesting to note that the canon speaks of "equity" and "evangelical charity," and does not consider or use the

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<sup>27</sup> See HOLLAND, "Policies When a Member Leaves the Religious Institute," p. 129.

<sup>28</sup> We have already noted that while the first paragraph of canon 702 is essentially the same as canon 643, §1 of *CIC/17*, the second paragraph of canon 702 is different. There is no reference to dowry any longer, and it is no longer restricted to women religious.

<sup>29</sup> See HOLLAND, "Policies When a Member Leaves a Religious Institute," p. 130.

<sup>30</sup> SCRIS, *Sacra congregatio*, in FLANNERY II, p. 200.

<sup>31</sup> MCDERMOTT, "Institutes of Consecrated Life and Societies of Apostolic Life," p. 872. We intend to discuss these factors shortly.

word, “justice.”<sup>32</sup> We can now turn our attention to the principles of “equity” and “evangelical charity,” which are the most significant elements of c. 702, §2.

### 3.3 - EQUITY AND EVANGELICAL CHARITY

Canon 702, §2 simply expects religious institutes to translate into action the principles of equity and evangelical charity towards separated members. The concept of equity is not an easy one to comprehend.<sup>33</sup> The equity under discussion here is canonical equity. We will attempt to explain the term, and take a cursory look at its historical development, hoping that this will prove beneficial in understanding equity in the Code of Canon Law, especially as it relates to canon 702, §2. Nevertheless, we do not intend to discuss the concept of equity in great detail, since there is much literature already available on this concept.<sup>34</sup>

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<sup>32</sup> See MORRISEY, “De dimissione sodalium,” p. 1793. In this commentary Morrisey says: “El canon habla de ‘equidad’ y de ‘caridad evangélica’. Nótese que evita de intento utilizar la palabra ‘justicia’. Dado que en muchos países la administración de justicia depende de los tribunales civiles, el Código quiere así evitar proporcionar a religiosos descontentos la ocasión para introducir su causa ante los tribunales civiles.” He notes that the word “justice” was intentionally omitted because in many countries the administration of justice is reserved to secular tribunals. See also MCDERMOTT, “Institutes of Consecrated Life and Societies of Apostolic Life,” p. 872.

<sup>33</sup> See M. AMEN, “Canonical Equity Before the Code,” in *The Jurist*, 33 (1973), Part I, p. 3.

<sup>34</sup> For detailed accounts on the historical development of canonical equity, See J.J. COUGHLIN, “Canonical Equity,” in *StC*, 30 (1996), pp. 403-435; M. AMEN, “Canonical Equity before the Code,” in *The Jurist*, 33 (1973), pp. 1-24, and Part II, pp. 256-295; F.J. URRUTIA, “Æquitas canonica,” in *Periodica*, 73 (1984), pp. 33-38; P. FEDELE, “Æquitas canonica,” in *Apollinaris*, 51 (1978), pp. 415-439; G. LESAGE, “Le droit ecclésial et la miséricorde,” in *StC*, 14 (1980), pp. 430-449; C. LEFEBVRE, *Les pouvoirs du juge en droit canonique: contribution historique et doctrinale à l’étude du c. 20 sur la méthode et les sources en droit positif*, Paris, Recueil Sirey, 1938; E. WOHLHAUPTER, *Æquitas canonica: Eine studie aus dem Kanonischen Recht*, Paderborn, [n. p.]1931; A. SHEEHAN, *Canonical Equity: An Historical Synopsis*, Unpublished Licentiate Thesis, Washington, DC, The Catholic University of America, 1960.

### 3.3.1 - Historical Development of the Concept of Equity

The concept of equity has been compared to some other concepts like Aristotle's *ἐπιείκεια* (*epieikeia*) and the *οἰκονομία* (*oikonomia*) of the Orthodox Church, especially the Greek Orthodox Church. Aristotle introduced his idea of *epieikeia* in the context of his reflections on law and justice in the *Nicomachean Ethics*.<sup>35</sup> Aristotle believed that positive human law is defective as a result of its universal nature.<sup>36</sup> In Book V of *Nicomachean Ethics*, he writes:

The reason is that all law is universal but about some things it is not possible to make a universal statement which will be correct. In those cases, then, in which it is necessary to speak universally, but not possible to do so correctly, the law takes the usual case, though it is not ignorant of the possibility of error. And it is none the less correct; for the error is not in the law nor in the legislator but in the nature of the thing, since the matter of practical affairs is of this kind from the start.<sup>37</sup>

Aristotle invokes *epieikeia* in a situation like this to do what the law was unable to do, namely, to deliver justice, because *epieikeia* is regarded as just.<sup>38</sup> For Aristotle, *epieikeia* did not only facilitate justice, but it discharged a superior form of justice.<sup>39</sup> *Epieikeia* steps in to correct the defect in the law.

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<sup>35</sup> See L. ÖRSY, Commentary on canons 1-28, in J.A. CORIDEN, T.J. GREEN, and D.E. HEINTSCHEL (eds), *The Code of Canon Law: A Text and Commentary*, New York, Paulist Press, 1985, p. 42. See also V.R. UY, *The Principle of Equity in the Code of Canon Law: An Historical and Canonical Study*, JCD diss., Romae, Pontificia Studiorum Universitas a. S. Thoma Aq. in Urbe, 2001, pp. 11-12.

<sup>36</sup> See J. BARNES (ed.), *The Complete Works of Aristotle*, vol. II, Princeton, NJ, Princeton University Press, 1984, p. 1795. See also ÖRSY, Commentary on canons 1-28, p. 42. See also UY, *The Principle of Equity in the Code of Canon Law*, p. 12.

<sup>37</sup> See BARNES (ed.), *The Complete Works of Aristotle*, vol. II, pp. 1795-1796.

<sup>38</sup> *Ibid.*, p. 1796.

<sup>39</sup> *Ibid.*

Another concept that is thought to come close to equity is the *οίκονομία* (*oikonomia*) of the Orthodox Churches. With regard to *oikonomia*, L. Örsy notes:

Now, what happens in the case of *oikonomia* is that the bishop, the *oikonomos* of the house of God, turns to the Risen One and brings the insoluble situation before Him. Through an *analogia fidei*, he searches and seeks how the Lord in His power would heal a wound, would redress an injustice, would bring peace where it is needed. Then, because the Church has the power to ‘bind and loose’, the *oikonomos* himself (never less than a bishop, or a synod of bishops) brings redemption into the situation in which everything seemed to be amiss.<sup>40</sup>

It follows that *oikonomia* stems from the power of Christ who is present in the Christian community and guides the actions of the community. It is invoked only when the existing law has no provision for a particular situation. It is, therefore, a superior structure that supplies a solution to a problem when the law does not have anything to offer. However, according to Örsy, neither *ἐπιείκεια* (*epieikeia*) nor *οίκονομία* (*oikonomia*) is to be equated to equity.<sup>41</sup> Equity is different from *ἐπιείκεια* (*epieikeia*) because the former belongs to the external forum, while the latter belongs to the internal forum.<sup>42</sup> Equity should not “be confused with the Orthodox concept of *oikonomia*, which is a non legal device employed by a bishop or synod of bishops to resolve an inextricable legal conundrum.”<sup>43</sup>

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<sup>40</sup> See ÖRSY, Commentary on the canons 1-28, p. 44.

<sup>41</sup> See ÖRSY, Commentary on the canons 1-28, pp. 42-43.

<sup>42</sup> See C. LEFEBVRE, “Épikie,” in R. NAZ (ed.), *Dictionnaire de droit canonique*, vol. 5, Paris, Letouzey and Ané, 1953, pp. 364-365. The author writes: “L’équité semble donc constituer l’élément inspirateur de l’épikie. [...] L’épikie au sens strict s’en distingue-t-elle nettement, au point qu’elle a fini par être restreinte au for interne.”

<sup>43</sup> Ibid.

The principle of equity, which can be traced back to Roman law, has been in use since the third century BC.<sup>44</sup> Roman law itself traces its origin to the norms of the Twelve Tables which came into existence in the sixth century BC.<sup>45</sup> The Twelve Tables gradually developed into a strict system of laws that was also strictly interpreted to the detriment of the people it was meant to serve.<sup>46</sup> In addition, the system could not serve the needs of many foreigners who came to Rome or were under the authority of the Roman government. As a result, a different magistrate, the *praetor peregrinus*, was appointed in 242 BC to take care of the needs of strangers and aliens, while the *praetor urbanus* established in 367 BC retained jurisdiction over cases related to citizens.<sup>47</sup> Roman law did not bind the *praetor peregrinus* since he administered justice to foreigners only. Therefore, he freely appealed “to the ideals of natural justice, to the demands of human nature, to the image of a good head of a family, to the ways of a reasonable person, and to administer justice accordingly.”<sup>48</sup> With the passage of time, a number of succeeding *praetores* developed a different system of laws that did not depend on the Twelve Tables “but on the ethical ideas of the Roman people.”<sup>49</sup> The *praetor peregrinus* felt that the laws of the Twelve Tables were too narrow and unrealistic; so, he had to employ some ethical principles to establish a new set of legal norms. The initiative of the various

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<sup>44</sup> See ÖRSY, Commentary on the canons 1-28, p. 42.

<sup>45</sup> Ibid., p. 43.

<sup>46</sup> See *ibid.*

<sup>47</sup> See B. NICHOLAS, *An Introduction to Roman Law*, Oxford, Clarendon Press, 1979, p. 4. See also H.F. JOLOWICZ and B. NICHOLAS, *Historical Introduction to the Study of Roman Law*, Cambridge, Cambridge University Press, 1977, pp. 98-101; ÖRSY, Commentary on the canons 1-28, p. 43.

<sup>48</sup> ÖRSY, Commentary on the canons 1-28, p. 43.

*praetores* proved so successful and equitable that it “superseded all civil laws, and was applied to all, aliens and citizens alike.”<sup>50</sup> In brief, this was how equity made its appearance in Roman law. According to Örsy, “Equity in Rome meant to invoke higher principles than the law could provide, and with the help of those principles to give a balanced solution to legal problems. Thus, harmony between moral and legal issues was re-established.”<sup>51</sup> Equity corrected the defective provisions of the law and also supplied legal relief that was not provided for in the existing law.<sup>52</sup>

Equity also made its entry into the legal system of England almost the same way it made its entry into Roman law. The common law of the king was the normal procedure for administering justice in the courts. From the late Middle Ages onward, this system of law proved an inadequate way of bringing about justice because of its rigidity. Anyone who felt that natural justice had not been served in the king’s common law court appealed to the chancellor’s court. The chancellor was described as “the keeper of the king’s conscience.”<sup>53</sup> During the formative years of equity, the chancellors were bishops who exercised extraordinary jurisdiction in the English High Court of the Chancery and administered justice based on Christian principles and morality.<sup>54</sup> Like the Roman *praetor peregrini*, the chancellor in England invoked a higher principle and gave justice

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> See AMEN, “Canonical Equity before the Code,” pp. 14-15.

<sup>53</sup> ÖRSY, Commentary on the canons 1-28, p. 43.

<sup>54</sup> See *ibid.*

accordingly.<sup>55</sup> In each case, equity was applied because the legal system was inadequate, but through the instrumentality of an official, what was lacking in the law was supplied to give satisfaction to the needs of human nature or by appealing to Christian values.<sup>56</sup> This is why Örsy says: “Authentic equity, therefore, comes into play when the law is unable to uphold a value important to the community. The community then turns to another (non-legal) system of ideas to justify a departure from the legal system. It lets the value prosper intact, and it brings the law into the service of that value.”<sup>57</sup>

### 3.3.2 - Equity in Canon Law

Canon law, like any other legal system in the world today, is not perfect. The legislator of canon law is a finite being with human limitations. His limitations cannot but reflect in the body of laws he promulgates. A. McCoy notes: “Although the Church’s law cannot be such as would lead men outside of the path of salvation, it can be poor in its formulation – without contact with reality and truly ineffective. It would be bad theology to suppose that the Church cannot be exposed to this kind of weakness.”<sup>58</sup> Örsy contends that there is no perfect legal system, including canon law. He notes:

Ecclesiastical laws are human creations; consequently, they too may prove themselves unable to protect some value in the Christian community or to provide remedy for an injustice suffered. In that case, in canon law too, there must be recourse to authentic equity. Whoever is in charge of the issue, whoever it is who must give speedy justice, that person is entitled to invoke higher principles of morality and state that the law must cease to

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<sup>55</sup> See *ibid.*

<sup>56</sup> See *ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> A. MCCOY, “Canonical Equity versus the Proliferation of Dispensations and Privileges,” in *The Jurist*, 26 (1966), p. 98.

operate, and, through necessary accommodations, must become a servant of the value that must be safeguarded.<sup>59</sup>

Consequently, there is the need to invoke the higher principles of morality in the form of equity to take care of what the law has ignored or overlooked. This is why the concept of equity is implicit in both the *CIC/17* and *CIC/83*.

In the 1917 Code, equity was expressed six times in different ways,<sup>60</sup> and is present seven times also in different ways in the 1983 Code.<sup>61</sup> There are other canons in the 1983 Code where equity is not explicitly mentioned but simply implied.<sup>62</sup> The canons on equity take cognisance of the third principle approved by the 1967 General Synod of Bishops to guide the Code Commission in the revision of the Code. “In the law to be enacted, the code should concern itself not only for justice but also wise equity which is the fruit of benignity and charity.”<sup>63</sup> In other words, canon law is not just about justice, it is also about kindness and charity.

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<sup>59</sup> Ibid.

<sup>60</sup> See E. ROELKER, “The Meaning of ‘*aequitas*’, ‘*aequus*’, and ‘*aeque*’ in the Code of Canon Law,” in *The Jurist*, 6 (1946), p. 241. The relevant canons in *CIC/17* are c. 20 (“*aequitas canonica*”), c. 144 (“*naturalis aequitas*”), c. 192, §3, (“*naturalis aequitas*”), c. 643, §2 (“*naturalis aequitas*”), c. 1455, 2° (“*aequitas*”), c. 1833, 2° (“*aequitas*”). See also COUGHLIN, “Canonical Equity,” p. 423.

<sup>61</sup> See J. OCHOA, *Index verborum ac locutionum Codicis iuris canonici*, Città del Vaticano, Libreria editrice Lateranense, 1984, p. 19. The canons are: c. 19 (“*aequitas canonica*”), c. 221, §2 (“*aequitas*”), c. 271, §3 (“*naturalis aequitas*”), c. 686, §3 (“*aequitas et caritas*”), c. 702, §2 (“*aequitas et evangelica caritas*”), c. 1148, §3 (“*iustitia, christiana caritas et naturalis aequitas*”), and c. 1752 (“*aequitas canonica*”). See COUGHLIN, “Canonical Equity,” p. 423.

<sup>62</sup> See UY, *The Principle of Equity in the Code of Canon Law*, p. 2 where we read: “The Latin term ‘*aequitas*’, its adjectival form ‘*aequus*’ and adverbial form ‘*aeque*’ also appear in other canons of the Code.”

<sup>63</sup> PONTIFICIA COMMISSIO CODICI IURIS CANONICI RESCOGNOSCENDO, *Principia quae Codicis iuris canonici recognitionem dirigant*, “De quibusdam mediis fovendi Curam Pastoralem in Codice,” in *Communicationes*, 1 (1969), p. 79: “In iure condendo Codex non tantum iustitiam

In his address to the Twentieth Annual Convention of The Canon Law Society of America, Amleto Cardinal Cicognani stated *inter alia*: “In your work you must bear in mind the Good Shepherd and imitate his love for souls, his solicitude for the weak, and his kind and patient treatment of the sinner. Canon Law is thoroughly related to the work of salvation of souls. Remember that the ‘mind of the Church’ is the ‘Mind of Christ’ (*Mens Ecclesiae – Mens Christi*, the Saviour), and accordingly avoid the extremes of rigid severity and harmful laxity.”<sup>64</sup> Cicognani further stated:

As specialists in Canon Law, you not only safeguard the observance of the law, but you also practice the noble art of goodness and fairness (*ars boni et aequi*). You are ministers of justice and goodness. In approaching any problem, you have to apply the law without rigid severity and without harmful laxity. However, you must bear in mind that the purpose of the law is to promote the salvation of souls, and you should employ to the fullest extent canonical equity and the juridical institutions available to you.<sup>65</sup>

Thus, equity is seen as providing a balance between extreme legalism and laxity. It gives meaning to the purpose of the law, which is the salvation of souls.

The writings of the Popes in recent times indicate that the principle of equity is an integral part of the Church’s legal system.<sup>66</sup> In his 1973 address to the Roman Rota, Pope Paul VI refers to equity as “an attitude of mind and spirit that tempers the rigor of the

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sed etiam sapientem aequitatem colat, quae fructus est benignitatis et caritatis, ad quas virtutes excercendas Codex discretionem atque scientiam Pastorum et iudicum excitare satagat.”

<sup>64</sup> A.G. CICOGNANI, “Aequitas canonica in Salutem animarum – Canonical Equity and the Salvation of Souls,” in *The Jurist*, 19 (1959), p. 1. The statement of Cicognani brings out the characteristics of equity, namely, imitating the love of Jesus for souls, solicitude for the weak, kind and patient treatment of the sinner. Equity from a Christian perspective requires handling a situation the way Christ would handle it.

<sup>65</sup> *Ibid.*, p. 11.

law.”<sup>67</sup> He sees equity as an indispensable tool to safeguard the spirit of the Code.<sup>68</sup> In his address to the participants in the Canon Law Congress held at Gregorian Pontifical University, Rome, Paul VI spoke of equity as a canonical principle “marked with the spirit of charity, temperance, humanity and moderation.”<sup>69</sup> On the same occasion, Paul VI continued:

For, in canon law it is equity which governs the application of norms to concrete cases, with the salvation of souls as the goal which is always kept in view. Equity takes the form of mildness, mercy and pastoral charity and seeks not a rigid application of law but the true welfare of the faithful.<sup>70</sup>

If equity governs the application of norms to concrete cases, it then means that it is part of canon law, which has as its goal the salvation of souls. Paul VI refers also to the components of canonical equity, namely, mildness, mercy and pastoral charity.

In his first allocution to the Roman Rota, Pope John Paul II reminded ecclesiastical judges that “the primary requirement of justice is to respect persons,”<sup>71</sup> and

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<sup>66</sup> See A. MENDONÇA, “The Bishop as the Mirror of Justice and Equity in the Particular Church: Some Practical Reflections on Episcopal Ministry,” in *Canon Law Society of Australia and New Zealand Newsletter*, 1 (2003), p. 14.

<sup>67</sup> PAUL VI, Allocution to the Roman Rota, 8 February 1973, in *AAS*, 65 (1973), p. 99. English translation in W.H. WOESTMAN (ed.), *Papal Allocutions to the Roman Rota 1939-2002*, Ottawa, Faculty of Canon Law, Saint Paul University, 2002, p. 118. Equity is useful when the law proves to be too harsh. It is a corrective measure where the law lacks the necessary balance.

<sup>68</sup> See UY, *The Principle of Equity in the Code of Canon Law*, p. 3.

<sup>69</sup> PAUL VI, Address to the Participants in the Canon Law Congress, 19 February 1977, in *AAS*, 69 (1977), p. 211. There we read: “In legibus Codicis iuris canonici elucere debet spiritus caritatis, temperantiae, humanitatis ac moderationis, quae totidem virtutes supernaturales nostras leges distinguunt a quocumque iure humano seu profano.” English translation in *L'Osservatore romano* (=ORE), (10 March 1977), p. 4.

<sup>70</sup> Ibid. p. 211. See also *The Pope Speaks*, 22 (1977), p. 171.

<sup>71</sup> JOHN PAUL II, Allocution to the Roman Rota, 17 February 1979, in *AAS*, 71 (1979), pp. 422-427. English translation in WOESTMAN (ed.), *Papal Allocutions to the Roman Rota 1939-2002*, pp. 153-158. The idea is taken from L. BOUYER, *L'Église de Dieu, Corps du Christ et temple de l'Esprit*, Paris, [n.p.], 1970, p. 599.

to “look beyond justice and strive for equity and, beyond this, for charity.”<sup>72</sup> In his allocution to the Roman Rota on 18 January 1990, John Paul II revisited the same theme saying: “In the Church, true justice, enlivened by charity and tempered by equity, always merits the descriptive adjective pastoral. There can be no exercise of pastoral charity that does not take account, first of all, of pastoral justice.”<sup>73</sup>

### 3.3.3 - Evangelical Charity

The expression “evangelical charity” is used together with equity in canon 702, §2 of the 1983 Code. Perhaps the reason is that it is very difficult to draw fine lines of distinction between equity and evangelical charity, including the concept of justice. Although they are different concepts, some people believe that justice, equity and charity overlap.

Paul VI spoke of “wise equity” (*sapiens aequitas*) as “the fruit of benignity and charity.”<sup>74</sup> This gives the impression that equity is an offshoot of benignity and charity. For the Holy Father, evangelical charity is the suitable substratum on which equity grows. Charity must prevail over all other considerations. This is what Jesus wishes to see among his disciples. He summarised his call to evangelical charity as follows: “I give

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<sup>72</sup> JOHN PAUL II, Allocution to the Roman Rota, 17 February 1979, p. 154. See P. ANDRIEU-GUITRANCOURT, *Introduction sommaire à l'étude du droit en général et du droit canonique en particulier*, Paris, [n.p.], 1963, p. 22. John Paul II has built a ladder of priority with justice at the bottom, followed by equity, while charity occupies the most important position.

<sup>73</sup> JOHN PAUL II, Allocution to the Roman Rota, 18 January 1990, in *AAS*, 82 (1990), p.874. English translation in WOESTMAN (ed.), *Papal Allocutions to the Roman Rota 1939-2002*, p. 211. The Pope has used “pastoral justice” as a synonym for “charity.” No wonder then that the ecclesiastical norm of canon 702, §2 uses “equity and evangelical charity together.”

<sup>74</sup> PAUL VI, Allocution to the Roman Rota, 8 February 1973, in WOESTMAN (ed.), *Papal Allocutions to the Roman Rota 1939-2002*, p. 119.

you a new commandment: love one another just as I have loved you. It is by your love for one another, that everyone will recognise you as my disciples” (John 13:34-35). To underline the prominence of charity, P. Land has this to say: “Love transforms justice from within [...] Love informs all other virtues, lives in them and is their soul force [...] love finds expression in acts of charity.”<sup>75</sup>

### 3.4 - PRACTICAL APPLICATION OF CANON 702, §2

The requirements of canon 702 appear simple and clear; the first paragraph says that no compensation is to be paid by religious institutes to their separated members. However, the second paragraph demands that institutes show equity and evangelical charity to them. Thus, it is reasonable to conclude that the Code of Canon Law tells us what should be realised without providing details of the process.<sup>76</sup> With particular reference to canon 702, §2, canon law tells institutes what is expected of them but does not tell them exactly how they ought to do it. Each institute is expected to decide on the details of how it should extend equity and evangelical charity to its separated members. We shall now consider how this is being practised in a few areas and in a few religious institutes in the world today.

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<sup>75</sup> P. LAND, “Justice,” in J. KOMONCHAK, M. COLLINS and D. LANE (eds), *The New Dictionary of Theology*, Wilmington, DE, Michael Glazier, 1987, p. 52.

<sup>76</sup> This could be likened to the road map that gives us a bird’s eye-view of two different locations, A and B, but does not dictate to us how to move from point A to point B. The means of transport employed to go from A to B is immaterial to the map. It is the traveller who decides to walk, to use a bicycle, a motor cycle, a motor car, a bus, a train or an air plane, or even a snow-mobile. Certainly, snow-mobile is not a means of transport in most parts of the continent of Africa and other geographical spots that enjoy tropical climatic conditions. It is also the traveller who determines whether to break his/her journey along the way or to travel non stop from destination A to B. The reason for the stop is also immaterial, be it for refuelling, for a drink or a meal or even to ease oneself.

### 3.4.1 - Praxis in the Religious Institutes in the United States of America

Surveys were organised in the United States of America in 1990<sup>77</sup> and 1995<sup>78</sup> to have some idea of how the various religious institutes in the United States have been assisting their separated members to re-establish them in society.<sup>79</sup> The 1990 survey was carried out by Rose McDermott, while the 1995 one was done by M. Welch and P. Campbell. We are not told whether the surveys covered those who left religious life on their own and those who were dismissed. While McDermott used “separated members” in her article, Welch and Campbell used “departure” in reference to those who left religious life. It is therefore assumed that both articles, irrespective of the expression used, covered both those who left religious life either by voluntary departure or dismissal, since separated members in canon 702 applies to both voluntary departure as well as dismissal. We will highlight some of the findings of the two surveys done in the United States of America now, beginning with the 1990 survey conducted by Rose McDermott.

#### 3.4.1.1 - In Male Religious Institutes in USA

Among the religious institutes surveyed sixty-five were male religious institutes of pontifical right.<sup>80</sup> Of this number, thirty reported that they gave monetary assistance to

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<sup>77</sup> See MCDERMOTT, “Canon 702, §2 - Equity and Charity to Separated Members,” pp. 120-133.

<sup>78</sup> See M. WELCH and P. CAMPBELL, “Provisions for Departing Members,” in *Bulletin on Issues of Religious Law*, 12 (1996), pp. 1-16. Madeline Welch, OSU, organised and sent a questionnaire to LCWR members and subsequently Peter Campbell, CFX, adapted the material to survey CMSM members. The article by both Welch and Campbell presents the combined results of the two surveys.

<sup>79</sup> See HOLLAND, “Policies When a Member Leaves the Religious Institute,” p. 133.

<sup>80</sup> See MCDERMOTT, “Canon 702, §2 – Equity and Charity to Separated Members,” p. 130.

their ex-members according to the need of each individual.<sup>81</sup> McDermott observes that “Consideration was given to age, education, employability, housing, patrimony, familial assistance and the need for transportation.”<sup>82</sup> Fourteen of the male institutes reported that they gave between two and five thousand dollars, while nine of the institutes gave between five and ten thousand dollars.<sup>83</sup> Seven institutes stated that they gave monetary assistance taking into consideration the number of years the individual spent in the institute.<sup>84</sup> Five of the institutes surveyed reported that nothing was given to those who had spent only a short time in the religious institute and who also had a good job awaiting them.<sup>85</sup>

Forty-five institutes stated that they kept their ex-members on health benefits, while fifteen others did not have such a programme for their former members.<sup>86</sup> The forty-five who extended health benefits to their ex-members did so for a circumscribed period that ranged from three months to when the individual becomes covered by his employer.<sup>87</sup> Three institutes indicated that it varied from person to person, and two other

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<sup>81</sup> See *ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> See *ibid.*

<sup>84</sup> See *ibid.* McDermott explains: “For example, one institute gave \$1,000 for each year after final vows, while another gave the equivalence of a month’s salary for each year with a cut-off at \$20,000.”

<sup>85</sup> See *ibid.*

<sup>86</sup> See *ibid.* We are not told why fifteen out of forty-five male religious institutes (33.3 per cent) did not extend health care benefits to their ex-members. Is it for lack of funds or because the institute did not have coverage, or that the ex-members had some other health care coverage?

<sup>87</sup> See *ibid.*

institutes reported that they (institutes) were self-insured.<sup>88</sup> McDermott notes that “forty-six of the male religious institutes or seventy-one per cent of those responding had social security benefits, while nineteen institutes or twenty-one per cent did not.”<sup>89</sup> Four institutes reported that they had retirement benefits that also applied to separated members.<sup>90</sup> Twenty-six institutes indicated that they offered help other than money, according to the needs of the individual.<sup>91</sup> According to McDermott, nineteen institutes donated a car to the separated member, while eighteen institutes gave a loan to the separated member towards that purpose.<sup>92</sup> One institute paid for housing, while another gave tuition and a third institute provided a bank account for the departing member.<sup>93</sup> The report on the male religious institutes in the United States vis-à-vis the application of canon 702, §2 appears impressive. Similar praxis is also the case among the women religious institutes that we shall consider now.

#### 3.4.1.2 - In Women Religious Institutes in USA

McDermott’s survey covered one hundred and ninety-six apostolic institutes of women religious. One hundred and sixty-three were of pontifical right, and thirty-three

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<sup>88</sup> See *ibid.*

<sup>89</sup> *Ibid.* The survey organised by McDermott reveals that not all the male religious institutes in the United States of America took advantage of existing social security, at least as of 1990. One would expect that with all the encouragement from the Holy See since 1974 (*Sacra congregatio*) and the two documents on pension (1977 and 1979), each institute could have enrolled their members in a form of social security, if it exists in any given situation.

<sup>90</sup> See *ibid.*

<sup>91</sup> See *ibid.*

<sup>92</sup> See *ibid.*

<sup>93</sup> See *ibid.*

were of diocesan right.<sup>94</sup> Eighty-two of the institutes that responded to the questionnaire declared that they gave monetary assistance to their separated members in accordance with their needs. Of the eighty-two institutes of women religious, sixty-seven of them gave between four hundred to one thousand dollars, and twelve institutes gave from six to ten thousand dollars.<sup>95</sup> Eleven of the institutes gave monetary assistance to former members based on the length of time spent in the religious institute. One of the institutes reported giving between sixteen and twenty thousand dollars, while two others gave from twenty-one to twenty-five thousand dollars.<sup>96</sup>

Among the respondents to the survey, one hundred and fifty-five institutes stated that they kept their former members on health benefits, but forty-one institutes did not.<sup>97</sup> Frequent notations were made on the questionnaire stating that keeping a separated member on health benefit was temporary; it lasted until the member was definitively separated from the institute or received a position that included health benefits before she was formerly dropped from the health plan of the religious institute.<sup>98</sup> A total of one hundred and seventy-seven or ninety percent of the religious institutes of women had social security benefits, while nineteen or ten percent did not.<sup>99</sup> As McDermott correctly

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<sup>94</sup> See *ibid.*

<sup>95</sup> See *ibid.*

<sup>96</sup> See *ibid.*

<sup>97</sup> See *ibid.*

<sup>98</sup> See *Ibid.*

<sup>99</sup> See *ibid.*, p. 131. This represents an impressive number of women religious institutes that have listened to the advice of the Holy See regarding social security benefits. Observe also that a higher percentage of women institutes bought into social security benefits than their male counterparts, since the women had ninety per cent of their members on social security as opposed to the men with seventy-one per cent.

noted: "This reflects a positive response on the part of apostolic religious women to the opportunity to buy into social security for their membership. It is a benefit both for the members and those departing religious life."<sup>100</sup>

There were other provisions that religious institutes made available to their departing members according to individual needs, as observed by McDermott in her survey. Eighty-three of the religious institutes surveyed provided loans for their departing members.<sup>101</sup> Fifty-seven institutes provided each departing member with a car; nine institutes gave a loan to enable the ex-member to purchase a car, while five institutes reported that they sold a car to departing member at a low price.<sup>102</sup> Twenty-four institutes stated that they helped their departing members to secure an apartment and paid for it for a whole year, while fifteen provided clothing materials to their ex-members, and fifteen other institutes provided furnishings.<sup>103</sup> Twelve institutes made it possible for departing members to go through a counselling programme, while seven institutes offered educational packages to them.<sup>104</sup> McDermott's survey revealed that two institutes asked their departing member to repay the institute what was spent on her education.<sup>105</sup> Three institutes provided their departing members with a budget, while nine institutes kept them

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<sup>100</sup> Ibid.

<sup>101</sup> See *ibid.*

<sup>102</sup> See *ibid.*

<sup>103</sup> See *ibid.*

<sup>104</sup> See *ibid.*

<sup>105</sup> See *ibid.* The survey does not reveal the success of former members' cooperation in the repayment of money spent in their education. Common sense would tell us that it won't be easy for institutes to recover such monies. Take for an example one who left the institute full of resentment, such a person who may be harbouring deep ill-feelings for the members of the

on their retirement plan.<sup>106</sup> One institute developed a pension plan that included departing members, while another provided benefits for those leaving.<sup>107</sup>

Again, it could be said that the application of canon 702, §2 by the apostolic religious institutes in the United States of America, like that of the men religious institutes, is impressive. It contains some fine details. Since we have an idea of the practice among the apostolic religious women, it would be a good idea to consider what happens in the monasteries of women religious.

#### **3.4.1.3 - In Monasteries of Women Religious in USA**

Eighteen cloistered monasteries of women religious were among those who responded to McDermott's survey, and one of them was of diocesan right.<sup>108</sup> All of them reported providing monetary assistance to their former members.<sup>109</sup> Fourteen of the institutes reported that they gave monetary assistance to those who left their institutes by considering the needs of each individual.<sup>110</sup> Five monasteries indicated that they gave one thousand dollars, while four monasteries gave between two to five thousand dollars. The same survey also reported that one monastery simply returned the dowry.<sup>111</sup> The highest

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institute cannot realistically be expected to reimburse the institute for what was spent on her education.

<sup>106</sup> See *ibid.*

<sup>107</sup> See *ibid.*

<sup>108</sup> See *ibid.*

<sup>109</sup> See *ibid.*

<sup>110</sup> See *ibid.*

<sup>111</sup> See *ibid.*

amount given to a departing member was ten thousand dollars, while the lowest amount given was five hundred dollars.<sup>112</sup>

Fifteen monasteries of women religious indicated that they kept their departing member on health benefits for a determined length of time or until the departing member secured a job with health benefits attached.<sup>113</sup> McDermott reported that ten or fifty-six percent of the monasteries that responded to the survey had social security benefits, while eight or forty-four percent of those who responded did not have social security benefits.<sup>114</sup>

As regards other provisions, six monasteries of women gave various types of assistance according to the needs of the departing individual.<sup>115</sup> Four of the monastic institutes helped the departing member to secure an apartment, three provided wardrobe, while three assisted the individual in securing a job.<sup>116</sup> Three monasteries of nuns either provided a car or a loan towards the purchase of a car, while three other institutes offered a loan to the individual.<sup>117</sup> There was one monastery that paid for counselling and another arranged for an education package to the individual. McDermott also reported that in one

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<sup>112</sup> See *ibid.* We are not told why some gave an amount as low as five hundred dollars, just as we are not told why others were able to give up to ten thousand dollars. Even though we have been told that most institutes gave monetary assistance according to the need of the individual, these gifts may have been made with the financial situation of the monastery taken into consideration.

<sup>113</sup> See *ibid.*

<sup>114</sup> See *ibid.*

<sup>115</sup> See *ibid.*

<sup>116</sup> See *ibid.*

<sup>117</sup> See *ibid.*

instance, the inheritance, although renounced, was returned to the departing individual.<sup>118</sup>

There was only one monastery that reported that they had not lost any member through departure or dismissal in twenty years.<sup>119</sup>

#### 3.4.1.4 - Observations

According to the observations of McDermott, “there was great sensitivity and compassion in the consideration of the human dignity of those departing and the equity and charity afforded them.”<sup>120</sup> She noted that many institutes handled each case in an ad casum manner because of the complexity of the issue.<sup>121</sup> About twelve congregations had policies that they reviewed frequently.<sup>122</sup>

Most of the institutes that were surveyed stated that the main consideration in the treatment given to their separated members was to assist them to independence and security as they change to a new way of life.<sup>123</sup> “Prayer, dialogue, reflection, spiritual direction and counselling were all encouraged during the discernment period. There was particular compassion afforded those who had spent a number of years in the congregation and given great service to the Church.”<sup>124</sup> Among other things taken into

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<sup>118</sup> See *ibid.*

<sup>119</sup> See *ibid.*

<sup>120</sup> *Ibid.*, pp. 131-132. This is a clear indication that McDermott was impressed by the results of her survey. She felt that religious institutes in USA were fulfilling the requirements of canon 702, §2 of the 1983 Code.

<sup>121</sup> See *ibid.*, p. 132.

<sup>122</sup> See *ibid.*

<sup>123</sup> See *ibid.*

<sup>124</sup> *Ibid.* It sounds impressive that during the discernment period, institutes offered helpful packages to members who were contemplating departure or those who were on the verge of being

consideration in the help given to separating members were the condition of the person's health, education acquired, potential for employment, personal goods, salaried individuals as opposed to those who only received stipends, the place of residence as well as the age of the individual.<sup>125</sup> Efforts were made to encourage the departing member to engage in dialogue with the major superior regarding these elements before departure.<sup>126</sup> The dialogue with the major superior, in some instances, enabled the financial officers of an institute to assist the individual as she made an adjustment to her new state of life.<sup>127</sup>

McDermott also explained that some institutes that had policies ordinarily provided charitable assistance to their departing members according to their years of service.<sup>128</sup> She also noticed that while health benefits were provided in most instances, it lasted for a definite period.<sup>129</sup> Some of the answers to the questionnaire revealed that loans given to departed members were not usually paid back, just as what institutes spent on providing higher education to separated members was not reimbursed.<sup>130</sup> At least three institutes considered the reimbursement of money spent on providing education a moral responsibility on the part of a separated member.<sup>131</sup> In some instances, there was a

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dismissed, but one wonders whether those who were embittered or very resentful would accept to avail themselves of those suggestions.

<sup>125</sup> See *ibid.*

<sup>126</sup> See *ibid.* Engaging in dialogue would enable the religious institute to assess properly the needs of the individual, since there is no question of one hat fitting all.

<sup>127</sup> See *ibid.*

<sup>128</sup> See *ibid.*

<sup>129</sup> See *ibid.*

<sup>130</sup> See *ibid.*

<sup>131</sup> See *ibid.*

retirement plan in place that also applied to separated members in a modified way.<sup>132</sup> For those to whom the retirement plan was extended, the number of years they were in the institute was taken into consideration as well as any social security benefits they enjoyed independent of the institute.<sup>133</sup> Among the institutes that had a policy, one stated rather succinctly that whatever was given to separated members cannot be understood as compensation or a basic right of the separated member, but rather as a way for the institute to demonstrate its love and care towards the individual.<sup>134</sup> McDermott also observed that some institutes kept their separated members on their mailing list, and received them into the associate program of the institute after a stated period of time.<sup>135</sup>

On the whole, the article by McDermott reveals a high degree of care and concern on the part of the religious institutes in the United States of America towards their separated members. However, the result of the survey reveals also that the emphasis is basically on monetary assistance. There is not much done in terms of spiritual, moral and social support.<sup>136</sup> The survey by McDermott was not the only survey conducted in the

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<sup>132</sup> See *ibid.*

<sup>133</sup> See *ibid.*

<sup>134</sup> See *ibid.*

<sup>135</sup> See *ibid.* We are not told why the separated member would be welcomed into the associate membership only after a stated period of time. We are also not told the length of time that would have to elapse before the separated member could become an associate member. However, much would depend on the disposition of the separated member. It is doubtful that an individual who was dismissed against her wish, and who remains resentful would gladly accept a new status of associate membership. It is much easier for one who voluntarily left an institute to accept to become an associate member, than it is for an individual who was dismissed by the institute.

<sup>136</sup> See *ibid.* McDermott raises this as a question at the end of her article. Statistics show that most institutes do not consider anything except monetary assistance. We have already observed that the Holy See expects religious institutes to assist the separated members not only financially but also spiritually, morally and socially.

United States that addressed the issue of assistance given to separated members of religious institutes. Other surveys followed in 1995, which we shall now consider.

### 3.4.2 - The 1995 Survey in the United States of America

Madeline Welch, OSU and Peter Campbell, CFX conducted two surveys of religious institutes in 1995, and a combined result of their surveys was presented in a joint article.<sup>137</sup> Peter Campbell makes it clear that this article which reports the results of the survey they conducted on the practices of religious institutes regarding the assistance they give to their separated members builds on the survey already carried out by Rose McDermott.<sup>138</sup> Welch developed a questionnaire and sent it to the Leadership Conference of Women Religious (=LCWR) members, and subsequently, Campbell adapted the material to compile another questionnaire which he sent to the national Conference of Major Superiors of Men (=CMSM).<sup>139</sup> Welch, a canonist, wrote from a canonical perspective, while Peter Campbell, a civil lawyer by profession, considered the civil law implications of the practices of these religious institutes in the United States. Madeline Welch notes: “Two hundred and fifty-one institutes, provinces, or monasteries responded, providing information on 606 departures. Each major superior was asked for data on the community and on the three most recent departures of professed members within the past five years. In some cases, there were no departures in this time period.”<sup>140</sup> In the survey

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<sup>137</sup> M. WELCH and P. CAMPBELL, “Provisions for Departing Members,” in *Bulletin on Issues of Religious Law*, 12 (1996), pp. 1-16.

<sup>138</sup> See *ibid.*, p. 16.

<sup>139</sup> See *ibid.*, p. 1.

<sup>140</sup> *Ibid.*, p. 7. The number of religious institutes surveyed indicates more institutes took part in the survey compared to the number surveyed by Rose McDermott in 1990. This is to be

on the male religious, Campbell observed: "Eighty-five institutes, provinces or monasteries responded, providing information on 225 departures. Six congregations reported no departing members. Data requested was the same as above."<sup>141</sup> We shall consider some aspects of the result of the surveys now.

### 3.4.2.1 - An Overview of the Praxis

Madeline Welch noted that the 1995 survey showed that the religious institutes in the United States were solicitous of those who left religious life, and the institutes were willing to look at the needs of their separating members quite broadly.<sup>142</sup> The majority of the institutes provided their separated members with a sum of money, household furnishings already in use by the departing member at the point of departure, and often an automobile or an interest-free loan towards the purchase of a car, if the member needed one.<sup>143</sup> Health insurance continued for a necessary period of time.<sup>144</sup> The age as well as the years of membership of those departing occasioned an increased concern about their support in later life.<sup>145</sup> In cases where the monetary gift was considered small,

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expected, since the survey of McDermot preceded that of Welch and Campbel some institutes may have been wary about taking part in the survey.

<sup>141</sup> Ibid. The number of male religious institutes that took part shows that more institutes were surveyed than the number that participated in the survey conducted by McDermott.

<sup>142</sup> See *ibid.* We have already seen that McDermott had the same impression from her 1990 survey.

<sup>143</sup> See *ibid.*, p. 2. Why do we say "if the member needs one" (a car)? We could have a situation where a member never drove a car before and does not intend to drive one. Then, giving the individual a car does not help. We could also have another situation where the member not only has not driven a car before, but is so advanced in age or is very ill that there is no room for such a person to drive. Then a car would not be part of the person's charitable subsidy package.

<sup>144</sup> See *ibid.*

<sup>145</sup> See *ibid.*

respondents to the questionnaire expressed concern that the religious institute had not discovered a way to make a contribution toward retirement beyond Social Security.<sup>146</sup>

About fourteen institutes of women indicated that their departing members were allowed to continue to participate in some community-funded pension arrangement.<sup>147</sup> In some other cases, religious institutes developed other means of assisting particular persons with retirement support. Such means that they established were trusts or annuities specially set up to provide contribution towards a particular member's retirement costs, especially for someone in poor health or one who was very near to retirement.<sup>148</sup> Some religious institutes reported a general policy of making a gift towards retirement to anyone leaving after a certain number of years, for example, after twenty-five years of membership.<sup>149</sup> There are several institutes that make a gift (or several gifts) to an established (=IRA) account of a separated member.<sup>150</sup> One institute reported that it made a monthly gift to a former member who left at the age of seventy.<sup>151</sup> Welch noted that often certain formulas like the years of profession were used by some institutes to determine a minimum gift.<sup>152</sup> In addition to the established minimum gift, special needs

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<sup>146</sup> See *ibid.*, p. 5.

<sup>147</sup> See *ibid.* Most of those who indicated on the survey that they were keeping the separated members on a community-funded pension programme were those who did so through a hospital system.

<sup>148</sup> See *ibid.*

<sup>149</sup> See *ibid.*

<sup>150</sup> See *ibid.*

<sup>151</sup> See *ibid.*

<sup>152</sup> See *ibid.*

were also taken into consideration.<sup>153</sup> These special needs would include those who are on expensive medication and things like that. It is assumed that they will spend more than those who are enjoying good health. A few institutes reported that they had established a maximum gift, with a formula used to determine how much of the maximum an individual would receive.<sup>154</sup>

One wonders from what part of a religious institute's funds the money to assist separated members would come. According to Welch, the great majority of the gifts made to departing members were taken from the current funds of the institute or from a fund specially set up for departing members.<sup>155</sup> Very few institutes reported that they gave gifts to their separated members from the retirement fund of the institute. The reason is that a gift from the institute's retirement fund would create the misconception that a separated member has a right or interest in the community's fund and property.<sup>156</sup> We have already seen that all rights and duties deriving from religious profession automatically cease with lawful dismissal from religious life.<sup>157</sup> Therefore, it is better to ensure that the gift to a separated member is taken from other funds or sources than from the retirement fund.

Speaking about the gift to separated members, Welch is of the opinion that "the size of the gift toward retirement should not be based on how much is in the retirement

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<sup>153</sup> See *ibid.*

<sup>154</sup> See *ibid.* An institute could decide, for instance, that even those with special needs would not be given more than forty thousand dollars.

<sup>155</sup> See *ibid.*

<sup>156</sup> See *ibid.*, p. 6.

<sup>157</sup> Canon 701.

fund, even if the community is 100 percent funded. If a community is ten percent or thirty percent funded, there is no way that the size of the fund can be used as the measure of the gift.”<sup>158</sup> A number of factors should be taken into account in deciding the amount of gift to be given. According to Welch, some of the factors would include other sources of support like sizable personal property, family wealth to come, Social Security and employer pensions, where these exist.<sup>159</sup> Another thing that should be considered is the health of the individual as well as his/her ability to work.<sup>160</sup> To be taken into consideration also is the number of work years ahead as well as the enhancement of Social Security that will result from years of fully taxable income.<sup>161</sup> Yet other factors that ought to be taken into consideration are education, skills, experience and the gifts the institute has already made to the separated member.<sup>162</sup>

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<sup>158</sup> WELCH and CAMPBELL, “Provisions for Departing Members,” p. 6.

<sup>159</sup> See *ibid.* Situations are different. Some people may have a sizable personal property, while others may not. The individual who has a sizable personal goods may or may not require an additional help from the religious institute. Some people may be expecting a reasonable amount of family wealth to come to them. It could be that a person’s parent or close relative has willed a property to the former religious but has stated that the person takes possession only after the death of the person who has willed it. This particular situation conceals a problem, because, although the person may have this wealth set aside for her, but in her need she is not yet entitled to the use of it. Therefore, the ex-religious deserves to be helped irrespective of the family wealth she will receive some time in the future. It must not be forgotten that some people have been deprived of what was willed to them by others, even after a legal battle. Must assistance be denied to a separated member simply because his/her parent has willed to him/her a million dollar estate or one that runs into several millions? So, while family wealth to come ought to be taken into consideration, it is wrong to refuse assistance to a separated member at the point of departure because of a property or wealth that is not yet within the individual’s possession.

<sup>160</sup> See *ibid.* These are important factors that must be taken into account. An individual in poor health or one unable to work needs more assistance than one who enjoys good health and one who is able to work and take care of himself/herself.

<sup>161</sup> See *ibid.*

<sup>162</sup> See *ibid.* Prior to formal dispensation from their vows, most of the perpetually professed religious go through a transitional period of exclaustation (c. 686, §1). Religious in temporary commitment do not have the option of exclaustation before their departure from

According to Welch, the survey revealed that for both men and women religious the departure situation of the oldest members did not always present great difficulty, compared to that of the younger ones.<sup>163</sup> She goes on to report that in most cases they entered into a secure marriage and some of them had good pensions from their work.<sup>164</sup> She also reported that the majority of women and men religious who left religious life at the normal retirement age did not appear to have a problem of ongoing support after they had left.<sup>165</sup> Welch said that the survey indicated that the majority of those departing seemed satisfied with the provision made for them by the religious institute.<sup>166</sup> She also said that some institutes reported the practice of simply asking the departing member to request what would be needed. Generally, the requests appeared reasonable, almost modest.<sup>167</sup> Welch observed that larger institutes tend to have a more uniform and

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religious life. Provision for members who are becoming exclaustated is made before the period of exclaustation begins, even though a member is expected to be self supporting during this period. The institute assists the member, ensuring that the individual has accommodation, transportation and other necessities needed to subsist. Therefore, a religious who goes through a period of exclaustation may have got most of the things needed as a definitively separated member. This is why assistance from the institute to a member on exclaustation must be taken into account if the member decides to leave the institute completely from exclaustation.

<sup>163</sup> See *ibid.*

<sup>164</sup> See *ibid.*

<sup>165</sup> See *ibid.* Even though Welch does not give us the reason for this, it is assumed that pensions and some other Social Security benefits may be in place to alleviate their problems.

<sup>166</sup> See *ibid.* But this may not be the case everywhere in the world because it is a well known fact that some separated members have filed litigation against their former institute because of the way they have been treated. The long legal battle in some cases is a precipitate of their resentment. So, the report of the 1995 survey from the United States of America is extraordinarily unique.

<sup>167</sup> See *ibid.* This is why one could conclude that the result of the 1995 survey in the United States of America is quite unique. We know of cases around the world where the demands of separating members are simply unreasonable and absolutely inconsiderate.

predictable policy to handle cases of separated members.<sup>168</sup> Surprisingly enough, several institutes that gave very little assistance to their separated members reported no lack of satisfaction, because the departing member understood the very limited financial condition of the institute. It is also surprising to note that it was in several institutes that tried to be quite generous to the separated member that lack of satisfaction was reported.<sup>169</sup>

The 1995 survey has given us an idea of how the religious institutes in the United States help their separated members. Everything from an institute to a separated member is understood to be a gift. One wonders whether such gifts from religious institutes to their separated members would not take certain implications into consideration. The most likely implication one would expect is taxation. Peter Campbell, writing from a civil law perspective, handles this issue in his joint article with Madeline Welch.

#### **3.4.2.2 - Implications of Gifts to Separated Members**

Peter Campbell affirms that if, at the time of departure, a religious institute gives to a separating member some money or some other valuable gift, such as an automobile, furniture, etc,<sup>170</sup> whatever is given and whenever it is given is to be seen as a gift; it is not

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<sup>168</sup> See *ibid.* We are not told why this is the case, but common sense would suggest that larger institutes would mean larger in numerical strength, and naturally would have more frequent cases of departures and even dismissals. Consequently, they are more likely to have more cases to fall back on, as well as be equipped with more practical incidents to enable them to draw up guidelines.

<sup>169</sup> See *ibid.* There is no explanation why this is the case, but one would expect that institutes that are very generous to separated members are most likely to be those that are wealthy. The separated member's expectations may be influenced by the overall wealth of the institute which forces the individual to expect more. Hence, there is the report of dissatisfaction on the part of those who received generous gifts from their institutes.

<sup>170</sup> WELCH and CAMPBELL, "Provisions for Departing Members," p. 10.

an income to the recipient.<sup>171</sup> Campbell goes on to point out that “gifts are taxable to the one giving them but income is taxable to the one receiving it.”<sup>172</sup> Campbell raises a very vital question: “Does the religious institute have to pay any gift taxes?”<sup>173</sup> In his opinion, the religious institute should not pay taxes for gifts to a separated member.<sup>174</sup>

Campbell has an interesting argument to support his opinion that institutes should not pay taxes for gifts to separated members. His argument is based on an Internal Revenue Service (=IRS) private ruling, number 8152051 of 1981. Individuals, and by extension associations functioning as religious institutes, are subject to gift tax.<sup>175</sup> However, much depends on what is given. Federal gift tax law generally exempts from tax gifts that are worth up to ten thousand dollars. Two spouses in a family are allowed to give up to twenty thousand dollars to one person without a gift tax liability. Judging from the precedent set by IRS, Campbell believes that “this family reference supplies the formula on how to determine whether a religious institute would pay taxes or not. The private letter ruling surmises that no specific gift tax exemption exists in the law for an otherwise exempt organisation.”<sup>176</sup> Campbell believes that unless a specific legal provision waives a tax, it is applicable.<sup>177</sup> The issue that still remains is: How do we

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<sup>171</sup> See *ibid.*

<sup>172</sup> See *ibid.* pp. 10-11. By implication, it means that a single gift to a departing religious is likely to be taxed twice; the institute is to be taxed for giving and the separated member is to be taxed for receiving the gift.

<sup>173</sup> *Ibid.*, p. 11.

<sup>174</sup> See *ibid.*

<sup>175</sup> See *ibid.*

<sup>176</sup> *Ibid.*

<sup>177</sup> See *ibid.*

calculate the value of the tax that a religious institute would be expected to pay as a result of the gift to a separated member? Campbell continues his argument as follows: if one person can have tax waived for the gift of ten thousand dollars, and two related parties pay no tax for a gift to someone totalling up to twenty-thousand dollars, how high is the limit for a group of freely related religious belonging to the same association? The answer is reached by knowing how many members are in the group, and multiplying that number by ten thousand dollars to get the figure that would serve as the limit that must be reached before a religious institute would be expected to pay any gift tax for the gift it makes to a separated member.<sup>178</sup> With this argument, Campbell concludes that no gift tax liability exists for religious institutes in the United States of America.<sup>179</sup> The argument and conclusion of Campbell make sense. It is rare of course to hear of religious institutes getting into trouble or being asked to pay tax because of the gift they have made to their separated members. Neither the 1990 McDermott's survey nor the 1995 ones organised by Welch and Campbell indicates that religious institutes have been penalised with gift tax.

There is no doubt that the various ways the religious institutes in the United States assist their separated members look impressive generally. Most of the assistance is largely monetary. One wonders how the institutes generate enough funds to assist their

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<sup>178</sup> See *ibid.*

<sup>179</sup> See *ibid.*, p. 11. However, Campbell also cautions: "An IRS private ruling resolves one case and is not precedent for others. It is, however, instructive as to how the IRS applies the law to a set of facts. This ruling makes sense in the context of the facts and gift tax law. No known instances exist where this has been an issue especially when advisors know what is the true relationship."

separated members. Peter Campbell enlightens us in this matter, and we wish to consider this now.

### **3.4.2.3 - Sources of Funds to Assist Separated Members**

We have already established that it is not advisable to finance gifts to separated members from the retirement fund of the institute because it sends the wrong signal that separated members are entitled to it, when they are not. Gifts to separated members must be understood as the result of the practice of charity on the part of the religious institute. It is better to finance such gifts from the current funds of the institute. A number of programmes have proved helpful to institutes in USA in their effort to assist separated members, either at the point of departure or in an ongoing fashion. Such programs include Social Security benefits, annuity, pension, and charitable trust. We wish to provide a brief discussion of selected programs.

### **3.4.2.4 - Social Security Benefits**

The majority of religious institutes in the United States enrol their members in the government subsidised social security program.<sup>180</sup> Social security benefits can easily follow the individual wherever he or she goes. This being the case, a departing member has something to keep him/her going either immediately or in the future. We have already noted in the second chapter of our study that the Church not only encourages religious institutes to enrol their members in social security programs, but also recognizes that the benefits should follow an individual religious who leaves or is dismissed from

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<sup>180</sup> See WELCH and CAMPBELL, "Provisions for Departing Members," p. 11.

religious life.<sup>181</sup> The Church further notes that social security programs would be an immense help to religious institutes in their efforts to assist their members who abandon their calling and those who are dismissed.

Social security is not without some concerns. Under the social security program in the United States, it is the religious institute that pays both the employer's and the employee's share of the tax necessary to fund the benefit.<sup>182</sup> This might seem as an apparent contradiction of what we have already said before, namely, the argument of Campbell that religious institutes should not pay gift tax. If a religious institute that enrolls its member in social security pays both the employer's and the employee's share of the tax, is it then not tantamount to paying gift tax? Campbell blames this situation on United States Congress that made the law. So, this could be seen as an oversight on the part of Congress.

Another problem with social security is that, in principle, especially following the existing law of the Church (c. 668, §3), it is not unreasonable to suggest that social security benefits belong to the religious institute.<sup>183</sup> The social security is paid for by the institute, and moreover a member who departs reserves no right to share in the assets of

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<sup>181</sup> See SCRIS, *Sacra congregatio*, in FLANNERY II, pp. 201-202. See also CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, "Pensions for Religious," in *CLD*, vol. 8, pp. 371-372.

<sup>182</sup> See WELCH and CAMPBELL, "Provisions for Departing Members," p. 11.

<sup>183</sup> See *ibid.*

the institute (c. 701).<sup>184</sup> Campbell cautions that while this may sound like a valid argument, it is unsustainable from the civil law perspective.<sup>185</sup> He argues:

When Congress amended the law to allow religious to participate in Social Security, it recognized the need for religious to have some retirement benefits and access to Medicare. How Congress changed the law provides the key to support the position that any Social Security benefits belong to the individual. This is true even if the individual allows central deposit of monthly checks in one account and accepts that such funds are for the use of the religious institute which in turn supports the member. The Social Security Administration has no problems with such arrangements [...]. Any Social Security credits or benefits belong to an individual and they stay with that person if he or she leaves a religious institute. This is really a good solution and can form part of any provisions made for a departing member.<sup>186</sup>

From the above quote, it is obvious that religious in the United States were allowed to participate in Social Security only at some point in time. The intention of Congress that amended the law to allow religious to participate in Social Security was precisely to ensure that each individual has retirement benefits and access to Medicare. This intention of Congress would be defeated if an individual is denied retirement benefits because of departure or dismissal from religious life. This legislation of United States Congress turns out to favour both religious institutes and individual religious in the United States of America.<sup>187</sup> Campbell is of the opinion that “whatever value Social Security has should

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<sup>184</sup> See *ibid.*

<sup>185</sup> See *ibid.*

<sup>186</sup> *Ibid.*, pp. 11-12.

<sup>187</sup> The legislation is in favour of the individual religious because if the religious becomes separated for any reason, he/she would be assured of something on which to subsist in the future. This would go a long way to take care of the anxiety that is associated with departure. Consequently, it also minimizes the resentment or bitterness that can be noticeable in the actions of some separated members. The legislation is also in favour of the religious institute because the availability of Social Security for the separating member is taken into consideration when a gift is

be factored into any other financial provisions” for a separating member.<sup>188</sup> He contends that “a religious institute should not make an issue of wanting back its payments into Social Security no matter how well-off the departing member may be.”<sup>189</sup> Any attempt by an institute to reclaim Social Security through legal proceedings will turn out a losing proposition at the end of the day.<sup>190</sup> However, Campbell is also of the opinion that a separating member who is financially well-off could decide to help his/her former religious institute, but such help ought not to be tied to Social Security benefits.<sup>191</sup>

#### 3.4.2.5 - Annuity

Another source of funds from which provision could be made to assist a separating member is from the purchase of an annuity. The annuity can provide for the future needs of the separating member without further involvement of the religious institute.<sup>192</sup> Campbell explains how it works. It is the religious institute that contracts with an insurance company to establish a pool of future funds that will be paid out on a monthly basis from a starting date.<sup>193</sup> “The amount of the annuity, when it starts, the interest rate assumptions, the age of the member, and how the religious institute wants to pay for it are all part of the contract with the insurance company. If the religious institute

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being made to a departing member. Obviously, a religious institute would be expected to spend more on a separating member who has no Social Security benefits than on the one who has.

<sup>188</sup> See *ibid.*, p. 12.

<sup>189</sup> *Ibid.*

<sup>190</sup> See *ibid.*

<sup>191</sup> See *ibid.*

<sup>192</sup> See *ibid.*, p. 13.

<sup>193</sup> See *ibid.* Campbell also notes that it is not only an insurance company that sells an annuity. There are annuity sellers other than insurance companies.

agrees to pay for the annuity in one payment it is finished with any future payments on behalf of the departing member.”<sup>194</sup> An annuity in this case is like an investment on behalf of a member of a religious institute that would not require more involvement of the religious institute once it is paid for and the contract sealed.

An annuity is an interesting device, even though it also hides some limitations. In a situation where the relationship between the separating member and the religious institute has gone sour, but the institute still wishes to help, an annuity may be of interest. According to Campbell, it ensures a clean break between the individual and the religious institute.<sup>195</sup> The separating member who may be bitter or resentful does not need to sit down in discussion with the institute over annuity benefits. Everything is handled by the third party, namely, the annuity seller. With an annuity a religious institute does not feel the pinch of scrambling around to find money for an ongoing support for a separating member irrespective of the length of time the support will cover.

One of the drawbacks with an annuity is the price for its purchase; it is often more than a religious institute would pay if it decides to distribute the money itself.<sup>196</sup> In most cases, a lump sum of money must be paid upfront if one is to get the best deal in the purchase of an annuity.<sup>197</sup> Campbell also points out that there is “the loss of invested

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<sup>194</sup> Ibid.

<sup>195</sup> See *ibid.*

<sup>196</sup> See *ibid.* The amount involved in the purchase of an annuity is much more than an institute would give to a separating member if no annuity were purchased on the individual's behalf.

<sup>197</sup> See *ibid.*

funds that make compounding interest work for the institute.”<sup>198</sup> Coupled with that is the fact that an annuity seller is in business for a profit, and it is the buyer who pays for the profit.<sup>199</sup> An annuity has some other legal effects. It is not the same as receiving a gift from a religious institute that has no tax consequences; annuity payments are taxable.<sup>200</sup> Campbell says: “Unless the one receiving the annuity payments contributed to the annuity, the regular annuity payments are fully taxable. Under the facts developed in this section, the departing member has paid nothing for the annuity. On the other hand, the former member has gained a right to annuity payments which was not present when receiving a gift.”<sup>201</sup> Whatever may be the case, an annuity ought to make an institute feel content that it has rendered assistance to a separated member.<sup>202</sup> It assures everyone that the separated member has something to live on in the future just as happens in the case of a pension right.

#### 3.4.2.6 - Funding through Pension Rights

In USA, another source of funds which the religious institutes use in providing ongoing support for their separated members comes from third party pensions that

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<sup>198</sup> Ibid.

<sup>199</sup> See *ibid.*

<sup>200</sup> See *ibid.* However, Campbell concedes that in some instances annuity payments may not be taxable, but not in the case where a religious institute buys an annuity that is eventually enjoyed by a separated member.

<sup>201</sup> Ibid.

<sup>202</sup> Campbell thinks that the concept of an annuity makes sense in some circumstances, but where the relations are good between the institute and the separating member, he contends that the wisdom of a choice of this type is hard to accept because the institute ends up paying more money than the member would ever get and at the same time sets up a taxable situation when none need exist.

members have rights in because of ministry assignments.<sup>203</sup> Campbell identifies a common source of such pensions as the TIAA-CREF which is popular in the education sector in the United States, especially higher education.<sup>204</sup> However, he acknowledges that other similar pensions do exist.<sup>205</sup> If pension rights exist, the separating member will be protected to the extent of the vested rights.<sup>206</sup> Under normal circumstances, a religious institute could argue that the money from the pension belongs to the institute based on Church understandings, but civil law does not permit such claims being made against pensions.<sup>207</sup>

Social Security or pension rights are good in every respect both for a religious institute as a body or for a member separated from it. In some cases, it may not provide all that a separated member needs, but it helps to reduce what a religious institute would give to assist a separated member. In such situations, other means of support must be considered. There could be another scenario where it is enough for the support of a

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<sup>203</sup> See *ibid.*, p. 14.

<sup>204</sup> See *ibid.* Although the article does not tell us what TIAA-CREF stands for, however, TIAA is an acronym for Teachers Insurance and Annuity Association, while CREF stands for College Retirement Equities Fund. For more information on TIAA-CREF, visit their web site at <http://www.tiaa-cref.org/newsroom/index.html>.

<sup>205</sup> See WELCH and CAMPBELL, "Provisions for Departing Members," p.14.

<sup>206</sup> See *ibid.*

<sup>207</sup> See *ibid.* Even though canon law and the proper law of an institute say that the pension due to religious belongs to the institute, it is extremely rare to find an institute insisting that the pension of a member who has been separated from it must be collected not by the member but by the institute.

separated member, in which case the institute does not need to provide anything else. Yet, there could be another situation where it is all that a poor institute can afford.<sup>208</sup>

Campbell expects religious institutes to factor into any provisions how a pension may grow if the separated member keeps the same job that provided the pension rights in the first place instead of changing jobs.<sup>209</sup> Additional years of service and compounding interest do have an amazing effect on the future of pension benefits.<sup>210</sup>

#### **3.4.2.7 - Funding Support through a Charitable Trust**

Some religious institutes in US have a charitable trust fund. It is assumed that the charitable trust is a properly established legal trust separate from the corporate or association structures of the religious institute.<sup>211</sup> “This means that the trust is a tax exempt, public charity according to Internal Revenue Code sections 501 (c) (3) and 509 (a).”<sup>212</sup> Separated members can receive distributions from a trust as gifts and not as a taxable income.<sup>213</sup>

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<sup>208</sup> See *ibid.* It is hoped that the separating member will understand that the institute is poor and cannot afford to make the separating member comfortable at the expense of the rest of the members of the institute. Where this understanding is lacking, we expect a lot of resentment and even litigation against the institute to follow.

<sup>209</sup> See *ibid.*

<sup>210</sup> See *ibid.* There was a case of a parish secretary in Canada who had worked for a parish for twenty-six years. She wanted to retire. On weighing the pros and the cons of retiring at the time, she discovered that if she retired, she would be entitled to a pension of about three hundred dollars a month. But if she put in six more years, when she would reach the legal retirement age, she would be entitled to a pension worth not less than nine hundred a month. She chose to stay six more years to reach the official retirement age in order to collect the pension. She is now happily retired.

<sup>211</sup> See *ibid.*

<sup>212</sup> *Ibid.*

<sup>213</sup> See *ibid.*

The possibility of a separated member receiving a benefit from a charitable trust depends largely on the purposes of the trust and the scope of the beneficiary class.<sup>214</sup> The language of the trust must make provision for the support of separated members, *ab initio*. “If the trust does not contain provisions for departing members it would be illegal to include them in any payments from the trust.”<sup>215</sup> Including separated members in any payments from a trust when the trust had no provisions for separated members *ab initio* carries consequences like loss of tax exemption and varying levels of liability for the trustees.<sup>216</sup> This is why Campbell insists: “To make this happen, the actual charitable trust should contain a clear statement of religious and charitable purposes and a description of the beneficiary classes to cover present and former members.”<sup>217</sup> According to Campbell, “no one has vested rights in a charitable trust even if the defined trust beneficiaries can have some expectations about receiving gifts from the trust.”<sup>218</sup> Generally, religious institutes have a system of trust that does not send the same amount to separated members as it does to those who remain part of the institute and faithful to their vocation.<sup>219</sup> There is no doubt that a Charitable Trust can be of immense help to a religious institute in its effort to assist separated members. However, Campbell observes:

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<sup>214</sup> See *ibid.*

<sup>215</sup> See *ibid.*, p. 15.

<sup>216</sup> See *ibid.*

<sup>217</sup> *Ibid.*

<sup>218</sup> *Ibid.*

<sup>219</sup> See *ibid.*

“What is paid out and how it is calculated does not belong in the trust, nor would it be necessary to make trust payments if the former member had no need.”<sup>220</sup>

#### 3.4.2.8 - Support from Corporate Resources

Support from corporate resources is another way religious institutes in the United States can extend needed retirement assistance to separated members.<sup>221</sup> According to Campbell, this form of funding can be comparatively easy because it has the fewest legal issues, even though it is not totally devoid of financial ones.<sup>222</sup> As in the charitable trust, it is possible to determine the payout but it is not easy to set up the funding.<sup>223</sup> Much depends on the financial system of the religious institute and the resources available to it.<sup>224</sup>

Campbell thinks that “a regular payment from regular sources to a former member may be easy or it may cause problems due to resource limitations.”<sup>225</sup> He also feels that since the religious institute regularly makes ongoing payments in support of the religious and charitable mission of the institute, there will be few legal issues involved.<sup>226</sup> Part of what the religious mission entails is caring for those carrying out the mission both current

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<sup>220</sup> Ibid. Of course, a charitable subsidy is relevant for the separated members who are in need. A religious institute is not obliged to lavish gifts at the doors of a former member who may be financially more buoyant than the former institute.

<sup>221</sup> See *ibid.*, p. 16.

<sup>222</sup> See *ibid.*

<sup>223</sup> See *ibid.*

<sup>224</sup> See *ibid.*

<sup>225</sup> *Ibid.*

<sup>226</sup> See *ibid.*

members and others, including the separated members who are beneficiaries of that mission.<sup>227</sup>

The two 1995 surveys of religious institutes in the United States by Welch and Campbell reveal a lot of organised systems and policies by which institutes provide charitable subsidies to their separated members. Institutes have different practices, but the purpose is the same – assisting former members to make the burden of life lighter for them. The praxis in the United States is also reflected in some other parts of the globe as will be identified and explained.

### **3.4.3 - Application of Canon 702, §2 in Canada**

The policies in Canada are not as elaborate as what we have seen exist in the USA. Nonetheless, the praxis in Canada takes into consideration most of the essential factors that must be considered in a meaningful application of canon 702, §2. Most of the help that religious institutes in Canada extend to their separated members at the point of separation concerns financial assistance.

#### **3.4.3.1 - Praxis of Male and Female Institutes in Canada**

With regard to charitable subsidy to ex-religious in Canada, Francis Morrissey has this to say:

Many Canadian institutes have adopted the practice of offering a basic sum to each departing member (for instance, \$1,000); this sum is then increased by another based on the number of years of membership in the institute (for instance \$500 per year). Then in addition, care is taken to ascertain the state of health, the education, the employment possibilities and so forth of the former religious. At times, an interest-free loan or low-

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<sup>227</sup> See *ibid.*

interest loan is granted to help smooth the transition. This can be used for the down payment on a house, and so forth.<sup>228</sup>

The statement covers most of the factors that religious institutes around the globe consider when they extend financial assistance to their separated members. There is a basic sum of money that each separating member receives. There is also an additional amount multiplied by the number of years the individual stayed in the institute. Finally, other exceptional issues may be taken into account. Morrisey is very careful when he refers to the amount of the basic sum and the additional money as a result of the number of years the separating member was a member of the institute. He says, “for instance, \$1,000” or “for instance, \$500.” This suggests that Morrisey is not saying that it is exactly the same for every religious institute in Canada.

In a public lecture delivered to the major superiors and treasurers of institutes of consecrated life, Morrisey gave different figures.<sup>229</sup> He noted that:

Usually, in addition to personal patrimony which is returned (and dowry money if such existed) we get something like this in Canada: basic sum \$3,000 - \$5,000, \$500 - \$1000 per year of membership, if the member has the use of a car, the car accompanies the person; if the member has a pension plan (from teaching, nursing, etc.) the plan accompanies the person. If the person has no pension plan, then some other provision is sometimes made for a monthly annuity, or something similar (depending on the number of years a person was in the institute, educational background, health, job opportunities, etc.); in other instances, a lump sum

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<sup>228</sup> F.G. MORRISEY, “Equity and Charity to Separated Members of Religious Institutes,” in CANON LAW SOCIETY OF GREAT BRITAIN & IRELAND *Newsletter*, 87 (1991), p. 14.

<sup>229</sup> See F.G. MORRISEY, “Separation Issues (Canons 684-704),” a paper delivered at the seminar for Legal Education for Leadership of Religious Institutes, Ottawa, Saint Paul University, 14-21 August, 2002, pp. 1-32. This seminar was sponsored by the University of Saint Paul (=USP), the Canadian Religious Conference (=CRC), Association des trésorrières et trésoriers des institutes religieux (=ATTIR), and Association of Treasurers of Religious Institutes (ATRI).

is granted instead. Sometimes, an interest-free loan to enable the member to make a down payment on a house, or something similar.<sup>230</sup>

The differences in calculating benefits reflects the flexibility that characterises equity and charitable subsidy to separated members of religious institutes, not only in Canada but in any other place in the world. Observe also that the scope of assistance that Morrissey revealed is wider than what he wrote in his 1991 article on the same subject. What Morrissey states as the praxis in Canada is in conformity with the result of a survey that is circumscribed to a section of Canada, conducted by female religious in Canada that we wish to consider now.

#### **3.4.3.2 - Praxis in the Province of Quebec, Canada**

Still on the disparity regarding the amount given by institutes in Canada to their separating members, the study of Sister Lucienne Boisvert shows that:

Most [religious institutes] have some basic amount which varies from \$500 and \$25,000; however the average is generally in the range of \$10,000 - \$15,000. To that basic figure some add an amount per year of profession. Again it varies from \$100 to \$1,000. I think that many institutes lean toward the latter, or close to that.<sup>231</sup>

Boisvert also stated that “many institutes consider the actual situation of the person involved and adjust accordingly, e.g., does the person have a marketable skill, profession, etc; is she currently in a paying job which can be continued; is there a possibility of a pension? Some keep departing members on their health care plan for a

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<sup>230</sup> Ibid., p. 30. The amount institutes give to their separated members in Canada has changed in recent years.

<sup>231</sup> L. BOISVERT, “Charitable Subsidy to Religious Leaving their Institute,” based on workshop presented at the Canadian Canon Law Society convention, 1994, p. 1. This is a one-page document obtained through the courtesy of Sister Marjory Gallagher, professor of Canon Law in the Faculty of Canon Law, Saint Paul University, Ottawa, Canada.

time in order to facilitate things at the beginning.”<sup>232</sup> She also noted that if the departing member has been living on her own and had the use of a car, several institutes allowed the individual to take the car along with her.<sup>233</sup> In situations where the departing religious has not been living alone, the institute could decide to provide an amount for furnishing or for the down payment on a car.<sup>234</sup>

Observe that Boisvert’s survey reveals the praxis among the religious institutes in Quebec but does not in any way contradict what we have learned from Morrissey as the policy in Canada. We can now take a look at the policy of one Canadian religious institute.

#### **3.4.3.3 - The Policy of the Oblates (OMI) in Canada**

The Missionary Oblates of Mary Immaculate in Canada is one of the religious institutes that has its own policy on charitable subsidy to separated members. The guidelines read:

- (i) In general, an initial fixed sum between \$1,500 and \$3,000 can be used as a guide, together with an additional \$500 for each year of vows;
- (ii) in particular, the Provincial Superior may also take into consideration the following:
  - (a) personal need: age, job opportunity, etc;
  - (b) possible low interest loan: purchase of car, house, upgrading, furnishing etc.

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<sup>232</sup> Ibid.

<sup>233</sup> See *ibid.*

<sup>234</sup> See *ibid.*

(iii) a global figure that will insure reasonable income for that period of transition to acceptable self-support, in the range from \$15,000 to \$20,000, with this set as the ceiling.<sup>235</sup>

The above guidelines for the Oblates are precise and also contain the essential elements that must be considered in any policy or guidelines that aim at extending charitable subsidy to separated members of religious institutes. As in the other practices we have already seen, there is first of all an established basic amount to which is added another amount that is multiplied by the number of years the individual was in vows. Furthermore, other factors like personal needs, loans, accommodation, and car, including pension or insurance, where this is applicable, are considered. It is also interesting to note that even in a single religious institute, the guidelines read that the basic sum is fixed “between \$1,500 and \$3,000.”<sup>236</sup>

So far, we have considered the practical application of canon 702, §2 in the United States of America, in Canada as a whole, in a particular province in Canada and in a particular Canadian religious institute. We could assume that we have a bird’s eye view of the practical application of canon 702, §2 in North America. We shall now review an example that exists in European application of canon 702, §2.

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<sup>235</sup> OBLATES OF MARY IMMACULATE, *Directory for the Administration of Temporal Goods*, Oblate Conference of Canada, 1992, p. D-503f. Quoted by K. CAFE, “Some Guidelines on the Assistance to be Given to Members Who Leave an Institute: Canon 702, §2,” in CANON LAW SOCIETY OF AUSTRALIA & NEW ZEALAND, *Newsletter*, 2 (1997), p. 41.

<sup>236</sup> See OBLATES OF MARY IMMACULATE, *Directory for the Administration of Temporal Goods*, Oblate Conference of Canada, 1992, p. D-503f. It is unclear whether the basic sum is different for different people. But this is doubtful. It will cause confusion for everyone involved if the basic sum is not the same for everyone. The basic sum should be the same for everyone, but the other factors could be used to ensure that the charitable subsidy is equitable. However, it appears that the *Directory* applies to different Provinces with different finances. It is also understood that figures have been adjusted since 1992.

### 3.4.4 - Application of Canon 702, §2 in Ireland

The religious institutes in Ireland, like others in many other countries, do not have a national policy on charitable subsidy to separated members. However, individual institutes have some guidelines and even existing policies, which they may treat as confidential. Attempts have been made by the leaders of religious institutes in Ireland to address the issue of charitable subsidy, by sharing information during workshops and at meetings for treasurers and leaders of institutes on how each institute practises charitable subsidy.

At a meeting of mostly congregational leaders and bursars on 22 April 1997, an attempt was made at formulating some guidelines for dealing with departing religious. A partial summary of that meeting reads as follows:

Practices differ between congregations regarding amounts given. All congregations seem to distinguish between those in formation who leave (to whom a few thousand might be given if they had gone beyond the first year) and those who have spent some years with the congregation. For the latter lump sums were mentioned which varied from £15,000 to £50,000. Some congregations have adopted £1,000 for each year of profession as their guideline.<sup>237</sup>

The above is another example of the variation in the treatment of separated members within a given country. The Conference of Religious of Ireland acknowledges that circumstances differ.<sup>238</sup> Among the things to be taken into account are the earning power

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<sup>237</sup> CONFERENCE OF RELIGIOUS OF IRELAND, "Guidelines for Dealing with Departing Religious," Memo of Meeting in Milltown Park on 22 April 1997, p. 1. This document is unnumbered.

<sup>238</sup> See *ibid.*

of the departing religious and whether the person has any pension rights.<sup>239</sup> They also listed provision for accommodation, transport (car) and VHI cover.<sup>240</sup>

The finance commission of the Conference of Religious of Ireland issued a memorandum at the end of its seminar, and in it, they concluded that each case is unique and much depends on circumstances.<sup>241</sup> They noted that decisions are made on a pragmatic basis.<sup>242</sup> Among the factors to be taken into consideration when assisting a departing member are: age, training qualifications, financial circumstances of the institute, the well being of people remaining in the institute, effect on State benefits and job outlook.<sup>243</sup>

A meeting of congregational leaders dwelt on assistance to departing members of religious institutes. After sharing their experiences, the participants observed that some institutes have a policy while others are working on an *ad casum* basis.<sup>244</sup> The group is

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<sup>239</sup> See *ibid.*

<sup>240</sup> VHI is not explained in the document in question, but information on the Internet shows that it refers to a healthcare system, and it is one of Ireland's most recognised and trusted household brands with an eighty per cent share of the Irish private health insurance market. For more details, see their web site at <http://www.vhihealth.com/about/index.jsp>.

<sup>241</sup> See CONFERENCE OF THE RELIGIOUS OF IRELAND, Memorandum of the Finance Commission Seminar held on 24 April 1997.

<sup>242</sup> See *ibid.*

<sup>243</sup> See *ibid.* It is interesting to note that this group considers the financial circumstances of the institute as part of the things to be taken into account when formulating any guidelines or policies that any institute would employ in assisting its departing members. We have already noted earlier that this is an essential element the Holy See would like to see factored into any assistance to separated members so that nothing is done at the expense of those religious who remain faithful to their vocation. There can be no equity if only the separating member is made comfortable at the expense of the rest of the members that remain in the institute.

<sup>244</sup> See K. BIRMINGHAM et al., "Report on Meeting of Congregational Leaders," held at 5, Westfield Road, Harold's Cross, on 19 February 1997, p. 1 (although this report is without pagination).

consistent with regard to the factors to be taken into account in determining the gift to be given to a separating member. The general conclusion was that an institute ought to start by assessing the resources of the institute and its financial situation (what it can afford).<sup>245</sup> The group agreed on the following statement:

Special consideration needs to be given to a member leaving who is not entitled to a pension, does not have a profession, does not have a reasonable earning capacity, is in bad health, advanced age, does not have a patrimony [and] does not have a supportive family. The converse will also be true, i.e. those who have a profession, pension rights, good health, reasonable earning capacity etc. will not need as much as those who do not.<sup>246</sup>

Granted that these are the same things factored into guidelines of religious institutes in other countries, the important point is that they reflect the equity and evangelical charity enunciated in canon 702, §2. Assistance is given to departing members who have financial needs but not to those who do not have such needs. It is also significant that the group believes that “the cultural reality in which the person lives must be taken into account.”<sup>247</sup> The meeting of the congregational leaders of Ireland felt that £1,000 for every year of active ministry constituted a good guideline as a basic gift for those beyond final profession. It also felt that for those under final profession, up to £2,000/£3,000 would be reasonable depending on the length of time the person was with the institute.

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<sup>245</sup> See *ibid.* It is remarkable that the meeting of the congregational leaders in Ireland considers not only what ought to be given to the separating religious, but considers the institute as well. The religious institute is not to give what it cannot afford.

<sup>246</sup> *Ibid.* Again we observe that the factors taken into consideration while extending assistance to separated members are almost the same everywhere.

<sup>247</sup> *Ibid.* This is a very important element that some guidelines and policies tend not to emphasise. In fact, it is rare to find any guideline or policy that takes the culture of a place or the one in which the separating member finds himself/herself into consideration. We shall mention something about the Nigerian culture in the next chapter (chapter four).

Furthermore, the group felt that another yardstick for those under final profession would be to give them the equivalent of three months living expenses or three months salary.<sup>248</sup> The group also discussed the possibility of providing accommodation in special circumstances, extending an interest-free loan for the individual to procure accommodation, as well as providing health insurance for one year after the separating religious leaves or for the person's lifetime, etc.<sup>249</sup> Even though there was no general agreement among the participants, most of the issues discussed are contained in a guideline prepared for the religious institutes in Ireland. The guideline has the potential of being a useful checklist that enables religious institutes in Ireland to extend assistance to their separating members.<sup>250</sup> Similar checklists of guidelines are also found elsewhere, as we shall see next.

#### **3.4.5 - Suggested Guidelines for Leaders of Institutes in Australia**

As is the case in many countries, the Conference of Religious in Australia does not have a national policy on the practice of charitable subsidy to separated members of religious institutes in Australia. However, there is a list of suggested guidelines that can prove a great help to institutes that are trying to extend assistance to their separated members. Part of the guidelines reads:

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<sup>248</sup> See *ibid.*

<sup>249</sup> See *ibid.*

<sup>250</sup> See CONFERENCE OF RELIGIOUS OF IRELAND, "Members Leaving Religious Life: Guidelines Prepared for the Conference of Religious of Ireland," (no date, no pagination). These guidelines are attached to the minutes of the meeting of congregational leaders held on 19 February 1997, at 5, Westfield Road, Harold's Cross. See Appendix 3 for the full text of the guidelines prepared for the Conference of Religious of Ireland.

The minimum assistance which a person leaving religious life requires, and which the Congregation provides is: bond for an apartment, adequate furnishings, adequate clothing, health insurance for one year, cash (or its equivalent, e.g., a car) equal to one year's stipend.<sup>251</sup>

Observe that it refers to the above list as minimum assistance; in other words, it is not all that is given to the separating religious. The document further explains: "Where the person has already been on exclaustation for some years, many of these items will have been provided, although they still technically belong to the Congregation. When the person leaves, the settlement agreement will state that certain items already in the person's use, such as clothing, furnishings, books, equipment, are now transferred to his/her possession."<sup>252</sup>

In addition, this document notes that special circumstances could require that extra help, even over a long period, be given to a separated member. Such circumstances could be for reasons of illness or essential training for employment.<sup>253</sup> It also notes that in some other circumstances, less assistance might be required, for instance, if the individual has a very well paid position of employment, or has large personal financial assets at his/her disposal.<sup>254</sup> The guidelines further suggest that the question of a loan

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<sup>251</sup> M. WRIGHT (ed.), "Separation from the Congregation," Confidential Guidelines prepared for the private use of the Conference Leaders of Religious Congregations of Victoria, 8 March 1993. The original document was dated 30 July 1991.

<sup>252</sup> Ibid. Most writers today will disagree with the use of the expression "settlement agreement." What a religious institute gives to its separating member is all based on charity; the separating religious is not entitled to it.

<sup>253</sup> See *ibid.*

<sup>254</sup> See *ibid.*

should be considered. Where the need exists, the institute may be in a position to offer a long-term loan either at low or zero interest to the separated member.<sup>255</sup>

The suggested guidelines for Australia note that every person is different, consequently, the circumstances of each must be considered individually. It provides a checklist as the guide to help in deciding the level of special assistance to ex-religious as follows: age and years spent in the Congregation, level of personal development and education, potential for future employment, physical and psychological health and family circumstances.<sup>256</sup>

The suggested guidelines for Australia, although comparatively short, contain most of the factors that ought to be considered when an institute seeks to assist a former member. The preamble of this unpublished document sees the assistance of institutes to their separated members as a pastoral responsibility. It also lays emphasis on both the individual who is leaving and the institute sitting down together to discuss everything regarding the re-entry of the individual into secular life.

### CONCLUSION

The aim of this chapter, as we indicated at the beginning, was to arrive at a practical interpretation of canon 702, §2 of the 1983 Code. As we have already observed, canon 702, §2 must be read together with canon 702, §1, if it is to make any sense. The first paragraph refuses compensation to ex-members of religious institutes for any work done while they were members. To allow ex-religious to make such claims from religious

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<sup>255</sup> See *ibid.*

<sup>256</sup> See *ibid.*

institutes would militate against the essence of religious life and the practical effects of religious profession. The relationship between religious institutes and their members cannot be considered to be the same as that between employers and employees, based on bilateral contracts.<sup>257</sup> Consequently, the norm of canon 702, §1 legally excludes the right of ex-religious to compensation, thereby protecting institutes from unreasonable demands from former members.

As strange as this may sound, we must remind ourselves that: “The obligation to provide for departed members is grounded on the relationship between the religious institute and its members – a relationship created and governed solely by the law of the Church.”<sup>258</sup> Welch and Campbell further contend:

We need to be confident in using the language of church law, because it is the only law that governs the institute as institute and its members as members. To use the language of civil law is often to suggest that other rights and obligations exist, when they do not in truth exist.<sup>259</sup>

Inability to have a grasp of church law and failure to implement its requirements vis-à-vis the assistance given to former religious could cause endless problems for institutes if the language of civil law is employed. Civil law does not fully understand the theology of religious life.

Welch states: “Membership [in a religious institute] is free and voluntary, and assignments are carried out gratuitously. The member is not entitled to compensation for work performed, even should he/she raise such claim upon leaving, because the membership relationship involves no rights or obligations of legal contract on either

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<sup>257</sup> See SCRIS, *Sacra congregatio*, in FLANNERY II, p. 200.

<sup>258</sup> WELCH and CAMPBELL, “Provisions for Departing Members,” p. 3.

side.”<sup>260</sup> Since it is a membership relationship that has come to an end (c. 701), as opposed to an employment relationship, a misunderstanding is created if we speak of separation in the language of employment or of contract.<sup>261</sup> “It is a departure from religious life, not a termination. We speak of years of membership, not years of service [...]. We speak of provision for departing member’s needs – not a severance or a service benefit or an entitlement.”<sup>262</sup> Accordingly, the decision of the Code Commission to replace “illi praestitam” with “in eo praestitam” was a wise and significant move. Work done for an institute justifiably expects payment from the institute to the worker, but work done as a member of an institute does not.

On the other hand, canon 702, §2 legally requires institutes to show equity and evangelical charity to their separated members. A proper understanding of canon 702, §2 depends on the understanding of the concepts of “equity” and “evangelical charity.”

Equity is not justice as we understand it from a civil law perspective. Justice is rendering to everyone his/her due.<sup>263</sup> In the case of a separated religious, the Church teaches that nothing is owed to him or her.

Equity is a higher form of justice. It is useful when an existing law does not make adequate provision for a particular situation or ignores it entirely. It tries to demonstrate

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<sup>259</sup> Ibid. See also *LG*, 43.

<sup>260</sup> WELCH and CAMPBELL, “Provisions for Departing Members,” p. 3.

<sup>261</sup> See *ibid.*

<sup>262</sup> *Ibid.*

<sup>263</sup> See A.G. CICOGNANI, *Canon Law*, Philadelphia, The Dolphin Press, 1935, p. 12. Cicognani notes: “In its strict sense, the term justice refers to the mutual relations between two persons, and implies a conformity or agreement between the acts of one and the rights of the other.”

the mind of the legislator rather than restricting its attention on the strict interpretation and requirements of the letter of the law. Canonical equity in the Church's legal system is a Christian product, based clearly on mercy and charity.<sup>264</sup> It is invoked when the law fails to uphold a value that the community considers important. Among the things that the Church is associated with are mercy and charity.

Evangelical charity is another element that is required by canon 702, §2. Evangelical charity is gospel charity, and gospel charity is the charity of Christ. The charity of Christ does not know any limits, and does not necessarily consider what a person rightly deserves. Evangelical charity compels us to treat people the same way Christ would treat them. By requiring both equity and evangelical charity, canon 702, §2 suggests that they go hand in hand. Any proper interpretation of this particular norm must take those two elements into consideration.

However, *Sacra congregatio* remains the document that has so far given the best interpretation of canon 702, even though it was issued before the promulgation of the 1983 Code of Canon Law. It widened the scope of the charitable subsidy to separated members of religious institutes to include spiritual, moral and social support, in addition to financial support. The declaration, *Sacra congregatio*, gives protection to religious institutes and separated members alike.<sup>265</sup> It suggests means that could enable religious

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<sup>264</sup> See MCCOY, "Canonical Equity versus the Proliferation of Dispensation and Privileges," p. 96.

<sup>265</sup> This shows a balanced application of the principles of equity and evangelical charity. Both religious institutes and the individual faithful are important to the Church.

institutes to help their separated members through the establishment of social security and insurance programs.

Religious institutes in North America and Europe take into consideration some of the suggestions of the instruction, *Sacra congregatio*, in their practical application of canon 702, §2 of the 1983 Code. They take a number of things into consideration, namely, age of the separated member, health, education and skills acquired. Other things to be taken into account are personal patrimony, investment in work-related and/or government pension programs, the financial status of the institute and its capacity to support all its members who remain faithful to their vocation. Most of the religious institutes ensure that their members are registered in social security and pension programs. These programs offer tremendous assistance to separated members without plunging religious institutes into an unnecessary financial crisis because of departures and dismissals. Some of the institutes that have existing policies regarding assistance to separated members make clear reference to the 1974 instruction.

However, it has been observed that a number of institutes do not have working policies or guidelines with regard to separated members. Many cases are handled in an *ad casum* manner. Lack of policies or guidelines must not be encouraged because it throws open the doors of criticism against religious institutes by separated members, their relatives and friends. Standing policies or guidelines would be of tremendous help to religious institutes in the face of any litigation by separated members who might have deep resentment against their former institutes.

Granted that many of the religious institutes in North America and Europe are doing their best to extend equity and evangelical charity to their separated members, yet there are probably some of them that are not doing enough. If what is given to a separated member cannot sustain him or her for more than three months, one wonders whether that has to be considered an appropriate application of canon 702, §2. Now that we have an idea of what obtains in North America and some other countries, we shall proceed to consider how institutes in Nigeria are applying this norm.

## CHAPTER FOUR

### THE APPLICATION OF CANON 702, §2 IN THE NIGERIAN CONTEXT

#### INTRODUCTION

The ultimate goal of our study is to know how the religious institutes in Nigeria presently provide assistance to their separated members and to propose suggestions for ameliorating the concrete situation if and where necessary. What we have done in the preceding chapters is to lay the groundwork to accomplish this objective. In the present chapter, we come face-to-face with our principal concern.

In order to achieve this purpose, it is important for us to review in brief the identity of the country, Nigeria. Therefore, we shall first situate Nigeria within its geographical location and then briefly discuss its political situation as well as its economy, and take a cursory look at some aspects of its culture. Efforts will be made to examine the financial situation of the religious institutes in Nigeria, because the requirements of canon 702, §2 have to be understood and implemented by the institutes in Nigeria within that particular context.

For this reason, we will determine how the religious institutes in Nigeria currently practise the principles of equity and evangelical charity recommended by canon 702, §2. Most of the information we will provide will be derived from the analysis of the survey we conducted among the religious institutes in Nigeria.<sup>1</sup>

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<sup>1</sup> As indicated in the general introduction, the questionnaire compiled for this research was directed to and answered only by major superiors of religious institutes in Nigeria. Separated members of institutes were not interviewed. However, we must keep in mind that the issue at

The information received from the institutes through the survey will assist us in proposing suggestions and guidelines that would enable religious institutes in Nigeria to draw up their own policies regarding an 'equitable and charitable' assistance to their separated members. Likewise, we will also identify certain means that could help religious institutes in avoiding practical difficulties in their interpretation and application of canon 702, §2.

#### 4.1 - NIGERIA THE COUNTRY

Nigeria is a West African country that lies on the shores of the Gulf of Guinea to the south, with the Republic of Benin to the west, Niger Republic to the north, Cameroon to the south-east and Chad to the north-east.<sup>2</sup> Nigeria has a total size of about 923,768 sq km, slightly more than twice the size of California in USA.<sup>3</sup> It has a tropical type of climate in the southern coastal areas, with the average annual temperature of about 32°C (90°F) and a high humidity most of the year.<sup>4</sup> The northern part of Nigeria is drier and

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stake is to find out how religious institutes practise equity and evangelical charity towards their separated members as canon 702, §2 prescribes. Even though interviewing separated members might have resulted in more data and revealed the situation on the ground, the title of this thesis based on canon 702, §2 directs our attention on the superiors and the practice of various religious institutes in Nigeria.

<sup>2</sup> See J. MAHER et al (eds.), *The Europa World Year Book 2003*, vol. II, 44<sup>th</sup> ed., London and New York, Europa Publications: Taylor & Francis Group, p. 3126. See also CENTRAL INTELLIGENCE AGENCY (=CIA), *The World Factbook 2003*, Washington, DC, Brassey's Inc., 2003, p. 382. Our references to *The World Factbook* will be taken from this 2003 printed version. This resource book is updated online every month. The 2005 edition is also available online <http://www.cia.gov/cia/publications/factbook/geos/ni.html>. In fact, *The World Factbook* specifies that the coastline is about 853 kilometers, the boundary with Benin is about 773 km, with Niger Republic is about 1,4047 km, with Chad is about 87 km and with Cameroon about 1,690 km.

<sup>3</sup> See CIA, *The World Factbook 2003* notes that Nigeria has a total of about 910,768 sq km of land and 13,000 sq km of water.

<sup>4</sup> See *The Europa World Year Book 2003*, p. 3126. This is a typical tropical climate.

semi-tropical.<sup>5</sup> Therefore, the climate varies; equatorial in the south, tropical in the centre and arid in the north.<sup>6</sup>

#### 4.1.1 - Population

Nigeria has an estimated population of about 129,934,911.<sup>7</sup> It is the most populous country in Africa.<sup>8</sup> Nigeria is composed of more than 250 ethnic groups; the most populous and politically influential ones are: Hausa and Fulani that make up about 29% of the population, Yoruba about 21%, Igbo (Ibo) about 18%. Others are: Ijaw 10%, Kanuri about 4%, Ibibio 3.5% and Tiv 2.5% of the entire population.<sup>9</sup> Each of the ethnic groups has its own language. However, another source lists 521 languages, out of which 510 are living languages, 2 are second languages without mother-tongue speakers, while 9 are extinct.<sup>10</sup>

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<sup>5</sup> See *ibid.*

<sup>6</sup> See CIA, *The World Factbook 2003*, p. 382. It notes: "This entry includes a brief description of typical weather regimes throughout the year."

<sup>7</sup> See CIA, *The World Factbook 2003*, p. 382. It notes: "Estimates for this country explicitly take into account the effects of excess mortality due to AIDS; this can result in lower life expectancy, higher infant mortality and death rates, lower population and growth rates, and changes in the distribution of population by age and sex than would otherwise be expected." The truth is that there has not been an accurate census in recent years, but some recent records estimate Nigeria's population between 130, 000,000 and 137, 000,000. However, Nigeria is preparing for a fresh census that will take place in 2006.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> See R.G. GORDON, Jr. (ed.), *Ethnologue: Languages of the World*, Fifteenth edition, Dallas, TX, SIL International, Online version, 2005, available at <http://www.ethnologue.com/>. Surprisingly, *Ethnologue* provides information on each language, the alternate name of the language, the State and Local Government Area (LGA) where it is spoken, the approximate number of people that speak the language and the dialects under the same language. It also indicates where the people who belong to that language group are speaking another language.

#### 4.1.2 - History/Government

The present-day Nigeria, except for the section of the former German-controlled Cameroon, was conquered by the United Kingdom in several stages during the second half of the 19<sup>th</sup> century and the first decade of the 20<sup>th</sup> century.<sup>11</sup> In 1914, the British dependencies of the Northern and Southern Nigeria were merged into a single territory administered largely by traditional native rulers, under the supervision of the colonial authorities. The United Kingdom introduced a new Nigerian Constitution in 1947, and established a federal system of government, based on three regions: Northern, Western and Eastern.<sup>12</sup> The purpose of the federal arrangement was an attempt to reconcile the religious and regional tensions, and to accommodate Nigeria's diverse ethnic groups, notably the Ibo (in the east), the Yoruba (in the west) and the Hausa and the Fulani (in the north).<sup>13</sup>

Nigeria became independent on 1 October 1960. Unfortunately, its shaky democracy did not last long. On 15 January 1966, the civilian government headed by Alhaji Abubakar Tafawa Balewa was overthrown by a group of junior officers in the armed forces and the Prime Minister was killed.<sup>14</sup> Nigeria has recorded many coups and counter coups since the one in 1966.<sup>15</sup> In addition, Nigeria has witnessed a number of

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<sup>11</sup> See *The Europa World Year Book 2003*, p. 3126.

<sup>12</sup> See *ibid.*

<sup>13</sup> See *ibid.*

<sup>14</sup> See *ibid.*

<sup>15</sup> See *ibid.* Details of the coups and counter coups are contained in *The Europa World Year Book 2003*, pp.3126-3129.

major unrests traced to ethnic or religious differences.<sup>16</sup> Besides the military coups, ethnic and religious unrests, there is also political killing of individuals.<sup>17</sup> Whether it be a military coup, ethnic clashes, religious unrest or politically motivated killings, all this adversely affects the economy of Nigeria.

#### 4.1.3 - The Economy of Nigeria

The economy of Nigeria historically was based on agriculture, and more than half of the country's workforce is still engaged in farming (largely of a subsistence type). Even though the economy of Nigeria was historically based on agriculture, it is more truthful today to say that the economy is basically dependent on oil. The CIA correctly summarises Nigeria's economy as follows:

The oil-rich Nigerian economy, long hobbled by political instability, corruption, and poor macroeconomic management, is undergoing substantial economic reform under the new civilian administration. Nigeria's former military rulers failed to diversify the economy away from overdependence on the capital-intensive oil sector, which provides 20% of GDP, 95% of foreign exchange earnings, and 65% of budgetary revenues. The largely subsistence agricultural sector has failed to keep up with rapid population growth, and Nigeria, once a large net exporter of food, now must import food.<sup>18</sup>

The truth about this is that Nigeria's economy depends on oil, but political instability, corruption, religious riots and ethnic divisions have impoverished Nigeria to the point that most of the population lives below the poverty line. Many Nigerians do not have

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<sup>16</sup> See *ibid*, pp. 3131-3133. There have been a lot of these unrests in recent years.

<sup>17</sup> *The Europa World Year Book 2003*, p. 3195. For example, in December 2001 the incumbent Minister of Justice, a close associate of President Obasanjo, was shot and killed in his bedroom. In March 2003, Marshall Harry, a prominent member of the ANPP party in Abuja was killed in his bedroom. The killers in both murder cases are unknown.

<sup>18</sup> See CIA, *The World Factbook 2003*, p. 383.

access to basic amenities in a country that is sitting on mineral wealth. Mismanagement appears to be one major reason for their sufferings.

John Okwoeze Odey helps us to realise how the present state of the economy affects the masses in Nigeria as he writes:

If workers are not paid their salaries as and when due because our leaders prefer to empty the public coffer on frivolous projects, blatant squandermania and reckless looting of public money, we have an obligation to tell them to do justice and to warn them about the disastrous outcome of their action. [...]. The poor masses of this country are suffocating under the yoke of [...] democratic tyranny. They are socially alienated. They are politically enslaved. They are economically impoverished and devastated. They are psychologically traumatized. Millions of us have died without tasting the fruit of the abundant wealth you [God] deposited in our land.<sup>19</sup>

The above quote gives us a bird's eye-view of the situation in Nigeria. It is not only the present civilian government that is to blame. Sixteen years of military rule compounded Nigeria's problems. However, we must add that not all Nigerians feel the impact of the economy that is in shambles; there is still a tiny percentage of the population that is swimming in affluence.

One must be wondering what all this information on Nigeria has to do with a thesis in canon law. As we have already indicated, we consider a brief background on Nigeria important because it is within this geo-political and socio-economic atmosphere that the religious institutes in Nigeria exist. The same economic situation that faces the inhabitants of Nigeria affects them also. This has to be borne in mind as we expect

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<sup>19</sup> J.O. ODEY, *The Lamentations of a Lost Generation*, vol. I, Enugu, Nigeria, Snaap Press, 2005, pp. 15 and 17. Odey is a Roman Catholic priest of the diocese of Abakaliki in Nigeria, who has authored about twenty-nine books. Most of his writings in recent years are devoted to criticizing the Nigerian political leadership whom he blames without mincing words for the sufferings of the people of Nigeria.

religious institutes in Nigeria to extend equity and evangelical charity towards their separated members. The saying has it that: "*Nemo dat quod non habet.*" Consequently, the application of canon 702, §2 in the Nigerian context cannot be the same as its application in Europe and North America, since the economic situation in Nigeria is different from those of the developed nations.

#### 4.1.4 - The Economic Situation of Religious Institutes in Nigeria

The economic situation of Nigeria that we have just considered immediately tells anyone that religious institutes located within that geographical zone, known for its poor economy, must be facing serious economic hardships. In fact, the overall economic situation of religious institutes in Nigeria is deplorable.<sup>20</sup> Among the nine religious institutes of men that provided answers to our questionnaire, five reported that their sources of income include salaries from their members working within Nigeria. Of the religious institutes of women who provided answers to our questionnaire, eighteen of them stated that one of the sources of income that helps their institutes to subsist comes through the salaries of their members.<sup>21</sup> Only one male religious institute reported that part of its income is through the salaries of their members working outside Nigeria.<sup>22</sup> Among the female institutes who answered the questionnaire, eight get part of their

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<sup>20</sup> This conclusion stems from the results of our survey of the religious institutes in Nigeria.

<sup>21</sup> Even though we are not told what percentage of their income comes from the salaries of members, we know that generally workers in Nigeria are not the best paid in the world. Most workers are poorly paid. Often some state governments owe salaries to workers for several months.

<sup>22</sup> This is one out of those who answered the questionnaire. We assume that some other male institutes obtain the means to support their members through the salaries of their members working outside of Nigeria.

income from the salaries of their members working outside the country.<sup>23</sup> Money-yielding investments are another source of income for the religious institutes in Nigeria. Four male institutes rely on these investments for their sustenance. Twelve institutes of women reported that they also rely on money-yielding projects to enable them to subsist. Another source of income for the religious institutes in Nigeria is donations from within the country. Four male institutes benefited from this source of income. Fifteen of the female institutes who answered the questionnaire also stated that donations from within Nigeria are one of the sources of income for their institutes. Donations from outside Nigeria are another source of income for the institutes. Seven out of the nine male institutes reported that donations from outside are a source of income for them.<sup>24</sup> Seventeen female institutes stated also that they depended on donations from outside Nigeria for the maintenance of their institutes.<sup>25</sup> Some of the institutes are international, with their mother house or the centre for their general administration located somewhere outside Nigeria. Often most of the money to run the province, district or local circumscription comes from the allocation from their centre for general administration that is located elsewhere.

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<sup>23</sup> Like in the case of the male institutes, we assume that there are other female religious institutes in Nigeria who also manage to subsist partly because of the salaries of their members working outside Nigeria.

<sup>24</sup> This represents about 77.8 percent of the institutes that answered the questionnaire, but if all the institutes in Nigeria responded to it, the result would still be close to a high percentage of the institutes in Nigeria that receive donations from outside the country.

<sup>25</sup> This represents 70.83 percent of the institutes that responded to the questionnaire. Even though many institutes did not respond to the questionnaire, it may not be wrong to believe that a high percentage of the institutes in Nigeria still depend on outside donations for sustenance.

With regard to the source of funds with which the religious institutes in Nigeria help their separated members, most of them take the money from their current funds. Three male institutes stated that the money to help former members is taken from current funds. Five of the male institutes reported that they obtained the money from other sources.<sup>26</sup> Two of these five institutes stated that it came from their general administration (Mother House). One male institute reported that the money comes from their internal retirement fund.<sup>27</sup> Two male religious institutes did not indicate the sources of the funds they use in providing assistance to their separated members. The picture is almost the same in the religious institutes of women.

As for the institutes of women religious in Nigeria, most of them take the funds to assist their former members from their current funds. Seventeen institutes reported that this is the case. Only one religious institute stated that it takes the money from a fund specially set aside for members who leave.<sup>28</sup> Four institutes indicated that they received the funds from other sources.<sup>29</sup> Five of those who admitted to extending help to their former members did not identify the source of the funds they use when helping them.

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<sup>26</sup> Two of those who stated that the money came from other sources did not say what these sources are.

<sup>27</sup> This is the only male religious institute that reported having a fund set aside for retirement. We shall return to the issue of using the retirement fund to assist separated members shortly.

<sup>28</sup> There could possibly be a few other institutes in Nigeria that have funds set aside to help their former members at the time of separation or after, but this is not probable. At least of all the twenty-seven institutes who were kind enough to respond to our questionnaire, only one stated that it set a special fund apart for helping former members. This represents only 3.7 per cent.

<sup>29</sup> They do not reveal the sources of the funds that enable them to extend assistance to their ex-members. One may not be completely wrong to imagine that the four must belong to institutes that are international. It could be that the money comes from their centre for general

One question in the questionnaire was intended to seek information on the overall financial situation of the institutes. Only one male institute agreed that it is financially self-sufficient.<sup>30</sup> Among the female religious institutes, twenty-two declared that they are not financially self-sufficient. Only two female institutes stated that they were.<sup>31</sup> We would now like to examine how the institutes in Nigeria practise equity and evangelical charity towards their separated members with the resources available to them.

#### **4.2 - THE CURRENT PRACTICE IN NIGERIA WITH REGARD TO SEPARATED MEMBERS**

We can get a good picture of the practical application of canon 702, §2 in the Nigerian context with the results of our survey. The questionnaire was sent to all religious institutes in Nigeria in February 2005. A total of twenty-nine male institutes and fifty-nine religious institutes of women were surveyed. Not all of them responded.<sup>32</sup> Some of the answers were provided on behalf of the General administration, in the case of those institutes founded in Nigeria. Others answered on behalf of their province in Nigeria. We shall now consider some aspects of the survey.

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administration. This is only an assumption; the truth about the source of the funds can be revealed only by the four female religious institutes in question.

<sup>30</sup> We do not know what exactly they mean by accepting to be financially self-sufficient, considering the situation in Nigeria where things are generally very difficult. That an institute manages to live from hand to mouth does not indicate financial self-sufficiency. To receive hand-outs from overseas charitable organisations does not qualify for financial self-sufficiency either.

<sup>31</sup> One wonders how correct this claim is when their response is taken in conjunction with other answers they provided. The two institutes that feel that they are financially buoyant are both international religious institutes. It could be true that an entire institute is self-sufficient, and because a branch of it is dependent on its general administration for sustenance, it feels that it is self-reliant. But they provided answers on behalf of their province and not for their general administration.

<sup>32</sup> It is more appropriate to say that our survey was a select study, since some institutes did not answer the questionnaire.

#### 4.2.1 - Praxis in Male Religious Institutes in Nigeria

Out of the twenty-nine male religious institutes that were approached, only nine responded to the questionnaire. Eight of the nine institutes are of pontifical right; only one is of diocesan right. One of the institutes is a monastery. Each of the institutes has lost some members in the last twenty years either through voluntary departure or dismissal. Incidentally, religious institutes in Nigeria lose more members through dismissal than through voluntary departure, as could be observed from the results of our survey.<sup>33</sup>

Eight of the nine male religious institutes reported that they gave monetary assistance to their ex-members according to the need of each individual. One institute stated clearly that it does not extend any form of assistance to a separated member.<sup>34</sup> With regard to the nature of assistance given to former members, one institute reported that it helps its separated members to start a new life. However, this particular institute did not specify what type of help it gives.<sup>35</sup> Another institute reported that it gives financial assistance to ex-members, but would not specify the specific reason for the help. However, they stated that they give an average of about US\$1,700.<sup>36</sup> Six out of the nine

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<sup>33</sup> It is important to note the word “dismissal” is used to cover two categories of separated members. The first group are those who were not allowed to renew their vows on expiration, and the second group are those who were canonically dismissed for various reasons.

<sup>34</sup> This institute ought to be commended for giving an honest answer, even though its attitude towards the separated members seems to run contrary to the prescripts of universal law as enunciated in the Code of Canon Law (canon 702, §2).

<sup>35</sup> This institute also would not reveal how much money it gives. However, it stated that it helps the separated members according to the needs of the individual.

<sup>36</sup> This seems to be the highest amount that an institute in Nigeria would give to a separated member. According to our survey, no other institute in Nigeria has given a similar amount, either in American or in Nigerian currency.

male religious institutes reported providing transport money to members who were leaving them for good. Two provided clothing materials, while one returned personal belongings. Two institutes stated that they provided professional counselling, and two others provided spiritual direction to their separated members.<sup>37</sup> Three male institutes reported that they assisted their former members with further education. Only one of them clearly stated that the help would be for one year with a maximum of two years of the person's educational programme. Four institutes did not give any idea of the amount of money they give, but stated that they give according to the needs of the individual because each case is different. One religious institute gives US\$100 for each year of membership. One male religious institute has the policy of giving N10, 000 to someone who leaves within the first year of religious profession; N15, 000 to one who leaves after two years of profession; N20, 000 to one who stays about three years after profession; N25, 000 to one who leaves after completing four years of membership, and N30, 000 to one who completes five years in religious life. One who stays five years and above receives the same amount (N30, 000).<sup>38</sup> One institute gives N10, 000 to a separated member.<sup>39</sup> Another institute reported that it gives N10, 000 for each year of membership, with the maximum amount pegged at N50, 000.<sup>40</sup> Interestingly enough, it is this

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<sup>37</sup> Professional counselling and spiritual direction were offered only to those who welcomed the proposal. In fact, one institute reported that it provided counselling if the departing member requested for it.

<sup>38</sup> It then means that this institute gives between US\$75.75 to \$227.27 approximately to their separated members, depending on the number of years they were members of the institute.

<sup>39</sup> N10, 000 would be about US\$75.75, depending on the exchange rate. That means that this institute gives less than US\$100 to a separating member.

<sup>40</sup> What it means in effect is that this religious institute gives between US\$75.75 to a maximum of US\$378.75 to its separated members.

particular religious institute that referred to the assistance they give to their separated members as a “severance allotment.”<sup>41</sup>

Most of the religious institutes reported that the assistance they extend to their separated members is guided by a number of factors. These include: years of membership, age, education acquired, health, employment opportunities and family situation. Other factors include standard of living in the country, relationship with the institute, member’s contribution to his religious institute, whether the departure was voluntary or through dismissal, etc. Five institutes consider the number of years that the separating member spent in the institute. Four reported that they take age into consideration. Five would consider the level of education of the separating member, while three institutes would take the health of the former member into account. Three institutes stated that they help their former members to secure employment.<sup>42</sup> Six of the eight that give assistance to their former members reported that they take the family situation into consideration.<sup>43</sup> Three consider the standard of living in the country in determining the amount of assistance a separating member would receive. Four institutes take into account the relationship of the person with the religious institute prior to

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<sup>41</sup> This particular institute used the expression “severance allotment” more than once. This is revealing because it is now over thirty years since the Holy See clarified through the 1974 declaration, *Sacra congregatio*, that assistance to separated members of religious institutes must not be understood as a severance package.

<sup>42</sup> In fact, one of the institutes made it clear that the assistance it gives towards securing employment is limited to giving a good recommendation or a good reference letter to the former member if so requested.

<sup>43</sup> People who have a fairly rich family to go back to would require less assistance than those who return to poorer families.

departure or dismissal.<sup>44</sup> Three institutes consider whether the separating member is leaving through voluntary departure or dismissal.<sup>45</sup> Three other institutes reported that they consider other factors not mentioned here, but they did not specify what those factors are. One stated that the other factors depend on the special request of the separating members.

Out of the nine religious institutes of men, eight do not give loans to former members. Only one reported that it did; but interestingly, it used the phrase “reluctantly yes” in answer to the question. Most of the institutes reported that the assistance they give is for one time. Three stated that in principle their help is for one time, but the needs of the individual could force them into an on-going assistance.<sup>46</sup> Practically all the male religious institutes in Nigeria who give assistance to their former members admitted that their help is not uniform; much depends on the needs of the individual and the factors that ought to be taken into consideration.<sup>47</sup>

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<sup>44</sup> This would mean that former members who were disobedient to superiors would expect less assistance from the institute at the point of separation. One particular religious institute noted: “Some [ex-members] did damage to our image by the type of life they lived that led to their expulsion.” Yet another institute noted: “We would probably be less generous with our help to those who have done us harm before leaving.”

<sup>45</sup> One institute that gives N10, 000 (the equivalent of US\$75) to every separating member noted that this is the only factor they take into account if anything ought to be added to the specified amount given.

<sup>46</sup> None of those who indicated a possible on-going assistance tells us how long this lasts, but they also do not say that it is indefinite.

<sup>47</sup> Even the institute that gives the same cash amount to a separating member admitted giving an on-going assistance where the individual requires it and requests extra help.

#### 4.2.2 - Praxis in Female Religious Institutes in Nigeria

Out of the fifty-nine female religious institutes that were approached with our questionnaire, twenty-seven responded. Twenty-one out of the twenty-seven of them are institutes of pontifical right, while four are of diocesan right. Two institutes did not indicate whether they were of pontifical or diocesan right.<sup>48</sup> Twenty-four out of the twenty-seven that answered our questionnaire reported that they have lost members in the recent past through voluntary departure and dismissal.<sup>49</sup> The twenty-four institutes reported that they have lost a total of four hundred and eleven members in the last twenty years. One hundred and sixty-two of them were through voluntary departure, while two hundred and forty-nine members were dismissed. Judging from their responses, more members leave while on temporary vows than those who are finally professed.

Twenty-three out of the twenty-four female religious institutes in Nigeria who have lost members in the past reported that they offered assistance to their separated members. Only one institute does not provide anything.<sup>50</sup> Eighteen institutes give

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<sup>48</sup> The two religious institutes in question did not provide answers to the questionnaire. They sent letters of regrets and encouragement because they could not meet up with the deadline to return the questionnaire. The major superiors of those institutes were away around the time the survey was conducted.

<sup>49</sup> A little confusion arises with the only institute that reported losing no one because it also accepts to have lost one member through dismissal. This confusion may be as a result of not fully understanding the question.

<sup>50</sup> This particular institute is relatively new in Nigeria, and reported losing a total of four members. Surprisingly enough, in their case, one of those who left was in temporary vows, while the other three had made their final profession. The majority of the religious institutes lose more members from those who are temporarily professed than from those who have made their final profession.

transport money to a separated member to return home.<sup>51</sup> Twelve female institutes give lay clothing materials.<sup>52</sup> Seven religious institutes stated that they arrange for accommodation for their separating members. Generally, we are not told what type of accommodation they offer, and we do not know whether it is on a temporary or permanent basis.<sup>53</sup> Eleven institutes try to help in furthering the education of their separated members. Two institutes stated clearly that the help towards education is given to those who do not possess enough education and skills, and who did not receive any formal training while in the institute.<sup>54</sup> Five out of the twenty-seven religious institutes of women in Nigeria who replied reported providing professional counselling to their separated members. Only four institutes arrange for spiritual direction at the point of separation. Seven institutes stated that they give assistance through other means. One gives money to a separating member; no other form of assistance is extended to them. Another reported offering a job in one of its own institutions.

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<sup>51</sup> One of the institutes reports that this is included in the overall money given to the separating member. Another institute prefers to take the individual member home, to make sure she returns to her blood family.

<sup>52</sup> One institute explained that this happens where the lay dresses of the separating member no longer fit properly. This could be understood as resulting from the change in the physical structure of the separating member. Most religious institutes would not allow a separated member to go home for good while wearing their religious habit.

<sup>53</sup> One institute that is monastic reported giving separated members accommodation in their guest house. It does not say how long the separated member could remain accommodated there. We assume that this must be for a temporary period; otherwise it makes no sense that the person has left the monastery for good, unless given a permanent job in the monastery. Another institute clearly stated that it provides accommodation for their separated members on a temporary basis.

<sup>54</sup> Most of the institutes that help their former members to acquire more education and skills did not explain the extent of their help. Only one made it clear that the assistance it provides is limited to an initial help to begin an education programme.

Among the female religious institutes in Nigeria who extend assistance to their separated members, almost all of them reported that the assistance they provide is not uniform; much depends on the needs of each individual. Only one institute reported that it gives a uniform monetary assistance. Eighteen stated that the assistance they provide is a one time thing. One noted that, in principle, it gives help only once, but would always ask the separating member to come back if she thinks she needs further assistance. In like manner, another institute provides help once, but would consider the situation the separating member faces. Three institutes stated that their assistance to separating members is on-going.<sup>55</sup>

We tried to get some idea of how much money the religious institutes in Nigeria give to their separated members. We discovered that the amount is between N10, 000 to N150, 000.<sup>56</sup> As a matter of fact, only one institute reported giving up to N150, 000 (US\$1,136); no other institute has given more than N100, 000 (about US\$757). One institute reported giving not less than twenty thousand naira (Nigerian currency), but did not give any indication of the highest amount that has been given. Most of the female religious institutes that extended assistance gave between N10, 000 and N50, 000. Three institutes gave more than N50, 000. Nine female religious institutes did not reveal the

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<sup>55</sup> We do not know what exactly they mean by “on-going,” since they did not explain. Would “on-going” mean until the separated members are comfortable enough to take care of themselves? Would this be limited to those who are helped to acquire further education or skills? Considering the financial situation of the religious institutes in Nigeria, it is very unlikely that “on-going” in this case would mean till the separated member dies.

<sup>56</sup> N10, 000 to N150, 000 is approximately the equivalent of about US\$75 to US\$1,136, depending on the exchange rate of the Nigerian currency to the American dollar at a given period.

amount of money they gave.<sup>57</sup> One institute reported that it gave US\$100 for every year of membership in the institute.<sup>58</sup>

#### 4.2.3 - Issues Considered in an Assistance Package

The charitable assistance that the female religious institutes in Nigeria extend to their separated members takes different factors into consideration. Out of the twenty-seven institutes that answered our questionnaire, twenty-one took various factors into account. Only one institute stated that it did not take anything into consideration. Three institutes did not indicate that they took any factor into consideration.<sup>59</sup> Seventeen institutes counted the number of years the separated member spent in the institute after her first religious profession.<sup>60</sup> Twelve institutes took the age of the separating member into account.<sup>61</sup> Fifteen institutes reported that they consider education acquired. The

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<sup>57</sup> Two of the female religious institutes who did not provide figures of the exact amount they gave to their separated members simply stated: "It depends [...]."

<sup>58</sup> This particular institute does not tell us that there is any ceiling to the number of years they would pay the US\$100 for each year of membership to a separated member. It is not likely that they have had members living after about twenty to thirty years of membership because the amount they would need to give at one time would be too much for a single religious institute to part with in the current Nigerian situation.

<sup>59</sup> There is nothing strange about these responses because we have already mentioned that one institute did nothing for separated members. We have also noted another institute that gave a flat-rate monetary assistance, irrespective of what the needs might have been. It is not expected that these two institutes would take anything into account when extending help to their separated members.

<sup>60</sup> Most religious institutes are more in sympathy with the one who spent many years in the institute than with the one whose stay was relatively short. Many years in a religious institute could mean that the person is no longer very young.

<sup>61</sup> Age would affect other factors; if for example one is no longer young, if the person has not enough education, it may not be possible for the person to go back to school to acquire any further education or skills. Consequently, the person may find it difficult to obtain employment or at least one with good pay. For a woman who has reached the age of menopause, the possibility of getting married and have someone to take care of her at an advanced age may be out of the question in Nigerian society.

reason is that a person who is well educated stands a good chance of securing a well paid job than one who is not equally well educated.<sup>62</sup> A total of thirteen female religious institutes in Nigeria take into account the health of the former member.<sup>63</sup> Fourteen reported that among the things they consider when they give assistance to their separated members is employment opportunity. The person who is unlikely to secure a job with ease deserves more attention and more assistance.<sup>64</sup> Another factor that female religious institutes in Nigeria take into consideration as they extend help to their former members, especially at the point of separation, is the family situation of the separating member. Some people may not have a family to go back to.<sup>65</sup> Even if each person has one to return to, some families are wealthier than others and some would be more disposed to

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<sup>62</sup> However, sound education ought to be taken into consideration together with other factors. One may be very well educated but may have reached retirement age. Another could be educated but ill health may not allow her to work for a living. We should not also forget the psychological fulfillment that goes with having a sound education.

<sup>63</sup> This is understandable because one who is ill may require expensive medication in Nigeria where there is hardly any health insurance coverage, and where only the very rich can afford any form of coverage. A separated member who is very ill would certainly find it extremely difficult to secure employment in Nigeria where many healthy and educated people who are ready to work are unemployed.

<sup>64</sup> None of the institutes told us what extra help they give to those who are not likely to get a good paying job, but common sense would suggest that the institute would be more sympathetic towards people who fall under this category. However, taking employment opportunities into consideration does not necessarily refer to those who are unable or unlikely to secure a good job, but it also means that those who would pick up a job with much greater ease would expect to receive less from the institute at the point of separation.

<sup>65</sup> While such a situation is rare in the Nigerian context, it is not completely absent. Some years ago, a priest who suffered from Alzheimers before dying simply had no blood relatives. The story has it that he was a foundling who was raised by missionaries. From infancy, no one claimed to be his blood relative. He could only trace his roots to the missionaries. He grew up, studied in the seminary and was ordained. Even though he had friends, was a holy and successful priest, yet in his old age he had no biological family to cling to and could not go back to any.

accepting the burden of a relative who as a religious did not help anyone in her family.<sup>66</sup> Eleven institutes reported taking the standard of living into consideration when they put together an assistance package for a separated member. Six institutes took into account the relationship the separated member had with the institute while she was a member.<sup>67</sup> Only three institutes stated that they considered the individual's contribution to the institute while she was a member. If someone intentionally contributed nothing or almost nothing during her membership years, the person would not expect much help from the religious institute. Seven institutes took into consideration whether the separated member left through voluntary departure or through dismissal.<sup>68</sup> Only one institute noted that it takes into account other factors but does not tell us what those other factors are other than the ones we have already noted.

Of all the religious institutes of women in Nigeria who answered our questionnaire, only one reported that it gives loans to their separated members to help them re-establish themselves in society. The loan is given without the requirement of the

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<sup>66</sup> A Nigerian adage says: "All fingers are not equal" (a transliteration from the vernacular). This proverb is used in relation to people and wealth/riches. People are not equally rich or poor. The human society is not egalitarian; the same as the Nigerian society. Another Nigerian adage reads: "The firewood one gathers during the dry season is what one uses during the wet season" [when firewood is difficult to fetch] (a transliteration from the vernacular). In the same vein, a similar adage says: "The wealth one accumulates as a young person is what he enjoys in old age" (a transliteration from the vernacular). If while one was a member of a religious institute, one contributed nothing to his/her biological family, where is the justification in expecting the biological family to shoulder responsibilities for the separated religious?

<sup>67</sup> A member who was obedient to superiors and was serious with her vocation would attract more sympathy from the institute at the point of separation than one who proved to be difficult. A religious who was working and kept all her salaries (at least most of the time), who was very disobedient to superiors and who in every respect was a problem member would expect less sympathy and assistance from her religious institute at the point of separation and thereafter.

payment of interest on it. It also noted that in most cases the loan is not paid back. Those who paid back did so only in part.<sup>69</sup>

While the foregoing represents the answers the religious institutes in Nigeria gave to our questionnaire, there were some remarks freely made by the major superiors that are quite revealing and helpful to an understanding of the situation of institutes in Nigeria and their practice of equity and evangelical charity towards their separated members. We now wish simply to take note of or highlight some of those remarks.

#### **4.2.4 - Remarks of some Major Superiors in Nigeria**

Some of the major superiors who responded to our questionnaire made some interesting observations. Some of their comments provide clues that reveal their understanding and application of canon 702, §2 in Nigeria, including the exact financial situation of the religious institutes in the country.

One major superior commented: “We are not yet established as [...]. We have as yet no policy guiding our help of former members. The [...] professed [...] who left is being helped to study through a donation from outside Nigeria. [...] we do not earn salaries, but as a community we earn money through the work of our hands [...]. Some questions are left unanswered because we have no policy as yet.”<sup>70</sup> This very honest

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<sup>68</sup> Naturally, there is more bitterness that goes with dismissal than with voluntary departure. In dismissal, a person may have done something that is serious and brings shame on the entire institute, but may be unwilling and unprepared to leave.

<sup>69</sup> It is not a surprise that most institutes do not give loans to their former members. Moreover, the general economic situation of the religious institutes in Nigeria makes it impossible for them to grant loans to former members when they do not have enough funds to look after those who remain faithful to their vocation within the institute.

<sup>70</sup> All the ellipses in this quote are meant to protect the identity of the major superior and the institute that made this honest remark.

remark reveals the poor financial status of the institute, its dependence on the generosity of people and organisations from outside Nigeria, as well as the fact that the institute has no policy on how to assist separated members. Another institute commented: “[...] we are a community in Nigeria, trying to become self reliant. The [...] finally professed who left us completed university and decided to leave!! We are learning slowly.”<sup>71</sup> One institute had this to say: “It is essential to maintain a good relationship with the former members, but some times it is difficult because some of them left with violence due to misunderstanding. Such people find it difficult to engage in any dialogue with their former congregation.”<sup>72</sup> One institute stated: “We have no written guidelines on assistance to those leaving the institute. Rather each administration considers how best to settle those who leave.”<sup>73</sup> One major superior in a beautiful letter attached to the reponse to the questionnaire noted among other things: “We have no pension, health insurance programmes, etc. [...] we are not remotely self-sufficient [...], and are almost entirely dependent on aid from outside Nigeria [...]”<sup>74</sup> Another major superior stated: “Our province deals with departing members as individuals with unique needs. The only clear

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<sup>71</sup> The comment: “We are learning slowly” is not explained. But could it mean that the institute feels exploited by those who joined them, and then acquired a sound education before abandoning their vocation?

<sup>72</sup> This remark highlights the unique resentment associated with separation from a religious institute, especially in cases of dismissal.

<sup>73</sup> Again, the remark of this major superior reveals that there is no policy guiding any assistance package for separated members. Everything is handled in an ad hoc manner. The use of the word “settle” is a bit vague; hopefully, it does not give the impression of the settlement of debt or that what is given to the separated member is something owed him/her by the institute.

<sup>74</sup> The quote again reveals the economic status of most of the religious institutes in Nigeria. In addition to what is quoted is the fact that the letter also made it clear that none of their members receives a salary; they have no pensions and no health insurance. The institute in Nigeria depends on aid from outside Nigeria.

policy is that of charity.”<sup>75</sup> Another superior remarked: “Those who leave the institute are normally reluctant to come back to the community for assistance, even though this is clearly mentioned to them before they leave.”<sup>76</sup> One major superior stated: “The problem is that our sources of income are not yet enough to sustain the [members who remain faithful to their vocation]. We don’t have enough to assist the ex-members. Some of them were trained but they never wanted to continue with us. Some did damage to our image by the type of life they lived that led to their expulsion.” Yet another superior said: “The discernment of good vocations from spurious vocations in Nigeria is a problem. Prudence is needed in dealing with the ex-members because of fraudulent activities in the name of the institute.”<sup>77</sup> Another superior, after enumerating a number of ‘expenses’ their institute incurs because of their members, feels that their separated members rather “owe” their former institute. In other words, this superior does not feel that anything should be done to help former members.

Having presented a summary of the results of our survey of the religious institutes in Nigeria, and having earlier considered the application of canon 702, §2 in some other countries, we notice that some differences exist. Situations differ from place to place. The

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<sup>75</sup> There is no doubt that the assistance each institute extends to separated members is based on charity. But charity to a separated member is not the same as the charity of sparing petty-cash to a beggar on the street for coffee or a little money for transport to someone who is stranded on the road and has no money to get to his/her destination. It is not enough for a religious institute to disregard guidelines or policies simply because canon 702, §2 speaks of charity; the practise of charity could hide gross abuse of human dignity.

<sup>76</sup> We are not told why separated members are reluctant to come back to the institute for assistance, even though the institute expresses its willingness to assist them in their future needs.

<sup>77</sup> The superior who wrote this must be in the best position to explain what the saying means. However, the superior sounds a note of warning to institutes in Nigeria who are extending assistance to their former members. From what the writer says, it is unlikely that the superior is in favour of institutes being generous to former members.

difference in situations affects the practical application of canon 702, §2 by religious institutes around the globe. We shall now mention some of the disparities we discovered in the methods of application.

#### 4.2.5 - Observations

The responses of the religious institutes in Nigeria to our questionnaire were quite informative. Generally speaking, one would say that many of the institutes are doing their best to assist their separated members, since most of those who took part in our survey reported doing so. Apparently, but only apparently, there appears to be a degree of sensitivity and compassion on the part of most of the institutes as they extend equity and charity to their former members, judging from the result of the survey. Most of the institutes handle each case in an *ad casum* manner because of the complexity of the issue.<sup>78</sup> However, one can easily observe that the understanding of canon 702, §2 and its practical application in Nigeria is not exactly the same as in the countries of North America and Europe that we have already considered. We shall start by highlighting some of the comments made by the major superiors who responded to our questionnaire.

The result of our survey reveals that the application of canon 702, §2 in the Nigerian context is basically limited to monetary assistance.<sup>79</sup> This does not indicate a proper understanding and application of our chosen canon. We have already established

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<sup>78</sup> We have already noted that this is the same elsewhere, even in the advanced countries of Europe and North America.

<sup>79</sup> This is also almost the case in many other countries of the world. The reason is that in most cases the separating member fails to cooperate with the institute when it offers things other than money. Moreover, the level of resentment in most cases does not allow the separating member to listen to the voice of reason during those bitter moments.

the fact that the Holy See expects religious institutes to demonstrate equity and evangelical charity to separated members not only financially, but also spiritually, morally and socially.<sup>80</sup> The money given to separated members in most cases is sufficient only to qualify as transport money to go home. In addition to transport fare, the money can last only for a very short period; perhaps a few days or at most for some weeks. It is doubtful that this is the type of assistance the Church would want to see institutes extend to their former members.

Not only is the assistance provided in the form of money not enough, but the spiritual assistance the Holy See has asked institutes to include in their assistance package to separated members based on equity and evangelical charity is almost lacking. Not many institutes that participated in our survey reported seriousness with regard to this spiritual requirement. Rather, we have explanations why it is not and cannot be included.<sup>81</sup> The spiritual requirement has to go hand-in-hand with the other expectations of the Holy See from religious institutes as they endeavour to show equity and evangelical charity towards their separated members. If a separating member feels that the overall treatment from the institute is dehumanizing or that the financial assistance is objectively poor, one would not expect the separating member to hearken to any suggestion to go for spiritual direction or undergo a counselling programme.

In addition to financial and spiritual support, the Holy See expects institutes to help the former members morally and socially. These are also lacking in the assistance

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<sup>80</sup> See SCRIS, Declaration, *Sacra congregatio*, in FLANNERY II, p. 200.

<sup>81</sup> A few institutes noted that the former religious are so embittered that they are not interested.

the institutes in Nigeria give to their separated members. If the financial help from the institute to a former member is considerably poor, not only will the separating member disagree to any suggestion for spiritual direction or counselling programme, but it is likely that the individual would not accept any other suggestion from the institute even if it wears the cloak of moral or social character. The resentment arising from a part of the package invariably affects the disposition of the individual in accepting the other aspects of the gift that the Holy See wishes institutes to extend to their separated members.

Most of the things that help religious institutes in other countries to assist their former members are not available in Nigeria. For example, the Holy See through its declaration, *Sacra congregatio*, encouraged religious institutes to endeavour to see that their members are enrolled in already existing organizations of social security and insurance. These are not readily available to most people in Nigeria.

Pension is one thing on which the Holy See has issued two separate documents, encouraging institutes to ensure that their members are enrolled in pension programmes. It is generally difficult to see people who survive on pension plans in Nigeria. Most Nigerians have lived their lives without having any job with a pension attached to it. For those who are on pension, it does not sustain them. For about two years now, pensioners have not received their income. From our survey, we observe that over 92% of all religious working in Nigeria have no pensions attached to their work or apostolate. This being the situation, no one expects a pension to follow most of the former members. The monks and the nuns are confined to their monasteries; therefore they do not engage in

works that have any promise of pensions attached to them. Likewise, many of the religious sisters are engaged in works or apostolates that offer absolutely no pensions.<sup>82</sup>

From our survey, we observe that there is not a single religious institute that buys an annuity for its members. The idea of an annuity is something that is not popular in Nigeria. So, while some institutes in other countries buy annuities, none of the institutes in Nigeria does so. In the same vein, other sources of funds to assist separated members like funding through a charitable trust and support through corporate sources are simply not available to religious in Nigeria.

It is quite interesting to note that some of the religious institutes in Nigeria agreed to operating health insurance plans for their members, but the truth is that over 94% of the institutes have no health insurance for their members.<sup>83</sup> Consequently, one would not expect that a former member would have the opportunity to enjoy any health insurance programme immediately after leaving religious life. Our survey shows that a few institutes are still considering whether or not to buy health insurance for their members. To compound the situation is the fact that there is no health insurance programme run by either the federal or state governments for citizens and permanent residents in Nigeria, as

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<sup>82</sup> A professed sister whose apostolate, for example, is to teach catechism to children in a parish, has no salary attached to that and there is no pension to be expected. Consequently, there will be no pension to follow the sister if she leaves religious life or is dismissed by her institute. This is only one example. Others abound.

<sup>83</sup> Those who reported buying health insurance for their members did not explain whether they do it for all their members or only for a few who have serious health problems. Considering Nigeria's economy and the poor financial situation of the religious institutes in Nigeria, it is unlikely that any of the institutes can afford to buy health insurance for all its members.

their counterparts in Canada have.<sup>84</sup> Nigerians are at the mercy of healthcare providers, including paying the consultation fees for each visit to the doctor or healthcare institution. It boils down to the fact that a separated member of a religious institute in Nigeria has no realistic chance of any health insurance coverage.

Let us turn our attention again to some of those useful comments made by the major superiors who answered our questionnaire. The first of the comments we noted reads: “We are not yet established as [...] but depend on our [...]. We have as yet no policy guiding our help of former members. The [...] professed [...] who left is being helped to study through a donation from outside Nigeria. [...] we do not earn salaries, but as a community we earn money through the work of our hands [...]. Some questions are left unanswered because we have no policy as yet.” If a religious institute is “not yet established” and depends on outsiders for sustenance, one wonders about the kind of assistance it can afford to extend to its separated members. In fact, some of the institutes are “not yet established,” because they can hardly take care of the needs of the members who remain in religious life. A situation like this does not encourage faithfulness to the

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<sup>84</sup> In Canada, for example, most provinces have health programmes for citizens and permanent residents. In the province of Ontario, for example, there is the Ontario Health Insurance Plan (OHIP). OHIP pays for services that are medically necessary. These services include all visits to one’s family doctor and specialists. Most of the laboratory tests and medical procedures are also covered by this provincial health programme. OHIP does not cover all medical expenses; one would need additional private insurance, if one wishes to do so.

Refugee claimants who are not yet covered by OHIP are also eligible to receive emergency and essential health services through the Interim Federal Health (IFH) programme. This ensures that most people within the Canadian territory have one type of health coverage or another.

A person, who has no family doctor or cannot easily get an appointment with the doctor, can go to a walk-in medical clinic. All these programmes and services are not available in Nigeria to Nigerians and therefore, not available to separated members of religious institutes in Nigeria.

vows of religion and to the proper laws of the religious institute in the Nigerian context.<sup>85</sup> Again, if a religious institute does not have members whose works bring in money for the institute, how then can such an institute give reasonable assistance to separated members? The obligation to look after the members who remain faithful to their vocation has priority over the equity and charity that must be extended to former members.<sup>86</sup> It is no surprise that this institute has no guidelines for handling the cases of former members, and it is no surprise that it has no standing policy for helping its separated members.<sup>87</sup> Considering the number of religious who have left religious life in Nigeria or have been dismissed by their institutes and there are still no guidelines on how to help them, would this be considered as a sign of seriousness on the part of the institutes? The common feeling could be that since what the institute can afford to give to a separated member is insufficient, it is better left undocumented. Generally speaking, this method of handling the case of a separated member does not indicate a proper understanding of canon 702, §2

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<sup>85</sup> When religious institutes fail to provide their members the basic needs, the obvious is to be expected; individual members would begin to do anything to provide themselves with those basic needs. Also, if an institute does not provide enough basic needs to its members, one would expect individual members to do everything in their power to augment what they receive. Consequently, some of the vows may be broken and the proper laws of the religious institute may also be contravened.

<sup>86</sup> See SCRIS, *Sacra congregatio*, in FLANNERY II, p. 200. Here we read: "Every religious family has the obligation of providing for the spiritual, moral and social, as well as temporal well-being of its members while they retain their membership. This obligation extends also in some fashion, though for a different reason, and within certain limits, to those who leave the institutes and who find themselves faced with the necessity of inserting themselves into society as lay people after having spent, perhaps, many years in religious life."

<sup>87</sup> Even though this is a comment made by one religious institute, the fact remains that most institutes in Nigeria simply do not have any guidelines or policy for extending equity and charity to separated members. A few institutes that claim to have guidelines are those whose constitution makes reference to canon 702, §2 of the 1983 Code of Canon Law.

and falls short of the expectations of the Holy See vis à vis the help religious institutes ought to extend to their separated members.<sup>88</sup>

Another institute commented: “[...] we are a community in Nigeria, trying to become self reliant. The [...] finally professed who left us completed university and decided to leave!! We are learning slowly.” It is not only this institute that is trying to be self-reliant; all the religious institutes in Nigeria are struggling to become so. In the case of this institute, it is a coincidence that those who leave it have acquired university degrees. That being the case, they stand the chance of being relatively comfortable in the world, hopefully. However, it is not known whether this institute accepts only graduates as postulants. Could it be that they accept candidates who also do not have degrees but endeavour to train them to acquire university degrees as soon as they are professed? Most of the religious institutes in Nigeria recruit candidates who have finished secondary school education, as prospective candidates for their houses of postulancy and novitiate. Therefore, it is unlikely that candidates recruited as high school graduates would have university degrees. Hence, most of the religious who left as graduates must have joined their institutes as university graduates, or were trained after they had made their profession. But considering the poor financial situation of the institutes in Nigeria, it is unlikely that anyone can afford to give a university education to all its members.<sup>89</sup> Note also that the major superior of this particular institute ends with the comment: “We are learning slowly.” While we are not one hundred percent sure of what this comment

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<sup>88</sup> See SCRIS, *Sacra congregatio*, in FLANNERY II, pp. 200-202.

means, it might not be completely wrong to interpret it as a sign of regret on the part of the institute. It feels exploited by those former members who were trained and acquired university degrees, but who left the institute shortly after.

In answer to one of the questions contained in our questionnaire regarding the nature of assistance institutes offer to their separated members, one of the institutes referred to transport money as “part of the severance allotment.” Considering what we have seen already in the course of this thesis, we now know that this is a phrase that must not be used by any institute in reference to the equity and evangelical charity required by canon 702, §2. The Holy See had made its position clear on this issue with the 1974 declaration, *Sacra congregatio*, which still remains the best interpreter of our chosen canon. Understanding the assistance given to a separated member as severance allotment hides a number of implications for a religious institute. Considering that our survey is a select study of religious institutes in Nigeria, one would not be completely wrong to believe that this institute may not be the only one in Nigeria that considers help to separated members as a severance allotment.

Canon 702, §1, which is influenced by the theology of religious life, denies any claim or compensation by separated members from their religious institutes. In an effort to clarify this, the Holy See writes:

It would be contrary to the nature of religious life to equate it with a business or a factory or to put the relations between institutes and members on a par with relations between employers and employees.<sup>90</sup>

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<sup>89</sup> Our analysis is not in any way intended to disprove or say that what this institute reported is untrue, but simply to appreciate what is said against the background of what is obtainable in the Nigerian context.

<sup>90</sup> SCRIS, *Sacra congregatio*, in FLANNERY II, p. 200.

The expression “part of severance allotment” is one that is better used in business ventures and when an employer finds reason to lay off a worker. Considering the amount of money that institutes in Nigeria give to their separated members, it is doubtful whether in practical terms it would even qualify as a satisfactory severance package. Using the expression thirty-one years after the Church has explained that it is not to be used suggests that, perhaps, some institutes in Nigeria do not understand the requirements of canon 702, §2.

In answer to the sources of the funds religious institutes use in assisting their separated members, one institute indicates that they are taken from the “internal retirement fund.” To take the money from an internal retirement fund hides a lot of implications for the religious institute. We have seen earlier that it gives the wrong impression that separated members are entitled to compensation from the institute, when they are not. It also gives the impression that separated members count as owners of the internal retirement fund, which is absolutely not true. Consequently, a separated member could file a lawsuit against the institute if he/she feels that he/she has been unfairly treated. Therefore, taking the money to assist separated members from the internal retirement fund is an indication that we do not have a clear understanding of what is implied by equity and evangelical charity towards separated members. We have already indicated that equity and evangelical charity to separated members must take into account the members of the institute who remain faithful to their religious commitment. Taking care of them takes precedence over equity and evangelical charity towards separated

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members. The internal retirement fund is basically set aside for the good of the members of the institute, as opposed to separated members. Against the background of all that we have seen so far, we can imagine the situation a former religious would face when making an effort to adapt to a new style of life in Nigeria.

#### **4.2.6 - The Situation of a Former Religious Adapting to New Life**

What we have seen so far indicates that life could be difficult for one who leaves a religious institute in Nigeria through voluntary departure or dismissal. The ex-religious leaves religious life to embrace the Nigerian society where few things work the way they are meant to work; embraced by a country that is “superabundantly rich but only about 3 percent of the population controls about 90 percent of the nation’s wealth while more than 60 percent of the population lives below the poverty line.”<sup>91</sup> The miserable situation that a former member faces in Nigeria is not limited to the ruined economy of Nigeria, but it also includes a socio-cultural one. The ex-religious would face poor support from the former institute, including the problem of getting married in a society that no longer rates such a person highly. We wish to highlight some of these problems now.

##### **4.2.6.1 - Insufficient Support from Religious Institute**

The result of our survey reveals that most of the religious institutes admitted extending assistance to their separated members. It has helped us to establish that the assistance to separated members is generally limited to monetary assistance. We also know from our survey that most of the institutes give between US\$75 to \$385. Only very few institutes noted giving between US\$770 to \$1,103. Considering the standard of living

in Nigeria and the rate of inflation, one could say that the assistance from religious institutes to their separated members can support the former members only for a few days, a few weeks or a couple of months, as the case may be.

From the money given to a separated member, the individual is expected to take care of transport, food, accommodation and clothing. If he/she requires medical treatment, it would have to be paid for from the same money. The former religious may not be employed immediately after leaving the religious institute, and may not have sufficient education to facilitate securing a job. The money that institutes give to their separated members is not enough to help anyone who wishes to go back to school in order to acquire further education or skills. It is even worse for anyone who has no family to go back to.<sup>92</sup> Unfortunately, as noted earlier, most of the religious in Nigeria do not have jobs that have pensions attached to them. Some of the ex-religious cannot expect any pension to follow them at the moment of separation. Furthermore, most of the institutes in Nigeria do not buy health insurance for their members. Therefore, one who leaves an institute in Nigeria cannot hope to enjoy any free health benefits from anyone after separation. Considering what we have seen in this chapter, one could conclude that the assistance religious institutes give to their separated members is insufficient, since it does not provide significant support in the face of a biting economy.

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<sup>91</sup> ODEY, *The Lamentations of a Lost Generation*, vol. I, p. 51.

<sup>92</sup> We must admit that this is rare in the Nigerian context, even though there have been isolated cases where some ex-religious have been rejected by their families because they have brought shame on their family by leaving religious life. But it is one thing to have a family to go back to, and another thing to have a family that can support the individual. A family could welcome back the ex-religious, but may be so poor that it cannot help him/her in a significant way.

#### 4.2.6.2 - The Biting Economic Situation

The biting economic hardship that characterizes Nigeria is one of the problems that a separated member of a religious institute is bound to face. J. Odey is one of the few Nigerians who are fearless and courageous in their criticism of Nigerian rulers who are responsible for the plight of many Nigerians. Odey has aptly painted a picture of a situation that is common in the present day Nigeria:

Certainly, I cannot understand what a hungry man, a homeless man, a retired civil servant who cannot receive his pension, an unemployed youth, a worker who has not received his wage for so many months, a man dying of ruptured appendicitis who cannot go to the hospital because he cannot afford to foot the bill, a man who is pestered and cursed by his children because he cannot give them food let alone paying their school fees, an impoverished family that is served one week quit notice to vacate their home because they cannot pay their rent, and so forth, can gain [...].<sup>93</sup>

This is a typical example of the Nigerian situation in which a separated member of a religious institute is expected to re-establish himself/herself. This is the reality that faces many Nigerians today. Granted that not everyone who leaves a religious institute falls under this category, yet it is obvious that many of those who left or were dismissed face a situation similar to the one described above. A separated member who is not well educated, who would remain unemployed after separation, who may no longer be young, who may not be enjoying good health, who may not have a wealthy family to return to and who may not get enough support from the former religious institute could well be as miserable as those described in the above quotation. Apart from their poor financial situation, separated members in Nigeria experience other socio-cultural problems.

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<sup>93</sup> ODEY, *The Lamentations of a Lost Generation*, vol. I, p. 74.

#### 4.2.6.3 - A Crippling Veil of Shame

Shame is another problem that most of those who leave religious life in Nigeria face. Naturally, Nigerians have high regard for anyone who answers the divine call to the priesthood or religious life. Family and friends of a newly ordained priest or religious greatly rejoice at the ordination or the profession of their loved one who is seen to have made them proud. Every relative or friend identifies with the newly ordained or newly professed. Priestly ordination and religious profession qualify for elevation to a higher status not only for the person, but also for the family and friends of the newly ordained or professed. Ordination to the priesthood attracts expensive presents. The home parish often includes the gift of a car among other gifts to the newly ordained. It is also a question of all-hands-on-deck, in terms of gifts to a newly professed. Ordination to the priesthood and religious profession are occasions that bring about great joy and rejoicing to families of priests and religious.

On the other hand, departure or dismissal from the priesthood or religious life brings a lot of sorrow and distress not only to the priest or religious, but also to his or her family, friends and admirers.<sup>94</sup> The person who leaves brings a lot of shame to family and friends. No one cares to know whether exit from religious life is through voluntary departure or dismissal; it is presumed that it must be dismissal. It is assumed that the ex-religious must have committed an unpardonable and shameful atrocity, hence, his/her expulsion from the institute. Consequently, the person is perceived as a failure. This results in feelings of an inferiority complex in the former priest or religious. Unlike at

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<sup>94</sup> Leaving the priesthood is not something that is common in Nigeria, but leaving religious life or being dismissed from a religious institute is no longer a rare occurrence.

ordination or religious profession when everyone wants to identify and rejoice with the candidate, the one who leaves religious life becomes a loner. The person becomes a source of shame to family and friends. As a result, many who have left religious life, especially those who were dismissed by their institutes, often slump into severe depression that in some cases cripples them for life.

Often ex-religious remain in hiding for a long period of time before they can begin to mix freely with people. In fact, most of them wish to leave Nigeria completely to begin a new life overseas so as to be away from the public eye. In some cases, some of those who have left religious life do not succeed in overcoming the inferiority complex that descends and envelopes them at departure or dismissal. No one must underestimate the crippling effect of this veil of shame and possibly the guilt that ex-religious grapple with in a traditional society like Nigeria. This sense of shame impacts the rest of the life of a separated member.

#### **4.2.6.4 - Marriage after Separation from the Religious Institute**

Departure or dismissal from a religious institute, in some cases, could return one to the lay state.<sup>95</sup> The person is no longer bound by the religious vows of chastity (celibacy), poverty and obedience made at religious profession. The ex-religious finds himself/herself in the Nigerian society that is visibly status-oriented. Consequently, the ex-religious joins the rest of his/her fellow Nigerians fighting for survival and searching for comfort. Statistics show that most of the ex-religious are ill-prepared for this

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<sup>95</sup> We use the word “could” because a cleric who leaves a religious institute to become a diocesan priest has not been returned to the lay state. This is different from a religious sister or brother or a monk/nun who leaves without joining another institute.

competition and for all the expectations of society. One of those expectations in the Nigerian context is the possibility of getting married and having children.

African culture considers marriage and the raising of children as sacred duties and obligations. Speaking about the importance of marriage and the raising of children in Africa, J.S. Mbiti writes: “Anyone who dies without leaving behind a child or a close relative to remember him or pour out libations for him is a very unfortunate person.”<sup>96</sup> This is true of the Nigerian culture. In another book Mbiti writes: “A person who, therefore, has no descendants in effect quenches the fire of life, and becomes forever dead since his line of physical continuation is blocked [...]”<sup>97</sup> Mbiti also has this to say: “Failure to get married under normal circumstances means that the person concerned has rejected society and society rejects him in return.”<sup>98</sup> What Mbiti says about Africa in general is true of Nigeria in particular. Among the Igbos of Nigeria, for example, “before marriage a person is regarded as a minor and so has not much cultural and social responsibility. A person in this stage of life has very little chance of speaking in any gathering of the *umunna* or the village as the case may be.”<sup>99</sup> Speaking about the importance of marriage and the raising of children in Nigeria, a priest shares his pastoral experience while working in a parish in Nigeria:

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<sup>96</sup> J.S. MBITI, *Introduction to African Religion*, London, Heineimann, 1975, p. 105.

<sup>97</sup> J.S. MBITI, *African Religions and Philosophy*, London, Heineimann, 1969, p. 133.

<sup>98</sup> *Ibid.* Note that Mbiti uses the expression “under normal circumstances,” because an African who belongs to a religious institute or a Catholic priest is not necessarily under pressure to get married. Furthermore, people who are insane or lack the use of reason are not under any pressure to get married.

<sup>99</sup> B.N. OPARAUGO, *Igbo Traditional Marriage Rite and the Roman “Ordo Celebrandi Matrimonium” of 1991: Textual Analysis and Liturgical Inculturation*, STD diss., Romae, Pontificium Athenaeum S. Anselmi de Urbe, 1994, p. 75.

The consequences of failing to beget children used to be quite grave in some parts of Nigeria before the coming of Christianity. In a certain rural area of Nigeria where I worked for six years, up till quite recently, the custom has been that if a man died without an issue [child], he was not buried in the ground but was abandoned in an 'evil forest' as food for vultures and other birds of prey; the reason being that, since he failed to fulfil his duty to the tribe through child-bearing, to bury him in the belly of mother-earth would constitute an offense against 'Ala' (the goddess of fertility), thus bringing down her wrath on the entire community.<sup>100</sup>

The practice of burying the childless in an evil forest may no longer exist in Nigeria, but it reveals the cultural past of some Nigerians. While it may not be the current practice, it reveals the inner desire and expectations of Nigerian cultures regarding marriage and the raising of children.<sup>101</sup> This is the culture that embraces a separated member of a religious institute after exit from religious life and places on him/her no little socio-cultural pressure.

The cultural expectation to get married and beget children in Nigeria hides some difficult implications for both men and women who leave religious institutes. A separated member who is a man, we have already noted, is under pressure to get married and have children. We must not forget that this is the same man who is grappling with shame for discontinuing as a religious. For the ordinary Nigerian, as we have already noted, there is no difference between departure and dismissal; each ex-religious must have been dismissed for a serious crime or sin. He has fallen from grace and must be one of the 'greatest sinners' around. The money received upon leaving will not cover expenses for

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<sup>100</sup> E. OBUNA, *African Priests and Celibacy: In a Culture Where a Man Without Children is a Waste*, Rome, Leberit Press, 1986, p. 31.

<sup>101</sup> This is not in any way suggesting that there are no celibates in Nigeria who are neither clergy nor religious.

both a traditional and a church wedding.<sup>102</sup> This is the same ex-religious who may not have enough education to secure a job. It is the same ex-religious who, though educated, may not have a job in Nigeria where the unemployment rate is high. Worse still is if the ex-religious is ill or getting-on in years; it would be difficult to find a woman who would accept his marriage proposal. It may also be an ex-religious who may not have anyone from his biological family to support him financially.

In addition to the need to get married, there is another expectation that a man ought to build a house of his own. A man who has not been able to build a house in his own village does not deserve the respect due to him as a man.<sup>103</sup> Almost all the problems encountered by men who leave religious life in Nigeria are also experienced by the women who are separated from religious institutes.

A woman may have received little or no assistance from her former religious institute. She has to grapple with the shame that she has fallen by the wayside, and has in turn brought unbearable shame to her family. She may be one of those who might find it difficult to reintegrate herself into her family again. She may no longer be young enough to pursue an educational career. Even if she is young enough for further studies, she may not have the means to see herself through school. If she is already educated she may be unemployed for a while. She will not have any pension programme or a health insurance

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<sup>102</sup> In most Nigerian cultures, it is the man who shoulders the financial responsibility while getting married. There is usually a customary or traditional marriage that precedes the church wedding, in the case of Christians. Customary marriage and church weddings in Nigeria are both relatively capital intensive projects for anyone.

<sup>103</sup> A popular saying among the Igbos of Nigeria notes: "If a man fails to get married and fails to build a house of his own what would he tell his ancestors when he dies?" This shows the level of contempt the society has for men who are unable to marry and build their own house.

plan. Her problem may further be compounded if she is ill and needs medical care for continued living. Again, she finds herself in a society where the government has no programmes in favour of the citizens from which she can benefit.

In addition to all these problems, a woman who leaves a religious institute or is dismissed from one in Nigeria has even a greater pressure on her to get married as a result of cultural expectation. Speaking about marriage and marriageability, Rose Uchem quotes Uzoma, one of her respondents in a survey as saying:

Often, you will find that when a woman gets to a certain age, people around her begin to pressurize her to get married; but it is not the same for a man. You will see a man who has aged considerably; probably up to fifty or more in age only getting married; nobody says anything; it is not seen as abnormal. But for a woman it is different.<sup>104</sup>

Part of the reason is that in the Nigerian context, “a woman has no identity outside marriage [...]”<sup>105</sup> Again, it is generally believed that “*oge nwanyi n’agafe agafe*.”<sup>106</sup> A woman who has reached the age of menopause has less chances of getting married in Nigeria. Another ethnic group in Nigeria called the Annangs have a popular saying that “one does not marry a wife for beauty but for the purpose of procreation.”<sup>107</sup> Another author has this to say: “Without child, marriage for the Igbos seems incomplete and poses

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<sup>104</sup> R.N. UCHEM, *Overcoming Women’s Subordination: An Igbo African and Christian Perspective, Envisioning an Inclusive Theology with Reference to Women*, Enugu, Snaap Press, 2001, p. 92. This same opinion has been expressed by different writers on Igbo cultural values.

<sup>105</sup> *Ibid.*, p. 68.

<sup>106</sup> This is an Igbo expression that literally means that “a woman’s time passes,” especially with reference to fecundity.

<sup>107</sup> J. OSOM, *Moral Implication of High Bride-Price in Nigeria: Annang Case Survey*, STD. diss.; Rome, Pontificia Universitas Lateranensis, 1989, p. 14.

a very serious problem. A childless marriage in Igbo culture is seen as a natural curse.”<sup>108</sup>

Speaking about the consequences of childlessness, D. Dodo had this to say:

In Nigeria, one of the main aims of marriage is to beget children. All things considered, children are regarded as the ties of many marriages. Where there is no child either because of infertility or impotence, the bonds of marriage are loosened.<sup>109</sup>

Like all Africans, one of the marks of a successful marriage is the ability to have children. Any marriage that has not been blessed with a child remains shaky, unhappy and surrounded by temptations for the couple. In most cases of childless marriages, the blame is heaped at the woman’s door, even if impotence on the man’s part may be responsible for childlessness.<sup>110</sup>

If, therefore, a woman leaves a religious institute when she is no longer young, it might be quite difficult for her to get married. The separated member who is a woman is not only under the pressure of getting married, she is also under the pressure to have children, as well as to have a male child. These societal expectations and pressures have forced some female separated members of religious institutes in Nigeria who are no longer young to get married to spouses they would rather not have anything to do with, if given the option. This raises a doubt, from the perspective of proper consent. Also, her disposition to marry a man would also depend on the willingness of the family of the man to accept her. Often the relatives of the man who would wish to marry her may stand in

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<sup>108</sup> OPARAUGO, *Igbo Traditional Marriage Rite*, p. 34. See also OBUNA, *African Priests and Celibacy*, p. 30.

<sup>109</sup> D. DODO, “Factors Contributing towards Instability of Christian Marriages in Nigeria,” a paper presented at the 8<sup>th</sup> Annual Conference of the National Laity Council of Nigeria, 15-19 December 1979, pp. 25-26, quoted in OBUNA, *African Priests and Celibacy*, p. 32.

<sup>110</sup> See R.N. UCHEM, *Beyond Veiling: A Response to the Issues in Women’s Experiences of Subjugation in African Christian Cultures*; Enugu, Snaap Press, 2002, p. 32.

the way, since marriage is a communal enterprise in Nigeria. The relatives of the would-be husband would surmise that the same atrocity that ejected her out of religious life would make it impossible for her to remain faithful in marriage.

#### **4.2.6.5 - Other Societal Expectation**

In Nigeria, one who is trained is expected to train others and take care of other people. 'Others' in this sense and in the extended family structure that is prevalent in Nigeria would include one's siblings, cousins, nephews and nieces. One is also expected to take care of one's parents, uncles and aunts, as the case may be. When one becomes a priest or religious, the person automatically joins the rank of the 'educated' in society. However, relatives realise that their loved one who is a priest or religious is no longer expected to fulfil the role of helping to train and look after others as long as he or she perseveres in his or her vocation. Nevertheless, as soon as the person leaves the priesthood or religious life, that person is no longer exempt from the cultural or societal expectation to train and look after others. Consequently, a former religious grapples with this expectation that he/she ought to give and not to receive from his/her family.<sup>111</sup>

Now that we have considered the state of separated members who are adapting to new life, we are convinced that a separated member faces myriads of problems in Nigeria. The uphill task that a separated member faces justifies the demands of canon 702, §2 of the 1983 Code. It is sad to note that some institutes still do little for separated

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<sup>111</sup> This does not in any way give the impression that families that are a little more comfortable do not welcome back their loved ones who exit from religious institutes. In fact, some more comfortable families would take the initiative to have a forum where they will try to find out from the former religious what he/she wishes to do next. If the family has the means, it would lend its support to their loved one who has left religious life.

members. It is also sad to observe that few religious institutes in Nigeria have any guidelines and policies to follow while extending equity and evangelical charity to separated members. While we cannot impose any policy on any institute, we can at least propose some guidelines that could help them draw up their own.

#### 4.3 - PRACTICAL MEANS TO IMPLEMENT CANON 702, §2 IN NIGERIA

Much of this chapter revolves around our 2005 survey of religious institutes in Nigeria, aimed at ascertaining how they apply canon 702, §2. Prior to this, there was no data addressing the application of canon 702, §2 on equity and evangelical charity towards separated members of religious institutes in Nigeria. Among other surprises stemming from the survey is the fact that there are no national guidelines for the application of canon 702, §2. A few institutes reported that they have guidelines, not realising that a mere reference to canon 702, §2 in their constitution does not suffice, and moreover, none of the institutes that reported having guidelines had anything to show for it, which reduces it to a mere claim. A few institutes also reported having a policy for the application of canon 702, §2, but could not produce a copy of it.

No institute can comfortably claim a reasonable degree of seriousness if it does not have a guideline or policy to implement canon 702, §2. When there is no existing guideline, then an *ad casum* handling takes over. *Ad casum* approach is bound to give rise to bitterness on the part of the separated who will always see the law as unfair. This work would be incomplete if it did not suggest some guidelines in the light of existing guidelines found elsewhere and against the background of the results provided by our survey. We shall now attempt to propose some guidelines.

#### 4.3.1 - Possible Guidelines that Institutes in Nigeria could Follow

Guidelines for the application of the provisions of canon 702, §2 serve as a checklist for major superiors who sincerely wish to be “just” and “charitable” to their separated members. Some of the things we suggest to be factored in may not apply in all cases. Therefore, if any guideline is irrelevant in a particular case, it should be ignored. Cases are different; not every possibility must be considered in the case of a religious leaving the institute to become a lay person in the secular world. In the same vein, the situation of a person leaving religious life to become reintegrated in the social world is not the same as a religious who is a priest leaving religious life but remaining a cleric and becoming incardinated in a diocese.

The guidelines for the religious institutes in Nigeria to implement canon 702, §2 have to be kept relatively simple because not all the situations in Europe and North America are obtainable in Nigeria. Ken Cafe has reported the most detailed guidelines on this issue for institutes in Australia, and it is worth consulting his work.<sup>112</sup> We shall now enumerate the relevant issues that ought to be factored in when extending equity and evangelical charity to a separated member in the Nigerian context.

##### 4.3.1.1 - Spiritual Factors

1. Has the separating member any need for spiritual direction? If so, the institute would need to provide the required spiritual assistance through the services of one of its

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<sup>112</sup> See K. CAFE, “Some Guidelines on the Assistance to be Given to Members who leave an Institute: Canon 702, §2,” in CANON LAW SOCIETY OF AUSTRALIA & NEW ZEALAND, *NewsLetter*, 2 (1996), pp. 44-55.

members or give the fees for the spiritual direction elsewhere. This is something that must be welcoming to the separating member.

2. The institute could consider organizing a farewell Eucharistic liturgy with the separating member. This would depend on whether the separating member is open to this.<sup>113</sup> He/she could be asked whether he/she would like to invite some people to this celebration. Even if a Eucharistic liturgy is not possible, at least a para-liturgical celebration could be arranged. The separating member could be asked whether he/she would like to have any particular readings or hymns for this parting liturgy. Readings must be carefully selected, and someone would have to speak on behalf of the institute.<sup>114</sup>

It is also appropriate to invite the separating member to respond, if he or she desires. This would have to be pre-arranged to avoid any embarrassment on the part of the separating member.

#### **4.3.1.2 - Social Element**

1. Is it possible to organize a farewell party? The institute could consider organizing a send-off party in the form of a social evening, with a nice meal. This could follow the liturgy, if possible. The separating member would need to be comfortable with this idea

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<sup>113</sup> This is something that is not practised by any institute in Nigeria, and we understand why. Some people are so embittered at the point of departure or separation that they may not be disposed to such an idea. However, it is important that even in a case of dismissal, the institute show that it is dealing with the human person who is created in the image and likeness of God and who still retains his/her human dignity.

<sup>114</sup> The speaker would have to be selective with soothing words to encourage continued good relations between the separating member and the rest of the members of the institute. The presider or the homilist/speaker need not be the superior. Another person could fill the role, if that is more acceptable to the separating member.

too.<sup>115</sup> The separating member could be asked to extend an invitation to a few people of his/her choice, relatives and friends.

2. Does the separating member require someone to speak to his/her family prior to official separation? Due to the shame that separated members grapple with in Nigeria, it is important for the institute to find out from the separating member whether he/she would like the institute to explain the situation to his/her family before definitive departure so that the blood relatives would receive him/her back. This would facilitate re-establishing the ex-member in society. The family would serve as the first cushion as he/she battles with the shame of falling by the wayside. Overcoming the shame of leaving religious life in Nigeria is a key factor to survival.

3. Does the member need someone to take him/her home? The institute ought to find out from the member if he/she would like to be accompanied home to the family on the exact date of leaving the institute, and probably someone to reassure the family that it is not the end of the world for the separated member.

#### **4.3.1.3 - Physical Factors**

1. Age: What is the age of the separating member? This has to be taken into consideration when preparing an assistance package. To leave religious life before the age of forty is not the same as leaving at fifty, sixty or seventy. The younger the person,

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<sup>115</sup> There is no doubt that some people may not welcome this idea. But it is important to bear in mind that a separating member was once one of them. Religious must demonstrate that they understand better than the ordinary person in society who would assume that the former member must have quit religious life because he/she must be the greatest sinner around. No matter the reason for leaving religious life, a separated member would still remain a member of Christ's faithful, created in the image and likeness of God. He/she could still become a saint, if we accept that a saint could be a sinner who has repented and who has been forgiven.

the easier it is to adjust to society. There should be more sympathy for those who are no longer young.

2. Years of membership: How many years has the separating member spent in religious life? This factor may not be neglected. One who has spent anywhere between twenty to forty years in religious life is not the same as one who leaves after a few years of profession.<sup>116</sup> Institutes could have different ways of calculating the number of years of profession. One institute could, for example, say between one to five years after profession, six to ten years, etc., a certain amount of money is given. Another institute could agree that each year of profession attracts a stipulated amount of money, multiplied by the total number of years the separating member spent in the institute. This has to be clearly spelled out in the policy.

3. Level of education acquired: Does the separating member have a fairly good education? Good education prepares one for the job market, even though it is not always a guarantee for securing a job. A separating member who has neither a good education nor skills to get a job requires more assistance.

4. Employment Opportunity: Does the separating member have chances of securing a job? In addition to good education, is there real possibility of obtaining employment?

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<sup>116</sup> See CAFE, "Some Guidelines on the Assistance to be Given to Members," p. 56. Ken Cafe disagrees with assistance to a separated member based on years of 'service' or profession. With due respect to his argument, it does not seem that we are true to equity and evangelical charity if the assistance to a separated member is in total disregard of the number of years one has spent in the institute. Moreover, the number of years of profession is only one out of several issues to be factored in when extending assistance. However, it would be wrong to use the number of years as the only determinant guideline for assisting a former member, but at the same time it must not be ignored.

One who has only a secondary school education has less chances of securing a job than a degree holder or a nurse.

5. Helping a former member to get employment: Can the institute help the separating member to secure a job? The clergy and religious in Nigeria are highly respected, and Nigeria is a place where person-to-person contact is often successful. If the institute assists a separated member in looking for work, there would be better chances for him/her to secure a job. The institute should not hesitate to help the separating member secure a job, if it could.

6. Health of the former member: What is the health condition of the separating member? If the former member is ill and requires medical care, he/she needs more assistance than one who has no health problems.

7. Standard of living: What is the standard of living in the area? The standard of living in a place would have to be taken into consideration.<sup>117</sup> It is not the same everywhere.

8. Family situation: Does the separating member have a family to return to? The blood family to which the former member returns is important to helping resettlement in society. Some families are more capable of taking care of a former member than others.

9. Relationship with institute: What has been the relationship between the member and the superiors of the institute? Has the former member been obedient to superiors? Is he/she in possession of money or some other valuable items belonging to the institute?

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<sup>117</sup> This is why the guidelines and the policy of an institute would require updating on a regular basis. Reviewing the guidelines and the policy every five years should be encouraged.

These would have to be looked into while preparing an assistance-package for the separating member.<sup>118</sup>

10. Does the departing member have a ‘nest egg?’<sup>119</sup> A member may have been on exclaustation for one, two or three years and may have accumulated more than an institute can afford to give; a situation like that would have to be taken into account.

11. Clothes: Does the separating member need appropriate clothes at the point of leaving the institute?<sup>120</sup> The institute ought to buy some new clothes for the separating member, especially if this person has been wearing only a religious habit. This is important in the case of women religious.

12. Transportation: Is money needed for transport home? Much depends on whether the institute would take the separating member home or not.

13. Financial situation of the institute: Is the religious institute financially buoyant? This is one of the important things that must be considered when preparing an assistance package for a separated member. Much of what an institute can do for its separated members depends on its own financial situation. The institute must bear in mind that its obligation is directed, first and foremost, to its members who remain faithful to their

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<sup>118</sup> It is possible to have a situation where a member controlled huge sums of money because he/she was a finance administrator/bursar/treasurer or was running a project that belongs to the institute, and decided to keep some money at the point of departure, an issue that would need to be addressed.

<sup>119</sup> See CAFE, “Some Guidelines on the Assistance to be Given to Members,” p. 47. Cafe explains what is meant by ‘nest egg’. A departing member who has a ‘nest egg’ could be so self sufficient that he/she may not require any further assistance from the institute. An example of a ‘nest egg’ is when a member has embezzled money prior to departure or dismissal.

<sup>120</sup> Most religious in Nigeria are identified with religious habits proper to each institute. After separation, the former member is expected to discontinue wearing the religious habit. Consequently, a set of new clothes would be needed.

vocation and, therefore, rely directly on the institute for their sustenance. Failure to take this into consideration would run contrary to the principles of equity and evangelical charity enunciated in canon 702, §2.

The suggested guidelines have tried in a little way to cover “the spiritual, moral and social, as well as the temporal well-being” of the former member, as the Holy See would expect.<sup>121</sup> These suggested guidelines for religious institutes in Nigeria do not in any way pretend to be exhaustive. There are a number of things that obtain in other countries that are not mentioned here. For instance, we have not spoken of health insurance, social security, pensions and annuities. These things that are common in the developed nations are mostly unavailable in Nigeria. However, this does not free religious institutes from exploring the possibility of buying healthcare plans for their members and participating in social security programmes that would be of help to them and their separated members. Rather, we have incorporated things that are peculiar to Nigeria that may not be applicable to other parts of the world.<sup>122</sup> These are some of the areas that an institute would have to consider while putting together an assistance package for separated members and the information would have to be made available to all members.

#### **4.3.1.4 - Documentation to Accompany the Separating Member**

It is noteworthy that the survey we carried out did not include individual separated members of religious institutes in Nigeria. The questionnaires were directed only to major superiors. We also avoided interviews with any separated member. We

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<sup>121</sup> See SCRIS, *Sacra congregatio*, in FLANNERY II, p. 200.

<sup>122</sup> We have offered suggestions that could help the separated religious grapple with the shame that follows for a very long time.

limited our study, as indicated in the general introduction and in the main body of this work, to know how the institutes responded to the requirements of canon 702, §2 and not how the departing members reacted to or expected from the provisions of the said canon. However, this does not mean that we are not aware of stories told by some separated members with regard to the way they were treated at the point of departure from their institutes. If we were to interview some separated members of religious institutes in Nigeria, we might hear some shocking stories. The stories that are told greatly contradict the application of canon 702, §2 as has been reported by the institutes in Nigeria that took part in our survey.<sup>123</sup> We shall be faced with doubts and uncertainties as to who sounds more credible, the separated members or the religious institutes. Even if these separated members are lying, their accounts of the treatment they received from their former institutes at the point of separation and their level of resentment do not speak well of the institutes in Nigeria in particular and the Church in general. A systematic analysis of the experiences of the members who have left the religious institutes is beyond the scope of our study because of the complexity of the subjective issues involved.

It is important to note, however, that it is wise for institutes to document any assistance package they provide. The document must be signed by representatives of the institute as well as the separating member. With such a signed document, the institute can speak with certainty about what it has been able to do for a particular person, and the former member cannot easily lie about what the institute did or did not do at the point of separation. This will save everyone from any kind of embarrassment.

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<sup>123</sup> We cannot give examples because this work does not include any interview with separated members of religious institutes.

#### 4.3.1.5 - Civil Tribunals and Cases presented by Separated Members

In chapter two of this study, we have already noted that some separated members from other parts of the world have sued in civil courts their former institutes because of the 'poor treatment' given to them at the point of separation. The religious institutes in Nigeria have been fortunate that they have not recorded lawsuits against them from separated members. The lack of lawsuits by separated members against their former institutes could be attributed to a number of reasons.

The first is that Nigerian Christians have a high regard for the clergy and religious. It is not common for people to take members of the clergy and religious to court.<sup>124</sup> We are not sure how long this respect will continue. In a changing society like Nigeria, it will be no surprise to see a separated member filing litigation in civil court against the former institute in the future.<sup>125</sup>

Another reason has been that the legal system in Nigeria was emasculated during the many years of military dictatorship. Many cases were handled by military tribunals or kangaroo courts, and there was no shortage of decrees that empowered the military but weakened the judiciary. The rule of law suffered immensely. However, since 1999 Nigeria has had a democratically elected government, even though traces of what we

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<sup>124</sup> This does not mean that it has not happened. We are only saying that it is rare to find it in the Nigerian context.

<sup>125</sup> A few years ago a woman who was dismissed from a religious institute was seen carrying an empty coffin on her head and walking along the streets of a major city in Nigeria, in a peaceful protest against the treatment she received at the hands of the authorities of her former religious institute.

experienced under the military linger on. The rule of law in Nigeria is still a mockery.<sup>126</sup> Indeed, there is comparatively little progress made in restoring the power of the judiciary.

Yet another reason is the veil of shame that unavoidably descends on and envelopes a separated member in Nigeria. Society assumes that a separated member must have done something wrong and not the institute. This social stigma that a separated member has to grapple with, which forces him/her to go into hiding or at least keep a low profile, does not allow this person to be confrontational to the point of filing litigation against the former institute. It is, therefore, important for institutes to take precautions because the *status quo* could well change in the future.

Religious institutes would need to equip themselves with a few more documents, in addition to noting the assistance package at the point of separation. The most important is one members sign when joining the institute; they will claim nothing for services rendered while in the institute, “or for future considerations.”<sup>127</sup> Institutes must ensure that there is a thorough explanation of this requirement during the formation period. Candidates would have to be convinced that the reason for this is based on the theology of religious life that we have already referred to in the first chapter of this work.

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<sup>126</sup> On 4 June 1999, President Obasanjo appointed a Commission to investigate human rights abuses committed from 1 January 1994 until his taking office on 29 May 1999. This Commission was styled after the Truth and Reconciliation Commission that was successful in South Africa after the apartheid era. While formally inaugurating the commission on 14 June 1999, he extended the inquiry further into the past to 31 December 1983, when President Shehu Shagari was deposed in a military coup. Some people who felt that they are above the law (especially past rulers) who were invited to testify before the commission headed by Justice Chukwudifu Oputa refused to appear and no action was taken against them. Nigerians are yet to be informed about the results of the Commission, even though it has submitted its report.

<sup>127</sup> See F.G. MORRISEY, “Equity and Charity to Separated Members of Religious Institutes,” in CANON LAW SOCIETY OF GREAT BRITAIN & IRELAND, *Newsletter*, 87 (1991), p. 14.

Again, a copy of the guidelines or the policy implementing equity and evangelical charity to separated members should be made available to every member. As a matter of fact, candidates ought to have proper knowledge of the information contained in the guidelines or policy during their formative years. The novice director must ensure that candidates have understood these documents. If candidates understand the exact interpretation of equity and evangelical charity as enunciated by canon 702, §2, it also means that they are equipped with a good knowledge of the theology of religious life because canon 702 is at the heart of its meaning. With this documentation in place, religious institutes in Nigeria would have little to fear should any separated member sue the former institute for compensation at any point.

#### CONCLUSION

The issue we set out to explore in this chapter is how religious institutes in Nigeria understand and practise the equity and evangelical charity enunciated in canon 702, §2 of the 1983 Code. We could conclude that the institutes fall under three main categories in their understanding and practical application of the canon. The first category consists of those who stated that they do absolutely nothing for separating members. The second comprises those who give the same kind of assistance to all separating members, irrespective of individual needs. The third group includes those who give monetary and non-uniform assistance to separating members.

The first of these three categories state clearly that they do not extend any form of help to a separated member. We find this category among the male as well as the female religious institutes in Nigeria. While we commend the honesty of the institutes who admit

that they do absolutely nothing to assist separating members, we cannot fail to question such a situation because it is unsatisfactory. It is either that the institutes that fall under this category are unaware of the moral and canonical obligations of equity and evangelical charity that canon 702, §2 imposes on them, or that they are acting deliberately contrary to the obligations this important ecclesiastical norm places on them. It is possible that their inability to extend assistance to their separated members is due to lack of funds. However, they did not state that to be the case. If their decision is a result of ignorance, it cannot be excused because the Church has registered its concern for separated members and has codified this in the 1917 and 1983 Codes. Furthermore, following an important plenary assembly on 23-25 October 1973, the Church articulated its explanation and decision through the declaration, *Sacra congregatio* of 25 January 1974, pointing out to religious institutes the need of assisting separated members and how to go about it. If, on the other hand, they are acting deliberately contrary to the Church's legislation, then their action needs to be amended. Their refusal to assist someone who was one of them for a while and who contributed to the same noble cause with them, in probably bringing solace to others who battled the hardships of life, is not excusable. Refusing to give any help in charity to their separated members could well be tantamount to disrespect to the Church's legislation, and its social teachings. Even without any ecclesiastical legislation in place, a sense of justice and compassion should incline us to assist a former member of a religious institute who has voluntarily left or has been dismissed from the institute and finds himself/herself facing great hardship, like in the Nigerian situation.

Those who fall under the second category are those institutes who reported that they give a uniform assistance-package to their separated members. While we praise this group for trying to do something for their separating members, it is important for us to note that their assistance falls short of the expectations of the Church. These institutes seem to be telling us that they do not take any other extenuating factor into consideration. They seem to be saying that all fingers are equal, and therefore one size fits all. There is no true equity and charity in this approach. No two cases of departure or dismissal from religious institutes are the same. Some people are better equipped than others to survive after their exit from a religious institute. As the Holy See has correctly pointed out in *Sacra congregatio*, “the measure of such assistance, the financial help provided, would have to be weighed according to each individual case, since no two are the same. The situation of those who have good qualifications and experience and whose placement in the world is assured in advance is far different from that of those religious who by reason of age or other circumstances are physically or morally unsuited for a remunerative position.”<sup>128</sup> It is over thirty years since the Holy See gave this directive; it is surprising that any institute would ignore the explanation and directive. There is no reason for any institute to be content with giving a uniform assistance package to their separated members. We have already discovered that those institutes that give a uniform assistance to their separated members, irrespective of their needs, do not offer enough to help them in their needs at the point of departure or separation. Considering the situation in Nigeria that we have already painted in this chapter, it is reasonable to conclude that an offering

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<sup>128</sup> SCRIS, *Sacra congregatio*, in FLANNERY II, p. 201.

of a uniform assistance to all its separated members irrespective of their needs does not reflect the equity and evangelical charity canon 702, §2 speaks about. It is quite possible that these institutes do not have a clear understanding of ecclesiastical law. They are to be encouraged to review their present policy and incorporate into it the mind and the spirit embedded in the words of the canon.

The third group of institutes are those who reported that they extend an assistance package to their separated members, taking certain factors into consideration. While this group must be commended for their efforts, we feel that they could do even more for their separated members.

We say that these institutes could do even more because the Church has explained that the assistance package for separated members should include where necessary, provision for their spiritual, moral and social, as well as temporal well-being, while these institutes in Nigeria generally offer only monetary assistance.<sup>129</sup> We are also of the opinion that the money in the amount of approximately N10, 000 to N50, 000 (US\$75.75-\$378.75) that most of the institutes in Nigeria give to their separated members at the point of separation does not reflect the equity and evangelical charity that the Church advocates to be extended to separated members. Granted that one or two institutes stated that they have given more than what most others give, we know that even those who gave more do not give enough to help a separated member in a situation as difficult as Nigeria, considering that the government does not provide for the most basic needs of its citizens.

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<sup>129</sup> Ibid., p. 200.

We must recall that it is from this same third group that we highlighted some comments that do not seem to be in consonance with the explanation and directives of the Holy See. Some of them stated that they do not think that something ought to be done for separated members. Some referred to what they do as a “severance allotment,” while others used the word “settle” in relation to what they do for their former members at the point of separation. Some of them take the money to help their separated members from the internal retirement fund; we have already explained the implication of this action. All this is a clear indication that some of the religious institutes in Nigeria may not have a clear understanding of the legislation of the Church and also act, perhaps consciously or unconsciously, in disregard of the explanation and decision of the Holy See vis-à-vis equity and evangelical charity towards separated members of religious institutes.

The information gathered through our survey indicates that, considering all aspects of the life in Nigeria, one cannot heap all the blame at the doors of the institutes in Nigeria, most of whom do not have in place structures that could help them as they extend assistance to their separated members. The country, Nigeria, is also to blame. Nigeria, as we have seen, is a country that from its amalgamation by the colonial masters has been showing signs of breaking up. The ethnic and religious differences tend to destabilize the country. The political atmosphere in Nigeria and the high level of corruption leave much to be desired. All this affects adversely the economy of Nigeria that in turn affects the economic situation of the religious institutes in that country. The social security programmes that the Holy See has advised religious institutes to buy for their members are not readily available. The high rate of unemployment, the non-

payment of salaries, the non-payment of pensions, the unavailability of jobs that have pensions attached to them, the lack of healthcare programmes in the country, etc., make it difficult for religious institutes to give reasonable assistance to their separated members.

The institutes in Nigeria deserve to be commended for what they are able to do for their former members, considering the economic situation of Nigeria and that of the institutes in the country. The poor situation notwithstanding, many of the institutes are able to do something for their separated members. Not only are they able to do something, they also endeavour to factor in some of the elements that institutes in Europe and North America take into consideration when they extend equity and evangelical charity to their separated members.

## GENERAL CONCLUSION

Canon 702 embodies two norms: while §1 states that a separated member of a religious institute who lawfully leaves or who is lawfully dismissed cannot demand anything from the institute for work done in it, §2, which is the focus of our study, on the other hand, *obliges* religious institutes to show equity and evangelical charity to their separated members. Even though, at first sight, the two norms appear to be ambivalent or contradictory, a very careful look at them reveals a close logical link between their precepts. While the first paragraph is categorical, the second attempts to strike the much desired balance in a very difficult situation. The norm in canon 702, §2 is the result of the Church's compassion, in accord with its social teachings for the religious who depart from their institutes. Our attempts to determine how the religious institutes in Nigeria understand and put canon 702, §2 into practice have yielded the following conclusions:

First, the precept of canon 702, §1 which denies any compensation to separated members of religious institutes on the basis of justice is founded on the theological principle which is at the heart of consecrated life. The conciliar and post-conciliar documents clearly teach that religious life is a radical imitation of the life of Jesus Christ, in his poverty, chastity and obedience to God the Father. One who imitates the life of Jesus Christ is one who is consecrated as Christ was and is equally committed to doing the will of God. The person who sincerely obeys God's will does not seek earthly or material reward. Each institute is to ensure that its members are made fully aware of this truth during their formative years. It is, therefore, unacceptable that a separated member would demand compensation for any work done while in the institute as a member. The

relationship between an institute and a religious is not the same as that between an employer and an employee. Years spent in religious life are rightly referred to as years of membership, not years of service. This is why the Church requires that each institute assists its former members in the spirit of canonical equity and evangelical charity, rather than on the basis of justice.

Second, the Church's compassion towards separated members of religious institutes is not something that has suddenly appeared in canon 702, §2 of the present Code. The concern and compassion of the Church towards separated members has a long history. Long before the 1917 Code, the Church approved the institute of the dowry brought by women religious when they were entering the religious institutes so that, in case they departed from the institutes, it would help them to start a new life in the world. If the dowry was not sufficient for this purpose, the institute was obliged to supplement it to qualify it as a charitable subsidy. Despite such legislation, the religious institutes continued to experience problems in providing proper assistance to separated members. This was evident in the various responses of the Holy See sent at different times to major superiors of different religious institutes. Finally, the Holy See insisted that the assistance offered to separated members must go beyond monetary assistance to include the spiritual, moral, and social aspects of one's life. The Holy See also suggested what institutes could do to equip themselves economically to be able to assist their separated members. However, the Holy See insisted that the help offered to separated members is not to be the detriment of those who remain in the institute. In other words, while an institute is obliged to help a separated member, it must also make sure that the well-being

of those who are still in the institute is not jeopardized in any way. That is why canon 702, §2 uses the expression “equity and evangelical charity.”

Third, the concepts of “equity” and “evangelical charity” are not very easy to define. They are virtues or inner disposition of a public authority who is entrusted with the ministry of interpreting and applying the law to a concrete case. Equity is not justice *sic et simpliciter*, but it is justice applied with mercy and compassion. It is a higher form of justice. It is employed when the existing law has either no provision that is applicable to a concrete case or an existing provision cannot be applied with same vigor to every case. Therefore, canonical equity is a Christian approach to legal problems based on mercy and compassion. Evangelical charity is gospel charity, the charity of Christ. The charity of Christ knows no bounds. To act in a spirit of evangelical charity means that we treat people the same way as Christ would treat them.

Fourth, when these principles are applied by a religious institute to the situation in which one of its separated members is in need, the institute must take into consideration various factors in determining how much monetary assistance can be offered and what other needs, such as medical, moral, spiritual, etc., are to be included in such a case. Each case is unique. Therefore, the determination of any concrete assistance must reflect the needs engendered in each case. Although a general policy will provide a guideline, a concrete case cannot be absorbed in general statistics. In most of the religious institutes in North America and Europe, the approaches adopted to resolve problems associated with the assistance to separated members reveal to some extent the application of equity and evangelical charity, at least in economic matters.

Fifth, according to our study, it seems that the religious institutes in Nigeria do not apply the principles of equity and evangelical charity stated in canon 702, §2 in a uniform manner. While some institutes offer some assistance to their separated members, others do not. While some take certain factors into consideration, others simply give uniform assistance to all separating members. The responses from major superiors in Nigeria indicate that the institutes do not seem to have a clear understanding of the concepts of equity and evangelical charity. Our survey revealed that most religious institutes in Nigeria do not have concrete guidelines for dealing with the assistance to be offered to separated members.

Sixth, the problems faced by religious institutes in Nigeria with respect to equitable and charitable assistance to separated members are exacerbated by the prevalent poor economic situation in the country. Nigeria is poor and its shattered economy invariably affects the economic situation of the religious institutes working in the country. Consequently, these institutes do not have enough funds to extend reasonable assistance to their separated members. Pensions and other social security programmes that enable religious institutes around the world to assist their separated members are not available in Nigeria.

Seventh, the problems faced by the separated members of religious institutes in Nigeria are compounded by the peculiar socio-cultural situation that may not be experienced by their counterparts in Europe and North America. The worst of the social-cultural problems is the veil of shame that cripples the separated members. No financial assistance given to a separated member can adequately compensate for the struggle that grips the person as a consequence of this particular socio-cultural problem in Nigeria. We

believe that a religious institute must take this problem into consideration because it is an experience that affects the whole life of the separated member and that of his/her family.

Eighth, our survey reveals that separated members of religious institutes in Nigeria encounter more serious problems than their counterparts in other parts of the world and are, therefore, more in need of assistance. In fact, separated members in Nigeria in general receive very little monetary assistance from their institutes because the institutes themselves are battling with serious economic problems. While one cannot deny that many of the institutes in Nigeria try to assist their separated members, the greatest impediment they face in this regard is the lack of funds necessary to offer equitable and charitable assistance proportionate to the needs of separated members.

Ninth, our study leads us to conclude further that the institutes in Nigeria not only do not have enough funds to assist their former members, but also they do not have enough funds even to look after those who still remain faithful to their vocation. If an institute does not have the means to take care of its members, then the members may be forced to fend for themselves by seeking jobs elsewhere, which could put at peril their fidelity to their religious vocation. The inability of religious institutes to care properly for their own members could signal the hard times the future Nigerian church itself will have to face. The future of the church in Nigeria will depend to a large extent on healthy, happy and content members of religious institutes working in the country. Therefore, the religious institutes in Nigeria should ensure that their members are well looked after while they are still active, as well as in their retirement and old age, and this without doubts cannot be done without sufficient funds.

The inability of the religious institutes in Nigeria to provide for their members during their retirement and old age is not a problem limited to the institutes only. Most of the dioceses in Nigeria have no adequate provision in place for their diocesan clergy. The situation is the same in other institutes of consecrated life and societies of apostolic life. Even though this is outside the scope of this study, yet our experience in the country reveals that the dioceses and other groups are equally unprepared and must, therefore, avail themselves of financial resources in order to provide adequately for the retirement and old age of their members.

The results of our survey and reflections on the concrete situation reigning in Nigeria lead us to propose the following suggestions:

1. - The bishops of Nigeria and all competent ecclesiastical authorities involved in the establishment of religious institutes are to be more careful in granting *approbatio* to an association of Christ's faithful which intends eventually to become an institute of consecrated life. There is no doubt that the Church already exercises great care (cf. cc. 576, 587, 605, etc.) in the establishment of institutes,<sup>1</sup> but what is of concern here is the need for more prudence and critical evaluation on the part of the competent Church authority in Nigeria when approving an association. Any association that seeks proper ecclesiastical approval ought to demonstrate its economic viability before such approval is granted. This is extremely important in the Nigerian situation where new institutes are springing up all over the country and are often successful in recruiting young men and

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<sup>1</sup> Cf. E. GAMBARI, *The Canonical Establishment of a Religious Institute: Process and Procedures*, Florence, [Artigraf], 1999, p. 14. English translation by M.M. ARMATO and T. BLESSIN (eds.).

women in their late teens and early twenties, with little or inadequate education and life experience.

2. - In the midst of a vocation boom in Nigeria, religious institutes should be very circumspect in admitting the number of candidates they can reasonably provide for (c. 670). It is important in the long term to reduce their excessive dependence on foreign sources of financial assistance in the education and formation of candidates to religious life. In fact, the aid from Europe and North America has dropped drastically in recent years, and there is little hope that things will change for the better in the near future.

3. - Each institute must train or form its members in different professions, trades, occupations, etc. in conformity with its charism, so that they will bring in sufficient income for their maintenance and future security. They should also have in place pension and health care plans for their members. These plans can follow the members in the event they leave the institute.

4. - Wise and prudent investment of surplus funds of the institutes could be another source of help in times of need. Although Nigeria is not rich economically, despite its oil wealth, there is ample scope for honest investment that can yield very good returns. The religious institutes are not to feel too wary about investing, as long as their investments are honest, and intended solely for the accomplishment of their mission and for the good of their members.

5. - The setting up of endowment funds which are likely to yield good returns would be very helpful in carrying out the institute's charitable works. Interest accruing from the endowment funds could be used in assisting members who depart from the institute.

6. - It is extremely important that all religious institutes in Nigeria are made aware of the true meaning of canon 702, §2 and its implications both for the institutes themselves and for their separated members. Canon 702, §2 contains one of the most humane and wise norms in the entire Code. It obliges the religious institutes to treat their departing members with dignity and Christian compassion.

7. - Even though our study reveals that the institutes in Nigeria do not have enough funds, yet the monetary assistance they give to their separated members needs to be reviewed. The N10, 000 (US\$75) N50, 000 (US\$375) that most institutes give to their separated members is insufficient even in the Nigerian context. Financial assistance that does not go beyond providing transport fare to go home and sustaining the former member for more than three months does not fulfil the requirement of equity and evangelical charity enunciated in canon 702, §2. Each institute in Nigeria, therefore, should consider being more generous to its separated members when extending financial assistance to them.

8. - The issue of medical insurance for religious in Nigeria ought to be taken more seriously. The present situation where many institutes stated that they are only at the starting block in their discussions concerning healthcare insurance for their members is not encouraging. Institutes should allow separating members, especially those with some medical conditions, to stay on their medical insurance programme after departure until they can make their own arrangements about it. They could at least be allowed to enjoy the health insurance for a determined period of time, possibly until they are able to stand on their own.

9. - Institutes are to suggest spiritual direction, counselling and any other psychological help to separating members who may be in need of such assistance. The institutes could place at the service of the separated members their own experts or pay for such services if sought from outside the institute. In this situation, the separating member would have to be disposed to receive such assistance.

10. - The institute could arrange, in consultation with the separating member, a farewell Eucharistic liturgy or a para-liturgical celebration to recognize his/her contribution to the institute. The person could be asked, if he/she so desires, to invite his/her family members and friends to the celebration. If the idea of the Eucharist or para-liturgical celebration is agreeable to the separating member, then, he/she could be involved in its planning and preparation. This celebration could be topped with a social evening.

11. - The institute should find out whether a separated member would need someone to speak to his/her family prior to official separation. This will have great significance because in the Nigerian culture, for reasons already explained above, a separated member usually finds it very difficult to explain to his/her family the reason for his/her departure from the institute.

12. - The institute would need to find out from the separating member whether he/she would like someone to accompany him/her home. This gesture might reassure the family that their son or daughter or sibling would be assisted by the institute to the extent possible.

13. - One of the more practical ways of assisting a separated member is to help him or her in finding a suitable employment because Nigerians still hold in high regard the

clergy and religious. It is more likely that a separated member will succeed in finding employment if he/she has the support of the religious institute.

14. - Institutes must somehow learn to assist their separating members in grappling with the shame that descends on them when they depart. This could prove to be one of the most valuable supports a separating member receives from the religious institute.

15. - Even though each case is different, an *ad casum* handling of cases without any general guidelines is not ideal. Therefore, each institute must have a general policy to guide the handling of the cases of separated members. Such policy could then be applied to each case with necessary adaptations. This general policy could include the suggestions indicated in this study. It must address the spiritual, social and physical needs of the separating member. The policy should consider the age, years of membership, level of education or skills acquired, health, standard of living in the area, the family of the member concerned, etc. in determining the assistance to be offered to a separating member.

16. - Institutes are to ensure that their candidates are familiar with the policy governing equity and charity to be extended to separated members. This would enable any separating member to understand the nature and the kind of help he/she could expect at the time of separation. This could minimize, if not eliminate, any pain or hurt that might result from the experience of separation.

17. - Institutes must have members sign a document when joining the institute to the effect that they will claim nothing for services rendered while in the institute, or for future considerations.

18. - Each institute must see to it that every aspect of the assistance package offered is documented. It is wise to have the separating member sign this document together with the competent authority representing the institute.

19. - In our opinion, the involvement of the Conferences of Major Superiors of Nigeria (Men and Women) could prove very helpful to different religious institutes. These Conferences could draft a national policy on the equitable and charitable assistance to be offered to separating members. This general policy could then be adapted by each religious institute in view of its own particular circumstances and resources available.

Canon 702, §2 will retain its practical value in the years to come, because just as religious institutes in Nigeria are flourishing in terms of new vocations, they also record relatively high number of departures every year. Consequently, the religious institutes would continue to be concerned with taking care of their members as well as with the equitable and charitable assistance to those leaving them. It is our hope that the above suggestions would somehow inspire and assist religious institutes in drafting their own policies that would reflect their charism and resources available to them. A wholesome policy that reflects the concerns an institute has for all its members, those who remain faithful to their vocation and those separating, could prove to be a veritable source of grace and salvation for all – the salvation of souls being the ultimate goal of the Church's mission (c. 1752).

## APPENDIX 1

### QUESTIONNAIRE

#### 2005 SURVEY: EQUITABLE AND CHARITABLE PROVISION FOR SEPARATED MEMBERS OF RELIGIOUS INSTITUTES IN NIGERIA

##### Section A: Information on institute

1. Name of your religious institute.....
2. Address of your Generalate/Provincialate/Monastery:
3. Name(s) of your founder/founders.....
4. When was your institute founded? .....
5. Where was your institute founded?.....
6. Is it of pontifical right [     ] or diocesan right? [     ]
7. If your institute was founded outside, how long has it been in Nigeria?.....
8. Do you provide answers to this questionnaire on behalf of the General administration [     ], on behalf of a Province [     ] or Monastery [     ]?

##### Section B: Information on members

1. How many professed members (temporary and perpetually) do you have at present in your institute/ province? .....
2. How many professed members have left your institute in the last twenty years through voluntary departure?.....
3. How many of them were in temporary vows? .....
4. How many of them had made their perpetual profession? .....
5. How many professed members have been legitimately dismissed from your institute (e.g. last twenty years)?.....
6. Do you offer them any assistance when they leave the institute?  
Yes [     ]     No [     ]
7. If yes, what is the nature of the assistance you offer them?  
(a) Transport money to go home [     ]

- (b) Clothing [     ]
- (c) Accommodation [     ]
- (d) Further education/studies [     ]
- (e) Professional Counselling [     ]
- (f) Spiritual direction [     ]
- (g) Other [     ]

8. Is the assistance you offer those leaving the institute uniform?

Yes [     ] No [     ]

9. Is the assistance you offer for one time [     ] or an on-going one? [     ]

10. If monetary assistance is offered, how much money do you give to a separated member?.....

11. Do you take into consideration certain factors when you offer assistance to a former member? Yes [     ] No [     ]

12. If yes, please indicate them here below:

- (a) Years of membership [     ]
- (b) Age [     ]
- (c) Education acquired [     ]
- (d) Health of the former member [     ]
- (e) Employment opportunities [     ]
- (f) Family situation [     ]
- (g) Standard of living [     ]
- (h) Relationship with the institute [     ]
- (i) Member's contribution to the religious community [     ]
- (j) Whether the departure was voluntary or through dismissal [     ]
- (k) Other factors [     ]

13. Does your assistance include loans to former members? (a) Yes [     ] (b) No [     ]

14. Is the loan given with the requirement of payment of interest on it?

Yes [     ] No [     ]

15. Do they usually pay back the loan? (a) Yes [     ] (b) No [     ] (c) Part [     ]

### **Section C: Relationship between the institute and former members**

1. Is there any formal ceremony of departure when a member is leaving?

(a) Yes [     ] (b) No [     ]

2. If yes, what form of ceremony (e.g. liturgical, social, etc.) do you plan? (Please explain).
  
3. Do you keep in contact with the former members?  
Yes [     ] No [     ] Occasionally [     ]
4. Do you invite former members to the celebrations of your institute/congregation?  
Yes [     ] No [     ] Occasionally [     ]
5. Do you welcome former members into associate-membership, if you have any?  
Yes [     ] No [     ]

**Section D: More information on assistance to members**

1. Are your members enrolled in any government subsidised social security?  
(a) Yes [     ] (b) No [     ]
2. Are there pension plans attached to their works/apostolates?  
(a) Yes [     ] (b) No [     ] (c) Some [     ]
3. Could you provide the number **or** percentage of your members who are currently engaged in works that have pension plans attached to them?  
Number [     ] **or** Percentage [     ]
4. Does your institute/congregation buy an annuity for its members?  
Yes [     ] No [     ]
5. Do you have health insurance programmes for your members?  
Yes [     ] No [     ]
6. If yes, do former members continue to enjoy your health insurance schemes after departure?  
Yes [     ] No [     ]
7. What is the source of your assistance to former members?  
(a) current/general funds [     ]  
(b) internal retirement fund [     ]  
(c) money specially set aside for members who leave [     ]  
(d) Other [     ]

8. Do you consider your institute/congregation financially self-sufficient?  
Yes [      ] No [      ]
9. Considering the economic situation in Nigeria today, how does your institute/congregation/monastery subsist? Through:
- (a) Salaries of members in Nigeria [      ]
  - (b) Salaries of members outside Nigeria [      ]
  - (c) Money-yielding investments [      ]
  - (d) Donations from within Nigeria [      ]
  - (e) Donations from outside Nigeria [      ]
  - (f) Other [      ]

**Section E: More on your institute/congregation**

1. Does your institute/congregation have **guidelines** on assistance to those leaving the institute? Yes [      ] No [      ]. If yes, would you please attach a copy?
2. If you have a **working policy** for implementing the guidelines, could you attach a copy of the policy?
3. Do you have any other suggestions or remarks you wish to include?

**\*Thank you immensely for taking the time to answer this questionnaire.**

## APPENDIX 2

### SACRA CONGREGATIO PRO RELIGIOSIS ET INSTITUTIS SAECULARIBUS

#### Declaratio

#### DE SUBSIDIO CARITATIVO PRAESTANDO IIS QUI INSTITUTUM RELIGIOSUM DERELINQUERUNT

Sacra congregatio pro Religiosis et Institutis saecularibus, dum Superiores Generales de quibusdam normis Coetus Plenarii circa auxilium iis praebendum, qui Institutum deserunt, certiores facti, nonnullas cogitationes et principia cupit proponere, in quibus praedictae normae innituntur.

Non latent Sacram Congregationem difficultates, in quibus Instituta religiosa versantur sive ob satis auctum numerum eorum, qui egrediuntur, sive ob rationes, quibus iidem postulationes suas probare conantur.

Quaevis religiosa familia obligatione tenetur bono spirituali, morali, sociali, temporali priorum sodalium consulendi, donec hi in ipso permanent Instituto. Quae quidem obligatio etiam quodammodo extenditur, licet diverso nomine et intra certos fines, ad eos, qui Institutum deserunt atque ut saeculares in humanam societatem se inserere debent, maxime postquam plures annos vitam religiosam duxerunt.

Codice iuris canonici statuitur, ut si quis a votis solutus aut dimissus ex Instituto egrediatur, nihil possit repetere ob quamlibet operam eidem praestitam. Hoc principium, de quo in can. 645, §1,

### THE SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES

#### Declaration

#### ON CHARITABLE SUBSIDY GIVEN TO THOSE WHO LEAVE A RELIGIOUS INSTITUTE

The Sacred Congregation for Religious and Secular Institutes, in bringing to the notice of the Superiors General certain directives of the Plenary Assembly concerning the help which should be given to those who leave their religious communities, wishes to indicate at the same time the considerations and principles on which the directives are based.

The Sacred Congregation is aware of the difficulties facing Institutes themselves both on account of considerable increase in the numbers of those who leave and by reason of the criteria by which those who leave would justify their claims.

Every religious family has the obligation of providing for the spiritual, moral and social, as well as temporal well-being of its members while they retain their membership. This obligation extends also in some fashion, though for a different reason, and within certain limits, to those who leave the Institutes and who find themselves faced with the necessity of inserting themselves into society as lay people after having spent, perhaps, many years in religious life.

The Code of Canon Law prescribes that those who leave their religious community, because dispensed from their vows or dismissed from the Institute, cannot make any claims for the work they

agitur, ad ipsam naturam et vim professionis religiosae revocatur. Qui enim vitam religiosam amplectitur, in vitae condicione prorsus peculiari libere et voluntarie se collocat. Professio religiosa est res ordinis spiritualis, secumferens donationem, qua, sine ulla exceptione, Deo devoventur omnia, quae quis in vitae religiosae cursu perficere posit, quamvis in quoddam discrimen se conferre queat, quod attinet ad incertam sortem futuram.

Immutaretur prorsus natura et indoles Institutorum religiosorum, si haberentur tamquam officinae vel quaestuosae industriae vel si relationes inter eadem Instituta et sodales assimilari putarentur relationibus, quae inter mercedarium, seu dominum, qui mercedem dat pro labore, atque eius ministros seu operarios intercedunt.

Propter ea autem, quae supra dicta sunt, Institutum non eximitur officio adiuvandi eos, qui egrediuntur; quod quidem officium nititur in principiis caritatis, aequitatis, iustitiae, responsibilitatis socialis. Maxime vero horum temporum condiciones, multum postulant prudentiae, necnon difficultates, quas transitus a statu religioso ad statum saecularem suapte natura affert – hic enim transitus totam egredientis personam penitus afficit – requirunt, ut haec persuasum sibi habeat secum actum esse ea reverentia, quae ipsi ut personae debetur, atque ut moderatores instituti conscii sint, secundum principia enuntiata, sese recte gessisse.

Ecclesia quidem per can. 643, §2 iis, qui statum religiosum deserunt, benignam se praebuit; initio vi huius canonis mulieribus religiosis egredientibus favit, deinde, analogia servata, viris religiosis. Verumtamen praedicti canonis praescriptum non

have done as members of it. This principle, as stated in can. 643, paragraph 1, is intrinsic to religious professions. Those who enter religious life freely and voluntarily place themselves in a situation which is entirely special. Religious profession is a fact of a spiritual nature which implies the total surrender to God of all that one can earn during one's religious life, even if this implies some uncertainty regarding the future.

It would be contrary to the nature of religious life to equate it with a business or a factory or to put the relations between institutes and members on a par with relations between employers and employees.

The above does not release the Institute from the duty, based on the principles of charity, equity, justice and social responsibility, of assisting those who leave it. Above all, the necessity for tact at the moment of departure from the religious life and the difficulty inherent in the transfer, involving the entire nature of the person concerned, require that this person should depart feeling that he or she is being treated with all the respect due to a person. For the same reasons those in whose care the Institute rests should be conscious of having acted justly, according to the principles indicated.

The Church has made its stipulations for those departing from religious life, according to can. 643, paragraph 2, originally formulated for the benefit of ex-religious women and subsequently applied to ex-religious men. But the prescriptions of this canon appear inadequate in view of the new social

amplius sufficere videtur iis, quae novis huius aetatis condicionibus et hodierna conscientia sociali postulantur. Vicissim, ratione habita rerum, quae nunc accident, huiusque materiae multiplicium aspectuum, fieri non potest neque expedit, ut leges universales condantur omnibus applicandae.

Imprimis oportet efficaciter adiuvetur is, qui egreditur, ut in vitam socialem se inserat, ac quidem illis modis, qui ingenii facultatibus eius magis congruent. Patet vero mensuram huius auxilii atque subsidiorum largitionumque pecuniae religiosis egredientibus tribuendorum, singulis in casibus esse statuenda, siquidem non sunt pares omnium condiciones. Prorsus aliter enim res se habet apud eos, qui diplomatibus publice pollent et certum opus, quo vitae consulatur, faciunt, aliter autem cum agitur de religiosis utriusque sexus, qui propter aetatem vel alias causas physice aut moraliter non sunt idonei ad fructuosum munus exsequendum.

Praeterea amplitudo auxilii etiam e facultatibus ipsius Instituti pendet necnon ex officiis caritatis, aequitatis, iustitiae, quibus illud circa membra, quae in vita religiosa perseverant, devincitur, ne his iniusta onera imponantur, ex eo orientia, quod nimia liberalitas in eos, qui egrediuntur exercetur.

Instituta religiosa necessitatibus temporalibus sodalium, etiam cum aliquos ex iis vitam religiosam deserere contigat, prospicere possunt subsidiis adhibitis, quae horum temporum spiritui magis congruent, quae convenient cum mentis habitu circa iustitiam et cautiones sociales vigente, et quae nihilominus naturam vitae religiosae integram servant. In his subsidiis seu viis memoranda est, secundum hominum rerumque adiuncta, constitutio – sicubi

conditions obtaining today and in the light of the contemporary social conscience. On the other hand, considering the actual state of affairs and the complexity of the matter, it is neither possible nor advisable to formulate general norms applicable to all cases.

Above all, it is necessary to give appropriate assistance to the one leaving religious life in order to enable him to find the place in the lay state which is best suited to his capabilities. Of course, the measure of such assistance, the financial help provided, would have to be weighed according to each individual case, since no two are the same. The situation of those who have good qualifications and experience and whose placement in the world is assured in advance is far different from that of those religious who by reason of age or other circumstances are physically or morally unsuited for a remunerative position.

Moreover, the measure of the assistance depends on the possibility of the Institute itself and its obligations of charity, equity and justice towards its members who persevere in the community, not to burden them with unjustifiable obligation caused by an ill-proportioned generosity towards those who leave the community.

Religious Institutes could undertake provision for the temporal needs of their members, a provision applicable to them even if they leave religious life, by using the means more consonant with the spirit of the times in which we live, in the context of justice and social security and at the same time respecting the nature of religious life. Among these means, one might consider, according to circumstances, the establishment of

nondum facta sit – corporum seu collegiorum ad sociale cautionem pertinentium, ope Institutorum vel Conferentiarum Nationalium, vel etiam ille usus, ex quo membra ascribuntur iam existentibus eiusmodi corporibus seu collegiis, ad cautionem vel adiumentum sociale spectantibus.

Peculiari modo Institutis suadet, ut condant aut adiuvent – ubi iam exstant – specialia officia, quorum sit moraliter et oeconomice opitulari iis, qui egressi sunt; qua in re ea mente ducantur, ut illis consilio adsint eosque congrua habilitate instruant, quo citius, secundum proprii ingenii facultates, iis aggregentur, qui in saeculo opus faciunt, et utcumque, vitae rationibus consulere queant modo apto atque honesto.

Coetus igitur Plenarius Sacrae huius Congregationis, in sessione diebus 23-25 mensis Octobris 1972 habita, huius quaestionis aspectibus, de quibus supra, aliisque, sive theoreticis sive practicis, expensis, has quae sequuntur, normas directorias enuntiavit:

1. – Praescriptum canonis 643 § 1, ut principium vigere pergit.
2. – Quaevis familia religiosa sollerter curet de bono spirituali, morali, sociali et oeconomico illorum, qui ex Instituto egrediuntur.
3. – Instituta exquirant et adhibeant rationes opportunas, quibus sorti futurae prospiciatur religiosorum atque, propterea, etiam illorum, qui Institutum deserunt.

Sacra Congregatio, dum has normas directorias cum Moderatricibus et Moderatoribus Generalibus communicat, eos hortatur, ut in iisdem interpretandis et

programs of social security at the community level or with the intervention of the National Conferences, as well as enrolment of members in the already existing organizations of social security and insurance.

It is commendable that Institutes set up or support offices for the moral and economic assistance of those who leave, in order to give them advice and help them, according to their qualifications, to find as soon as possible a position and earn a salary in order to maintain themselves decently and properly.

The Plenary Assembly of this Sacred Congregation, in its session of October 23-25, 1972, after after examining all the theoretical and practical aspects of the problem, formulated the following directives:

1. – As a matter of principle, the norm laid down in paragraph 1 of canon 643 remains in force.
2. – Every religious family is urged to provide properly for the spiritual, moral, social and economic well-being of those who leave the institute.
3. – Religious institutes should study and adopt suitable measures to provide for the future of their religious and consequently of those who leave the institute.

The Sacred Congregation, while communicating these norms to Moderators General, exhorts them, so that, while interpreting and applying them, they take into consideration the principles and criteria explained above.

applicandis rationem ducant principiorum et  
criteriorum, quae supra sunt exposita.

Contrariis quibuslibet non obstantibus.

Datum Romae, die 25 Januarii 1974.

Arturus Card. Tabera, Praefectus

† Augustinus Mayer, O. S. B., Secr.

All things to the contrary notwithstanding.

Given in Rome, on 25 January 1974.

Arturus Card. Tabera, Prefect

† Augustinus Mayer, O.S.B., Secr.

## APPENDIX 3

### MEMBERS LEAVING RELIGIOUS LIFE: GUIDELINES PREPARED FOR THE CONFERENCE OF RELIGIOUS OF IRELAND

Canon 702, §1: Whoever lawfully leaves a religious institute or is lawfully dismissed from one, cannot claim anything from the institute for any work done in it.

Canon 702, §2: The institute, however, is to show equity and evangelical charity towards the member who is separated from it.

#### 1) Suggested Basic Check List

- Age of departing person?
- State of health at the time of departure, physical, mental? There may be need for counselling, psychological – short term help.
- Length of time in religious life?
- Is the person returning to a stable family?
- Will the member be living with the family – this could involve maintenance support.

#### 2) Future Works Prospects - Accommodation

- Professional qualifications?
- Is the person already in salaried/waged employment?
- Will there be a period of job hunting – interim financial support maybe required.
- Is accommodation – a flat required?

#### Consider:

- Would the congregation buy a flat as a future investment?
- Agree to pay the rent of a flat for a limited specified period?
- Help with provision of furniture?

Congregations [institutes] should take civil law advice before becoming involved in any long/short term arrangements or commitments regarding the provision of property.

#### 3) Calculating a Gift towards Retirement

- Canonical wisdom suggests that the term “gift” be used instead of “settlement” since the specific membership-status of a religious with his/her congregation cannot be equated with a contract of employment where severance/redundancy payments or other settlements are involved.

- A year's salary – relevant to professional post held or held in the past?
- All things considered, a realistic lump sum, one off gift, calculated on the time spent in religious life?
- Take into consideration National Insurance pension – has this been safeguarded for the person during his/her time in religious life?
- Consider paying Health Insurance for a specified period?
- Will the person additionally have a superannuation and monthly pension at the age of sixty or sixty-five?
- Depending on the age, mental and physical health of a departing member and his/her family circumstances, a congregation may wish to provide an on-going monthly financial 'gift'-allowance for the ex-member?

**N.B.** All assistance, financial or otherwise, given under sections 1-3 should be assessed as part of the final gift and a full dated record kept.

#### **4. Important**

The departing member is asked to sign a prepared brief statement in which he/she accepts the congregation's equitable and charitable gift and states that no further claims on the congregation, financial or otherwise will be made. This statement should be witnessed.

**4a.** It may be necessary, where relevant to consider the legal ownership of manuscripts, copyright, royalties, etc.

Congregations may wish to make this a civilly legal document.

The name of the departing member should be removed from bank mandates, Trusteeships, etc.

#### **5. Consideration for the Congregation**

Canon 670: "The institute must supply the members with everything that, in accordance with the constitutions, is necessary to fulfil the purpose of their vocation."

Any check lists such as those set out 1-3 have to be balanced against:-

- Financial status of the congregation.
- Its missionary/ministry needs.
- The shrinking earning capacity of members.
- Decreasing numbers.
- Needs of the sick and elderly members for professional nursing/residential care.
- Support of the local and universal Church, charities, etc.

**5.a.** Many congregations have a fund "for the *assistance* of past members" *and/or* a fund "for the support of Departing Members" which is topped up annually?

However faithfully a congregation strives to act with equity and evangelical charity, it can only do so in relation to its resources, obligations and commitments.

Charity Commission law must also be respected, this involves consultation with that body regarding an ex-gratia finance.

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## CURRICULUM VITAE

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He taught at the Holy Ghost Juniorate, in Ihiala, Nigeria before proceeding to Zambia as a missionary. After his years in Zambia, he was commissioned by his superiors to initiate a mission office for the Spiritans of the province of Nigeria. He also had experience of parish ministry in Canada.

In addition to his pastoral experience, he served at different times on the provincial council as a councillor for both the Spiritan province of Nigeria and the Spiritan province of TransCanada. He also served as the episcopal Vicar for religious in Enugu diocese before his assignment in Canada.

He earned a Licentiate in Canon Law (JCL) from Saint Paul University and the Masters in Canon Law (MCL) from the University of Ottawa in 2000.