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**THE UNIFICATION OF PROVINCES IN A RELIGIOUS INSTITUTE
WITH PARTICULAR REFERENCE TO THE SITUATION OF THE
MISSIONARY OBLATES OF MARY IMMACULATE IN THE UNITED STATES**

by
Rev. Warren A. BROWN III, OMI

**A dissertation submitted to the Faculty of Canon Law
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fulfillment of the requirements for the degree of
Doctor of Canon Law**

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ABSTRACT

The establishment of the religious province, originating in a time of flourishing development of the mendicant orders in the 13th century, allowed a decentralization of authority and facilitated the spread of religious institutes in their mission of service to the Gospel. The renewal called for by Vatican II, and the changing circumstances of diminishing vocations and the closing or restructuring of apostolic works, challenged contemporary religious institutes to examine their own operating structures to see whether they still met the needs of our time. Among the structures of religious life that the institutes have examined and adapted is the province.

As an ecclesiastical juridic person by the law itself, the province possesses certain rights and obligations, including the acquisition, ownership, administration and alienation of temporal goods in pursuit of its mission. The competent authority of the religious institute can establish, reorganize and suppress provinces, according to its constitutions. When separate provinces are joined together to form a new one, besides the norms of proper law, certain canons on juridic persons apply, and, in particular, the intentions of donors and founders, as well as any acquired rights of the former provinces must be respected. There are also important civil law issues involved in the restructuring of provincial corporations.

The rapid geographic expansion by the Missionary Oblates of Mary Immaculate in North America led to the establishment of five provinces in the United States by the mid-20th century. The consolidation of the U. S. Oblate provinces in 1999 was the culmination of a gradual process of collaboration and restructuring over a period of more than 30 years. The decision by the Oblate superior general and council to consolidate provinces followed a period of spiritual, psychological and juridical preparation, and an official consultation of the membership.

This thesis, using the experience of the U.S. Oblates as a case study, proposes to describe the procedure to be followed for successful consolidation of provinces from the canonical and civil law perspectives. What canonical structure might best be able to govern and animate the life of local apostolic communities in a unified missionary presence? What problems might be faced by those involved in the consolidation process? What are the pitfalls to be avoided? What were the civil legal, corporate and financial issues that had to be carefully addressed before the restructuring took place? We hope that this study would be of practical benefit to any religious institute contemplating a consolidation or reorganization of provinces.

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ABBREVIATIONS

AAS	<i>Acta Apostolicae Sedis</i>
ASS	<i>Acta Sanctae Sedis</i>
CIC, 1917	<i>Codex iuris canonici 1917</i>
CIC, 1983	<i>Codex iuris canonici 1983</i>
CLD	<i>Canon Law Digest</i>
CLSA	Canon Law Society of America
Const.	<i>Constitution (re OMI Constitutions and Rules)</i>
ES	<i>Ecclesiae sanctae</i>
OCUS	Oblate Conference of the United States
OMI	Missionary Oblates of Mary Immaculate
PC	<i>Perfectae caritatis</i>

INTRODUCTION

Since the time of the Acts of the Apostles, Christians have been gathering into communities in order to carry out the mission entrusted by Christ to His followers. The passage of the centuries has seen various formal structures develop in these communities of committed Christians from the time of St. Pachomius in the Egyptian desert of the 4th century up to today's Church of the 21st century. Different ages have witnessed new insights into how best to live in community as a religious institute and how best to respond to the needs of the surrounding world. Thus, structural changes in religious communities have been brought about by many factors, including: evolving spiritual and theological foundations, shifts in mission focus, the migration of peoples, a decline in membership numbers, and, perhaps most significantly, varying relationships between the Church and the socio-political realities of the times.

As circumstances changed in the last half of the XXth century, particularly with regard to a diminishing number of vocations and the closing or restructuring of numerous apostolic works, religious institutes had to examine their own operating structures to see whether they still met the needs of our time. Following upon Vatican II's call for religious institutes to renew themselves and to work in closer collaboration with others, there have been significant movements and developments within these institutes. In this study we shall examine what has become a common task for many religious institutes, the restructuring of its provinces.

Most pontifical religious institutes have initiated the *province* as a community unit and governance structure, defined in the 1983 Code of Canon Law (c. 621),

simply as a grouping of members, usually in a given geographical area. By canon law (c. 634 §2), a province is a juridic person, with all the rights and obligations attached to this status. With time, each province, like each diocese and each parish, takes on a life of its own, developing its own mentality and manner of proceeding.

The Missionary Oblates of Mary Immaculate were no exception to this process. After a period of sustained growth in the Northern Hemisphere, marked by the establishment of numerous provinces, most of the new vocations began to come from countries of the Southern Hemisphere. This left the Northern part of the Congregation, in Europe and North America, with many elderly members and cumbersome government structures, but without the persons necessary to make them function efficiently. The need for simplification and unification of these structures became evident.

In the United States, the Oblates experienced more than 140 years of development and growth. Five provinces were eventually established, each with its own particular physiognomy and apostolic thrust. For instance, in one province, Hispanic ministry might be a priority, while in another, the pastoral care of immigrants would assume particular importance.

As early as 1987, the then Superior General, Father Marcello Zago, OMI, began urging the Oblates in the United States to work together in a more collaborative manner. He had been promoting the same approach in other parts of the Congregation, such as in France, in Scandinavia, and so forth.¹ In 1996, he mentioned three results he hoped to derive from a restructuring of the members and works in the United States: a more effective missionary presence in the USA; a better way to live the Oblate vocation of witnessing in apostolic community; a more

¹ OBLATE CONFERENCE OF THE UNITED STATES, *Proceedings, Mission in the U.S. Today*, 4th Regional Meeting, Burlingame, CA, 8-13 November 1987, p. 49.

attractive way for future candidates and for a better formation.²

However, as with any change, there was also reluctance. In addition to unverifiable emotional and cultural issues, there were also a number of significant practical issues to consider, such as civil law consequences. For instance, in a time when religious institutes are being sued frequently for the activities of their members, is it opportune to unify corporations? But, keeping separate corporate structures for finances can at times prevent the union of minds and hearts that is necessary to build up a strong province.

This dissertation wishes to examine the canonical reality of the province in a religious institute, including the criteria for its continuation as a separate government structure. It then wishes to examine the procedures that could be used when considering the merger or union of provinces (see canon 581). While the Code of Canon Law and the practice of the Holy See provide for the merger and union of institutes, it is not the same when it comes to the merger and union of provinces; rather, such matters are usually left to the proper law of the institute (see canon 585).

Having established the canonical base, we will then take these principles and apply them to the particular situation of the Missionary Oblates of Mary Immaculate in the United States, as the Congregation moved from five provinces to one unified structure in 1999. This will enable us to consider what were some of the problems faced by those involved in the process, what were the pitfalls to avoid, and more particularly, in today's litigious world, what were the legal, the corporate and the financial issues that had to be carefully addressed before restructuring took place?

Since many other religious institutes are in the midst of a similar restructuring process, the principles and applications developed here could be of practical assistance to them.

Among the questions to be examined more particularly, we could note the

² OBLATE CONFERENCE OF THE UNITED STATES, *Proceedings from the Seventh Regional Meeting*, Belleville, IL, 8-12 April 1996, p. 3.

following: What are the canonical implications arising from a province's juridical personality? What canonical principles of fusion and suppression of juridic personality are involved in a merger of provinces? What process can be followed in such instances? Are there ecclesiological implications arising from new structures, especially in regard to the particular churches where ministry is being carried out? And, finally, what new structures in civil law should be considered to protect the assets and temporal patrimony of a restructured group of religious?

The phenomenon of merger and reorganization of religious institutes in recent years has led to several studies and articles on the topic. Five previous studies, though different in scope and juridical issues than the present one, nonetheless deal with the similar general concepts of fusion, union and reorganization in religious institutes. All of these studies serve as starting points for this dissertation.

Three of the previous studies analyzed the fusion and union of entire religious institutes. In the first of these, a study of canon 582 by M. J. BAIR, *Fusion and Union of Institutes of Consecrated Life in Light of the Code of Canon Law*,³ the author analyzed what is involved in the four types of unification of religious institutes: fusion, union, federation and confederation. This thesis examines the juridical effects of unification, the decision-making process towards unification, the involvement of outside persons in this process and the available options for members who do not wish to join the newly united institute. The work proceeds to discuss the current application of legislation to religious institutes of women.

The other two studies analyzed the fusion and union process of a particular religious institute. In a study by C. DARCY, *The Institute of the Sisters of Mercy of the Americas: The Canonical Development of the Proposed Governance Model*,⁴

³ M. J. BAIR, *Fusion and Union of Institutes of Consecrated Life in Light of the Code of Canon Law*, Ottawa, Saint Paul University, 1993, xvii, 361 p. (ms).

⁴ C. DARCY, *The Institute of the Sisters of Mercy of the Americas: The Canonical Development of the Proposed Governance Model*, New York, University of America Press, 1993, xix, 261 p.

the author's object was to see how the restructuring development of the Sisters of Mercy of the Americas remained faithful to the heritage of the order and the vision of its founder, Catherine McAuley. After setting the historical/canonical context of the Sisters of Mercy in the U.S., the author analyzes the procedures and developed structures of the proposed model of their union. The other study by H. DELANEY, *The Evolution of Governance Structures of the Sisters of Mercy of Australia, 1846-1990*,⁵ looks at the similar process and structures developed in the Australia Mercy Sisters. The study proposes to be a help to other congregations facing similar issues.

The final two studies dealt with the juridical structure of the congregation of the Oblates of Mary Immaculate, each with a distinct focus from each other as well as distinct from the ultimate focus of this study on the "province". The work by T. CASSIDY, *Districts and District Superiors Within the Missionary Oblates of Mary Immaculate*,⁶ examines the "district" as a local community within a province or delegation of the Oblates. This author proposes that the district community be considered as a juridical entity, similar to a house community within Oblate proper law. (This suggestion was incorporated into the OMI *Constitutions and Rules*, 2000.) The renewed emphasis upon apostolic community life is given as the rationale for this proposed change.

The concluding study which served as a basis for the present one is *The Missionary Oblates of Mary Immaculate: A Clerical Religious Congregation With Brothers* by W. WOESTMAN.⁷ In Woestman's study, the author's analysis of the

⁵ H. DELANEY, *The Evolution of Governance Structures of the Sisters of Mercy of Australia, 1846-1990*, Ottawa, Saint Paul University, 1991, xix, 246 p. (ms).

⁶ T. M. CASSIDY, *Districts and District Superiors Within the Missionary Oblates of Mary Immaculate*, Ottawa, Saint Paul University, 1997, xv, 329 p. (ms).

⁷ W. WOESTMAN, *The Missionary Oblates of Mary Immaculate: A Clerical Religious Congregation With Brothers*, 2d ed., Ottawa, Faculty of Canon Law, Saint Paul University, 1995, xviii, 294 p.

historical development of the juridical structures within the Oblate proper law based upon the Congregation's spiritual patrimony served as a guide for the present analysis of the development of the Oblate provinces.

None of these previous major studies investigated the concept of the religious province nor the canonical and civil law questions surrounding the province's extinction, fusion, union and reorganization. We shall use some of the criteria and principles for fusion and union of institutes and apply them to the fusion and union of provinces. Based upon the juridical principles developed in the previous studies concerning the Oblates, we shall examine an issue of current interest in the Congregation, the union and reorganization of provinces.

This dissertation involves primarily a canonical analysis of the process of union, fusion and reorganization of the province in religious institutes in general and of the Oblates of Mary Immaculate in particular. This of necessity includes an historical developmental study of the concept both within the universal canonical legislation as well as in the *Constitutions and Rules* of the Oblates. Finally, there is an analysis of the possible juridical effects of union and reorganization from the perspectives of both canon law and civil law.

Besides the published canonical sources in universal and proper law, the research included an examination of meeting minutes, documents and other materials located in the U.S. Oblate provincial office archives in Washington, D.C. Also, personal interviews were conducted with key leadership and expert consultants who coordinated the U.S. Oblate restructuring process. The author of this study himself participated in this transition.

The progression of this study will lead us to some practical conclusions as to how a religious institute might best consolidate or reorganize its provinces. Throughout the four chapters we will analyze the province itself, its consolidation or reorganization, and the subsequent juridical effects from three legal vantage points. We will begin with an analysis based upon the 1983 Code of Canon Law, noting any particular changes or developments since the 1917 Code and the

Second Vatican Council. Secondly, in all four chapters we will include an analysis of possible juridical effects stemming from the civil law, which, in contemporary religious life, have become increasingly important and complex. Finally, as a study of a particular case of province reorganization, we will examine, especially in chapters three and four, what effects the province and its restructuring may have in an institute's proper law. In our study of the consolidation of the Oblate provinces in the U.S., we do not propose it as a model but rather as a way of shedding light on the most critical issues any religious institute would face when considering this important decision.

The final conclusions of the study give a series of practical recommendations for other religious institutes which might be involved in the consolidation of its provinces. We will demonstrate how these conclusions are a product of our canonical examination of the consolidation process in general as well as a result of the practical experience of the U.S. Oblate province consolidation. We attempt to give particular suggestions as to how this consolidation process can successfully answer to the requirements of both civil and canon law. It is our hope that these will be of assistance to other religious institutes, who can apply them to their particular situations.

CHAPTER ONE

THE NATURE OF A PROVINCE IN A RELIGIOUS INSTITUTE

Various periods in the history of the Church have presented new insights into how best to live in community as a religious institute and how best to respond to the needs of the world. One governance structure which developed as a way to advance the mission and community of institutes of consecrated life was the province. Based upon the heritage of the divisions within the Roman Empire received by the early Church, a province became a way for the flourishing mendicant orders of medieval Europe to be administered more easily. To begin this study of the province, we must first examine its canonical foundations, describing the various juridical elements which the province encompasses.

This first chapter will begin, then, by outlining the historical and canonical development of governance structures of a clerical pontifical religious institute and, in particular, the historical and canonical development of the *province*. This will include an analysis of the definition of *province*, as well as an examination of its constitutive elements and juridical status. In the following section, we will analyze the implications of juridic personality, and some possible relations to civil law.¹ Finally, the chapter will conclude with an analysis of the development of the province structure according to the *Constitutions and Rules* of the Missionary Oblates of Mary Immaculate.

¹ Unless otherwise indicated, the use of the expression *civil law* in this study refers to the legal system of a secular political government as distinct from the *canon law* of the Catholic Church. We do not use the expression *civil law* in distinction from systems of *common law*.

I. GOVERNANCE STRUCTURES IN A RELIGIOUS INSTITUTE**A. Evolution**

The first two millennia of Christian history have witnessed the development and growth of consecrated life in its various forms. This study does not intend to present the history of structures in religious life. Rather, it simply wishes to examine their background, with particular reference to the Missionary Oblates of Mary Immaculate, a clerical congregation of pontifical right.²

The history of religious life illustrates several distinct epochs or periods which have contributed to the present-day structures.³ The first period saw a movement toward monasticism, beginning with the desert hermits in the first centuries. The simple rule of Pachomius of Egypt in the 4th century, followed in the West by the more elaborate rule of Benedict in the 6th century, gave structure to the early Christian monastic communities centered upon prayer and work under the direction of a religious superior.⁴ The monks took a vow of stability which bound them to the

² *Constitutions and Rules of the Congregation of the Missionary Oblates of Mary Immaculate*, Rome, Missionary Oblates of Mary Immaculate, Casa generalizia, 2000 (=OMI *Constitutions and Rules*, 2000), Constitution 1.

³ This history can be found in the following works among others: L. CADA et al, *Shaping the Coming Age of Religious Life*, New York, Seabury Press, 1979, vi, 197 p; H. EBAUGH, *Women in the Vanishing Cloister. An Organizational Decline in Catholic Religious Orders in the United States*, New Brunswick, NJ, Rutgers University Press, 1993, x 191 p; P. WITTEBERG, *The Rise and Fall of Catholic Religious Orders: A Social Movement Perspective*, Albany, NY, State University of New York Press, 1994, xii, 423 p; T. GANNON, "Catholic Religious Orders in Sociological Perspective", in *American Denominational Organization: A Sociological View*, R. SCHERER, ed., Pasadena, CA, William Carey, 1980, pp. 159-193; W. HINNEBUSCH, "Origins and Development of Religious Orders", in *Review for Religious*, 28 (1969), pp. 910-930; 29 (1970), pp. 59-78.

⁴ The rule of Basil became the foundation for Eastern monasticism from its inception in the years 358-364 until today. Benedict based his rule partly upon that of Basil.

monastery which they joined. The next significant structural development occurred in the 10th century when the monastery of Cluny in Burgundy organized several monastic communities under one common superior. The monasteries under the Cluniac federation were granted exemption from both temporal authority and all ecclesiastical jurisdiction except that of the pope.

Following periods of decline and reform in both men and women's communities, a new style of religious life developed in the early 13th century taking inspiration and leadership from Francis of Assisi and Dominic. These "mendicant" orders took the religious community outside the monastery's walls to the emerging feudal towns, and grew rapidly and extensively in Europe and beyond. New structures were developed to meet these changing times as well as the newer apostolic demands of preaching, study and a life of evangelical poverty. Vows of chastity, poverty and obedience became a stable form of religious profession. They were solemn vows with certain juridical effects. Other innovative structures included a division into provinces or regions under the guidance of a provincial superior (perhaps with a different title), the collegial gathering of the larger group occasionally in a general chapter, and the abandonment of monastic stability. The mendicant orders, as did the monasteries before them, experienced subsequent periods of decline and reform.

By the 16th century, with the Reformation in Europe and the discovery of the new world, new times brought new forms of religious communities — clerics regular and apostolic institutes. Generally, from the onset, these groups were established for world-wide apostolic work with a centralized general superior who appointed or confirmed the other superiors and administered the entire order. A longer time period was required for formation and training in their specialized apostolates. The innovation of simple vows, rather than the traditional solemn vows, helped to bring the new members into a longer period of preparation.

The aftermath of the French Revolution, the secularization of ecclesiastical property in Germany and the suppression of religious institutes, brought on the

most prolific age of foundation and innovation in religious life. New men's and women's congregations were established in the 18th, 19th and 20th centuries with the goal of restoring the Church and religious life. The apostolates of teaching, preaching home missions, health care and the foreign missions grew and, with them, governance structures developed to oversee diverse and widespread religious congregations.

These new structures were overseen by the Holy See⁵ and ultimately enshrined in the 1917 *Code of Canon Law*.⁶ Although the norms of canons 501 and 502 encouraged the various congregations to be faithful to their traditions and ministries in writing their rule, most of the constitutions looked rather similar. The canons on approval of structures and amendments to governance forms in religious communities called for the intervention of the Holy See. The Code enshrined the distinctions between orders and congregations, as well as between simple and solemn vows.

Following World War II, and some 30 years after the Code's inception, Pope Pius XII encouraged religious congregations at the first international congress of religious in December, 1950, to adapt to the needs of modern times.⁷ In 1952, he again challenged religious superiors to give women religious training and updating

⁵ LEO XIII, Apostolic Constitution, *Conditae a Christo*, 8 December 1900, in *Acta Sanctae Sedis* (=ASS), 33 (1900), pp. 341-347; English trans. in G. COURTOIS, ed., *The States of Perfection: Documents from Leo XIII to Pius XII*, trans. J.A. O'FLYNN, Dublin, M.H. Gill, 1961, pp. 5-13.

⁶ *Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus*, Romae, Typis Polyglottis Vaticanis, 1917, xvii, 777 p. (= 1917 Code)

⁷ PIUS XII, *Allocution to the International Congress of Religious, "Annus Sacer"*, 8 December 1950, in *Acta Apostolicae Sedis* (=AAS), 43 (1951), pp. 26-36; English translation in *Canon Law Digest. Officially published documents affecting the Code of Canon Law* (=CLD), J. O'CONNOR, ed., Chicago, Canon Law Digest - Chicago Province S.J., vol. III, pp. 119-131.

“on an equal footing with... colleagues in the world”.⁸ The superiors of religious orders and congregations began the process of bringing their communities up-to-date, and established collaborative organizations both at the general and provincial levels, e.g. the USG (Union of Superiors General-male), the UISG (International Union of Superiors General-female) and the national conferences of major superiors. These organs gave institutes the structures to facilitate their common task of answering the pope’s call for adaptation.

This thrust toward renewal found new emphasis in the Second Vatican Council, especially in the constitution *Lumen gentium*⁹ and the decree *Perfectae caritatis*.¹⁰ The spirit of *aggiornamento* of the Council, particularly articulated in its emphasis on ecclesiastical authority as service and on the relational principle of subsidiarity,¹¹ attempted to breathe new life into the governance structures of religious institutes. The Council’s directives on renewal were instituted in law through the norms of *Ecclesiae sanctae*, 6 August 1966,¹² and the decree *Ad instituenda experimenta*, 4

⁸ PIUS XII, *Allocution to the Superiors General of Female Institutes and Congregations*, 15 September 1952, in AAS, 44 (1952), p. 826; English trans. in *Review for Religious*, 11 (1952), p. 307.

⁹ VATICAN II, *Dogmatic Constitution on the Church, Lumen gentium*, 21 November 1964, in AAS, 57 (1965), pp. 5-75; English trans. in A. FLANNERY, ed., *Vatican Council II: vol. 1, The Conciliar and Post-Conciliar Documents, New Revised Edition* (=FLANNERY), Northport, NY, Costello Pub. Co; Dublin, Dominican Publications, 1996, pp. 350-426, (Especially Chapters V and VI).

¹⁰ VATICAN II, *Decree on the Up-to-date Renewal of Religious Life, Perfectae caritatis*, 28 October 1965, in AAS, 58 (1966), pp. 702-712 ; English trans. in FLANNERY, *Vatican Council II*, vol. 1, pp. 611-623.

¹¹ The Council never defined subsidiarity nor did it indicate the reason for its application in the life of the Church. See G. LESAGE, “El principio de subsidiariedad, nueva manera de gobernar”, in *Vida religiosa*, 47 (1979), p. 367.

¹² PAUL VI, *Ecclesiae sanctae II, Norms for Implementing the Decree: On the Up-to-date Renewal of Religious Life*, 6 August 1966, in AAS, 58 (1966), pp. 775-787; English trans. in FLANNERY, *Vatican Council II*, vol. 1, pp. 624-633.

June 1970,¹³ among other pertinent post-conciliar documents. In line with the Council's recognition of subsidiarity and the call to study the charism of the religious founders, the development and innovation of structures became the responsibility of each institute through special renewal chapters.

B. 1983 Code

Finally, taking the documents of Vatican II as its foundation, the 1983 *Code of Canon Law*¹⁴ established new norms for these structures, especially in canons 617-640. These canons reflect the previous centuries of development in the governance of religious institutes and offer general and practical directives for men's and women's communities, of both pontifical and diocesan right. More specific and complementary norms would be found in the proper law of each particular community. According to the 1983 Code, the basic internal governance structures common to all groups are: 1) *religious houses* (cc. 608-616); 2) *superiors and councils* (cc. 617-630); 3) *chapters* (cc. 631-633); and, 4) *temporal goods and their administration* (cc. 634-640).

In the course of this study, we will examine how the religious province functions utilizing these foundational structures. Briefly, here, we note the following implications. The province is composed of religious houses and local communities. It is directed by a major superior, the provincial, who, with the assistance of a council oversees the community life and apostolate of the province. This

¹³ SACRA CONGREGATIO PRO RELIGIOSIS ET INSTITUTIS SAECULARIBUS, Decree, *Ad instituenda experimenta*, 4 June 1970, in AAS, 62 (1970), pp. 549-550; English translation in CLD, vol. VII, pp. 80-81.

¹⁴ *Codex iuris canonici, auctoritate Iohannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Città del Vaticano, Libreria Editrice Vaticana, 1989, xxxii, 669 p (= 1983 Code); English trans. in *Code of Canon Law, Latin-English Edition*, translation prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 1999, xliii, 751 p.

administration is coordinated with the superiors of the houses or local communities, and the supreme moderator of the institute. As it participates in the universal life of the institute, the province sends delegates to the general chapter, depending upon the arrangements of proper law. The province might be involved with provincial or local chapters. Finally, due to its juridical character, the province owns and administers temporal goods for the support of its members and the advancement of its apostolate.

In conclusion, the general law of the 1983 Code on the governance structures of religious institutes states general principles which leave ample room for application by the individual institutes. Depending upon the spirituality of the institute (active or contemplative), its founder's vision, its apostolic focus and its numerical and geographical expanse, each institute develops the structures most suited for its needs, and those of the local or universal church it serves. In the following section, we shall examine more deeply that structure of governance which is the focus of this study, the religious province. Given the character of the Code to give mainly general principles, province structures will vary among institutes depending upon their proper laws.

II. THE PROVINCE IN CANONICAL LEGISLATION

A. The definition of a province

1. Initial developments

The province structure in the religious institute has developed gradually as a practical means of decentralizing religious communities as they experienced growth in numbers and geographical extension. As has been noted above, organized religious life began with individual desert hermits and then, later, with small autonomous monastic communities. In the rule of Pachomius, who died around

350, the nine or ten monasteries he founded were joined in one unified order which anticipated the structures to come later in the Middle Ages.¹⁵ However, the rule of St. Benedict, as it developed at Monte Cassino in 528 and was widely adopted in monastic communities throughout the West, favored autonomous family-like communities, whose members took a vow of stability to a particular monastery. There was no attempt to unite monasteries until 817 when Louis the Pious of the Carolingian empire, influenced by Benedict of Aniane, attempted unsuccessfully to enforce a uniform way of life in all the monasteries of his territory. By the 12th century, the Abbeys of Cluny and Citeaux, influenced by the Benedictine rule but not part of the Benedictine family, had created feudal-type organizations of several monasteries gathered under one common superior, although with rather limited power.

The first universal ecclesiastical legislation which anticipated the development of religious provinces came from the Fourth Lateran Council in 1215. Under the initiative of Pope Innocent III, the council mandated that in each kingdom or ecclesiastical province all abbots and priors of autonomous Benedictine communities should meet every three years in a general chapter to treat the reform of the order and the observance of the rule.¹⁶ Four abbots were to be chosen as presidents of the chapter and at each chapter religious and prudent persons were to be appointed who would visit every Benedictine house within the kingdom or province for the task of correction or reform where needed. These principles were affirmed by the papal bull *Summi Magistri* of Benedict XII in 1336, commonly

¹⁵ C. BUTLER, *Benedictine Monachism: Studies in Benedictine Life and Rule*, London, Longmans, Green and Co., 1919, pp. 234-235.

¹⁶ INNOCENT III, Fourth Lateran Council (1215), const. 12, *In singulis regnis sive provinciis*, in P. TANNER, ed., *Decrees of the Ecumenical Councils*, original text established by G. ALBERIGO et al., in consultation with H. JEDIN, London, Sheed & Ward; Washington, DC, Georgetown University Press, 1990, vol. I, pp. 240-241. Also, see H. SCHROEDER, ed., *Disciplinary Decrees of the General Councils, Text, Translation and Commentary*, St. Louis, Herder, 1937, pp. 253-254.

referred to as *Benedictina*.¹⁷ *Summi Magistri* amalgamated these monasteries into national congregations within a total of 36 distinct ecclesiastical provinces. These were to meet triannually to examine the report of the specially appointed visitors and the community's observance of the rule. Besides these monastic roots, we could also mention the Order of Hospitalers of St. John of Jerusalem, the Templars and the Premonstratensians in the 12th century which all had territorial divisions, a general superior, a general chapter and mobility of membership.¹⁸

These developments preceded the establishment of provinces in the mendicant orders which are recognized as the true predecessors of the province in religious institutes of today. As Francis of Assisi and Dominic began to attract new members to their mendicant way of life, with its focus on preaching and living the gospel witness of poverty, their membership grew rapidly. Thus, Francis in the general chapter of 1217¹⁹ and Dominic in the chapter of 1221²⁰ respectively, divided their growing communities into territorial provinces. By the time of the chapter of Narbonne in 1260, the Franciscans had 34 provinces,²¹ and by 1303 the

¹⁷ BENEDICT XII, *Summi magistri*, 20 June 1336, in *Magnum bullarium romanum; bullarium, privilegiorum ac diplomatum Romanorum Pontificum, amplissima collectio*, Graz, Akademische Druck-u Verlagsanstalt, 1964-1966, Tome III, Pars II, pp. 214-240, esp. Chapters I - V.

¹⁸ HINNEBUSCH, "Origins and Development of Religious Orders", pp. 928-929.

¹⁹ Eleven provinces were designated at this chapter: six in Italy, two in France, one each in Germany, Spain and the Near East. See J. MOORMAN, *A History of the Franciscan Order, From Its Origins to the Year 1517*, Oxford, Clarendon Press, 1968, p. 62; R. HUBER, *A Documented History of the Franciscan Order (1182-1517)*, Milwaukee, WI, Nowiny Pub. Apostolate, 1944, p. 706. Some commentaries on the 1917 Code state that the 1217 Chapter of Franciscans instituted 12 provinces.

²⁰ Eight provinces were established and five provinces were immediately organized: Spain, Provence, France, Lombardy and Tuscany. The chapter projected eventual provinces in Germany, Hungary, England, Greece, Scandinavia, Poland and the Holy Land. See W. HINNEBUSCH, *The History of the Dominican Order*, New York, Alba House, 1966 - , vol. 1, pp. 92-93; G. GALBRAITH, *The Constitution of the Dominican Order, 1216-1360*, Manchester, The University Press, 1925, p. 266.

²¹ HUBER, *A Documented History of the Franciscan Order*, p. 707.

Dominicans counted 18 provinces in their order.²² The primitive Dominican province contained eight or ten houses,²³ while, at the beginning, a Franciscan could be appointed provincial of a country he had never seen or which had no foundation of the order.²⁴

The supreme authority in the mendicant orders was the general chapter, which had legislative power and convened every three years or at the interval determined by the minister general, the superior of the whole order.²⁵ The general chapter was a representative assembly, with three representatives from each province, and other friars appointed by the minister general for their expertise. The chapter's business included election of the minister general, revision of the constitutions and creating or dividing provinces.²⁶ On the level of the province, the minister provincial became the intermediate authority between the minister general, the highest superior, and the guardian, the local superior. The minister general served for life; the other superiors had limited terms of office.

Provincial chapters were held every three years and were representative assemblies which exercised authority over the province, even over the minister provincial. Later, these chapters would also appoint the guardians of the local communities. The Franciscan province itself was divided into areas each called

²² HINNEBUSCH, *The History of the Dominican Order*, p. 174.

²³ GALBRAITH, *The Constitution of the Dominican Order*, p. 140.

²⁴ HUBER, *A Documented History of the Franciscan Order*, pp. 708-709.

²⁵ The Dominicans held their general and provincial chapters annually; the conventual chapter met whenever needed. The Dominican chapters held elections for the respective superiors. The highest Dominican superior was the master-general. The superior of the province was the provincial prior, and that of the convent was the conventual prior. Until 1278 the Dominicans had vicars and vicariates which were similar to the Franciscan *custos* and *custodes*. See GALBRAITH, *The Constitution of the Dominican Order*, pp. 37-174; HINNEBUSCH, *The History of the Dominican Order*, pp. 172-174.

²⁶ The Dominican order instituted the office of *diffinitores*, elected representatives of the lower ranks which excluded superiors, who met in a chapter in years when there was no general chapter. The *diffinitores* were eventually discontinued in the Franciscans.

custodies, which were directed by the *custos*. Each *custos* oversaw a number of convents, who were directed by the guardians, or local superiors. The authority of the office of *custos* diminished with time, and there was not great uniformity amongst the provinces in this regard. Eventually, within the Franciscan provinces the chapters at the custodial level fell into disuse. The local community also held a conventual chapter, a fraternal gathering but also a forum for elections to provincial chapters.²⁷ With some adaptation and evolution, this basic structure became stabilized in the mendicant orders.²⁸ In time, a similar provincial structure was adopted by the apostolic orders and the congregations of simple vows founded up until the present century.

In summary, then, the province, as defined by practical necessity, was an integral governmental division of a religious institute which had become numerous in membership and geographically dispersed over long distances. The provincial superiors would answer to the general superior of the institute, but would be competent to direct the members and apostolates in the territory of their province. The members of the institute would possess some form of stability within a certain province upon profession of vows and became subjects of the respective provincial. Religious houses and their superiors maintained their own autonomy, but were joined juridically in the province. The general chapter of the religious institute would be competent to create provinces and provide for their leadership. Though usually created as a strictly geographic territorial entity, provinces could be designated on the basis of other criteria, such as language or culture. Provinces

²⁷ The local community or convent remained the fundamental element of structure in the Dominican order and the province was of lesser importance until 1913. See A. GAUTHIER, "Provincia, Cenni storici", in *Dizionario degli istituti di perfezione*, diretto da G. PELLICCIA (1962-1968) e da G. ROCCA (1969-), Roma, Edizione Paoline, 1983, vol. 7, col. 1059.

²⁸ This basic description taken from L. IRIARTE, *Franciscan History: the Three Orders of St. Francis of Assisi*, trans. from Spanish by P. ROSS, Chicago, Franciscan Herald Press, 1982, pp. 85-92. The four initial mendicant orders were the Franciscans, Dominicans, Carmelites and the Augustinians.

would be represented at the chapter through their superiors and other elected members.

2. Developments in the 20th century

Prior to the 1917 Code, there was no universal law defining the province of a religious institute nor any universal norms governing its erection or suppression. Moreover, the constitutive elements for the province in universal law were not defined. In 1901, the Congregation for Bishops and Regulars promulgated a document commonly referred to as *Normae*, which detailed the norms followed by the Congregation in approval of new institutes of simple vows.²⁹ The *Normae* regulated the procedure for congregations which wanted to divide into provinces when they needed more than one novitiate and for whom the governance of only one superior was becoming too difficult.³⁰ Universal law on provinces and their institution developed from the praxis of the proper law of each institute and the concessions granted by the Holy See. The *stylus Curiae* (the practice of the Roman Curia) only gradually evolved until the time of the *Normae* when it more universally reserved to the Holy See the competence for instituting and innovating provinces.³¹

²⁹ S. C. EPISCOPORUM ET REGULARIUM, *Normae secundum quas S. Congr. Episcoporum et Regularium procedere solet in approbandis novis institutis votorum simplicium*, 28 iunii 1901, Romae, Typis S.C. de Propaganda Fide, 1901, 59 p; after the promulgation of the 1917 Code, the *Normae* were revised: SACRA CONGREGATIO DE RELIGIOSIS, *Normae secundum quas S. Congregatio de Religiosis in novis congregationibus approbandis procedere solet*, 6 March 1921, Romae, Typis Polyglottis Vaticanis, 1922, 16 p. [also in AAS, 13 (1921), pp. 312-319].

³⁰ *Normae*, 1901, n. 301: "Statim ac Institutum tantopere diffusum est, ut plures novitiatus requirantur, et regimen per unam moderatricem solam difficilius evadat, illud in provincias dividere iuvat."

³¹ F. WERNZ and P. VIDAL, *Ius canonicum*, tome III, *De religiosis*, Romae, apud Aedes Universitatis Gregoriana, 1933, pp. 63-67, esp. 64-65; A. LARRAONA, "Canon 493: De erectione et suppressione religionis, provinciae, domus", in *Commentarium pro religiosis et missionariis*, 5 (1924), pp. 256-261; T. SCHAEFER, *De religiosis ad normam Codicis iuris canonici*, ed. quarta aucta et emendata, Roma, Editrice Apostolado Cattolico,

The 1917 Code defined the religious province in c. 488, 6°, among the introductory canons of Book II *De Religiosis*, Part II, which included definitions of several other terms:

Province, the union of several religious houses under one and the same Superior, and constituting part of the same Institute.³²

The Code then stated, in Title IX, *De erectione et suppressione religionis, provinciae, domus* in c. 494 § 1, the universal law with regard to the institution or innovation of the province:

It pertains exclusively to the Apostolic See: to divide into provinces an Institute approved by the Holy See, to unite existing provinces or otherwise modify their boundaries, to establish new provinces or to suppress existing ones, to separate independent monasteries from one monastic Congregation and to unite them to another.³³

Thus, following the promulgation of the 1917 Code, religious institutes of pontifical right were required to petition the Holy See for any innovation in regard to their provinces. The definition of a province in canon 488, 6°, left several questions to jurisprudence and to the proper law, namely: the number of religious required for a province to be established; the number of houses needed; as well

1947, pp. 73-74; A. BATTANDIER, *Guide canonique pour les constitutions des soeurs à voeux simples, suivant les récentes dispositions (Normae) de la S. Cong. des évêques et réguliers et les décrets les plus récents*, 5e éd., Paris, J. Gabalda, 1911, pp. 404-405. The author lists two precedents for the Holy See requiring approval for erection of provinces.

³² CIC, 1917, c. 488, 6°: "Provinciae, plurium religiosarum domorum inter se coniunctio sub eodem Superiore, partem eiusdem religionis constituens." English translation in *Codex iuris canonici, Canonical Legislation Concerning Religious*, Authorized English translation, Città del Vaticano, Libreria Editrice Vaticana, 1949, (= *Canonical Legislation Concerning Religious*), pp. 7-8

³³ CIC, 1917, c. 494 §1: "Religionem pontificii iuris in provincias dividere, constitutas iam provincias coniungere vel aliter circumscribere, novas condere conditasve supprimere, monasteria sui iuris a monastica Congregatione separare et alii unire, ad unam pertinet Sedem Apostolicam." English trans. in *Canonical Legislation Concerning Religious*, p. 10.

as any other prerequisites before a province could be formed.³⁴

The Second Vatican Council gave general directives for the renewal of religious life in *Lumen gentium* and *Perfectae caritatis*. Following the Council and with the guidance of *Ecclesiae sanctae*, amongst other post-conciliar decrees, religious institutes began the task of renewal and experimentation in their structures. One piece of legislation particularly significant in regard to religious provinces was *Ad instituenda experimenta*, a decree from the Congregation for Religious and Secular Institutes, 4 June 1970, which stated:

It will belong to each religious institute of pontifical law, in accord with the norms of its particular law, to unite already existing provinces or otherwise to modify their boundaries, to establish new ones or to suppress existing provinces, but with the continuing obligation to have recourse to the Holy See for the initial division into provinces or for the total suppression of provinces (cf. c. 494 §1). The general chapter should establish norms to be observed in the erection and modification of provinces and these norms must be inserted into the Constitutions.³⁵

Following the promulgation of *Ad instituenda experimenta* the institutes themselves were given general authority over the establishment and modification of provinces, with a few exceptions.

The Pontifical Commission for the Revision of the Code of Canon Law (=Code Commission) established a special *coetus* for the revision of the law for religious; it held its first session in November, 1966, and met some 16 times through May, 1974. In the second session, a new canonical definition of the religious province

³⁴ SCHAEFER, *De religiosis*, pp. 73-74.

³⁵ 1. "Cuiusque Instituti religiosi juris pontificii erit, ad normam juris particularis, constitutas jam provincias coniungere vel aliter circumscribere, novas condere conditasve supprimere, firma manente pro prima divisione in provincias aut pro totali earumdem suppressione, obligatione recurrenti ad Sanctam Sedem (cfr. c. 494 §1). Capitulum generale statuat normas servandas in erectione et innovatione provinciarum Constitutionibus inserendas", in AAS, 62 (1970), p. 549. English trans. in *CLD*, vol. VII, pp. 80-81.

was formulated.³⁶ However, at a later meeting, it was decided to reformulate integrally the introductory canons on religious life in line with Vatican II, making them more doctrinal and less juridical.³⁷ Then, at a later session, it was decided to drop any terms which would not be applicable to all religious institutes, including the term *province*.³⁸ Thus, the definition of a province was not included in the 1977 *Schema* of the revised code which was distributed for comments. Upon study of the responses to this *Schema* and further discussion by the *coetus*, a canon defining the province was reinserted in the 1980 *Schema*, including now the innovations of *Ad instituenda experimenta*.³⁹ Similar to the definition of the 1917 Code, this definition became the one found in the final version. The religious province is now defined in c. 621 as

a grouping of several houses which constitutes an immediate part of the same institute under the same superior and has been canonically erected by legitimate authority.⁴⁰

The purpose of the province structure is to facilitate governance by a major superior who has ordinary power, to draw the members of the religious institute in closer relation to one another, and to provide for more effective coordination of their apostolate. The province has its own proper rules for administration, subordinate to those of the institute, but in coordination with those of its local communities. The definition of a province now being held securely in law, let us proceed to examine

³⁶ "Provincia religiosa est pars Instituti, personalitate canonica gaudens, pluribus constans domibus religiosis inter se coniunctis, sub eodem Superiore." *Communicationes*, 17 (1985), p. 144.

³⁷ *Communicationes*, 25 (1993), pp. 270-326.

³⁸ *Communicationes*, 6 (1974), pp. 89-90.

³⁹ *Communicationes*, 12 (1980), pp. 149-150.

⁴⁰ CIC, 1983, c. 621: "Plurium domorum coniunctio, quae sub eodem Superiore partem immediatam eiusdem instituti constituat et ab auctoritate legitima canonice erecta sit, nomine venit provinciae." English trans. in *Code of Canon Law, New English Translation*, CANON LAW SOCIETY OF AMERICA, 1999.

its constitutive elements and to compare the 1983 Code's definition with that of the 1917 legislation.

B. The constitutive elements of a province

As in the original situation of the mendicant orders and subsequent other religious institutes, a growth in membership, geographical distance between religious houses and a desire to respond more flexibly and practically to local needs have all helped initiate a move toward decentralization of the institute and the establishment of provinces. Today, faced with changing situations in religious life as well as a desire to respond in the spirit of the principle of subsidiarity, other reasons have motivated the creation of provinces.⁴¹ These include: growing numbers of active religious in some areas, sensitivities to differences in language and culture, and a desire to respond better to local ecclesiastical and civil organisms. Since there is no mention in universal law as to when a change in province structure is necessary or opportune, each institute must decide on its own, based upon the praxis of the Holy See and the experience of other institutes.⁴²

Other than the change in procedure for the erection of a province, the definition in both codes is similar. The constitutive elements of a province mentioned in c. 621 are: 1) the union of several houses or local communities; 2) under the same superior; 3) constituting an immediate part of the institute; and, 4) erected by the legitimate canonical authority. Later on we will add some other possible elements which derive from jurisprudence and the common and proper law of religious institutes and which could even become constitutive in certain instances.

The union of several houses, while not a specified number in the canon, is defined by jurisprudence and the universal law itself. Both before and after the

⁴¹ For some of these reasons, see GAMBARI, *Religious Life*, p. 525.

⁴² *Ibid.*, p. 527.

1917 Code, the *stylus Curiae* required that there be at least three houses to form a province.⁴³ The basis of this requirement relates to the identification of a province as a juridic person.⁴⁴ Not mentioned in the definition is whether the houses which form a province are to be established or constituted houses or other local communities. Since the established houses possess stability in canon law, it would seem that at least three local communities should be established houses so as to ensure a stable province.

The superior of the province, a provincial, is distinct from the local superior of the religious houses and from the supreme moderator of the institute. The provincial is an intermediate superior in the institute, but, as stated in the preceding canon 620, is a major superior with ordinary power of governance. The provincial can be either elected or appointed to office, and is assisted by a council. The superior of the province acts in the name of the province as a juridic person and oversees the administration of its temporal goods. Among the provincial superior's other roles are those of directing the formation programs⁴⁵ and, in the case of clerical institutes of pontifical right, issuing dimissorial letters for ordination of

⁴³ LARRAONA, "Canon 488 (cont.)", in *Commentarium pro religiosis et missionariis*, 3 (1922), p. 203; SCHAEFER, *De religiosis*, pp. 73, 133. While the argument from the moral person analysis held for at least three, the *stylus Curiae* had asked for 4 houses with at least 12 religious. Moreover, curial jurisprudence allowed an institute to divide into provinces only if there could be at least four provinces. [See T. BOUSCAREN et al., *Canon Law: A Text and Commentary*, 4th rev. ed., Milwaukee, Bruce Publishing, 1966, p. 239]. Some commentators state that in general canonical interpretation *plurium* meant at least two, basing themselves upon the argument from *Regula Juris* 40: "Pluralis locutio duorum numero est contenta," from *Liber Sextus of Boniface VIII* (1298), in *Corpus iuris canonici*, A. RICHTER et A. FRIEDBERG, eds, ed. 2a, Lipsiae, ex Officina B. Tauchnitz, 1879-1881, vol. 2, col. 1123.

⁴⁴ Canon 115 § 2 defines the collegial juridic person. Three persons as a minimum are required for it to be constituted. Canon 634 § 1 identifies the province as a juridic person, although not as a collegial person.

⁴⁵ The major superior has a role in admission to the novitiate, cc. 641-644, and in overseeing its operation, cc. 647 § 3 and 649 § 2.

candidates.⁴⁶ The provincial superior oversees the apostolate of the province in coordination with the diocesan bishop.⁴⁷ The provincial also has a role towards members living outside the community (c. 665 § 1), as well as in the process of dismissal of members from the institute.⁴⁸ The Code provides for the establishment of conferences of major superiors for the purposes of bettering their institutes' apostolate, to work in common with other religious, and to establish ties with the conference of bishops and individual bishops.⁴⁹

The province constitutes an immediate part of the institute, a distinction which did not appear in the 1917 Code. By "immediate" is usually meant the first administrative or organizational division of the institute. Thus, the province usually relates directly to the highest superior of the group with no intervening level of government,⁵⁰ except in some larger institutes where provinces are grouped together in assistancies. Since the province has its own juridic personality, it possesses a certain autonomy within the institute, while remaining dependent upon the institute's higher authority. The province relates in subsidiarity with the houses which form it, including both those which are constituted and those which are formally established.

The final constitutive element of the province mentioned in c. 621 is that it is erected by the competent authority of the institute. This was an addition to the definition of a province found in the 1917 Code. Each institute is to decide

⁴⁶ CIC, 1983, cc. 266 §2 and 1019.

⁴⁷ CIC, 1983, cc. 677-679 and 681-683.

⁴⁸ CIC, 1983, cc. 694 § 2, 695, 697 and 703.

⁴⁹ CIC, 1983, cc. 708 and 709.

⁵⁰ R. SMITH, "The Governance of Institutes", commentary on c. 621, in J. BEAL, J. CORIDEN and T. 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. 783.

according to its proper law who is this competent authority, whether the superior general, the chapter, or some other internal collegial authority. The decree of erection of the province is itself subject to the universal law on singular administrative decrees (cc. 35-47, 48-58) and on juridic acts (cc. 124-128). Finally, the Code requires prior approval of the statutes of the province (cc. 94, 117), if these are to be different from the general provisions of the constitutions.

C. Other possible elements of a province

Apart from the above-mentioned constitutive elements noted in c. 621, there are other elements which could also be considered to be somewhat integral and which are found either within the universal law or in the proper law of religious institutes.⁵¹ These elements include a means of subsistence and economic autonomy, a circumscribed territory or apostolate, and a functional governing structure.⁵² Some of these elements are implied by those mentioned above.

As a public juridic person and formed of at least three houses, a province needs the means⁵³ to be able to sustain the life and ministry of its membership. An analogy can be made with the requirement in c. 610 § 2 for a religious house, that the needs of the members be provided for suitably.⁵⁴ For example, the *Oblate Constitutions* state:

In accordance with the principle of subsidiarity, each Province or Delegation will strive to provide for its own needs in financial

⁵¹ "The province is not an identical juridical figure in each institute...", in GAMBARI, *Religious Life*, p. 526.

⁵² D. ANDRÉS, *Il diritto dei religiosi: commento esegetico al Codice*, 2a ed. italiana, versione integra aggiornata della 4a ed. spagnola, Roma, Edurclia, 1996, pp. 118-119.

⁵³ See also CIC, 1983, c. 114 § 3 on juridic persons.

⁵⁴ COMITÉ CANONIQUE DES RELIGIEUX, *Directoire canonique: vie consacrée et sociétés de vie apostolique*, Paris, Les Éditions du Cerf, 1986, p. 71.

matters.⁵⁵

Moreover, in a spirit of community and evangelical poverty, the province is expected to contribute out of its income to the institute itself.

With regard to its territory or scope of activity, the province should be ordinarily circumscribed with specific limits defined by the authority which erects it, usually mentioned in the formal decree itself. But, the reasons could be linguistic or cultural or for a specific apostolate, i.e., a healthcare province, an education province, etc. Though the reason for founding a province usually relates to its location in a specific territory, this is a flexible element depending upon particular situations. Thus, for instance, a province could be formed which is contiguous in territory with another province of the same institute but dedicated to people of a certain language and/or culture. Likewise, there could be houses attached to a province which lie outside the territorial limits but which are dependent due to their status as a mission of the province.

With regard to the structures, community life and apostolate of the province itself, these elements touch upon the community and mission at its heart. A governing structure with a major superior (provincial), a council, and a finance officer⁵⁶ would be a minimum requirement. In addition to the house superiors (with possibly also a council and a treasurer), in some institutes there would also exist a provincial chapter and local chapter, which would meet from time to time. There could also exist other offices such as a vicar, a formation director, an archivist, as well as various committees, such as a finance committee (c. 1280). The community

⁵⁵ *OMI Constitutions and Rules, 2000*, const. 152.

⁵⁶ There is discussion among canonists as to whether the Code requires the treasurer (finance officer) to be a member of the Institute itself. For reasons of the highly complex organizations and financial institutions that some institutes or provinces have become, it is critical that the treasurer be a person of true skill, expertise and competence in financial matters. See R. McDERMOTT, "Canon 636: The Financial Administrator of a Religious Institute", in K. VANN and J. DONLON, eds., *Roman Replies and CLSA Advisory Opinions*, Washington, DC, Canon Law Society of America, 1997, pp. 58-59 (= *Roman Replies*).

life is an essential element, dependent upon the proper law, which also requires planning and evaluation from time to time. The apostolate and mission of the province, although coordinated by the major superior, also requires ongoing planning and evaluation to be effective in what for many institutes is their reason for existence.

D. Juridical effects of the province

The creation of a province results in several important canonical consequences. We might list some of these here; others will be treated later. First of all, on the community level, the province becomes a public juridic person in the Church. Thus, its temporal goods are ecclesiastical goods. The province can acquire, possess, administer and alienate these goods subject to the universal law on temporal goods and the provisions of the proper law. It must also follow applicable civil laws and protect its assets in accordance with the civil law, through a civil law incorporation or some similar mechanism. Within the proper law of the institute, there may be certain requirements for a community once it has been erected into a province, which did not bind previously. For instance, the province has the right of representation at the general chapter of the institute, and can send its wishes and suggestions to the chapter. The superior of a province is a major superior with proper ordinary power of governance over the members, according to the norm of law. The province must have a finance officer who assists the major superior in the ordinary administration of temporal goods. In clerical institutes of pontifical right, the provincial superior is an ordinary for his members (c. 134 § 1) and becomes the judge of first instance in disputes between houses or members and in penal processes for the members (cc. 1427 §1 and 1717 §1). In disputes between provinces the supreme moderator is judge in first instance. For a province to be joined to another, to be redefined or to be suppressed, the competent authority in the institute must intervene.

Individual members, with perpetual or final profession, become members of a province and subject in obedience to the province's major superior, as well as to the supreme moderator and their local superior. In clerical institutes, upon ordination to the diaconate, a member becomes incardinated into the institute (c. 266 § 2). A province member who works in a diocesan apostolate will be subject to the authority of the diocesan bishop while remaining a religious subject of the major superior.

In conclusion, the juridical structure of the religious province has seen an adaptation with time to the various needs of the institutes and the Church. However, we observe that, in its general lines, the structure has remained constant since the time of Sts. Francis and Dominic, and is now included in the universal law of the Church. We next look at one of the more important canonical effects of the province: its juridic personality.

III. THE JURIDIC PERSONALITY OF A PROVINCE

A. Definition of a juridic person

The concept of juridic person in the present Code of Canon Law traces its origins back to Roman Law, though there have been several developments and refinements along the way. As individual persons would gather and form associations of different types and on different levels, these associations took on rights and duties of their own apart from those of the individual founding members. They were known by various terms in the Roman law, such as *collegium*, *universitas* or *sodalitas*. With time, the emperor Augustus dissolved many of them and required that any new entities receive approval from the senate.⁵⁷ Associations could be distinguished between those which were public, e.g., *municipium*, and those which were private. Perhaps a more fundamental distinction was made between an

⁵⁷ A. GAUTHIER, *Roman Law and Its Contribution to the Development of Canon Law*, Ottawa, Faculty of Canon Law, Saint Paul University, 1996, pp. 49-50.

association of persons, a corporation, *universitas personarum*, and a collection of goods or property, the institution or foundation, *universitas bonorum*.⁵⁸ The Code of Justinian made allowances for institutions to receive contributions and to sue.⁵⁹

The medieval canonists built upon the concepts of a juridic person found in Roman law. The canonist Sinibaldo Fieschi, who later became Innocent IV, is credited with the conclusion that using “the term *persona* for a *collegium* constitutes a creation of the mind.”⁶⁰ The actual term *juridic person*, used to designate the subject of rights as distinct from those of the physical human person, seems to have been used for the first time by A. Heise, d. 1851, a German jurist.⁶¹ European civil law in the 19th century, especially in Germany, Italy and France, recognized the concept of a juridical person as a subject of rights and obligations; these persons comprised both physical persons or things, such as foundations.⁶²

The 1917 Code adopted in Book II, cc. 99-102 and 105 (and, also, cc. 684-725) the notion of a juridic person for the Church’s systematic codification of its laws. The juridic person, as described in these canons, was synonymous with a moral person.⁶³ Although there is no definition in the Code itself, we could describe a moral person as

⁵⁸ B. BROWN, *The Canonical Juristic Personality with Special Reference to Its Status in the United States of America*, Washington, DC, The Catholic University of America, 1927, pp. 18-19.

⁵⁹ GAUTHIER, *Roman Law*, p. 51.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, p. 52.

⁶² With regard to the relationship of the concept and norms of the canonical juridic person with the Common Law System, which is the basis of the legal system in the USA and in most English-speaking countries, we shall discuss this point in Chapter IV of this study. For now, we might simply note that the concept of “corporation” in the Common Law System is similar to that of juridic person in the Canon and Civil Law.

⁶³ See CIC, 1917, cc. 687, 1489 and 1495, §2, where the Code equates moral and juridic personality.

a juridic entity, independent of the elements which serve as its substratum, such as an institution specified by its purpose more than by the nature of its goods, whose existence results from an act of public authority and who is capable of becoming the subject of rights similar to those of physical persons whom it resembles in its juridic activity.⁶⁴

To be recognized by ecclesiastical authority, the moral person must have a purpose in harmony with the pursuits of the Church: divine cult, charity, Christian perfection and teaching. In brief, according to the 1917 Code, the Catholic Church and the Apostolic See were moral persons⁶⁵ by divine law, all other moral persons were inferior moral persons, whether established through the law itself or by the decree of the competent superior (c. 100 § 1).

As was the case for the canons on religious institutes, the Code Commission assigned a *coetus* to review Book II, *De personis*, of the 1917 Code and to propose new canons integrating the teaching of Vatican II. This *coetus* also met several times⁶⁶ to discuss the canons on juridic persons before the 1977 *Schema*⁶⁷ was

⁶⁴ "... comme une entité juridique, indépendante des éléments qui lui servent de substratum, comme une institution spécifiée par son but, plus que par la nature de ses biens, dont l'existence résulte d'un acte de l'autorité publique, et qui est capable de devenir sujet de droits aussi bien que les personnes physiques auxquelles elle est assimilée dans son activité juridique." R. NAZ, *Traité de droit canonique*, Paris, Letouzey et Ané, 1949, vol. 1, p. 252. Author's English translation.

⁶⁵ Some authors attribute the use of "moral person" instead of "juridic person" in the 1917 Code as the preference of Cardinal Pietro Gasparri who was influenced by canonical writings from France and Belgium. G. LO CASTRO, *Personalità morale e soggettività giuridica nel diritto canonico*, Milano, Dott. A. Giuffrè Editore, 1974, pp. 29-32, footnote 15.

⁶⁶ These sessions are described by PONTIFICIA COMMISSIO CODICI IURIS CANONICI AUTHENTICE INTERPRETANDO, *Synthesis generalis laboris Pontificiae Commissionis Codici Iuris Canonici Recognoscendo*, in *Communicationes*, 28 (1996), pp. 196-199.

⁶⁷ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema canonum libri II de Populo Dei*, Romae, Typis Polyglottis Vaticanis, 1977, 158 p; English trans. in PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Draft of the Canons of Book Two: The People of God*, translated under the auspices of the CLSA by a translation team under the direction of W. SCHUMACHER, Rome, Vatican Polyglot Press, 1977, vii, 147 p.

produced. Having received comments on the *Schema*, further meetings were held in 1979 and 1980 to make additional changes to these canons. After presentation of the 1982 *Schema*⁶⁸ to Pope John Paul II and his immediate advisors, a few further modifications were made in the text before the new Code was finally promulgated in 1983. The more significant changes in the 1983 Code from the previous one include: 1) the placement of the canons on juridic persons in Book I, *Normae generales (General Norms)*, rather than in Book II, *De personis (Of Persons)*; 2) a more refined use of the terms "juridic person" and "moral person"; 3) the division of juridic persons into *universitas personarum* and *universitas rerum*; and, 4) the distinction between private and public juridic persons.⁶⁹ In the present study, we will refer to these changes as they relate to our topic of the religious province.

The first change mentioned above, that of placing the canons on juridic persons in Book I, *General Norms*, rather than in Book II, *The People of God*, was made in the final meetings of the *coetus* preparing the 1980 *Schema*. In the 1977 *Schema*, the canons on juridic persons had appeared in the first part of Book II. After much discussion, however, the *coetus* concluded that it was better to place general legal concepts which relate to the entire Code in Book I, making Book II more uniformly ecclesiological.⁷⁰

From the earliest sessions, the distinction between moral and juridic person

⁶⁸ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Codex iuris canonici: schema novissimum iuxta placita Patrum Commissionis emendatum atque Summo Pontifici praesentatum*, Civitate Vaticana, Typis Polyglottis Vaticanis, 1982, xviii, 308 p.

⁶⁹ There are several studies on the process of the amendment of the canons on juridic persons in the 1983 Code. Among these we might mention in particular: F. COCCOPALMERIO, "De persona juridica iuxta schema Codicis novi", in *Periodica*, 70 (1981), pp. 369-400; A. GAUTHIER, "Juridical Persons in the Code of Canon Law", in *Studia canonica*, 25 (1991), pp. 77-92; T. GREEN, "Persons and Structures in the Church: Reflections on Selected Issues in Book II", in *The Jurist*, 45 (1985), pp. 24-94.

⁷⁰ *Communicationes*, 12 (1980), pp. 52-54; *Communicationes*, 13 (1981), pp. 298-301; *Communicationes*, 14 (1982), pp. 154-155; *Communicationes*, 22 (1990), 135-140.

was discussed in the meetings of the *coetus*.⁷¹ Besides changing the terminology to resemble more closely that of the civil law, the group was influenced by a doctrine that had been discussed both before and after Vatican II.⁷² This doctrine held that moral persons pre-existed in the natural order as, for example, natural associations and families, while juridic persons were those created in the positive law of society. While accepting this foundational doctrinal distinction of moral persons, and while in agreement that the Church was a moral person by its divine institution, the *coetus* decided not to include mention of the Church as a moral person since it was a different type of moral person than that which was to be distinguished from a juridic person.⁷³ However, the final revision of the text of the Code re-introduced the reference to the Church as a moral person, to indicate that "the presence of the Church in the juridical order is not constituted by human law."⁷⁴

Although the 1917 Code differentiated between collegial moral persons and non-collegial ones, this led to difficulties and differences of interpretation and categorization of moral persons. The *coetus* thus proposed a further division for the purpose of making clearer juridic distinctions among the various types of juridic persons. The difficulty lay in establishing where a true college, a group entirely made up of equals, existed, and whether complete equality was required for all

⁷¹ *Communicationes*, 21 (1989), pp. 137-141, 166.

⁷² GAUTHIER, "Juridical Persons", p. 81, cites the influence of W. Onclin, "De personalitate morali vel canonica", in *Acta Conventus internationalis canonistarum Romae diebus 20-25 maii 1968 celebrati*, Typis Polyglottis Vaticanis, 1970, pp. 163-183; prior to Vatican II we note also the article by P. RAYANNA, "Moral or Juridical Person?", in *The Jurist*, 18 (1958), pp. 459-467.

⁷³ *Communicationes*, 21 (1989), pp. 140-141; also, PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema canonum libri II de Populo Dei*, Romae, Typis Polyglottis Vaticanis, 1977, pp. 5-6 (*Praenotanda*).

⁷⁴ GAUTHIER, "Juridical Persons", p. 82.

collegial persons.⁷⁵ The proposed canons, eventually adopted in the 1983 Code, distinguished between a *universitas personarum* and a *universitas rerum* as categories for all juridic persons.⁷⁶ Those who were a *universitas personarum* could be either collegial, where all members, by equal right or not, determined the group's activities, or, non-collegial, where, as in a diocese, parish or religious institute, certain members had more authority than others (c. 115 § 2). These changes in the canonical understanding of juridic person were influenced by Vatican II's desire to have the diocese and parish seen more as communities than as institutions. However, some objections still remain among commentators and suggestions are proposed for further improvements to the distinctions between a non-collegial *universitas personarum* and a *universitas rerum* and the category of non-collegial *universitates personarum* in general.⁷⁷

The last significant change made in the law on juridic persons in the 1983 Code concerns the distinction between private and public juridic persons. The need for such a distinction arose from the renewed understanding of moral persons and the

⁷⁵ *Communicationes*, 21 (1989), pp. 141-142, 161; *Communicationes*, 22 (1990), pp. 51, 68; *Communicationes*, 6 (1974), pp. 98-99.

⁷⁶ According to GAUTHIER, "Juridical Persons", pp. 85-89, the Code Commission made this decision by influence from the secular law and the writings of W. Onclin cited above. The rationale was acknowledged by the Code Commission in the *Praenotanda* of the 1977 *Schema*, p. 6. See also A. MARZOA J. MIRAS y R. RODRIGUEZ-OCAÑA, eds., *Comentario exegetico al Código de derecho canónico*, 2a ed., Pamplona, Ediciones Unversidad de Navarra, 1997, vol. 1, pp. 773-775, (=Comentario exegetico) for a discussion of the rationale for including mention of the Church as a moral person in the Code.

⁷⁷ See GAUTHIER, "Juridical Persons", p. 88. For example, R. Kennedy argues that a religious institute is a collegial juridic person, since the canon states that the participation by members need not be direct. In the case of religious institutes, he argues that participation is indirect though elected representatives. Also, the canon states that the participation in decision making need not be by equal right, as in the case of auxiliary bishops in an episcopal conference. See R. KENNEDY, "Juridic Persons", in *New Commentary on the Code of Canon Law*, p. 160.

acknowledgment of the right to free association by the Christian faithful.⁷⁸ Public juridic persons, established by the law itself or by the competent authority, fulfill their purpose in the name of the Church for the public good according to the precepts of law. The Code Commission understood "in the name of the Church" to mean "to act in the name of the hierarchy".⁷⁹ Private juridic persons are given their juridic personality through a special decree of the competent authority. Though the discussion after the 1980 *Schema* raised the issue of perhaps dropping the notion of private juridic persons, it was decided that they flow from the teaching of Vatican II and represent an advance in canonical science.⁸⁰ Some commentators on the 1983 Code have even demonstrated how associations could be considered to attain the status of moral personality while not being recognized juridically by the Church.⁸¹

In conclusion, we might now propose a basic description of the juridic person derived from the canons in the 1983 Code: juridic persons, distinct from physical persons, are aggregates of persons or of things which are subjects of rights and obligations, either established by law⁸² or by the competent ecclesiastical authority, and are ordered for a common purpose in conformity with the mission of the Church and the nature of the group, possessing the sufficient means to achieve said purposes.⁸³ In this study we will treat mainly of those elements which constitute the

⁷⁸ See CIC, 1983 cc. 215, 225 § 1 and 321-329.

⁷⁹ *Communicationes*, 21 (1989), p. 143.

⁸⁰ *Communicationes*, 14 (1982), pp. 143-144.

⁸¹ GAUTHIER, "Juridical Persons", pp. 89-91.

⁸² Some of these rights and obligations in the universal law include: the capability of acquiring, retaining, administering and alienating temporal goods (c. 1255); and, the right to sue and be sued in ecclesiastical tribunals (c. 1400, §1, 1°).

⁸³ For other definitions see: R. Kennedy, *New Commentary on the Code of Canon Law*, p. 155; CHIAPPETTA, *Il Codice di diritto canonico: commento giuridico-pastorale*, 2a. ed., Roma, Bologna, Edizione Dehoniane, 1996, vol. I, p. 168; CORRAL SALVADOR, *Nuovo dizionario di diritto canonico*, p. 795; and, P. VALDRINI, ed., *Droit canonique*, Paris, Dallaz,

public juridic person, as is a province of a religious institute. Let us now consider in detail the common elements of a juridic person.

B. The elements of a juridic person

Several authors have outlined what they consider to be the “constitutive” elements of a juridic person mentioned in the 1983 Code. They speak of: 1) the material element, 2) the formal element, and 3) the finalistic or goal element.⁸⁴ These constitutive elements are noted in c. 114, §§1, 2 and 3. R. Kennedy argues against the use of the term “constitutive elements”, referring instead to these elements as the “basis in reality or substratum of the newly created juridic person.”⁸⁵ His point is well taken, in that some of these basic elements must pre-exist in reality before a formal juridic person is actually constituted. In particular, the grouping of persons, as a moral person, could exist before it is juridically constituted. Furthermore, the Code requires that the statutes, whose basic content is prescribed in c. 94 §1, be approved by a competent authority before the juridic person exists (c. 117). While acknowledging this objection to the use of the term “constitutive”, for our purposes of explanation we will follow the traditional approach.

The material element includes an aggregate of either persons or of things. For a *universitas personarum*, there must exist at least three persons (c. 115 § 2). Nevertheless, if with the passage of time there remains only one member, and no other provisions are made, the *universitas personarum* continues to exist and that

1989, pp. 127-128; J. FOX, “Introductory Thoughts about Public Juridic Persons and their Civilly Incorporated Apostolates”, in *Angelicum*, 76 (1999), p. 594.

⁸⁴ CHIAPPETTA, *Il Codice*, vol. I, pp. 169-170; L. VELA - F. J. URRUTIA, “Persona giuridica”, in C. CORRAL SALVADOR, V. DE PAOLIS y G. GHIRLANDA, eds., *Nuovo dizionario di diritto canonico*, 2a. ed. aggiornata, Milano, San Paolo, 1996, pp. 795-796.

⁸⁵ R. KENNEDY, “Juridic Persons”, in *New Commentary on the Code of Canon Law*, p. 157.

one member exercises the rights of the aggregate, (c. 120 § 2). Furthermore, if with time all the members cease to exist, the juridic person is extinguished only after one hundred years of inactivity (c. 120 § 1). The Code does not specify the material element for the *universitas rerum*, also referred to as an *autonomous foundation*. However, as an aggregate of spiritual or material goods or things, it must be gathered into one unified element, and be distinct from both its individual components and the person, persons or college who administer it (c. 115 § 3).

As to other possible changes in the material element, the Code considers the joining of public juridic persons (c. 121), their division into parts (c. 122), and ultimate extinction (c. 123). With regard to the joining together of material elements of two juridic persons, the newly created one obtains the goods and patrimonial rights as well as the obligations of the former juridic persons. In the case of the division of a public juridic person into parts, the competent ecclesiastical authority oversees the division of patrimonial rights and goods as well as debts and other obligations amongst the newly created juridic persons. Finally, in the case of extinction of a juridic person, the allocation of goods, patrimonial rights and obligations is governed by the law and the statutes, or if there is no provision for extinction, by the immediately superior juridic person. In all three cases of change in the material elements, the intention of the founders,⁸⁶ donors and acquired rights must be respected.

The formal element includes establishment by the public ecclesial authority, either by the law itself⁸⁷ or through a particular decree. Though the Code does not define the competent ecclesiastical authority mentioned in c. 114, canonical tradition and the nature of this authority seems to confine it to the Holy See,

⁸⁶ "The originators of the request to establish a juridical person, public or private, are known in canon law as founders. There is, however, no precise definition of the concept of the "founder", no description or qualifications for being founders," in Fox, "Introductory Thoughts About Public Ecclesiastical Juridic Persons", p. 596.

⁸⁷ Some examples where the 1983 Code states which structures have juridic personality *ipso iure*: cc. 373, 432 § 2, 449 § 2, 238 § 1, 515 § 3, 634 § 1, 741 § 1.

episcopal conference and diocesan bishop.⁸⁸ There are perhaps other precisions that could be made, such as to whether the intention of the authority is itself constitutive or simply declarative,⁸⁹ depending upon the nature or essence of the juridic person, as in the case of the description of the Church as a “moral” person.⁹⁰ Besides the intervention of the competent public authority at the time of the establishment of a public juridic person (cc. 114, 116, 117), it is also required when it is joined with another public juridic person (c. 121), when it is divided into parts (c. 122), as well as when the public juridic person is suppressed (c. 120 §1).

The element of finality, or the purpose, entails that the juridic person be united in its material element in a common purpose which transcends that of the individual members and conforms to the mission of the Church (c. 114 § 1). In describing such purposes, the Code mentions works of piety, of the apostolate, or of spiritual or temporal charity (c. 114 § 2). In a *universitas personarum* this purpose can be the one articulated by the group’s *founder*, and in a *universitas rerum* the purpose becomes the reason for cooperation as well as the bond of cohesion and attraction of members. In either case, the purpose is to be stated in the statutes of the juridic person.⁹¹ The juridic person, then, must act within the scope of its stated purpose or mission which could be amended by the competent authority to meet changing circumstances.

In order to accomplish its purpose, the juridic person must possess sufficient means. The Code (c. 114 § 3) states that the competent ecclesiastical authority

⁸⁸ See R. KENNEDY, “Juridic Persons”, p. 158.

⁸⁹ Commentators do not seem to address too frequently the issue of whether a juridic person could be constituted by custom. An interesting case of whether there is need for a formal decree of erection for a parish is found in a decision by the CONGREGATION OF THE COUNCIL, 5 March 1932, in AAS, 25 (1933) , pp. 436-438; English trans. in *CLD*, vol. I, pp. 151-154.

⁹⁰ L. VELA - F. J. URRUTIA, “Persona giuridica”, p. 796.

⁹¹ Some other canons of the 1983 Code dealing with the contents of statutes are: cc. 94, 1280, 1281, and 1291-1295.

should be assured that sufficient means are possessed by the entity before juridic personality is conferred. By “means” the Code refers to temporal goods, but also to the organizational structures and procedures by which the juridic person is administered.⁹² Practical wisdom will define “sufficient means” according to each particular situation, though particular or proper law may give some specific criteria.

C. The province as a juridic person

Having considered a general description of the juridic person and its elements, we now turn to the province of a religious institute as a juridic person. The explicit mention of the province as a juridic person is found in c. 634 § 1, the first canon in Article 3, *Temporal Goods and Their Administration*:

As juridic persons by the law itself, institutes, provinces, and houses are capable of acquiring, possessing, administering, and alienating temporal goods unless this capacity is excluded or restricted in the constitutions.⁹³

Thus, once an institute is established it becomes a juridic person, as well as its provinces and houses. Two canons in the 1917 Code are mentioned as sources for c. 634 and serve as the precedent for the present legislation:

c. 531 Not only every Institute, but every province, and every house is capable of acquiring and possessing property with fixed or founded revenues, unless the capacity to do so be excluded or restricted by its rules and constitutions.

c. 1495 § 2 This same right to acquire, to hold, and to administer property is extended by the law of the Church to individual

⁹² “The primary focus of means is on material things, temporal goods. It would, however, seem appropriate to include one other item among the means, namely, the methods or plans of action, intended to be applied in achieving its goals,” in FOX, “Introductory Thoughts About Public Ecclesiastical Juridic Persons”, p. 603.

⁹³ CIC, 1983, c. 634 § 1: “Instituta, provinciae et domus, utpote personae iuridicae ipso iure, capaces sunt acquirendi, possidendi, administrandi et alienandi bona temporalia, nisi haec capacitas in constitutionibus excludatur vel coarctetur.” English trans. in *Code of Canon Law, New English Translation*, CANON LAW SOCIETY OF AMERICA, 1999.

churches and other moral persons which have been duly established by church authority as juridical persons according to the norms established by the sacred canons.⁹⁴

These canons were discussed in the meetings of the Code Commission as to their placement in this section and the terminology to be used. The 1977 *Schema* draft was the first attempt to restate the canon on the capacity of religious institutes regarding temporal goods:

c. 37 §1 The temporal goods of institutes of consecrated life are regulated by the norms of the universal patrimonial law of the Church unless something else is expressly provided by the law.

§2 In keeping with the specific nature of Institutes, Constitutions can define, limit, or exclude capacity to acquire, possess, and administer temporal goods.⁹⁵

In this section, which stated the law common to all institutes of perfection, the *coetus* decided, as noted above, to omit any references to prescriptions which did

⁹⁴ CIC, 1917, c. 531: "Non modo religio, sed etiam provincia et domus sunt capaces acquirendi et possidendi bona temporalia cum redditibus stabilibus seu fundatis, nisi earum capacitas in regulis et constitutionibus excludatur aut coarctetur." C. 531 is located in Book II, *De personis*, Pars II, *De religiosis*. English trans. in *Canonical Legislation Concerning Religious*, p. 23.

CIC, 1917, c. 1495: "Etiam ecclesiis singularibus aliisque personis moralibus quae ab ecclesiastica auctoritate in iuridicam personam erectae sint, ius est, ad normam sacrorum canonum, bona temporalia acquirendi, retinendi et administrandi," is found in Book III, *De rebus*, Pars. VI, *De bonis ecclesiasticis acquirendis*. English trans. in BOUSCAREN, *Canon Law; A Text and Commentary*, p. 739. Note that in neither c. 531 nor c. 1495 § 2 is there mention of alienation. In the 1917 legislation, alienation is mentioned in cc. 534 (Book II) and 1530-1534 (Book III), among other places.

⁹⁵ 1977 *Schema*, c. 37 §1. "Bona temporalia Institutorum vitae consecratae reguntur normis iuris patrimonialis universalis Ecclesiae, nisi aliud a iure expresse caveatur." § 2. "Ob propriam indolem Institutorum, Constitutiones definire, coarctare vel excludere possunt capacitatem acquirendi, possidendi et administrandi bona temporalia." English trans. in PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema of Canons on Institutes of Life Consecrated by Profession of the Evangelical Counsels: Draft Schema of Canons on Institutes of Life Consecrated by Profession of the Evangelical Counsels: Draft*, Washington, DC, Publications Office, U.S. Catholic Conference, 1977, p. 25.

not apply to all institutes. Thus, the reference to provinces found in the 1917 Code was dropped.⁹⁶ However, in the meeting of the *coetus* preparing the next schema, it was decided that, as in the 1917 Code, explicit mention should be made of those parts of the religious institute which have juridic personality *ipso iure*, including the province.⁹⁷ The revised version of the canon which appeared in the 1980 *Schema* remained unchanged in the 1983 Code.

Keeping in mind, then, the material, formal and finalistic or goal elements previously mentioned as necessary or constitutive for a juridic person, we now apply them to the province. As for the material element, a province is formed from a group of houses or local communities of a given institute in a particular area or region. These communities usually have previously been established as a mission or a delegation on behalf of the institute. The 1983 Code, like the 1917 Code, does not specify the number of houses, but based upon the definition of a *universitas personarum* (c. 115 § 2), it is usually at least three.

The material element could include also some temporal goods and possibly even some patrimonial rights belonging to the houses or some other juridic person of the institute now under the auspices of the newly formed province, though these would not be considered constitutive. In its desire to respect the principle of subsidiarity, and in deference to the proper law, c. 634 § 1 qualifies that the province has the capacity to own goods "unless this capacity is excluded or restricted in the constitutions".⁹⁸ For instance, in the *Constitutions and Rules* of the Oblates of Mary Immaculate we find in constitution 151 an example of such

⁹⁶ *Communicationes*, 27 (1995), pp. 100-107; *Communicationes*, 5 (1973), pp. 53-55.

⁹⁷ *Communicationes*, 12 (1980), pp. 175-185.

⁹⁸ The Council of Trent excluded the possibility of ownership of temporal goods even for the whole institute in the case of the Franciscan Order (OFM) and Capuchin Order, their property was owned by the Holy See. See the Council of Trent, Session XXV, cap. 3, in TANNER, *Decrees of the Ecumenical Councils*, vol. II, p. 777. Reference to this situation was explicitly mentioned in cc. 582, 2° and 628, 1°, of the CIC, 1917 and in c. 706, 1°, of the CIC, 1983.

limitation:

The Congregation as such, Provinces, Delegations, and canonically established houses have the right to acquire, retain, administer and alienate property in accordance with the Church's common law. In the case of established houses, however, this right is limited; the limits are fixed by the Provincial in Council.⁹⁹

As for the formal element, the province, as mentioned in both the 1917 and 1983 Codes, has juridic personality by the law itself, once it has been duly erected as a province by the legitimate authority. Although it is a distinct juridic person, it remains part of the religious institute itself. When the province of a religious institute is erected and holds the status of a public juridic person, it becomes subject to obligations and rights according to its nature (c. 113 § 2). As a general rule, the province's statutes are those of its institute's proper law, though the province could also have special statutes for particular situations.

With regard to the element of finality or goal, the province fulfills the purpose or mission¹⁰⁰ of the institute, in the name of the Church and in view of the public good. This purpose includes the spiritual patrimony of the institute expressed in the particular community life and apostolate of a given province.¹⁰¹ A province might have, for example, a mission statement which explains its particular adaptation of

⁹⁹ *OMI Constitutions and Rules*, 2000, p. 160. As a further definition of the right to own property, Rule 151a states: "The special statute of Missions, district communities, and residences will determine whether they have the right to acquire, retain, administer, and alienate property."

¹⁰⁰ One must be careful to distinguish the "mission" from the "ministry" or apostolic tasks which support the mission. The mission, as received by the Church from Christ, has both a theological and a juridical dimension. See FOX, "Introductory Thoughts About Public Ecclesiastical Juridic Persons", pp. 598-600.

¹⁰¹ The spiritual patrimony includes the nature, purpose, spirit and character of the institute in the mind and design of its founder, including its sound traditions. The "sound traditions" are those that have arisen over time and have become so deeply rooted that they characterize the institute itself. The patrimony does not include simple customs and practices which are non-essential and obsolete (*Ecclesiae sanctae* II, 16 § 3). See GAMBARI, *Religious Life*, p. 125. For an in-depth study of this topic, see also J. KALLUMKAL, *The Patrimony of an Institute According to the Code of Canon Law*, Rome, Pontificia Università Lateranense, 1989, ix, 208 p. (ms).

the institute's charism. A province's mission, besides its adherence to the purpose of the universal Church, conforms to the pastoral plan of the local church or churches which it encompasses. With changing time and circumstances, the province's purpose or mission could be adapted from that originally articulated by its founders.

Most institutes have prerequisites in their own proper law, describing the sufficient means necessary for the establishment of a province (i.e., c. 114 § 3). Given the material element necessary, i.e., several houses or communities and possibly their temporal goods, the province must have sufficient income to support the personnel, the institutions and the mission. Though this criterion is usually included in the proper law of the institute, specific situations and needs can lead to differing conclusions.

Finally, in describing the province's juridic personality, we note that it is a non-collegial juridic person. As is described in c. 115 § 2, all the members of a province do not equally direct its activities, but rather they entrust those roles to a provincial superior and council. In the same way, the institute itself is a non-collegial juridic person since the role of leadership is entrusted to a supreme moderator and council and to a general chapter. As a juridic person, therefore, it is the superior who directs the temporal goods of the province, with the assistance of the treasurer and the council when necessary.

Now that we have briefly described the elements of the province's juridic personality, we next turn to examine the implications of that juridical status along with its associated rights and obligations.

D. Implications, rights and obligations in canon law

1. Regarding temporal goods

The principal rights and obligations of the province in relation to temporal goods are those of acquiring, possessing, administering, and alienating them.¹⁰² As a public juridic person, the goods of the province are ecclesiastical goods, and, therefore, as goods of the Church, their acquisition, possession, administration and alienation are subject to the prescripts of Book V, *The Temporal Goods of the Church*.¹⁰³ Likewise, the province's handling of temporal goods is subject as well to any exclusions or restrictions in the religious institute's constitutions (cc. 635 § 1; 1257 § 1). Each institute is to establish norms governing the use and administration of goods in accordance with its practice of religious poverty (c. 635 § 2). For a province, these norms could be included in the general policy directory, the directory for the administration of temporal goods,¹⁰⁴ or even for some parts in the formation directory (c. 659).

¹⁰² The 1917 Code gave an extensive list of *fontes* related to the possession of goods by religious. Though Benedict's rule included possession of goods, the earliest mention of approval in universal law is found in Gratian's collection of decretals when Pope St. Gregory (590-604) approved of a donation of property to a monastery (C. 75, C. XII, q. 2). The right to possession of movable and immovable goods was reaffirmed at the Council of Trent, *sessio XXV, de regularibus*, c. 2,3. For an explanation of the 1917 Code *fontes* on c. 531, see J. MACMANUS, *The Administration of Temporal Goods in Religious Institutes*, Washington, DC, Catholic University of America, 1937, pp. 14-33.

¹⁰³ J. DE LOURDES LEONARD, "Temporal Goods", in J. HITE et al., *A Handbook on Canons 573-746*, Collegeville, MN, The Liturgical Press, 1985, p. 102, among other authors, reminds us: "Book V makes clear that the temporal goods of the Church are designed to serve its spiritual purposes."

¹⁰⁴ Cf. F. G. MORRISEY, "The Directory for the Administration of Temporal Goods in Religious Institutes", in *Unico Ecclesiae servitio: Études de droit canonique offertes à Germain Lesage, o.m.i.*, M. THÉRIAULT, and J. THORN, eds., Ottawa, Faculty of Canon Law, Saint Paul University, 1991, pp. 267-285.

With regard to acquiring and possessing¹⁰⁵ temporal goods, the norms in cc. 1259-1272 apply to religious institutes and provinces. The principle contained in c. 1267 §§ 1, 2, is an important one. Offerings given to a juridic person belong to that juridic person alone, and, in matters of greater importance and in the case of offerings burdened by an obligation or condition, special permission is required to accept them. Thus, although the province acquires and possesses those gifts given to it, a separate juridic person subject to the province could administer them. For example, a particular apostolate, acquires and possesses those goods specifically given to it. Likewise, what is given to a house as such is, within the limits allowed by the proper law of the institute, the property of that house. By the same token, it should be noted that what has been given to the province does not belong to the institute itself. The principle regarding the intention of the donor is important here as well, as found in c. 1267 §3.

As it pertains to the sharing of goods, institutes have different policies concerning limits on how much each province can possess on its own.¹⁰⁶ The acquisition of temporal goods is certainly subject to the proper purposes mentioned in c. 1254 § 2: to order divine worship, to care for the decent support of the clergy and other ministers, and to exercise works of the sacred apostolate and of charity, especially toward the needy.¹⁰⁷ Besides the universal laws, the province's

¹⁰⁵ Note the somewhat different terms used, where in c. 634 §1 it states "...acquiring, possessing ..."(*...acquirendi, possidendi...*), and in c. 1254 § 1 it says "...to... acquire, retain..."(*...acquirere, retinere...*).

¹⁰⁶ Some institutes actually have a tax, others an annual quota for a sharing fund. This sharing was encouraged in the *Normae*, 1901, n. 294: "Quaelibet domus, copia rerum abundans, quotannis ex eo quod in fine anni, rationibus consolidatis, et omnibus deductis expensis, superest pecuniae, tertiam partem tradat capsae provinciali, et quaelibet provincia eodem modo tertiam partem eorum quae sibi supersunt, tradat arcae Instituti."

¹⁰⁷ This listing of the principal purposes for the use of temporal goods in the Church mentioned here is a development of those purposes upon which the constitution of the province as a juridic person is based (see c. 114 § 2). See also cc. 634 § 2, and 640 for the importance of practicing poverty in pursuit of these purposes. These canons are based upon principles found in *PC*, 13.

acquisition and possession of goods is as well dependent on or subordinate to the immediately superior juridic person, the institute itself.¹⁰⁸

The norms for ordinary and extraordinary administration of temporal goods in the 1983 Code are covered in cc. 638 §§ 1, 2, and in cc. 1273-1289. As a non-collegial juridic person, the province is represented by the major superior (c. 118) who is the ordinary administrator of goods, and is assisted by a finance officer (c. 636 § 1) who is required to give an account of the administration to the competent authority (c. 636 § 2). As for extraordinary administration, it is up to the proper law of the Institute to determine which acts are extraordinary and to list what is necessary to place an act validly (c. 638 §1). A precise listing of these acts is important as whatever is not on the list can be presumed to be an act of ordinary administration.¹⁰⁹

Alienation of temporal goods is treated both in c. 638 §§ 3, 4, and in cc. 1291-1296. As a juridic person, the province has the right and obligation to enter into contracts according to the civil laws of the respective territories (c. 1290). The province must determine its stable patrimony,¹¹⁰ and keep its listing current (cc. 1283, 3°, 1290). As a juridic person, the province can alienate goods with the written permission of the competent superior and the consent of the council (c. 638 § 3). The permission of the Holy See is required for transactions over the amount set for the region, or for objects donated by a vow or of things which are precious due to artistic or historic value (cc. 638 § 3, 1292 §2).

¹⁰⁸ COMITÉ CANONIQUE DES RELIGIEUX, *Directoire canonique: vie consacrée et sociétés de vie apostolique*, Paris, Les Éditions du Cerf, 1986, pp. 234-235.

¹⁰⁹ *Ibid*, p. 249.

¹¹⁰ Considered among the stable patrimony would be: land, buildings, major equipment (not to become quickly obsolete), funds designated as "immobilized" by the competent authority, goods of a historical or artistic value, goods given by a vow, and, possibly, goods restricted by the intention of the donor.

2. Other financial rights and obligations

Besides these four rights and obligations of the province as a juridic person, some other important implications of its juridic personality can be examined. One of these would be that, as a juridic person, the province is held liable for its actions (c. 639). The canon reverts to the basic principle that only persons authorized to do so can bind the juridic person in contracts. There is a responsibility placed upon the superiors not to incur debts that cannot be paid off within a reasonable time without undue burden to the juridic person.

The major superior of the province of a pontifical clerical institute, as an ordinary (c. 134 § 4), can act as executor of pious wills mentioned in cc. 1301 and 1302.¹¹¹ However, the ordinary does not supplant the executor(s) legally designated by the testator.¹¹² As the representative of the province as a juridic person, the ordinary can give permission to accept foundations on the province's behalf as non-autonomous foundations and manage the necessary prescriptions in cc. 1304-1307. Depending upon the proper laws, the major superior could also establish an autonomous foundation as a separate juridic person (c. 1303, §1,1°).¹¹³ In certain instances, he can reduce and transfer Mass obligations (c.

¹¹¹ V. DE PAOLIS, "Temporal Goods of the Church in the New Code With Particular Reference to Institutes of Consecrated Life", in *The Jurist*, 43 (1983), pp. 357-358.

¹¹² The ordinary has a role of vigilance, ensuring that the pious intentions of the donors are properly carried out. How this can be done in the face of the civil law is usually difficult, especially as there may be other persons (relatives, etc.) involved. See the commentary on c. 1299, by R. KENNEDY, "Pious Causes", in *New Commentary on the Code of Canon Law*, pp. 1509-1512, esp. pp. 1510-1511.

¹¹³ There is some debate among commentators as to whether the ordinary can establish a juridic person by decree. "The rationale for a major superior's competency to establish a juridic person is founded on c. 134 which defines a major superior of a pontifical clerical institute as an ordinary with specific executive power. Since a major superior of a non-clerical institute is not an ordinary with executive power, it is doubtful that such a superior could establish a juridic person by decree." See J. HITE, *A Primer on Public and Private Juridic Persons: Applications to the Healthcare Ministry*, St. Louis, Washington, The Catholic Health Association, 2000, vii, p. 5.

1308 §2, 1309).¹¹⁴ With respect to the province or when its members are involved, and given the conditions expressed in the canon, the ordinary can reduce, moderate or commute pious wills of the faithful, or lessen their obligations (c. 1310). Before such action is taken, the ordinary would need to consult his finance council.

Finally, as a juridic person, the province can stand trial in ecclesiastical court through its legitimate representatives (c. 1480 § 1), either as a plaintiff or as a defendant. Only the major superior, as the representative of the juridic person (c. 118), can appoint those who represent the juridic person in a civil court forum (c. 1288).

E. Possible relation to civil law

As a public juridic person, there are many rights and obligations of the province which have implications in the civil law. Most of these will be discussed later in this study, but it would be important to list some of the more significant implications here. Of course, the civil laws of the various jurisdictions (nation, state, municipality, etc.) will also result in different implications for the province.

With regard to the administration of goods, c. 1284 § 2 lists nine tasks for the administrator to fulfill with “the diligence of a good householder”. All of these tasks have civil legal or financial implications. The administrator must see to it that

However, “the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life has been granting juridic personality for health care systems that cross diocesan boundaries and which currently or historically have belonged to individual or consortiums of religious institutes. A request for an institution operating completely within the boundaries of a single diocese should be directed to the diocesan bishop.” See M. JOYCE et al., eds., *Procedural Handbook for Institutes of Consecrated Life and Societies of Apostolic Life*, Washington, DC, CLSA, 2001, p. 188.

¹¹⁴ The question of whether the ordinary can transfer Mass obligations, c. 1309, is disputed among some commentators. However, according to most opinions, it would seem that they are a competent authority as regards the faculty granted by this canon. See R. KENNEDY, “Pious Causes”, in *New Commentary on the Code of Canon Law*, p. 1523.

insurance policies are taken out to cover losses and damages to goods. The ownership of goods must be protected by civilly valid methods, which could include especially the civil incorporation of the province and possibly of some apostolates and funds. Care must be taken to observe canon law, civil law, intentions of the founder and of donors, as well as prescripts imposed by legitimate authority, so that no damages result from non-observance of civil laws. Goods and income must be collected accurately and on time and the results used according to the intention of the founder or legitimate norms. Interest payments on loans or mortgages and capital debts must be made in a timely fashion. Surplus funds are to be carefully invested and set aside for the use of the province. Accounting books of receipts and expenditures must be kept organized, which entails the necessity of audits. An annual report of the financial administration is to be made. All documents are to be suitably organized and protected; and, documents and records of civil property rights of the Church or the province are to be authentically copied and placed in archives. Budgets of incomes and expenditures are strongly recommended, but left up to the proper law for further requirements and presentation.

With regard to the employees of the province, civil laws concerning labor and social policy are to be observed meticulously. This would include the requirements in law for social security and other taxes to be paid. A just and decent wage is to be paid employees so they can provide for their needs and those of their dependents (c. 1286). This just and decent wage would also include health insurance and other benefits, such as a pension. The salaries of members of the province would have to be received in a way that is in compliance with the province's status as a charitable organization under civil laws relating to income taxes. In cases of civil litigation, the administrator is neither to initiate nor contest litigation in the name of the province without written permission from the ordinary (c. 1288).

Concerning contracts and alienations, the canon law on contracts assumes the provisions of the civil law of the territory with the same effects, unless these

provisions are contrary to divine law or canon law (cc. 22, 1290). The competent ecclesiastical authority is to decide if any action is to be taken when ecclesiastical goods have been validly alienated civilly but without the required canonical formalities (c. 1296). With regard to contracts and debts, the province must answer to its obligations as a juridic person. However, if a member has entered into a contract concerning personal goods with the permission of the superior, or if a member entered a contract in the name of the province but without the superior's permission, the member must answer for the contract or debt and not the province as a juridic person (c. 639).

With regard to acceptance of pious wills, civilly valid formalities are to be observed and the intention of the testators is to be fulfilled. Gifts or bequests made *inter vivos* are contracts which demand that certain obligations be fulfilled under civil law. However, because last wills and testaments are not strictly speaking contracts, the civil law is not canonized, although the canon urges observance of civil law formalities (c. 1299 § 2).¹¹⁵ The wills of members of the province to be made before perpetual profession must be valid in civil law (c. 668 § 1). When a member renounces ownership of personal property, whether the renunciation is obligatory in the institute or not, this renunciation, as far as possible, should be civilly valid (c. 668 § 4).

In the first three sections of this study we have examined the universal laws of the Church regarding the governance structures of religious institutes, the religious province and, finally, the province's juridic personality. We now turn to examine the proper law of one religious institute, the Missionary Oblates of Mary Immaculate, and, in particular, the structures of its provinces. The proper laws and procedures of the Oblates will serve as a case study for this thesis.

¹¹⁵ R. KENNEDY, "Pious Causes", in *New Commentary on the Code of Canon Law*, p. 1510.

**IV. THE PROVINCE ACCORDING TO O.M.I. PROPER LAW: 2000
CONSTITUTIONS AND RULES****A. The development of a provincial structure in the Oblate congregation**

The Missionary Oblates of Mary Immaculate began as a small group of diocesan priests gathered together in a community to preach parish missions under the founding leadership of Saint Charles Joseph Eugene de Mazenod, a diocesan priest of the diocese of Aix-en-Provence, France. With their coming together on 25 January 1816,¹¹⁶ the early community of five priests, known as the Society of the Missionaries of Provence, began its ministry in southern France. As numbers and ministry grew and developed, Eugene de Mazenod, now vicar general of the diocese of Marseilles, went to Rome with his written *Constitutions and Rules* to request papal approval. This official papal approbation of the Oblate rule was granted on 17 February 1826,¹¹⁷ with de Mazenod acting as the first Superior General.

Following official approval, the Oblate works increased and spread throughout France. Eugene de Mazenod, by now the bishop of Marseilles, began accepting requests for Oblate missionaries in areas outside France. By 1841, the Oblates had established a presence throughout France, and in England and Canada as well. In 1847, a mission was accepted in Ceylon (present day Sri Lanka). In order to govern effectively a growing and far-flung missionary congregation, de Mazenod delegated authority to the superiors of these missions and also to canonical

¹¹⁶ The community approved the first rule and professed religious vows on 1 November 1818, in Aix.

¹¹⁷ *Constitutiones et Regulæ Congregationis Missionariorum Oblatorum Sanctissimæ et Immaculatæ Virginis Mariæ*, Gallipolis, 1827, 200 p.

visitors¹¹⁸ for the accomplishment of their ministry.¹¹⁹

As the General Chapter of 1850 drew near, Bishop de Mazenod sent a letter convoking a chapter which would consider how the Congregation was to face the emerging changes of the foreign missions, geographical separation, and other new ministerial realities.¹²⁰ In his opening address to the chapter, he summarized the recent rapid expansion of the Congregation and proposed revisions to the rule with new governmental structures which included the addition of provinces and vicariates.¹²¹ By 1850, besides the earlier missions, the Oblates now found themselves in Oregon and Texas with a request to send missionaries to Natal in Southern Africa being considered.

The capitulars, meeting in August, 1850, were thus charged to revise the *Oblate Constitutions and Rules* and adopt new structures necessitated by present and foreseen future circumstances. A committee was chosen by the chapter to draft modifications and then present them to the whole chapter for revision and final approval. The proposed additions, approved by the chapter, were taken to Rome by Bishop de Mazenod himself and were accepted by Pope Pius IX on 28 March 1851.¹²² At the next Oblate general council meeting (23-24 April 1851) four

¹¹⁸ These special delegates were given the title of "visiteur extraordinaire" (as in the case of England, Canada and Oregon) or "visiteur permanent". See G. COSENTINO, *Histoire de nos Règles*, G. MARCHAND, trans., Ottawa, Éditions des Études oblates, 1955, vol. III, p. 30.

¹¹⁹ W. WOESTMAN, *The Missionary Oblates of Mary Immaculate, A Clerical Religious Congregation With Brothers*, Ottawa, Faculty of Canon Law, Saint Paul University, 1995, p. 66.

¹²⁰ *Circulaires administratives des Supérieurs généraux aux Membres de la Congrégation des Missionnaires Oblats de M.I.(=Circulaires administratives)*, Marseille, 1850-1862, vol. I, pp. 1-8.

¹²¹ J. PIELORZ, *Les chapitres généraux au temps du Fondateur*, Ottawa, Éditions des Études oblates, 1968, vol I, pp. 264-265.

¹²² PIUS IX, Apostolic Letter, *Quum nullo unquam*, 28 March 1851, in *Constitutiones et Regulæ Congregationis Missionariorum Oblatorum Sanctissimæ et Immaculatæ Virginis Mariæ*, Massiliae, Marius Olive, 1853, pp. 193-197 (= *Constitutiones et Regulæ*, 1853).

provinces and four vicariates were established.¹²³

With some delay, the new edition of the *Oblate Constitutions and Rules* was finally promulgated in 1853.¹²⁴ In a circular letter accompanying the promulgation, Bishop de Mazenod pointed to the important role that the new provincials would hold for the future of the Congregation.¹²⁵ The province was defined in the *Oblate Constitutions and Rules* for the first time, and the authority of the provincial superior outlined.

B. The definition of a province

The sources of the *Constitutions and Rules* written by Eugene de Mazenod have been researched and studied, particularly in the work of G. Cosentino.¹²⁶ The primary influence upon de Mazenod was the rule of St. Alphonsus Liguori and the Redemptorists approved by Pope Benedict XIV in 1749. Secondary sources included the rules of St. Ignatius of Loyola for the Jesuits, St. Vincent de Paul for the Vincentians (Lazarists), St. Phillip de Neri for the Oratorians, St. Charles Borromeo for the Oblates of St. Charles, and, finally, the rule of Jean-Jaques Olier and the Sulpicians. The definition of the province and its administrative structure

¹²³ The provinces included: the First Province of France (or the Province of Midi), the Second Province of France (or Province of the North), England, and Canada; the vicariates included Saint-Boniface, Oregon, Ceylon, and Natal. See *Registre des conseils généraux*, Rome, Maison générale oblate, vol. 1, p. 139.

¹²⁴ *Constitutiones et Regulæ Congregationis Missionariorum Oblatorum Sanctissimæ et Immaculatæ Virginis Mariæ, Massiliæ*, Marius Olive, 1853, 218 p.

¹²⁵ *Circulaires administratives*, vol. I, pp. 108-113. See also J. LEFLON, *Eugene de Mazenod, Bishop of Marseilles, Founder of the Oblates of Mary Immaculate, 1782-1861*, F. FLANAGAN, trans., New York, Fordham University Press, 1961-1970, vol. IV, pp. 291-293. This author notes how, although the changes effected a decentralization of the Congregation, the Superior General (Bishop de Mazenod) still possessed a "monarchical character" within the rule.

¹²⁶ The primary and secondary sources for the *Oblate Constitutions and Rules* are discussed in COSENTINO, *Histoire de nos Règles*, vol. I, pp. 71-205.

seems primarily influenced juridically by the rule of St. Alphonsus while the style of provincial leadership was drawn from that of St. Ignatius.¹²⁷

1. Pre-Vatican II *Constitutions and Rules*

The Oblate general chapter of 1850 approved a definition of a province based upon the canonical principles and jurisprudence of the time. After some discussion, the chapter approved the distinction between a province and a vicariate, which were to be established in countries where the necessary conditions for a province did not yet exist.¹²⁸ The province and the vicariate were defined in the 1853 Oblate *Constitutions and Rules*:

Provinces are subject to the common laws; they are to comprise at least three houses and ordinarily enjoy sufficient revenues. For vicariates, a lesser number of houses is needed, and permanent residences suffice with a smaller number of members. In addition to the general statutes, in most cases, vicariates are governed by the decrees of the Superior General in council, which take into account distances and particular difficulties relating to places.¹²⁹

The three houses necessary for the province were to be canonically established houses; for the vicariate, the Rule required that the residences be permanently

¹²⁷ J. RESLÉ, *Commentarium privatum constitutionum et regularum, IIIa pars*, Ottawa, Éditions des Études oblates, 1959, vol. I, pp. 136-138.

¹²⁸ J. PIELORZ, *Les chapitres généraux au temps du Fondateur*, Ottawa, Éditions des Études oblates, 1968, vol. I, pp. 283-287.

¹²⁹ Part III, Chapter I, § VII, art. II: "Provinciae communibus subjacent legibus, tribus saltem domibus constant, et sufficienti ordinarie fruuntur reddito; vicariatus autem pauciores domos admittunt, permanentesque residentias cum minori operariorum numero, et praeter statua generalia, specialibus, ut plurimum, reguntur decretis, a Superiore generali in suo consilio latis, et accommodatis locorum distantiae et difficultatibus," in *Constitutiones et Regulæ*, 1853. Author's English translation.

established.¹³⁰ The province ordinarily must have sufficient funds to be autonomous financially from the general administration or other provinces.¹³¹ The third edition of the *Oblate Constitutions and Rules*, promulgated in 1894, did not introduce any changes in the definition of the province.¹³²

Following the promulgation of the *Normae* in 1901 by the Holy See, the *Oblate Constitutions and Rules* were revised again so as to conform to universal canon law for religious. The basic elements of a province from the earlier 1894 edition were retained in the 1910 *Constitutions and Rules*:

To form a province, there must be at least three houses and a sufficient income. For a vicariate, only permanent residences are required.¹³³

Referral to the special requirements for vicariates was placed in the following article.

Upon the promulgation of the 1917 Code, the *Oblate Constitutions and Rules* were once again updated to reflect modifications in the universal law. Thus, there is a slight addition in the 1928 text:

To form a Province, there must be at least three houses, and a sufficient income and other means of its stability. For the erection of a Vicariate it is sufficient to have permanent residences, which

¹³⁰ "Tempore quo Congregatio incepit dividi in provincias (1851), ille numerus minimus domorum statui debuit valde inferius. Praevidendum est in futurum numerum superiorem domorum requiri ad provinciam novam condendam," in RESLÉ, *Commentarium privatum*, vol. 1, p. 141.

¹³¹ It is interesting to note that the 1853 edition includes the word ordinarily ("ordinarie"), while it does not appear in the 1910 edition (art. 540) nor in the 1928 text (art. 509). In the first establishment of provinces in the 1850s it might well have been that they would not have been always self-sufficient financially.

¹³² Part III, Chapter I, §VIII, art. II, in *Constitutiones et Regulae Congregationis Missionariorum Oblatorum Sanctissimae et Immaculae Virginis Mariae*, Turonibus, Typis A. Mame, 1894, 245 p.

¹³³ Part III, Chapter I, §VIII, art. 540, in *The Constitutions and Rules of the Congregation of the Missionary Oblates of the Most Holy and Immaculate Virgin Mary*, London, R. & T. Washbourne Ltd., 1912, 214 p.

because of special local conditions require their own separate jurisdiction.¹³⁴

The “other means of its stability” are not defined in the proper law, but could mean a suitable number of vocations, a certain territory, a sufficient number of members, and those things which in general constitute requirements for a moral (juridic) person.¹³⁵

2. 1982 *Constitutions and Rules*

Following the Second Vatican Council, the Oblates met in chapter in January, 1966, to revise the constitutions and rules in light of Vatican II’s teaching. The experimental *Constitutions and Rules* finally approved at this chapter demonstrated no major difference in the juridical definition of a province. However, the stability required to form a province was explicitly linked with assurance of a sufficient income:

To form a Province there must be at least three houses, and a sufficient income to give assurance of its stability. For the erection of a Vice-Province it is sufficient to have permanent residences, which because of special local conditions require their own separate government.¹³⁶

The category of a vice-province was introduced, replacing the vicariate. A new smaller structure was introduced, the delegation, which could result from the joining of several persons or communities under the administration of the province or of the

¹³⁴ Part III, Chapter I, § VIII, art. 509, in *The Constitutions and Rules of the Congregation of the Missionary Oblates of the Most Holy and Immaculate Virgin Mary*, Rome, Via Vittorino da Feltre, 5, 1930, 234 p.

¹³⁵ RESLÉ, *Commentarium privatum*, vol. 1, p. 141.

¹³⁶ Rule 193, pp. 108-109, in *Constitutiones et Regulæ Congregationis Missionariorum Oblatorum Sanctissimæ et Immaculatæ Virginis Mariæ a Capitulo Generali XXVII Exaratae*, Romæ, 1966 (Latin/English version), 148 p.

general administration.¹³⁷ The experimental status of the 1966 *Constitutions and Rules* remained until the general chapter of 1980 when new *Constitutions and Rules* were prepared and approved (in 1982).

The 1982 Oblate *Constitutions and Rules* qualify the province as an organic unity, and describe more clearly the criteria for its establishment:

A province is an organic unity comprising at least three houses and provided with sufficient personnel, revenues and other requisites for its stability and development.

When the foregoing conditions are not fulfilled but local conditions require the establishment of a distinct administration, a Vice Province may be set up; in this case, several residences may suffice.

Whatever is stated in the *Constitutions and Rules* concerning Provinces and Provincials applies also to Vice Provinces unless the contrary is explicitly indicated.¹³⁸

The requirement of permanent residences for a vice-province was dropped, and the category of a delegation was maintained.¹³⁹

3. 2000 *Constitutions and Rules*

The 1992 Oblate general chapter mandated that a process be initiated for the review of Oblate administrative structures. The chapter also mandated that the third part of the *Constitutions and Rules* on structures be revised by the 1998

¹³⁷ *Ibid.*, Const. 168, p. 48.

¹³⁸ Const. 78, in *Constitutions and Rules of the Congregation of the Missionary Oblates of Mary Immaculate*, Rome, Missionary Oblates of Mary Immaculate, Casa generalizia, 1982, 181 p.

¹³⁹ *Ibid.*, Const. 79.

chapter.¹⁴⁰ A committee was established to examine the existing structures in light of the present conditions of personnel and mission and to present recommendations for the next chapter. The committee presented its rationale and a preliminary text at the 1995 Inter-capitular meeting, including among its guiding principles a respect for dignity of persons, flexibility, the inclusion of discernment in decision-making, subsidiarity and strong leadership, and consistent accountability. It was noted that the new structures should reflect a renewed emphasis on collaboration and coresponsibility.¹⁴¹ The theme of the 1992 chapter, "Witnessing as Apostolic Community", and its emphasis upon living as an apostolic community also entered into the proposed realignment of structures.

After receiving results of the consultation on the proposed rationale at the meeting in 1995, the committee prepared a revised text of the *Constitutions and Rules*, sent out for a general consultation of all members of the Congregation in October, 1996. After incorporating the results of this consultation, a new proposed text was presented to the 1998 general chapter. The final text of the new Part III of the *Constitutions and Rules* was accepted at the 1998 chapter, and approved by the Holy See on 3 May 1999.¹⁴² The *OMI Constitutions and Rules, 2000*, defines a province as

an autonomous unit of the Congregation grouping several local communities of Oblates at the service of the Church within a determined territory.¹⁴³

The reference to houses has now been completely dropped from the definition

¹⁴⁰ *Witnessing as Apostolic Community*, Acts of the 32nd General Chapter, 1992, Rome, O.M.I., 290 Via Aurelia, pp. 63-69.

¹⁴¹ *Basic Rationale Statement*, Post-Capitular Committee on Structures, Intercapitular Meeting, Bangkok, Thailand, 23 October - 8 November, 1995, p. 4.

¹⁴² CONGREGATIO PRO INSTITUTIS VITAE CONSECRATAE ET SOCIETATIBUS VITAE APOSTOLICAE, letter, 3 May 1999, prot. n. M 29 - 1/99, in *OMI Constitutions and Rules, 2000*, p. 15.

¹⁴³ Const. 78, in *OMI Constitutions and Rules, 2000*.

in favor of “local communities”. This gives greater importance to district communities as juridical units within the Congregation, now comparable to a canonically established religious house.¹⁴⁴ The province is now understood to be a grouping of local communities, whether they be houses (with emphasis upon living together in the same place) or districts (where the members could be living in several different places).

C. The criteria for the establishment of a province

We now consider the elements of a province in the Oblate proper law within the broader context of universal law considered above. Given the definition of a province found in Const. 78 of the 2000 *Oblate Constitutions and Rules*, the elements are: 1) an autonomous unit of the congregation; 2) grouping several local communities of Oblates; 3) at the service of the Church; and, 4) within a determined territory. There also are other elements which will be discussed later.

As an “autonomous unit of the congregation”, the province has its own juridical existence, but does not stand entirely on its own, as would be the case of an autonomous monastery. The *Oblate Constitutions and Rules* provide that the province has juridic personality, and, therefore, it has the right to acquire, retain, administer and alienate property.¹⁴⁵ As the superior of the province, the provincial is a major superior and ordinary who administers in the name of the juridic person. However, the province always acts in unity with the rest of the Oblate Congregation

¹⁴⁴ Ibid., Consts. 77, 92; Rule 91a. The juridical concept of a district community as a unit of governance was studied in depth by T. CASSIDY, *Districts and District Superiors Within the Missionary Oblates of Mary Immaculate*, Ottawa, Saint Paul University, 1997, xv, 329 p. (ms.); also, “District Community”, in *OMI Documentation*, 221 (1998), pp. 3-23; and F. SANTUCCI, “Districts as Expressions of Apostolic Community in the Oblates of Mary Immaculate”, in *Vie Oblate Life*, 53 (1994), pp. 103-119.

¹⁴⁵ Const. 151, in *OMI Constitutions and Rules*, 2000.

at all of its governmental levels: general, province and local administrations.¹⁴⁶

The province is defined in the 2000 *Oblate Constitutions and Rules* as a “grouping of several local communities”. As mentioned above, the local communities can take on different manifestations in Oblate life: a canonically established house or a duly constituted house with a local superior, a district community entrusted to a local superior, or by exception an autonomous residence under the care of a Director.¹⁴⁷ The change in terminology in the Oblate definition of a province, from that of the 1982 *Constitutions and Rules* where the province was comprised of “at least three houses”¹⁴⁸ to the present definition of a “grouping of several local communities” has a basis in the past and current lived reality.

As T. Cassidy has noted, due to the missionary character of the Oblates who historically often have been sent to minister together in a region while living separately in isolated missions, the establishment of a canonical house was not always possible.¹⁴⁹ However, in the Oblate proper law, the district community was considered to possess similar stability and permanence as a house, even though the Oblates could not all live together under the same roof. In today’s situations, where Oblates are called to minister in a wide variety of settings, the lack of personnel makes establishing a religious house somewhat difficult. Given these practical realities, the district community is viewed juridically as an equal to the religious house in the *Oblate Constitutions and Rules*.

¹⁴⁶ For example, Const. 75, in *OMI Constitutions and Rules*, 2000: “...Each level should be in close contact with the others, providing support, coordination, service and leadership. Unity of mind and heart is maintained by effective communication at all levels and with each Oblate.” And also Const. 99: “The Provincial Superiors share in the Superior General’s responsibility and concern for the whole Congregation...”

¹⁴⁷ Const. 77, in *OMI Constitutions and Rules*, 2000.

¹⁴⁸ Const. 78, in *OMI Constitutions and Rules*, 1982.

¹⁴⁹ See CASSIDY, *Districts and District Superiors*, pp. 37-68. The author points to the Oblates’ missionary experience in Ceylon as the origin of the concept of a district community.

Nevertheless, since the province is to be a stable organism, the preference for canonically established houses relates to their more permanent structure.¹⁵⁰ The number of local communities needed to form a province is not specified in the Oblate proper law, as the number is not specified in the definition of a province in the universal law, c. 621. However, given the jurisprudence with regard to juridic personality, it would seem that some combination of at least three local communities would be a minimum.

With the addition of the words “at the service of the Church”, the Oblate province is readily seen to not exist for itself, but to have a mission of service. Thus, the province is also missionary in character.¹⁵¹ The very purpose for the existence of a province, as described in Const. 96, is to establish closer bonds among local communities and to ensure the stability of apostolic works. To clarify the type of service a particular province offers to the Church, each province should have priorities and goals. The mission of the Oblates is fulfilled in communion with the bishops and the pastoral plan of the local churches.¹⁵²

Finally, each Oblate province has a determined territory for which it is responsible. Thus, the province does not generally relate to any specific group of persons but rather to everyone in a particular territory. The boundaries of provinces, as a general rule, should not overlap.¹⁵³ The 1983 Code does not

¹⁵⁰ The house is also seen as a better way to facilitate community life and as a more favorable place to assign young Oblates. See remarks by M. ZAGO, OMI, Superior General, in *MISSIONARY OBLATES OF MARY IMMACULATE, Intercapitular Report, Minutes and Documents, Bangkok, Thailand, 23 October - 8 November, 1995*, Roma, Curia Generalizia, 1996, p. 12.

¹⁵¹ The specific service of the Oblates is defined in Const. 5: “We are a missionary Congregation. Our principal service in the Church is to proclaim Christ and his Kingdom to the most abandoned...”

¹⁵² Const. 6, in *OMI Constitutions and Rules, 2000*.

¹⁵³ Rule 98a, in *ibid*.

mention territoriality in the definition of a province.¹⁵⁴ There are examples within the Oblates from the past and the present where two or more provinces co-exist in the same territory. Usually this has been due to difference in language or ethnic groups. However, this practice could create unnecessary duplication and even lead to misunderstandings.

Having considered the constitutive elements in the definition of a province in Oblate proper law, we shall now consider some other important foundational elements. For a province to be established, it should demonstrate a certain permanence and stability.¹⁵⁵ This is to be understood in several contexts. First, there should be a certain stability with regard to personnel, and suitable programs for vocation recruitment and for formation. Also, there should exist long-term financial stability.¹⁵⁶ Furthermore, under the general heading of effective internal organization and cohesiveness, there should be a sense of identity, an adequate leadership potential, a respect for cultural diversity, and the ability to communicate in a common language.

¹⁵⁴ This point of a determined territory was specifically discussed by the Code Commission in formulating the canon on a province but it was decided to not include it. See *Communicationes*, 12 (1980), p. 150.

¹⁵⁵ These criteria are explicitly mentioned in Const. 97: "Normally, a Province has attained and is able to maintain a satisfactory level of self-sufficiency. This entails sufficient personnel, suitable vocation and formation programs, as well as a long-term financial stability," and Rule 97a: "In addition to other criteria, a Province must generally demonstrate a capacity for effective internal organization and cohesiveness. This implies a sense of identity, adequate leadership potential, a respect for cultural diversity, and the ability to communicate in a common language", in *OMI Constitutions and Rules*, 2000.

¹⁵⁶ As a juridic person the Oblate province should have the means to achieve its purpose or mission (see CIC, 1983, c. 114 § 3). As we have mentioned above, *means* includes temporal goods, but also the personnel and structure of operations to make this achievement possible.

D. Particular procedures for the erection of a province

As we have seen above, the establishment of provinces in the Oblate Congregation began in 1851. Since then, there have been some important changes in the procedures, particularly in relation to the intervention of the Holy See. In particular, G. Cosentino notes how through a process of discovery the Oblates in 1863 recognized that they were not an exempt Congregation, and the Holy See pointed out that the first Oblate provinces lacked the necessary papal indult for their establishment.¹⁵⁷ In a decree dated 5 January 1866, the Congregation of Bishops and Regulars ratified the previous erection of provinces, but decreed that in the future the Oblates would need recourse to the Holy See for erection of any new provinces.¹⁵⁸ This remained the practice until the changes brought about by Vatican II which shall be discussed in Chapter II. Nonetheless, within the procedure of Oblate proper law itself, there really have been few changes.

As R. Kennedy remarks in commenting upon the establishment of the juridic person, there must first exist certain elements as a "basis in reality" before any formal establishment can take place.¹⁵⁹ For an Oblate province, that basis in reality begins with a mission, usually proposed by the local bishop or the Holy See to the Oblate general administration. The mission, in which several Oblates establish a

¹⁵⁷ COSENTINO, *Histoire de nos Règles*, vol. 5, pp. 178-179. For further discussion concerning whether the Oblates were a non-exempt Congregation, see WOESTMAN, *The Missionary Oblates*, pp. 78-84.

¹⁵⁸ COSENTINO, *Histoire de nos Règles*, vol. 5, p. 179. In his circular letter of 29 June, 1866, Fr. J. Fabre explains the consequences of the decree declaring the Oblates not to be exempt as was originally thought, but he also explained the indults which have granted the continuation of certain presumed privileges, including that of division into provinces, in *Circulaires administratives*, vol. I, pp. 153-167, esp. pp. 158-159. From this time until 1971 it was necessary for the Oblates to obtain approval from the Holy See before any new provinces were established.

¹⁵⁹ See R. KENNEDY, "Juridic Person", in *New Commentary on the Code of Canon Law*, p. 157.

missionary presence in a specific place, is described in Const. 80 of the 2000 *OMI Constitutions and Rules*. If the specified conditions exist in the mission, Oblate communities can be established as a *delegation*.¹⁶⁰ An Oblate delegation is a grouping of local communities which has juridic personality, its own statutes, governed by a major superior who must be at least confirmed by the superior general in council.¹⁶¹ A delegation is described in the *Oblate Constitutions and Rules* as a response to an evolving situation; it may eventually become a province if the criteria for the existence of a province have been met.

Once there is a basis in reality for the establishment of a province, and the criteria have been met (Const. 97, rule 97a), the procedures for the erection of a province are to be followed. Not all of these procedures are mentioned in the *Oblate Constitutions and Rules*. Within the Oblate structure, the superior general in council establishes provinces, changes their boundaries, and suppresses or unites existing provinces.¹⁶² For a province to be established or to continue in existence, it is normally expected to have at least 40 members.¹⁶³ Also, as a general rule, the proposed boundaries are not to overlap with any other province.

Before any decisions are taken, the superior general consults those Oblates concerned (Const. 98), usually including both a personal contact between the superior general and council and the Oblates involved, as well as an individual written ballot to be returned to the general administration.¹⁶⁴ The communities must

¹⁶⁰ Delegations are described in Consts. 79 and 110-116, in *OMI Constitutions and Rules*, 2000.

¹⁶¹ In Oblate proper law the meaning of the terms "Superior General in Council" and "Provincial or Delegation Superior in Council" are clearly defined as the respective Superior with the consent of the Council. See Const. 86, in *OMI Constitutions and Rules*, 2000.

¹⁶² Const. 98, Rule 146a, in *ibid*.

¹⁶³ Rule 98b, in *ibid*.

¹⁶⁴ Though not included in the *OMI Constitutions and Rules*, 2000, the previous *OMI Constitutions and Rules*, 1982, briefly described consultation in Rule 83: "submitting

also begin to discuss among themselves in order to develop some common apostolic goals (Const. 96). Special additional statutes for the proposed province can be submitted to the superior general and council, but this is not universally required.

The superior general in council at a plenary session (rule 146a), after hearing the results of the consultation, establishes the new province. Usually there is a three-year probationary period for the province's additional special statutes, after which time they can be revised according to the actual lived experience. Before the official date of establishment of the province, the process for the appointment and installation of the provincial and council is begun.

CONCLUSIONS

We can now draw some conclusions from what we have presented.

1. Within the universal laws of governance of religious institutes, the province is not an essential structure. It is an intermediate level of governance in an institute which needs to decentralize its governance structures. The province serves to facilitate the communication of the life of the institute between the lower level of the institute, that of the religious house and local community with its superior, and the higher level, which includes the supreme moderator and the general chapter.

2. The superior of the province, in a pontifical clerical institute, is a major superior and an ordinary who has particular responsibilities during a specific term of office in a role of service within the province. In the spirit of subsidiarity, the provincial superior helps to facilitate the institute's mission by relating hierarchically to the local superiors and the supreme moderator. Therefore, the province, though autonomous in various aspects of the exercise of its juridical rights and responsibilities, depends upon the general chapter and the institute's constitutions and rules for particular direction.

advice and suggestions, especially when requested."

3. As a public juridic person, the province's temporal goods are distinct from those of the institute. Since canonically established houses are also public juridic persons, they normally have the canonical right to acquire, possess, administer, and alienate property, which must be respected by the provincial superior. Sometimes, where there is civil incorporation at the provincial level, the canonical rights of individual houses may possibly be overlooked. As its goods are considered ecclesiastical goods, the province is directed by the universal authority of the Church and its laws on temporal goods, as well as those of the particular institute.

4. The province structure first began with developments in the proper laws of the 13th century mendicant orders in Europe. The structures of the province and their relation to the larger order were developed over a period of time; they were accepted and adapted by those religious institutes of men and women which arose in later centuries. Only gradually did the province enter into the universal legislation of the Church when with the *Normae* of 1901 and the subsequent 1917 Code there began to be some uniformity in the province structure among all religious institutes.

5. The Second Vatican Council, in deference to the principle of subsidiarity and in respect for the spiritual patrimony of each institute, allowed for certain variations in the proper law. The definition of the province in the 1983 Code has retained most of the earlier legislation. The constitutive elements contained in the present juridical description of a province are: 1) the union of several houses or local communities; 2) under the same superior; 3) constituting an immediate part of the institute; and, 4) erected by the legitimate canonical authority.

6. Apart from these elements, there can be others, some of which are specified within the proper law of religious institutes, such as: a means of subsistence and an economic autonomy, a specific circumscribed territory and a functional governing structure, including a community life and an apostolate.

7. Key to an understanding of the province is understanding its nature as a

public juridic person. The canon law on juridic persons has seen some development in understanding between the 1917 and 1983 Codes. A definition of a juridic person according to the current legislation would include the following: juridic persons, distinct from physical persons, are aggregates of persons or of things and subjects of rights and obligations which are established by law or by the competent ecclesiastical authority and ordered for a common group purpose in conformity with the mission of the Church and the nature of the group.

8. The 1983 Code has maintained an explicit reference to the province as a juridic person. Principal among the rights of a province as a juridic person are those of acquiring, retaining, administering and alienating temporal goods. These are qualified by certain universal laws and the proper law of each institute. Since the province is a non-collegial juridic person, the provincial superior exercises responsibility for administering the temporal goods, assisted by the provincial treasurer and the provincial council. The administration and alienation of the province's temporal goods have implications both in canon law and in the civil law which call for careful planning and proper execution.

9. Among the Oblates of Mary Immaculate, the province structure was implemented in the 1850s to assist a missionary congregation growing in numbers and in geographical extension. The Oblate *Constitutions and Rules'* definition of a province and the juridical requisites for its establishment evolved with changes in the universal law of the Church. Following Vatican II, with the renewal of the Oblates and their *Constitutions and Rules*, changes were experienced. In the present law, the province is described as a grouping of local communities which can be established by the superior general in council and which adheres to the criteria described in the Oblate *Constitutions*. These criteria principally include: sufficient personnel, suitable vocation and formation programs, as well as a long-term financial stability.

Having outlined the basic description of a province and its implications in the universal law and in the proper law of the Oblates, we now move to consider how the province structure can be amended. In the second chapter of this study we will examine the procedures and the effects in canon law for the fusion, union and reorganization of the province, again both in the universal law and in the Oblates' proper law.

CHAPTER TWO

THE FUSION, UNION AND REORGANIZATION OF PROVINCES

Having examined the concept of *province*, this second chapter will focus on the canonical process of fusion, union and reorganization of provinces. There will be a canonical analysis of changes in the universal law, especially those following Vatican II and the promulgation of the 1983 Code of Canon Law. The juridical consequences of reorganization will be considered; for example, the issue of possible suppression of a juridic person (the former province or provinces). Finally, the chapter will analyze the development of proper law in the Oblate *Constitutions and Rules* to show how provinces within the Congregation can now be united or reorganized.

We begin with some basic definitions of terms.¹ The Code Commission discussed whether a juridical definition of *fusion* or *union* should be included in the preliminary canons on structures of religious institutes. It was finally decided in the sessions examining the 1977 *Schema*, that due to the variety of fusions and unions in the experience of different institutes, it was better to include a generic formulation. The revised text, instead of defining fusion and union, simply included

¹ Among other sources for these distinctions, we refer to: M. J. BAIR, *Fusion and Union of Institutes of Consecrated Life in Light of the Code of Canon Law*, Ottawa, Saint Paul University, 1993, pp. 211-213; L. CHIAPPETTA, *Il Codice di diritto canonico: commento giuridico-pastorale*, 2a ed., Roma, Bologna, Edizioni Dehoniane, 1996, vol. I, p. 721; R. MCDERMOTT, "Mergers/Unions/Confederations/Federations", commentary on c. 582, in J. BEAL, J. CORIDEN and T. GREEN, *New Commentary on the Code of Canon Law*, commissioned by the CLSA, New York, NY/Mahwah, NJ, Paulist Press, 2000, pp. 750-751; L. MURABITO, "Union of Institutes and Union of Monasteries in Decline", in *Consecrated Life*, 11 (1986), pp. 273-280; E. O'HARA, "Issues of Aggregation, Merger and Dissolution", in *CLSA Proceedings*, 49 (1987), pp. 155-168. See also the discussion found in C. DARCY, *The Institute of the Sisters of Mercy of the Americas: The Canonical Development of the Proposed Governance Model*, New York, University of America Press, 1993, p. 123, footnote 117.

the actual content of both paragraphs of the proposed canon 9 in the 1977 *Schema* into one paragraph, which became canon 582 of the 1983 Code.²

Therefore, when the 1983 Code speaks of *fusion*, as in canon 582,³ it generally refers to the coming together of two unequal institutes where the smaller or weaker one loses its juridical identity and is absorbed into the larger one. The concept in the canon is based upon that found in *Perfectae caritatis*, 21. In English, this is sometimes called an *amalgamation*.⁴ The term *union*, also used in c. 582, refers to the case when two or more institutes come together and form an entirely new entity. This is in the sense used in *Perfectae caritatis*, 22: the joining members lose their former identities in order to form together an entirely new one. By *reorganization* we refer to the internal governance and community structures of the new entity, once a union, fusion or redistribution is accomplished.

Although the terms *fusion* and *union* are used in c. 582 and *Perfectae caritatis* to refer to institutes, we intend to employ these same terms, by analogy, to refer to the institute's internal structural changes on the province level. Thus, on the level of the province, a fusion would refer to the situation when one entity, such as another province or a vice province, is joined to a province. A union would occur when two or more provinces are joined together to create a new one.

² See BAIR, *Fusion and Union of Institutes of Consecrated Life*, pp. 206-211; see also *Communicationes*, 11 (1979), pp. 48-49.

³ CIC, 1983, c. 582: "Fusiones et uniones institutorum vitae consecratae uni Sedi Apostolicae reservantur; eidem quoque reservantur confoederationes et foederationes."

⁴ PC, 21; English trans. in A. FLANNERY, Gen. Ed., *Vatican Council II*, vol. 1, *The Conciliar and Post Conciliar Documents, New Revised Edition*, Northport, NY, Costello Publishing Co.; Dublin, Ireland, Dominican Publications, 1996, p. 622: "If possible, they are to be *amalgamated* with more flourishing institutes..."

A term commonly used in North America to refer to fusion and union is *merger*,⁵ used especially with reference to civil corporations. However, this term is not used in canonical documents nor in the *stylus Curiae*.⁶ *Merger* could be interpreted to refer to either a *fusion* or a *union*, thus it is important to note an inconsistency in the English usage which could have differing canonical implications. For the purpose of this study, we will refrain from using the term *merger* unless it is accompanied by a specific reference.

I. PROCEDURES IN CANON LAW FOR THE FUSION, UNION AND REORGANIZATION OF PROVINCES

A. Pre-1917 and 1917 Code

The procedures developed by the mendicant orders in 13th century Europe constitute the primary basis for the province structure in today's religious institutes. In these orders and, later in the apostolic orders, the general chapter, or in some cases the superior general, had the authority to erect, suppress and modify provinces. However, with the rise of the congregations of simple vows, it gradually became the more common practice for these innovations to be reserved to the Holy See itself.

Some pre-1917 Code commentators cite various examples in curial jurisprudence of instances where the Holy See reserved to itself the authority to approve the erection and modification of the province structure.⁷ For instance, A.

⁵ As in the English translation of canon 582: "Mergers and unions of institutes of consecrated life are reserved..." *Code of Canon Law, New English Translation*, CANON LAW SOCIETY OF AMERICA, 1999.

⁶ O'HARA, "Issues of Aggregation, Merger and Dissolution", p. 160.

⁷ A. BATTANDIER, *Guide canonique pour les constitutions des soeurs à vœux simples, suivant les récentes dispositions (Normae) de la S. Cong. des évêques et*

Larraona notes that the practice in universal law before the 1917 Code was not clearly defined, as there were examples both among the orders and the congregations where the approval of the Holy See was not required.⁸ In particular, those orders which had received an apostolic privilege in questions of internal governance retained their capacity to erect and modify provinces.⁹ For the Oblates of Mary Immaculate, there existed some misunderstanding as to whether or not they possessed the apostolic exemption or privilege which would allow for their own internal structuring process.¹⁰ Some of these issues are noted by A. Bizzarri in the collection of jurisprudence from the Congregation of Bishops and Regulars.¹¹ The

réguliers et les décrets les plus récents, 5e éd., Paris, J. Gabalda, 1911, pp. 404-405; F. WERNZ and P. VIDAL, *Ius canonicum*, 3a ed., Romae, apud Aedes Universitatis Gregorianae, 1927-1946, tome III, pp. 64-65.

⁸ A. LARRAONA, "Commentarium codicis: de erectione et suppressione religionis, provinciae, domus", in *Commentarium pro religiosis et missionariis*, 5 (1924), pp. 266-267.

⁹ *Ibid*, p. 267. Among those which retained the privileges of erecting provinces were the Jesuits and the Mercedarians.

¹⁰ Bishop de Mazenod referred to the juridic status of the Congregation during the 1850 General Chapter in this way: "Notre Congrégation est en communication de privilèges, non seulement avec les Rédemptoristes, comme la porte le rescrit du pape Léon XII imprimé à la suite de nos Règles, mais encore avec tous les Ordres religieux présents, passés et futurs, d'après la déclaration formelle faite de vive voix à notre Révérendissime Père Général par le même Souverain Pontife, notre insigne protecteur. Toutefois les membres de la Congrégation ne pourront user des dits privilèges avant d'en avoir demandé et obtenu l'autorisation du Supérieur Général", in G. COSENTINO, *Nos chapitres généraux*, Ottawa, Éditions des Études oblates, 1957, vol. 16, p. 58.

¹¹ A. BIZZARRI, ed., *Collectanea in usum secretariae Sacrae Congregationis Episcoporum et Regularium*, 2a ed., Romae, Typographia Polyglotta, 1885, xl, 881 p. For example, S. Cong. Ep. et Reg. 10 March 1860, p. 777, par. 15: "Pro erigendis novitiibus et provinciis recurrendum erit ad S. Cong. Ep. et Reg."; also, 11 July 1860, p. 784, par. 7, "Pro translatione domus principis, et pro erectione et divisione provinciarum, pro erigendis domibus novitiatus, et immutatione Constitutionum, pro alienationibus recurrendum erit in casibus particularibus ad S. Cong. Ep. et Reg."; and, 2 March 1861, p. 790, par. 1: "...Hinc in Constitutionibus mentio facienda est de Apostolico Beneplacito in alienationibus, de licentia a S. Cong. Ep. et Reg. obtinenda pro erectione et divisione provinciarum..." and, 23 May 1860, p. 798, par. 7: "Praescribendus est consensus Ordinarii pro erectione novarum domorum, et licentia S.C. pro novitiibus et provinciis."

number of new congregations founded during the 19th century gave rise to many decrees and interpretations from the Holy See. However, with time the *stylus Curiae* became clear: the approval of the Holy See was required for the erection and modification of provinces.¹²

Many of these issues were finally resolved with Pope Leo XIII's promulgation, in 1900, of the constitution *Conditae a Christo*,¹³ and the Congregation of Bishops and Regulars' issuance of the *Normae* in 1901.¹⁴ With those congregations professing simple vows now recognized as religious, and the practices of the Holy See for approval of new institutes being made public, the procedures for the erection and modification of province structures become more uniform. The prescription in *Normae*, n. 302, reserved to the Holy See authority to approve the erection and modification of provinces in religious institutes,¹⁵ except for those whose apostolic privileges remained in force. Religious institutes were asked to update their constitutions and rules so as to conform with the procedures of the *Normae*, including those norms in nn. 272 and 302 for the erection and modification of provinces.

The 1917 Code, drawing from the curial jurisprudence and the precedent of the *Normae*, clearly stated in c. 494 § 1 the universal law governing the erection and modification of provinces:

¹² LARRAONA, "De erectione et suppressione", pp. 266-267; also, WERNZ-VIDAL, *Ius canonicum*, tome III, pp. 64-65.

¹³ LEO XIII, Apostolic Constitution, *Conditae a Christo*, 8 December 1900, in ASS, 33 (1900), pp. 341-347. English trans. in G. COURTOIS, ed., *The States of Perfection: Documents from Leo XIII to Pius XII*, trans. J.A. O'FLYNN, Dublin, M.H. Gill, 1961, pp. 5-13.

¹⁴ SACRA CONGREGATIO EPISCOPORUM ET REGULARIUM, *Normae secundum quas S. Congr. Episcoporum et Regularium procedere solet in approbandis novis institutis votorum simplicium*, 28 iunii 1901, Romae, Typis S.C. de Propaganda Fide, 1901, 59 p.

¹⁵ Ibid., n. 302: "Haec tamen divisio Instituti in provincias, necnon novarum postea provinciarum erectio, fieri non potest absque auctoritate Sanctae Sedis, ut dictum est in n. 272."

It pertains exclusively to the Apostolic See: to divide into provinces an Institute approved by the Holy See, to unite existing provinces or otherwise modify their boundaries, to establish new provinces or to suppress existing ones, to separate independent monasteries from one monastic Congregation and to unite them to another.¹⁶

We have already examined in Chapter One the case of the institute being initially divided into provinces, and that of the subsequent erection of new provinces. In addition, as we will note in this chapter, c. 494 § 1 of the 1917 legislation also treated the various cases of modification of a province: existing provinces being joined together, boundaries of existing provinces being changed, and existing provinces being suppressed.¹⁷ In these cases, since the province was a juridic person, additional principles applied.

When existing provinces are joined, a new province is usually formed and the former provinces' juridic personality is, therefore, extinguished. Of course, in some instances, one of the former provinces is retained and continues its existence with new boundaries and members. In the case of a union, the status of the temporal goods of the province is affected. Thus, in the 1917 Code, the procedures for the extinction of a province were governed by the following norms:

c. 494 § 2: When a province becomes extinct, the right of disposing of its property, while safeguarding the laws of justice and the wishes of the founders, belongs, unless the constitutions ordain

¹⁶ CIC, 1917, c. 494 § 1: "Religionem pontificii iuris in provincias dividere, constitutas iam provincias coniungere vel aliter circumscribere, novas condere conditasve supprimere, monasteria sui iuris a monastica Congregatione separare et alii unire, ad unam pertinet Sedem Apostolicam." English trans. in *Codex iuris canonici, Canonical Legislation Concerning Religious*, Authorized English translation, Città del Vaticano, Libreria Editrice Vaticana, 1949, p. 10.

¹⁷ Canon 494 only applied to institutes approved by the Holy See. While it was rare that institutes of diocesan right would be divided into provinces, it was possible. For the procedures regarding institutes of diocesan right, see T. SCHAEFER, *De religiosis ad normam Codicis iuris canonici*, ed. quarta aucta et emendata, Roma, Editrice Apostolado Cattolico, 1947, pp. 132-133.

otherwise, to the General Chapter or, outside the time of the Chapter, to the Superior-General with his Council.¹⁸

c. 1501: When an ecclesiastical moral person becomes extinct, its goods belong to the immediately superior ecclesiastical moral person, while safeguarding always the wishes of the founders or donors, legitimately acquired rights and the particular laws which governed the extinct moral person.¹⁹

When it is simply a question of the change of boundaries of a province, there would not necessarily be a suppression or an extinction of a province's juridic personality; nonetheless, the status of the temporal goods could be affected because of new realities.²⁰ Most probably, the newly configured province would have made adjustments with the surrounding provinces, especially with regard to personnel and temporal goods. The 1917 Code, in describing the province in c. 488, 6°, did not mention territory; this was left to the determination of proper law.

In summary, then, the 1917 Code required approval of the Holy See for the modification or suppression of provinces. Nonetheless, it was left up to the religious institute's internal authority to provide for the reordering of an extinct province's temporal goods.

¹⁸ CIC, 1917, c. 494 § 2: "Exstincta provincia, de eius bonis statuere, salvis iustitiae legibus et fundatorum voluntate, spectat, nisi constitutiones aliud caveant, ad Capitulum generale vel, extra tempus Capituli, ad Moderatorem generalem cum suo Consilio." English trans. in *Canonical Legislation Concerning Religious*, p. 10.

¹⁹ CIC, 1917, c. 1501: "Exstincta persona morali ecclesiastica, eius bona fiunt personae moralis ecclesiasticae immediate superioris, salvis semper fundatorum seu oblatores voluntatibus, iuribus legitime quaesitis atque legibus peculiaribus quibus exstincta persona moralis regebatur." Author's English translation.

²⁰ A related issue at the time of the 1917 Code was the dormant provinces of various orders and congregations due to the turmoil of the 19th century. According to the law on moral persons, a moral person existed in perpetuity, and even if only one physical person survived, the moral person still existed. For those provinces where no one was still living, commentators remarked that the norms of c. 494 did not apply; thus, dormant provinces could be resurrected by the orders themselves within a hundred years. See LARRAONA, "De erectione et suppressione", p. 265; also, SCHAEFER, *De religiosis*, p. 134.

B. The contributions of Pope Pius XII

Pope Pius XII, through allocutions, discourses and other papal documents, advised the religious institutes of the need for adaptation and renewal to conform with the changes in conditions in society.²¹ As early as 1947, in celebrating the 14th centennial anniversary of the death of St. Benedict, he had recommended to various Benedictine families that they unite in federations among themselves.²² In the early 1950s, the number of vocations to religious life in Europe had declined as much as half from twenty years before, especially among women religious.²³ These changed conditions called for, among other things, adaptations in structures of governance.

In the apostolic constitution *Sponsa Christi*,²⁴ 21 November 1950, and the accompanying *General Statute of Nuns*, the Pope encouraged federations and confederations of autonomous or *sui iuris* monasteries of *moniales* as a way both to safeguard against difficulties that could arise from complete separation, as well as to ensure regular observance and the growth of contemplative life.²⁵ This was

²¹ For a summary of some major themes of the pope's contributions, see J. GALLEN, "Renovation and Adaptation", in *Review for Religious*, 14 (1955), pp. 293-318.

²² PIUS XII, Homilia, *Beatissimi Patris inter Missarum sollemnia celebrata in Basilica Patriarchali S. Pauli extra moenia ob decimum quartum exactum saeculum ab obitu S. Benedicti Nursini*, in AAS, 39 (1947), pp. 454-455.

²³ PIUS XII, Allocution to the Superiors General of Female Institutes and Congregations, 15 September 1952, in AAS, 44 (1952), pp. 823-826, esp. p. 824; English trans. in *Review for Religious*, 11 (1952), pp. 305-308, esp. pp. 305-306.

²⁴ PIUS XII, Apostolic Constitution and General Statutes of Nuns, *Sponsa Christi*, 21 November 1950, in AAS, 43 (1951), pp. 5-24; English trans. in *CLD*, vol. III, pp. 221-239.

²⁵ Further purposes and advantages of these federations were outlined by the Congregation for Religious in the instruction *Inter praeclara*, which accompanied the promulgation of *Sponsa Christi*. See SACRA CONGREGATIO DE RELIGIOSIS, Instruction *Inter praeclara*, 23 November 1950, in AAS, 43 (1951), Part II, pp. 41-44. English trans. in *CLD*, vol. III, pp. 244-247.

a particular problem, and the question of establishing federations was specifically for these monasteries; moreover, the formation of federations did not take away from the autonomy of these monasteries of nuns, each of which remained *sui iuris*. The establishment of these federations would, of course, require approval from the Holy See.

These types of structural adaptations were also alluded to in the Pope's closing address to the international congress of religious,²⁶ 8 December 1950, where he referred to "latitude in thought and discussion, unity in planning and organization and speed in execution"²⁷ as three important qualities of the adaptation of religious life to the present times. Among the talks given at this congress, several focused on the need for a spirit of unity among religious institutes, including discussions of union of institutes, and aggregations and federations of monasteries.²⁸ The themes elucidated by Pius XII in various talks in the 1950s prefaced the teaching on renewal of religious life at Vatican II.

C. Vatican II and the Code Commission

The Second Vatican Council, being primarily a pastoral council, did not as such enact any new legislation for religious life. Rather, the Council wanted to articulate a theological and spiritual foundation for the ongoing renewal of consecrated life in contemporary times. Through *Lumen gentium*²⁹ and *Perfectae caritatis*, a direction was set for the future of religious institutes. In studying the various

²⁶ PIUS XII, *Allocution to the International Congress of Religious, "Annus Sacer"*, 8 December 1950, in AAS, 43 (1951), pp. 26-36; English trans. in *CLD*, vol. III, pp. 119-131.

²⁷ *Ibid.*, English trans. in *CLD*, vol. III, pp. 129-130.

²⁸ See BAIR, *Fusion and Union of Institutes of Consecrated Life*, pp. 105-113.

²⁹ This includes particularly *Lumen gentium*, Chapter V, *The Call of the Whole Church to Holiness*, and Chapter VI, *Religious*.

schemata of *Perfectae caritatis*, we see the move from a primarily juridical view of religious life to a more nuanced theological spiritual understanding, reaching back to the very sources of religious life as a way to imitate Christ.³⁰ The *schemata* reflect the articulation of the Church, describing how religious life is emerging into the modern era.³¹

With respect to the structures of religious life, the Council saw the importance of living in the midst of the world rather than apart from it, and it gave religious institutes the directive to read the signs of the times and entertain a "right amount of prudent experimentation"³² so as to resolve present and future problems.³³ Although there is little explicit mention of the religious *province* in the Council's documents,³⁴ the principles which were to guide the renewal of religious life and its structures could relate, with the appropriate adaptations, as much to the *province* as to the entire religious institute.

The guiding principles and directives governing the fusion, union and reorganization of provinces can be gleaned primarily from articles 2 through 4 of *Perfectae caritatis*. Article 2 states the Council's five basic principles for renewal in all religious institutes: 1) the final norm is the following of Christ; 2) there must be acceptance and retention of the spirit and aims of the founders and the institutes' traditions; 3) institutes should share in the life of the Church in all its

³⁰ These points are discussed by F. WULF in his article "Decree on the Appropriate Renewal of the Religious Life", R. WALLS, trans., in H. VORGRIMLER, Gen. Ed., *Commentary on the Documents of Vatican II*, vol. II, Freiburg, Herder & Herder, 1968, pp. 301-370, esp. 301-332.

³¹ *Ibid.*, p. 331.

³² *PC*, 4.

³³ WULF, "Decree on the Appropriate Renewal of Religious Life", p. 331.

³⁴ The *province* is mentioned only once, in *PC*, 13, "Provinces and houses of the different institutes should share their sources with one another, those who have more helping those who are in need." English trans. in FLANNERY, *Vatican Council II*, vol. 1, p. 618.

initiatives and undertakings; 4) there must be a proper understanding of people, contemporary times and the needs of the Church; and, 5) adaptations to the times must always be animated by a spiritual renewal. Article 3 describes the criteria by which religious should examine their life, prayer, apostolate and mode of government. There should be a revision of constitutions, directories, books of customs, prayers and ceremonies according to the spirit of the Council documents. Article 4 describes how effective renewal and right adaptation are to be achieved with the cooperation of all members, especially of the institute's competent authorities, and with the approval of the Holy See when necessary.

In *Perfectae caritatis*, articles 21 and 22 treat of the amalgamation and union of institutes and monasteries; moreover, in certain situations, institutes and autonomous monasteries are advised to form federations where possible. In article 21, the Council Fathers consider the situation where these groups face both an uncertain future and declining numbers of members. It is recommended that these institutes not accept any more novices and unite with another institute so as to improve their regular religious observance and strengthen their apostolic work. Furthermore, article 22 states that if their numbers are small, they should form unions with groups which share similar constitutions, customs and spirit, or at least associations with those with whom they share similar apostolic works. These three forms of unification (federation, union and association) require prior approval of the Holy See.

1. *Ecclesiae sanctae*, 6 August 1966

Pope Paul VI promulgated norms for the renewal called for in several documents of the Second Vatican Council through his *motu proprio Ecclesiae sanctae*, 6 August 1966. For the purposes of our study, we shall illustrate how in this document the Pope gave more specific directives for the renewal of structures in religious institutes through implementation of the decrees *Christus Dominus* and

Perfectae caritatis. We shall begin with a consideration of the implementation of the decree on the pastoral office of bishops, *Christus Dominus*.

The first part of *Ecclesiae sanctae*³⁵ provides for the implementation of the various sections of Vatican II's decree on bishops. In articles 22-40 of *Ecclesiae sanctae* I, entitled *Religious*, the Pope implements articles 33-35 of *Christus Dominus*. In particular, articles 25 and 26 lay down norms regarding the subjection of religious to laws or decrees enacted by the local ordinary or by the episcopal conference. Article 25 states that religious are bound by laws, decrees and ordinances of the local ordinary affecting various works, the sacred apostolate, as well as pastoral and social activity. According to article 26, they are also bound by other laws, decrees and ordinances of the local ordinary and the episcopal conference in certain questions related to instruments of social communication, attendance at public shows, membership or cooperation with certain prohibited societies, and ecclesiastical dress.³⁶

In reference to religious who hold diocesan offices, article 32 requires that for a grave reason any member of the religious institute who occupies an office in the diocese can be removed either by his superior or by the local ordinary.³⁷ Article 34 treats of the suppression of religious houses in the diocese and must be understood in the context of c. 498 of the 1917 Code. According to the previous legislation, recourse had to be made to the Holy See for the suppression of a house belonging to an exempt religious institute, with no reference to the local ordinary. The *motu proprio*, *Ecclesiae sanctae*, insisted that the local ordinary also had to be consulted

³⁵ PAUL VI, Apostolic Letter, *Motu proprio*, *On the Implementation of the Decrees Christus Dominus and Presbyterorum ordinis*, *Ecclesiae sanctae* I, 6 August 1966, in AAS, 58 (1966), pp. 757-775. English trans. in FLANNERY, *Vatican Council II*, vol. 1, pp. 591-610.

³⁶ The treatment of these topics in the 1983 Code is somewhat more nuanced than that of *Ecclesiae sanctae*.

³⁷ See CIC, 1983, c. 682.

in cases involving exempt religious institutes. The other paragraphs of article 34 were applicable to all cases of suppression of religious houses.³⁸

The second part of *the motu proprio, Ecclesiae sanctae II*,³⁹ gives norms for the implementation of the Conciliar Decree, *Perfectae caritatis*. In its first section, *Ecclesiae sanctae II* develops articles 2 through 4 of *Perfectae caritatis*. Here, the Pope discusses some preliminary understandings: those persons responsible for the renewal, the revision of constitutions, and the criteria for renewal and adaptation. Articles 39 through 41 indicate criteria and procedures for the unification and suppression of institutes.

For a union to take place, there must first of all be adequate preparation, which includes the spiritual, psychological and juridical areas (art. 39). The union must keep in mind both the good of the Church, the good of the institutes, and the freedom of each individual member (art. 40). Criteria are given which can be applied to the situation of a possible union: the number of members remains small, candidates have not been forthcoming for a long time past, and most members are advanced in years (art. 41). As *Perfectae caritatis* 21 recommends, if suppression of the institute is ultimately recommended, provision should be made for amalgamation with a more flourishing similar institute. Each member should be consulted beforehand, and all done with perfect charity.

While these norms are useful guidelines also for modifications in provinces of the same institute, it must be remembered that there is an essential difference. In the case of different institutes being unified or suppressed, the inherent rights of the members of each institute must be respected and the consent of the members of an institute being fused into another must be obtained; as we shall see, such consent is not necessary in the internal restructuring of institutes.

³⁸ This matter is treated in c. 616 of the CIC, 1983.

³⁹ PAUL VI, Apostolic Letter, *Motu proprio, Norms for Implementing the Decree: On the Up-to-date Renewal of Religious Life, Ecclesiae sanctae II*, 6 August 1966, in AAS, 58 (1966), pp. 775-787. English trans. in FLANNERY, *Vatican Council II*, vol. 1, pp. 624-633.

2. *Ad instituenda experimenta*, 4 June 1970

As the religious institutes entered the period of adaptation and renewal, *Ecclesiae sanctae* II recommended a period of experimentation, which included the convening of a special general chapter to renew the text of the institutes' constitutions (art. 3). These special chapters were to be summoned within at most three years, with the total time period of adaptation for each institute not to be prolonged more than two subsequent regular general chapters.⁴⁰ During this time of experimentation the Congregation for Religious and Secular Institutes issued some additional faculties to religious institutes by means of the decree *Ad instituenda experimenta*,⁴¹ 4 June 1970. The reason given by the Congregation for the concession of these faculties was that there were frequent requests for dispensations from the common law and, in promulgating them in a general decree, they could be implemented by all institutes as a group. These faculties would suspend or change some canons of the 1917 Code, in anticipation of the forthcoming revised Code of canon law.⁴²

Among the special faculties granted, the decree referred explicitly to the erection and modification of religious provinces and the prescriptions mentioned in c. 494 §1 of the 1917 Code. Henceforth, the institute no longer needed approval

⁴⁰ See *ES*, II, articles 3 and 6. A study of the procedures and history of the post-Vatican II renewal process in religious institutes is found in M. DORTEL-CLAUDOT, "The Task of Revising the Constitutions of the Institutes of Consecrated Life as Called for by Vatican II", trans. L. WEARNE, in R. LATOURELLE, ed., *Vatican II: Assessments and Perspectives: Twenty-Five Years After (1962-1987)*, New York, Mahwah, NJ, Paulist Press, 1989, vol. III, pp. 90-130.

⁴¹ SACRA CONGREGATIO PRO RELIGIOSIS ET INSTITUTIS SAECULARIBUS, Decree, *Ad instituenda experimenta*, 4 June 1970, in *AAS*, 62 (1970), pp. 549-550. English trans. in *CLD*, vol. VII, pp. 80-81.

⁴² For a canonical exegesis of this decree and an explanation of its standing in relation to the Council and the 1917 Code, see X. OCHOA, "Suspensio et mutatio canonum 'De Religiosis' per Decretum diei 4 junii 1970", in *Commentarium pro religiosis et missionariis*, 52 (1971), pp. 121-146, 211-222.

from the Holy See for uniting existing provinces, modifying their boundaries, establishing new provinces or suppressing existing ones. The special general chapters which each institute was to hold during these years were to establish proper norms for the establishment and modification of provinces and include these new norms in the institute's constitutions. Thus, reference to the erection and modification of provinces would now be included in religious institutes' proper law. However, in cases of institutes instituting the province structure for the first time or completely suppressing all provinces, approval of the Holy See was still required. Finally, as we have seen, c. 494 §2 already provided that the institute itself would oversee the disposal of property of any extinct province.

3. *Mutuae relationes*, 14 May 1978

Following the commemoration of the tenth anniversary of the decrees *Christus Dominus* and *Perfectae caritatis*, the Congregation for Religious and Secular Institutes and the Congregation for Bishops issued a joint document on 14 May 1978, entitled *Directives for Mutual Relations Between Bishops and Religious in the Church*.⁴³ The document was prepared in collaboration with the Congregation for the Oriental Churches and the Congregation for the Evangelization of Peoples (*Propaganda Fide*). The reason for this joint project was that many institutes depended, and still do, on either one or the other of these Congregations (Oriental Churches and *Propaganda Fide*) and not on the Congregation for Religious and Secular Institutes. Although this document makes a few explicit mentions of renewal in structures of religious institutes, it offers directives in how to coordinate

⁴³ SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, SACRED CONGREGATION FOR BISHOPS, *Directives for Mutual Relations Between Bishops and Religious in the Church, Mutuae relationes*, 14 May 1978, in *AAS*, 70 (1978), pp. 473-506. English trans. in *CLD*, vol. IX, pp. 296-340.

better between bishops and religious the overall renewal of the local and universal Church.

We mention the following norms in particular as they related to the development of renewed structures within religious institutes. First of all, bishops must support the unique charisms and the measure of real autonomy of religious institutes (art. 8, 13), but at the same time religious must cultivate a renewed awareness of the needs of today's Church and be generous in building it up through fidelity to their Constitutions and Rules and obedience to their superiors (art. 14). Secondly, as religious superiors must favor adaptations required by the cultural, social and economic conditions of these times, they must exercise a certain vigilance that these not conflict with religious consecration (art. 26). Thirdly, bishops, in dialogue with religious, must renew pastoral methods and update apostolic works, so that, while not neglecting present ministries, new forms of apostolic presence can be provided (art. 40). Fourth, bishops should be informed about the distinctive nature of each institute, the particular situation and the criteria for renewal (art. 47). Fifth, in approving newly founded institutes, bishops are required to discern the authenticity of the institute's charism as founded in the Holy Spirit, in faithful relationship to Christ and the Church, by a founder who reveals a docility to the Church's hierarchy and in response to the gift of the Spirit (art. 51). Finally, in order to improve the movement of institutes toward renewal, bishops should determine in advance what ministries and offices are to be entrusted to individual religious (art. 58). Clearly, whatever internal governmental and apostolic renewal religious institutes undertake, *Mutuae relationes* challenges religious institutes to do so in a spirit of dialogue and collaboration with the bishops and the local Church.

4. 1977 Schema

a. Erection and modification of provinces

The *coetus* of the Code Commission studying the Institutes of Perfection discussed the revisions to c. 494 of the 1917 Code at the third session, 22-26 January 1968.⁴⁴ Basing themselves upon the changes in the norms of the 1917 Code introduced by the decree *Ad instituenda experimenta*, the discussion revolved around whether the erection and modification of provinces should be left to be decided only by the general chapter or by the supreme moderator and council. The Secretary remarked that this task should be left to the supreme authority due to the importance it held for the institute as a whole, and, therefore, it should be reserved to the general chapter. He added that it would be possible for the supreme moderator in council to erect vicariates, vice-provinces, etc.⁴⁵ Thus, the *coetus* approved the proposed text, giving authority to the general chapter for the erection and modification of provinces.⁴⁶

As has been noted in Chapter I, the *coetus* decided to change some of the terminology in the canons so that they could be generically applicable to all types of religious institutes. Thus, it was felt that the term *province* would be too exclusive, and was subsequently referred to as simply a *part* of the institute, under

⁴⁴ *Communicationes*, 18 (1986), pp. 171-209.

⁴⁵ "Rev.imus Secretarius cum alio Consultore respondent rem melius reservari supremæ auctoritati ob momentum quod habet pro universo instituto religioso. Nihil tamen impedit, ubi necessitas urgeat, quominus Supremeus Moderator cum suo Consilio erigat vicariam vel vice-provinciam, etc.", in *Communicationes*, 18 (1986), p. 189.

⁴⁶ The proposed text read: "Institutum religiosum in provincias dividere, novas erigere, iam erectas coniungere vel aliter circumscribere ad Capitulum generale instituti spectat", in *ibid.*, pp. 188-189, 208. Note that originally the text had read: "...ad Capitulum generale instituti *unice* spectat", but the word *unice* was dropped, thus permitting the chapter to delegate this authority if necessary.

whatever name it be called.⁴⁷ In the final draft of the 1977 *Schema*, the *coetus*, acknowledging that it did not want to bind the proper laws of the religious institutes, changed the wording of the text from “the general chapter” to “the competent authority of the institute”.⁴⁸ The *coetus* recognized that more than a few institutes preferred for the supreme moderator and council to handle this duty. The Code Commission describes in the prefatory notes to the 1977 *Schema* that, given its directive principles for revision of the canons on consecrated life, it wanted to allow the institutes themselves to decide such matters which did not need to be regulated in the general law of the Church.⁴⁹ Thus, the text in the 1977 *Schema* in c. 8 referring to the provinces’ erection and modification read:

It belongs to the competent authority of the institute, in accord with the specification of the Constitutions, to divide the institute in parts, by whatever name called; to erect new parts; and to unite or to otherwise define parts already erected.⁵⁰

This canon, while incorporating into universal law the changes initiated in *Ad instituenda experimenta*, expresses a development in understanding how to relate

⁴⁷ See *Communicationes*, 6 (1974), pp. 89-90; also *Communicationes*, 28 (1996), pp. 101-104, 126.

⁴⁸ “In priori forma auctoritas competens indicatur tamquam Capitulum Generale Instituti. Sed non videtur necessarium hanc libertatis coarctationem Institutis imponere. Melius est determinationem derelinquere ipsis Institutis in proprio iure particulari. Non pauca Instituta hoc negotium relinquunt Supremo Moderatori Instituti de consensu sui consilii”, in *Communicationes*, 28 (1996), p. 126.

⁴⁹ “Flexibilitas huius propositae legislationis clare elucescit ex ampla applicatione secundi principii directivi quae necessario secum trahit amplam simulque prudentem applicationem principii subsidiariorum”, in 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 (=1977 Schema with U.S.C.C. Translation)*, Washington, DC, Publications Office, U.S. Catholic Conference, 1977, p. 16. English trans. in *ibid*, p. xvi.

⁵⁰ 1977 *Schema*, Canon 8: “Dividere Institutum in partes, quocumque nomine veniant, novas partes erigere, erectas coniungere vel aliter circumscribere ad competentem Instituti auctoritatem pertinet iuxta determinationem Constitutionum”, in *ibid*, p. 6. English trans. in *ibid*, p. 7.

the principle of subsidiarity to religious law. Not only the process of erection and modification of provinces is left to the religious institute itself, but the same institute is also to decide for itself which internal authority will carry out this function.

b. Suppression of provinces

In the 1917 Code, c. 494 contained the norms governing not only the erection and modification of provinces, but also their suppression. At the third session of the *coetus* (22-26 January 1968) in which the Commission discussed the new canon on erection and modification of provinces, it also discussed a new canon on suppression of provinces. The Relator explained that it was decided to combine in one canon all the canons which dealt with the topic of suppression, whether of institutes, provinces or houses.⁵¹ As in the case with erection and modification of provinces, the norms found in *Ad instituenda experimenta* were amplified so as to give the institute, through the authority of the general chapter, the final authority in the suppression of provinces. The only change made in the proposed text in this first discussion was to drop the words which referred to the qualification of the disposal of goods,⁵² it being decided that these same qualifications applied to all cases of suppression, whether of institutes, provinces or houses, and would thus be placed as a new fourth paragraph in the same canon. As was the case with erection and modification of provinces, the new canon on suppression of provinces was approved at this session of the *coetus*.⁵³ The final version approved for the 1977 *Schema* reflected only the general changes in terminology previously

⁵¹ *Communicationes*, 18 (1986), pp. 201-202.

⁵² These qualifying words were: "...salvis iustitiae legibus et fundatorum voluntate", in *ibid*, p. 202.

⁵³ Canon 7 §2: "Provincias supprimere ad Capitulum Generale instituti religiosi pertinet secundum praescripta in constitutionibus statuta. Ei quoque reservatur de bonis provinciae suppressae statuere", in *ibid*, p. 209.

discussed, that of replacing any specific reference to *provinces* with the more generic reference to *parts*:

The suppression of parts of an Institute belongs to the General Chapter in accord with the prescriptions of its Constitutions. Also reserved to the General Chapter is the disposition of the goods of the suppressed part.⁵⁴

Unlike the faculties granted by the decree *Ad instituenda experimenta*, in the 1977 *Schema* the institute itself, from its first division into provinces until their possible complete suppression, had been given almost total authority over its own governance in these matters.

5. 1980 *Schema*

Following the publication and general consultations on the 1977 *Schema* and its canon 8, the *coetus* in 1979 made only one change in its next proposed text, that of deleting the phrase *iuxta determinationem Constitutionum*.⁵⁵ One consultor had argued that the phrase should remain because there was not a certainty that all institutes would provide for this norm in their Constitutions. Though some consultors suggested reinserting the term *provincias* in the text, this was not approved by the majority, and the text remained the same as proposed by the Relator.⁵⁶

⁵⁴ Canon 13 §2: "Partes Instituti supprimere ad eiusdem Capitulum generale pertinet, secundum praescripta Constitutionum. Ei quoque reservatur de bonis partis suppressae statuere," in *1977 Schema with U.S.C.C. Translation*, p. 10. English trans. in *ibid*, p. 11. Also, *Communicationes*, 28 (1996), pp. 129-130.

⁵⁵ The *coetus* of the Commission met on 26 February - 3 March 1979, as reported in *Communicationes*, 11 (1979), pp. 42-66.

⁵⁶ *Communicationes*, 11 (1979), p. 47. This canon became canon 510 in the 1980 *Schema*: "Dividere Institutum in partes, quocumque nomine veniant, novas erigere, erectas coniungere vel aliter circumscribere ad competentem Instituti auctoritatem pertinet", in PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Codex iuris canonici*:

At the same 1979 meeting of the *coetus*, canon 13 of the 1977 *Schema* on suppression was also considered. The new proposed text of this canon was reduced to two paragraphs, with the suppression of houses being placed within the canon on houses, and the provision concerning the disposition of the temporal goods being excluded entirely. The consultative bodies on the 1977 *Schema* had observed that the suppression of parts of the institute should not be reserved to the general chapter, but rather to the competent authority in the institute.⁵⁷ Though members of the *coetus* considered several other proposed changes, none received a majority vote. Thus, the 1980 *Schema* text remained as it was originally proposed by the Relator with the sole modification that the "competent authority of the institute" rather than the "general chapter" was stated as the source of authority for suppressing provinces.⁵⁸

D. 1983 Code

The canon in the 1980 *Schema* on erection and modification of provinces saw one further change before the final version. After the final discussion in the Code Commission, the phrase *ad normam Constitutionum* was added to the conclusion of the proposed canon, making the final version similar once again to the text in the 1977 *Schema*.⁵⁹ The text in c. 581 of the 1983 Code, thus, reads:

Schema Patribus Commissionis reservatum (=1980 Schema), Civitate Vaticana, Libreria Editrice Vaticana, 1980, p. 124.

⁵⁷ "Non riservare al Capitolo Generale la soppressione delle "Istituti partes", ma alla competente autorità dell'Istituto, senza specificare quale sia: lo faranno le Costituzioni", in *Communicationes*, 11 (1979), p. 49.

⁵⁸ Canon 513 §2: "Istituti partes supprimere ad auctoritatem competentem eiusdem Istituti pertinet." Text in *1980 Schema*, p. 125.

⁵⁹ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis Patribus Commissionis ad novissimum schema CIC exhibitarum cum responsionibus a Secretaria*

To divide an institute into parts, by whatever name they are called, to erect new parts, to join those erected, or to redefine their boundaries belongs to the competent authority of the institute, according to the norm of the constitutions.⁶⁰

In the present law, the competent authority in each institute has the authority to erect and modify the *province*, but the constitutions of each institute must determine who has this authority.⁶¹ The first introduction of provinces or their equivalent into an already established institute will almost inevitably require some changes in the proper law of the institute, which changes will require approval by the competent authority (cf. c. 587). E. Gambari notes that, as had been prescribed in *Ad instituenda experimenta*, it remains appropriate in proper law to require that the first division of an institute into provinces be done by the general chapter, conceding subsequent divisions to the authority of the superior general with the consent of the council.⁶²

With regard to the canon on the suppression of the province, there were no changes made after the 1980 *Schema* and the final version given to the Pope and

et Consultoribus datis, Civitate Vaticana, Typis Polyglottis Vaticanis, 1981, p. 136.

Also see A. GUTIERREZ, "El nuevo Código y el derecho propio de los Institutos de vida consagrada", in *Vida religiosa*, 55 (1983), pp. 456-469. The author notes the many references in the 1983 Code where the canons on religious institutes defer to the institute's constitutions or its proper law: 86 total references to either one or the other.

⁶⁰ CIC, 1983, c. 581: "Dividere institutum in partes, quocumque nomine veniant, novas erigere, erectas coniungere vel aliter circumscribere ad competentem instituti auctoritatem pertinet, ad normam constitutionum." English trans. in *Code of Canon Law, New English Translation*, CLSA, 1999.

⁶¹ As an illustration of a religious congregation of pontifical right who requested a change in this authority from that granted by their Constitutions so as to allow the General Superior and Council to erect, divide and suppress parts of the Institute, note the example in K. VANN and J. DONLON, eds., *Roman Replies 1997*, pp. 13-14.

⁶² E. GAMBARI, *Religious Life According to Vatican II and the New Code of Canon Law*, trans. by the Daughters of St. Paul, Boston, St. Paul Editions, 1986, p. 527.

his selected advisors to review.⁶³ However, in the final edition of this canon, the paragraphs treating suppression of institutes and, then, of parts of the institute, were separated into two distinct canons. Thus, c. 585 of the 1983 Code which refers to the suppression of provinces simply states: "It belongs to the competent authority of an institute to suppress its parts."⁶⁴

Although the Code does not explicitly state that the authority be determined by the constitutions, one can infer that this logically would be similar to the case of erection and modification of provinces (c. 581).⁶⁵ Most commentators on the 1983 Code concur with this opinion, that, failing other determinations in the proper law, the competent authority to erect a province would be competent to suppress it.⁶⁶ In this promulgated text on suppression, there is no mention of the procedure for the disposal of temporal goods of the former provinces. For clarification of these issues, and given that the province is a public juridic person, the applicable norms are found in the section of the Code on juridic persons. We will discuss this important implication later.

In conclusion to this study of the drafting process and the 1983 Code, we can say that after much discussion the final text of these canons reflects Vatican II's spirit of renewal for religious institutes and the desire of the Code Commission to give room in the universal law for expression of the differences found in the various

⁶³ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Codex iuris canonici: schema novissimum iuxta placita Patrum Commissionis emendatum atque Summo Pontifici praesentatum*, Civitate Vaticana, Typis Polyglottis Vaticanis, 1982, xviii, 308 p.

⁶⁴ CIC, 1983, c. 585: "Instituti partes supprimere ad auctoritatem competentem eiusdem instituti pertinet." English trans. in *Code of Canon Law, New English Translation*, CLSA, 1999.

⁶⁵ T. RINCON-PEREZ, "Comentario - c. 585", in *Comentario exegético al código de derecho canónico*, obra coordinada y dirigida por A. MARZOA, J. MIRAS y R. RODRIGUEZ-OCAÑA, 2a ed., Pamplona, Ediciones Universidad de Navarra, 1997, vol II/2, p. 1424.

⁶⁶ "Omnis res, per quascumque causas nascitur, per easdem dissolvitur", in *Regulae iuris*, 1.IX.

religious institutes. Having shown what the present law states for the erection, modification and suppression of a province, we shall now consider what criteria would precipitate such a decision on the part of the religious institute.

II. CRITERIA FOR DECISION TOWARDS EXTINCTION, FUSION, UNION AND REORGANIZATION OF PROVINCES

Universal ecclesiastical law has not included any specific criteria regarding structural changes in the provinces of religious institutes. Up until the early 20th century, the religious orders and the congregations themselves decided when it would be advantageous to restructure. These decisions were usually based upon the growth or decline of the particular community related to socio-political events in a given region. The institutes also looked to the praxis of the Holy See and the examples of other religious families.⁶⁷ For the purposes of our study we now look to several of the above-mentioned recent Vatican documents for a guide as they give criteria for the fusion and union of religious institutes in contemporary times. We can suppose that the basic principles and criteria for reorganization of provinces will be similar, with appropriate adaptations.

A. Pre-Vatican II criteria

The first contemporary document to give specific criteria for restructuring among institutes was the apostolic constitution of Pius XII, *Sponsa Christi*, which was directed toward monasteries of nuns. The Pope notes that the changed circumstances, especially in contemporary Europe, offer the criteria upon which to judge the reorganization of monasteries advisable and even necessary:

In view of changed circumstances there are now many considerations which make it advisable and sometimes even

⁶⁷ GAMBARI, *Religious Life*, p.527.

necessary to confederate Monasteries of Nuns. Such are, for example, an easier and better distribution of offices, the temporary transfer of individual religious from one monastery to another for a number of reasons of necessity or usefulness, mutual economic assistance, the coordination of works, the protection of common observance, and so on. That all this can be done and attained without impairing essential autonomy nor in any way weakening the observance of cloister or harming recollection and the strict discipline of monastic life, is abundantly clear not only from the ample experience of the Monastic congregations of men, but also from the example of not a few Unions and Federations which have already been approved for Nuns. Besides, the establishment of Federations and the approval of the Statutes by which they are to be governed, will remain reserved to the Holy See.⁶⁸

In the Statutes which accompanied *Sponsa Christi* it is stated:

Art. VII, § 2, 2°: Federations of Monasteries, although they are not prescribed by any general rule, are nevertheless highly recommended by the Holy See, not only as a safeguard against the evils and inconveniences which can arise from complete separation, but also as a means of promoting regular observance and the life of contemplation.

Art. VII, §8, 2°: The principal purpose of a Federation of Monasteries is to give each other fraternal aid, not only in promoting the religious spirit and regular monastic discipline, but also in managing economic matters.⁶⁹

In an Instruction applying the Apostolic Constitution *Sponsa Christi*, entitled *Inter praeclara*, the Congregation of Religious repeated the Pope's recommendation for autonomous monasteries of nuns to form federations in order to avoid potentially harmful effects of independent monasteries, and to foster both spiritual and

⁶⁸ PIUS XII, *Sponsa Christi*, in AAS, 43 (1951), p. 13. English trans. in *CLD*, vol. III, p. 230.

⁶⁹ PIUS XII, *Sponsa Christi*, in AAS. 43 (1951), pp. 18-19. English trans. in *CLD*, vol. III, pp. 237-238.

temporal interests.⁷⁰ The Congregation also added a more specific list of general purposes and advantages of unions and federations, which included: 1) mutual fraternal assistance, in the conservation, defense and increase of regular observance and of domestic economy, as well as in other things; 2) establishment of common novitiates, due to lack of personnel or other moral, economic, local or similar circumstances, when practical spiritual, disciplinary, technical and cultural training cannot be given in one place; 3) the faculty and moral obligation of asking for and of mutually interchanging nuns who may be necessary for government and for training; and, 4) the possibility of a mutual temporary exchange or ceding of subjects, and also of permanent assignments.

B. Criteria established by Vatican II and the post-conciliar implementation

1. The Council documents

Vatican II called for two principal guides to renewal and adaptation: fidelity to the word of God, and adaptation to the needs of the present time. With respect to religious life, *Perfectae caritatis*, in article 2, gave several overall criteria for renewal:

The up-to-date renewal of the religious life comprises both a constant return to the sources of the whole of the Christian life and to the primitive inspiration of the institutes, and their adaptation to the changed conditions of our time.

a) Since the final norm of the religious life is the following of Christ as it is put before us in the Gospel, this must be taken by all institutes as the supreme rule.

b) The spirit and aims of each founder should be faithfully accepted and retained, as indeed should each institute's sound traditions, for all of these constitute the patrimony of the institute.

⁷⁰ CONGREGATION FOR RELIGIOUS, Instruction, *Inter praeclara*, in AAS, 43 (1951), pp. 41-42. English trans. in *CLD*, vol. III, pp. 244-245.

c) All institutes should share in the life of the Church.⁷¹

Thus, any renewal of structures must be preceded by an individual and communal spiritual renewal.

As we have seen above, in article three of *Perfectae caritatis* the Council stated that in the overall structural renewal of institutes, the mode of government should be examined according to certain criteria. These required that government structures first of all be in harmony with the present-day physical and psychological condition of the members. Furthermore, government structures should be in harmony with the needs of the apostolate, depending upon the nature or character of each institute, and taking into consideration the requirements of culture and the social and economic circumstances.

More specifically, in consideration of the signs of the times, the Council gave reasons or criteria for considering the amalgamation of religious institutes:

Institutes and monasteries which the Holy See, having consulted the local ordinaries concerned, judges not to offer any reasonable hope of further development, are to be forbidden to receive any more novices.⁷²

No explanation was given for “further development” in the decree, but one can assume that the document is referring to an institute which faces declining numbers. In article 22, the Council urges that if the institutes or monasteries are of the same religious family or tradition, the Holy See could approve that they form federations. If they are not of the same family, unions should be formed if they have similar constitutions and customs, the same spirit, and if the number of members are few.

More explicit criteria for the restructuring of religious institutes, and with appropriate adaptations, of religious provinces, are found in the post-Vatican II

⁷¹ PC, 2. English trans. in FLANNERY, *Vatican Council II*, vol. 1, p. 612.

⁷² PC, 21. English trans. in FLANNERY, *Vatican Council II*, vol. 1, p. 622.

motu proprio of Paul VI, *Ecclesiae sanctae* II, articles 40 and 41.⁷³ As to the union of institutes, the Pope states in article 40 that the general criteria taken into consideration must be: 1) the good of the Church, 2) the particular character of each institute (apostolic or contemplative), and 3) the freedom of choice for each individual religious, their awareness of options and their ability to vote by a formal secret ballot. Even more detailed criteria are described in the following article (no. 41), which include: 1) the number of members remains small, 2) no candidates for entry have come for a long time, and 3) the members are elderly.⁷⁴ If suppression of the institute is the final decision, there should be provision for possible amalgamation "with a more flourishing institute whose aim and spirit differ little from its own".⁷⁵ Clearly, the Vatican Council wanted the renewal of institutes to include possible fusion or union of structures so as to strengthen new religious life.

2. Sociological developments in religious institutes

According to the study by M. Bair, two prevailing concerns of the present situation of the Church and religious life are: 1) the problem of secularization; and, 2) dwindling membership, due to death, departures and a lack of vocations.⁷⁶ The Vatican Council challenged religious to live in solidarity with a world which they had also been taught to renounce.⁷⁷ The distinctions between religious and the world,

⁷³ *ES*, II, 40-41. English trans. in FLANNERY, *Vatican Council II*, vol. 1, p. 632.

⁷⁴ See E. O'HARA, "Issues of Aggregation, Merger and Dissolution", in *CLSA Proceedings*, 47 (1987), p. 166.

⁷⁵ *PC*, 21. English trans. in FLANNERY, *Vatican Council II*, vol. 1, p. 622.

⁷⁶ BAIR, *Fusion and Union of Institutes of Consecrated Life*, p. 155.

⁷⁷ *PC*, 2, 5.

so clearly defined in their practices before the Council, now became less focused.⁷⁸ The Council's teachings on religious life seemed to imply that there was a less defined distinction between religious and the rest of the Church, as *Lumen gentium* explained the "universal call to holiness" of all the baptized.⁷⁹ The roles of religious which had seemed so clear and distinct before the Council, now seemed somewhat indistinguishable from those of baptized laity.⁸⁰ In women's communities especially, many wondered why they could not accomplish their religious ministries, especially teaching and health care, without having to be professed members of religious communities.⁸¹ From the point of highest growth of numbers of religious in the United States in 1965 when there were 179,954 women religious and 34,978 men, the number has dropped to 81,161 women and 21,201 men (priests and brothers) in 2000.⁸² Figures for Canada and Western European countries show similar

⁷⁸ In a meeting with the Oblate General Administration on 16 January 1986, Cardinal Jerome Hamer, prefect of the Congregation for Religious and Secular Institutes, alluded to several signs which for him characterized a secularized religious institute. We might summarize these as including: a loss of appreciation for prayer, a decline in community life, more interest in secular rather than religious tasks, and a reduction in use of religious forms of expression and signs, e.g. *Kingdom* rather than *Church*. See "Report of the Superior General to the 1986 Chapter", 20 May 1986, in *Acta Administrationis Generalis O.M.I.*, 9 (1986), p. 165.

⁷⁹ SECOND VATICAN COUNCIL, *Dogmatic Constitution on the Church, Lumen gentium*, 21 November 1964, in AAS, 57 (1965), Chapter V, articles 39-42, pp. 44-49. English trans. in FLANNERY, *Vatican Council II*, vol. 1, pp. 396-402.

⁸⁰ P. WITTBERG, *The Rise and Fall of Catholic Religious Orders: A Social Movement Perspective*, Albany, NY, State University of New York Press, 1994, pp. 231-240.

⁸¹ In the study of a survey of U.S. women religious by M.A. Neal, the highest number of those who left after final vows (61% in 1982) did so due to dissatisfaction with community life. M. A. NEAL, *Catholic Sisters in Transition: From the 1960's to the 1980's*, Wilmington, DE, Michael Glazier Inc., 1984, p. 22.

⁸² Statistics taken from: *The Official Catholic Directory*, New York, P.J. Kenedy, 1817-

declines.⁸³ The number of women entering religious life in the U.S. has dropped from around 7,000 in the early 1960s to less than 1,000 in 1990.⁸⁴ The number of students in religious seminaries has dropped from 22,230 in 1965 to 1,437 in the year 2000.⁸⁵ The median age for women religious was 65 years,⁸⁶ with similar or higher median ages for most men's communities.

The literature on the topic of the decline in religious life in North America and Europe is vast, especially within the past 15 years. Psychological, sociological, theological and canonical studies abound which have examined this topic from a variety of perspectives. In particular, several major sociological studies have been published in the past decades which examine the particular effects both modern society and the Vatican II renewal have had on priesthood and religious life. The majority of these studies do not offer specific criteria for the decision whether to restructure the organization, or to unite or reorganize religious provinces. However, with the goal more commonly expressed in much of this literature for *refounding* or *revitalization*, critical factors are outlined which would lead to a decision for a particular institute to refound or to revitalize itself.

In our research, we have found that several major studies done in recent years analyze particularly well the contemporary situation of religious life in North America

⁸³ WITTEBERG, *The Rise and Fall of Catholic Religious Orders*, p. 2. For statistical reports of numbers of religious in Canada and Western Europe, see: *Annuaire statistique Ecclesiae*, 1970- , Civitate Vaticana, Secretaria Status, Rationarium generale Ecclesiae, 1970- . For Canada: 45,761 religious sisters in 1970, 26,620 in 1997; 11,117 religious priests and brothers in 1970, 6,764 in 1997. For Western Europe: 529,490 religious sisters in 1970, 346,393 in 1997; 102,078 religious priests and brothers in 1970, 76,585 in 1997. See also CANADIAN RELIGIOUS CONFERENCE, *Statistiques des instituts de vie consacrée et des sociétés de vie apostolique au Canada, Statistics of the Institutes of Consecrated Life and of the Societies of Apostolic Life of Canada*, Ottawa, Canadian Religious Conference, 2000, pp. 5, 19 and 30.

⁸⁴ WITTEBERG, *The Rise and Fall of Catholic Religious Orders*, p. 1.

⁸⁵ Statistics taken from: *The Official Catholic Directory*, New York, P.J. Kenedy, 1817-

⁸⁶ WITTEBERG, *The Rise and Fall of Catholic Religious Orders*, p. 2.

and offer some concrete courses of action for the future.⁸⁷ These studies include those authored by: L. Cada et al.,⁸⁸ H. Ebaugh,⁸⁹ D. Hoge,⁹⁰ M. A. Neal,⁹¹ D.

⁸⁷ The following predominant mention of studies done on religious life in the United States relates to our exposé and analysis of the situation of the Oblates in the U.S. There are, of course, other studies that have been done on the situation in Europe and Canada. Some of these have been included in the general bibliography of this dissertation. With regard to the particular Canadian situation, the article by M. THÉRIAULT provides a good summary of the theological and sociological situation of contemporary religious institutes, in "Horizon 2000. Vision et mission de la vie religieuse", in *Vie des communautés religieuses*, 46 (1988), pp. 213-239.

⁸⁸ L. CADA et al., *Shaping the Coming Age of Religious Life*, New York, Seabury Press, 1979, 197 p. This work looks at religious life and the life cycles in historical and sociological models. Throughout the history of the Church, religious institutes have passed through foundation, expansion, stabilization, breakdown and critical periods. In the critical period, the outcome leads to either extinction, minimal survival or revitalization. One conclusion is that the vitality of a religious congregation can be transformed in the measure that it can integrate its charism into new situations. This study is related to that of R. HOSTIE, *Vie et mort des ordres religieux, Approches psychosociologiques*, Paris, Desclée de Brouwer, 1972, 381 p. Hostie's study looked at the historical pattern of life of male religious orders and congregations in Europe. He concluded that two phenomena are evident: there exists a *geographic crucible* in which religious have taken a Western cultural center outwards to the world, and, there exists a common cycle of life in the life and death of all religious institutes, from genesis to extinction to possible rebirth.

⁸⁹ H. EBAUGH, *Women in the Vanishing Cloister: An Organizational Decline in Catholic Religious Orders in the United States*, New Brunswick, NJ, Rutgers University Press, 1993, x, 191 p. This author concludes that, unlike other organizations in decline, religious institutes do not follow the usual pattern of decline. Though not hopeful for a dramatic reversal in growth, in a case study the author shows one congregation as providing ongoing commitment to Christian witness.

⁹⁰ D. HOGE, *The Future of Catholic Leadership: Responses to the Priest Shortage*, Kansas City, MO, Sheed & Ward, 1987, xvii, 270 p. A sociological survey of priests in the U.S. at the behest of the NCCB in 1985. Hoge notes that the priest shortage is an institutional problem, not a spiritual one. He also notes that the shortage of vocations is more extreme in religious institutes than in dioceses. After a review of the survey results of priests and a study of the assimilation of U.S. Catholics into the mainstream U.S. culture, Hoge offers 11 options for alleviating the priest shortage.

⁹¹ M. A. NEAL, *Catholic Sisters in Transition: From the 1960's to the 1980's*, Wilmington, DE, Michael Glazier Inc., 1984, 173 p. This author compares the results of the U.S. "Sisters Surveys" of 1966 and 1982, and offers hypotheses as to why fewer women enter religious life. She notes that sisters have become materially poorer themselves as they focus their ministry toward the needy of society.

Nygeren and M. Ukeritis,⁹² and P. Wittberg.⁹³ Other more specific studies include that done by J. Bartunek⁹⁴ on the process and effects of change in a particular religious institute of women which decided in 1979 to merge five provinces into one province in the United States. Another study, by R. Schoenherr and A. Sorenson, looked at the effects of a declining clergy population in the U. S. Catholic Church.⁹⁵ Of these, in particular, the more recent studies by D. Nygren and M. Ukeritis, 1993, and P. Wittberg, 1994, give some insights to the present situation of the religious life in the U.S as they both offer criteria for changes in structures.

D. Nygren and M. Ukeritis undertook a study funded by the Lilly Endowment between 1989 and 1992 in which they elicited the opinions of over 10,000 religious priests, sisters and brothers in the U.S. This study's purpose was "to examine the

⁹² D. NYGREN and M. UKERITIS, *The Future of Religious Orders in the United States: Transformation and Commitment*, Foreward by D. MCCLELLAND, Westport, CT, Praeger, 1993, xxvi, 313 p.

⁹³ This author's work is cited above in footnote 80.

⁹⁴ J. BARTUNEK, "Changing Interpretive Schemes and Organizational Restructuring: The Example of a Religious Order", in *Administrative Science Quarterly*, 29 (1984), pp. 355-372. "Interpretive schemes" are those mental frameworks that help us describe the world around us. These schemes include those experiences that are particularly relevant and how we are to understand them. The interpretive schemes of the institute involved in the study changed due to the "crisis" caused by Vatican II and its mandates for collaborative analysis and revision of basic principles. The study shows how other factors affect structural change, such as the affective component, in this case expressed as the fears and uncertainty experienced by the members. Also, the environment has an effect, that is, the movements in society, the Church at large and particular events in the institute itself. Finally, the decisions of leadership also affect how these changing interpretive schemes can lead to structural changes.

⁹⁵ R. SCHOENHERR and A. SORENSON, "Social Change in Religious Organizations: Consequences of Clergy Decline in the U.S. Catholic Church", in *Sociological Analysis*, 43 (1982), pp. 23-52. A subsequent study by Schoenherr and others has examined the projected decline of clergy in the U.S. up until 2005, citing recruitment and retention as continuing problems. Two consequences of the declining population are seen to be low replacement rates and expanding parishioner-to-priest ratios. See R. SCHOENHERR and L. YOUNG, with the collaboration of T.-Y. CHENG, *Full Pews and Empty Altars: Demographics of the Priest Shortage in United States Catholic Dioceses*, Madison, University of Wisconsin Press, 1993, xxii, 437 p.

changes that are occurring in the experience and the understandings of religious life."⁹⁶ The following outcomes of this comprehensive study were established beforehand: 1) identification of the normative beliefs about religious life and how they will shape their future; 2) building a national comparative data base of all male and female religious; 3) enabling the leadership of religious orders to identify the current paradigms of planning that enable transformation, consolidation, merging or extinction; and, 4) labeling the changes that must yet occur if religious life is to remain vital.⁹⁷ The Religious Life Futures Project included six studies: a national survey, leadership studies, caring-people and visioning-group units, individual interviews and a theological/historical monograph.

In an explanation of the dynamics of transformation, the authors reflect on how change affects organizational structures: "One of the great challenges for contemporary organizations is adapting structures to support constantly changing or expanding purposes."⁹⁸ It is usually a crisis that brings on a transformation and a shift in a paradigm, which is the structure that supports a specific interpretation of reality or collective action.⁹⁹ This paradigm transformation can produce the effects of paralysis, disorientation, shock, defensiveness, grief and/or anger. The study concluded that the environmental change which exerted the greatest impact on the transformation process was the new understanding of the Church proclaimed during Vatican II, along with its accompanying directives for analysis and revision of basic principles and practices in religious congregations.¹⁰⁰ The study considered

⁹⁶ See D. NYGREN and M. UKERITIS, "The Future of Religious Orders in the United States: Research Executive Summary", in *Origins*, 22 (1992-1993), p. 259.

⁹⁷ Ibid.

⁹⁸ NYGREN and UKERITIS, *The Future of Religious Orders in the United States: Transformation and Commitment*, p. 1.

⁹⁹ Ibid., p. 2.

¹⁰⁰ NYGREN and UKERITIS, "Research Executive Summary", p. 260.

change at various levels: that of the social institution of religious life, the religious orders themselves, and the individual members. The general conclusion of this Futures Project was that dramatic changes must occur in most religious congregations in the United States. Religious must take an active stance in the present to ensure a future:

A future marked by significant revitalization will emerge for those congregations that are rooted in their relationship with God, and, in a spirit of fidelity to their founding purpose and responsiveness to absolute human need, confront the current gap between the Gospel and culture.¹⁰¹

The study found that both individual and collective conversion are needed in eight critical areas in order to move congregations from the present to a desired future: 1) individualism and vocation; 2) leadership; 3) authority issues; 4) work and corporate identity; 5) affiliative decline and role clarity; 6) racism and multiculturalism; 7) materialism and the Gospel; and, 8) charism and parochial assimilation. Among these conclusions the "most compelling result" of the study indicates that a significant percentage of religious no longer understand their role and function in the Church.¹⁰² This conclusion regarding the lack of role perception was affirmed by many of the other studies, including the following one.¹⁰³

P. Wittberg undertakes a sociological study of the life cycles of religious orders,¹⁰⁴ considering religious as social movements.¹⁰⁵ She looks at these cycles

¹⁰¹ Ibid, p. 270.

¹⁰² NYGREN and UKERITIS, "Research Executive Summary", p. 271.

¹⁰³ The same authors later gave a synopsis of their study as it affected religious priests, noting the importance to "come to new understandings of both religious life and priesthood" as religious priests increasingly become involved in parish and diocesan structures and ministry. See M. UKERITIS and D. NYGREN, "Voices of Religious Priests: Data from the FORUS Study", in P. HENNESSY, ed., *A Concert of Charisms: Ordained Ministry in Religious Life*, New York/Mahwah, NJ, Paulist Press, 1997, pp. 169-183.

¹⁰⁴ While noting the difference between "orders" and "congregations", the author uses the terms interchangeably. "Orders" here denotes all types of men and women's

from two levels. On the macro level, religious foundations are considered as social movements of "religious virtuosi" with particular ideologies. On the micro level, the author studies the religious foundations in the dynamics of intentional communities. The author's research agenda attempted a sociological analysis of periodically recurring cycles of Roman Catholic religious life. After outlining the general history of religious orders in the U.S., Wittberg shows how the present age (1950 - 1990) has seen a collapse of the ideology of religious life in large part due to the renewal in structures mandated by Vatican II. The ideology collapses with regard to: 1) the purpose of religious life (religious are no longer understood as distinct from the rest of the baptized due to a "universal call to holiness"¹⁰⁶); and, with regard to 2) the vows and community life (a loss of role clarity when interpretation of the vows is fragmented and boundary maintenance and common lifestyle erode as religious have more contact with people "outside" the community). While the "religious virtuosi" and the intentional community have lost their reasons for existence, they have at the same time experienced a withdrawal of the resources on which they depended: new recruits and many of the community's external supports. In the author's comparison with previous cycles of religious communities, she finds that the loss of both ideology and internal and external supports at the same time is unprecedented, resulting in a collapse of religious orders as we have known them up to now. The author concludes that the formulation of a new "Catholic virtuoso" spirituality for religious is essential both for the vitality of religious life and the Church itself. The door is left open to new religious groups who will eventually become the "religious virtuosi" of the future.

vowed religious communities. See WITTEBERG, *The Rise and Fall of Catholic Religious Orders*, p. 285, note 2.

¹⁰⁵ The historical/cyclical approach is similar to that taken by the studies of L. Cada et al. and R. Hostie.

¹⁰⁶ See *Lumen gentium*, 39-42. English trans. in FLANNERY, *Vatican Council II*, vol. 1, pp. 396-402.

Two other studies done in relation to the National Conference of Catholic Bishops (=NCCB) also shed some light on the situation of the religious in the U.S. and criteria for changing structures. The first of these began when Pope John Paul II established a three-person pontifical commission in 1983 to undertake a study of the decline of vocations to the religious life in the U.S.¹⁰⁷ This study, undertaken with the support of the NCCB and both men and women's conferences of major superiors of religious, was to seek to answer the questions of why so many had left religious life and why so few are entering it. The process involved listening sessions, dialogue and evaluation by bishops and religious. The commission issued its final report in November, 1986.¹⁰⁸ It concluded that there were five general classes of reasons for decline in vocations to the religious life: 1) cultural factors; 2) the impact of the Second Vatican Council; 3) developments in the Church in the United States; 4) impact of all the above on religious communities as such; and, 5) experiences which have affected religious choices.¹⁰⁹ In conclusion, the commission remarked that the current decline in numbers is due to systemic causes more than the fault of individuals or the lack of religious spirit; religious life in the

¹⁰⁷ JOHN PAUL II, Letter to the Bishops of the United States, 3 April 1983, in *The Pope Speaks*, 28 (1983), pp. 292-297. From *L'Osservatore romano (English edition)*, 3 July 1983, pp. 3-4. This special commission included Archbishops John R. Quinn and Thomas C. Kelly, and Bishop Raymond W. Lessard.

¹⁰⁸ PONTIFICAL COMMISSION ON RELIGIOUS LIFE, "U.S. Religious Life and the Decline of Vocations", in *Origins*, 16 (1986-1987), pp. 467-470.

¹⁰⁹ *Ibid.*, p. 468: 1. Cultural factors - new attitudes towards freedom, authority, obedience, affectivity, intimacy, sexuality, changes in technological culture, dynamics of rapid cultural change and difficulties of permanent commitment; 2. Impact of Vatican II - universal call to holiness, new emphasis on social morality, new role to the laity; 3. Developments of the Church in the U.S. - from an immigrant church to mainstream culture which was undergoing far-reaching shifts; 4. Impacts on Religious Communities - technology made communication easier with European mother houses, yet communities already more American than European, more options for women in society; and, 5. Experiences which affect personal choices - identity crisis, interiorization of religious life, public witness more of a challenge, selection process tighter, celibacy and permanence make religious choice difficult.

U.S. overall is in good condition. The report concluded with some remarks on areas that need further study: 1) a more balanced ecclesiology harmonizing "People of God" with the hierarchical Church; 2) the movement for the promotion of women in society and in decision-making roles in the Church; 3) the role of superiors and authority; and, 4) certain tensions which exist between some religious and the Holy See.¹¹⁰

In 1988, the NCCB Committee on Priestly Life and Ministry also issued some reflections on the question of priestly morale.¹¹¹ After reviewing the various studies that the bishops' conference had issued since 1973 on the priesthood in the U.S. Church, in these present reflections the bishops state:

Although there are present today powerful individual examples of priestly ministry shared in creative and energizing ways which continue the mission and ministry of the Church, it is also clear that there exists today a serious and substantial morale problem among priests in general.¹¹²

The document lists several concerns which have a negative impact upon the lives of priests: role expectations, declining number of active priests, loneliness, issues surrounding sexuality, differing perceived ecclesiologies, and, the need for affirmation. Therefore, the areas that need to be "substantially and seriously addressed" are: 1) the sense of priests' ownership and participation in light of major events and directions of their lives and the Church; 2) the need for a sense of community, common vision and mutual responsibility; 3) new language in terms of today's culture and society to speak of celibacy, sexuality, and the ways priests appropriate this commitment in their lives; 4) particular concerns which include

¹¹⁰ PONTIFICAL COMMISSION ON RELIGIOUS LIFE, "U.S. Religious Life and the Decline of Vocations", p. 469.

¹¹¹ NATIONAL CONFERENCE OF CATHOLIC BISHOPS, Committee on Priestly Life and Ministry, "Reflections on the Morale of Priests", in *Origins*, 18 (1988-1989), pp. 497-505.

¹¹² *Ibid.*, p. 499.

rectory living, term of office, personnel boards, rewards and recognition, benefits, private life and intimacy, and personal contact with their bishop; and, 5) resources need to be made readily available by dioceses and institutions for dealing with problems of morale and ministry. The reflections give some advice to bishops on how they can respond to these concerns as persons, as leaders and as participants in diocesan, regional and national structures.

Though this study considers, primarily, the position of diocesan priests, since many religious priests are employed in diocesan parish ministry in the U.S. and work alongside the diocesan clergy within the local church, many of these conclusions would be applicable. All priests in the U.S. must work in the same cultural context. Perhaps, too, analogy could be made with the relationships to authority both in the diocesan and religious priesthood, whether with the bishop or the provincial.

In conclusion, taking as our premise that law follows life, a canonical study of the fusion, union or reorganization of religious provinces must take into account the present situation of life among religious institutes. The studies of how social trends have impacted the practice of religious life will produce effects upon the internal spiritual life as well as upon the external structures of communities. There are several essential factors which can produce positive effects upon the future of religious communities in North America and their structures: strong personal faith in God with an insight into the relation of the Gospel with the multi-cultural dynamic in today's society, a visionary and pro-active religious leadership, a renewed self-identity based upon an appreciation of a founding charism and an understanding of the present role of religious in the Church and society, and, finally, an understanding and practice of the values of the common life. As we shall now see, these rather intangible criteria have been reduced to more concrete ones for restructuring of religious communities and assessment of a group's or province's viability. Perhaps, flexibility in regard to ongoing changes would be one of the more important marks of these new structures.

C. Criteria developed by Conferences of Religious Superiors in the United States

The union and suppression of religious institutes has been a relatively frequent occurrence in the United States since Vatican II. In 1994 a group sponsored by the Leadership Conference of Women Religious (LCWR), the National Association for Treasurers of Religious Institutes (NATRI), and the National Religious Retirement Office (NRRO) convened to discuss issues related to the viability of religious institutes.¹¹³ After some members had shared five case studies of union, fusion and/or suppression of institutes, resource persons drew up a list of four elements essential for viability in religious institutes, which, we believe, also apply to the parts of the institute or its provinces. These elements include: 1) a corporate focus on mission, 2) a critical mass of members to support the mission, 3) a pool from which leadership of the institute can be drawn, and 4) adequate financial resources to maintain the institute and support its mission. Self-evaluation questionnaires were included in a booklet so that institutes could apply the related topics of these elements of viability to their own particular situation.

D. Criteria developed through the Sisters of Mercy in the United States

The movement toward union among the Sisters of Mercy in the United States is one that is well documented and shows various criteria that were used as reasons for amalgamation. The Irish founder of the Sisters of Mercy, Catherine McAuley, herself expressed a desire for unity among the various communities for

¹¹³ This study is discussed in: *A Critical Juncture: Assessing the Viability of Religious Institutes, An Instrument for Self-Evaluation*, 2nd edition, Silver Spring, MD, LCWR, NATRI, NRRO, 2000, pp. ii-iii. A previous comparative study done on the issue of viability of religious institutes is found in E. O'HARA, "Guidelines and Instruments for Discerning the Viability of Religious Institutes", in *CLSA Proceedings*, 51 (1989), pp. 48-64.

the exercise of Mercy from the time of the institute's founding.¹¹⁴ Though there is some debate as to whether the unity she desired was to be one in spirit or in organization, it seems that, due to canonical and hierarchical concepts regarding religious institutes of women in the early part of the nineteenth century, the Mercy communities experienced fragmentation in their early years of growth.

Certain criteria were used to seek a closer bond of Mercy unity in the twentieth century. The reasons given for the union of various autonomous Mercy houses in the U.S. as noted by the Apostolic Delegate, Archbishop D. Falconio, in a 1905 letter addressed to the U.S. hierarchy include: to strengthen the condition of the institute, to promote regular observance of the constitutions and rules, and to lead to a better preparation for ministry.¹¹⁵ These benefits for unity are echoed in a letter by Mother M. Carmelita, one of the early superiors and proponents of the union.¹¹⁶ More recently, the stated reasons for further restructuring efforts which culminated in the Holy See's approval of the Institute of the Sisters of Mercy of the Americas in 1991 included: greater collaboration among the various units in witness to the Gospel and the Mercy charism, greater impact in addressing injustices, sharing of resources, national structure which would decrease the number of personnel in administration.¹¹⁷ The Holy See insisted that any structural juridical changes should

¹¹⁴ J. SABOURIN, *The Amalgamation: A History of the Union of the Religious Sisters of Mercy of the United States of America*, Saint Meinrad, IN, Abbey Press, 1976, p. 3.

¹¹⁵ See *ibid.*, pp. 21-23. A further description of Archbishop Falconio's rationale for unity as a means for spiritual renewal and a better way to live out the institute's charism is found in a decree of 29 August 1911 uniting houses in Connecticut, reported in DARCY, *The Institute of the Sisters of Mercy of the Americas*, pp. 194-195.

¹¹⁶ "With amalgamation we will have but one Constitution, a stronger organization, uniform and better training for our novices, irregularities will be corrected, non-canonical houses will be closed, customs will be defined, definite regulations will be made regarding our habit, outdoor dress, etc." See SABOURIN, *The Amalgamation*, p. 97.

¹¹⁷ DARCY, *The Institute of the Sisters of Mercy of the Americas*, p. 98, footnote 29.

reflect the deeper reality of a fuller religious life for members and a more effective service of the Church in mission.¹¹⁸

E. Criteria developed by commentators on the 1983 Code

In her study of the fusion and union of institutes, M. Bair notes that rather than simply through force of necessity, the criteria or motivation for union may come from a desire to realize better the charism of the institute's founder.¹¹⁹ Union with another group could help to strengthen the consecrated life, consolidate the values of the charism and achieve greater efficiency in the coordination of ministries and administration. The spiritual, rather than simply the pragmatic or the efficient, must be at the base of the restructuring. Other aspects which contribute to the discernment include the cultural, geographical, and financial circumstances, as well as the civil structures of the institute and its apostolates.

The same author and J. Hite list in a related article other reasons which might prompt an institute to consider merger or union with another group based upon the Vatican documents.¹²⁰ First, the institute has had few if any new members over a long period of time. Second, the number of members has been significantly decreased through death and departure. Third, the members have great difficulty in caring for their ministries or their members, especially the sick and the elderly. Fourth, the institute has difficulty in obtaining financial support for care for its members and ministries. Some of the more common particular factors to consider would include: charism, lifestyle, ministries, culture, geography, spirituality,

¹¹⁸ CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, 1 March 1988, Prot. n. B 220-1/86, p. 2, as quoted in DARCY, *The Institute of the Sisters of Mercy of the Americas*, Appendix IV - D, pp. 216-217.

¹¹⁹ BAIR, *Fusion and Union of Institutes of Consecrated Life*, pp. 223-225.

¹²⁰ M. BAIR and J. HITE, "The Merger and Union of Religious Institutes", in *Selected Issues of Religious Law*, P. COGAN, ed., Washington, DC, CLSA, 1997, p. 50.

government, size, psychological effects, civil law organization and finances.¹²¹ Though, in the case of deciding whether provinces of an institute should be united or reorganized one would suppose such things as charism, lifestyle, spirituality and government would be the same, this is not always the case. Each province has a particular history and has developed its own particular life or culture of which sensitive leaders must be aware.¹²²

Commentators on canons 581 and 585 in the 1983 Code mention possible criteria for the union or suppression of religious provinces. R. McDermott states that the lack of personnel and resources often necessitates a union or suppression of a part of the religious institute.¹²³ She also notes that ordinarily a "grave or very serious reason" must precede the suppression of a province, since this action has an effect on the life and mission of the Church as well as on the institute itself.¹²⁴ Concern for the good of the members of the particular church both in the cases of union and of suppression of a province could call for consultation with the diocesan bishop as well. Furthermore, as noted by E. Williamson, the decision for union or suppression and even the process leading up to it are influenced by the complexity of the modern world, with its rapidly changing political, geographic and social situations.¹²⁵ Finally, another commentator notes that, in conformity with the elements required for a province's erection as a juridic person, when it lacks

¹²¹ BAIR and HITE, "The Merger and Union of Religious Institutes", pp. 51-52.

¹²² These differences in cultural issues amongst provinces are discussed in G. ARBUCKLE, "Merging Provinces", in *Review for Religious*, 53 (1994), pp. 352-363.

¹²³ R. MCDERMOTT, "Structural Divisions of Institute", commentary on c. 581, in *New Commentary on the Code of Canon Law*, p. 749.

¹²⁴ *Ibid*, p. 752.

¹²⁵ E. WILLIAMSON, "Norms Common to All Institutes of Consecrated Life", commentary on c. 581, in G. SHEEHY et al., eds., *The Canon Law, Letter and Spirit: A Practical Guide to the Code of Canon Law*, prepared by The Canon Law Society of Great Britain and Ireland in association with The Canadian Canon Law Society, Collegeville, MN, A Michael Glazier Book, The Liturgical Press, 1985, p. 320.

sufficient members, communities, and means of subsistence to constitute a province, it is time to consider union or suppression of the province.¹²⁶

III. ELEMENTS OF THE PRESENT CANONICAL PROCESS

As in the case of criteria for deciding when to unite or reorganize religious provinces, the 1983 Code is silent on the canonical process relating to them. In c. 581, the Code states that the competent authority for these decisions is determined by the constitutions of each institute.

The commentators, as well as the consultors on the Code Commission, have foreseen that various scenarios could arise which might call for different authorities in the institute to be involved in the division of provinces.¹²⁷ When the institute makes its first division into provinces, this is a major decision affecting the future of the institute as a whole. Given its nature and gravity, this decision might best be left up to the general chapter, acting as the supreme authority within the institute. It would also entail a major revision of the institute's constitutions, which is the prerogative of the General Chapter. In the case where the province structure is entirely suppressed, this is also a serious decision perhaps more properly, though not exclusively, left to the General Chapter. However, when additional provinces are established or reorganized, or existing ones are suppressed, the superior general and council, who are apprized of the day to day issues throughout the institute would be the more likely ones to make these decisions.¹²⁸ Thus, when it

¹²⁶ COMITÉ CANONIQUE DES RELIGIEUX, *Directoire canonique: vie consacrée et sociétés de vie apostolique*, Paris, Les Éditions du Cerf, 1986, p. 71.

¹²⁷ We have noted above that any act of establishment or suppression of provinces which is not provided for in the institute's constitutions would first require an approved amendment by the competent authority, either the Holy See or the diocesan bishop, after receiving approval by the institute's general chapter. See CIC, 1983, c. 587 § 2.

¹²⁸ See MCDERMOTT, "Structural Divisions of Institute", p. 749; also WILLIAMSON, "Norms Common to All Institutes of Consecrated Life", in pp. 320-321.

is a question of the union or reorganization of existing provinces, the superior general in council would seem to be the more likely competent authority indicated in the institute's constitutions.

Where does the impulse to unite or reorganize the religious provinces usually originate? In her study of several mergers, E. O'Hara suggests that, in cases of mergers (fusions or unions) of institutes, usually the institute's leaders are the ones who most often and most easily consider restructuring.¹²⁹ They are the ones who see the broader needs of the institute and are less threatened by the prospect of structural change. They also are often in contact with leaders of other institutes who perhaps are considering similar issues. However, the members themselves within certain provinces could initiate a grass roots movement to reorganize for the betterment of their apostolate and the community life.¹³⁰ O'Hara notes, though, that in cases of an institute's suppression, the motivation usually seems to originate from a source external to the community, an ecclesiastical authority or a canonical visitor, for example. This would seem to be less likely in the case of a matter internal to the institute such as the reorganization of the provinces.

We can adopt some of the procedures mandated by *Perfectae caritatis* and *Ecclesiae sanctae* II for institutes as a whole, and apply them accordingly to the institute's internal reorganization. The suggested procedure is described in art. 39 of *Ecclesiae sanctae* II:

The project for a union between institutes—whatever its nature may be—supposes an adequate preparation, spiritual, psychological, juridical, according to the mind of the Decree *Perfectae caritatis*. For this, it is often desirable that the institutes should have the help of some assistant approved by the competent authority.¹³¹

¹²⁹ See O'HARA, "Issues of Aggregation, Merger and Dissolution", p. 162.

¹³⁰ See T. JOHNSON, "The Choice to Begin Anew: Anatomy of a Provincial Merger", in *CMSM Forum*, Winter 1996, pp. 15-16.

¹³¹ *ES*, II, 39. English trans. in FLANNERY, *Vatican Council II*, vol. 1, p. 632.

These preparatory procedures can be presumed to precede the actual canonical process for the union or reorganization of provinces. Furthermore, as called for in *Perfectae caritatis*, article 2, the adaptation of structures presumes interior renewal: a return to the sources of Christian life, and consideration of the needs of the present day world.

A spiritual and psychological preparation should precede the juridical preparation, and would be part of the initial consultation of the membership. The members should be informed of the process envisaged for consultation and of the possible results for the union or reorganization of the provinces. As they are involved in the process the members can begin to reflect more realistically on their individual and common future as religious. Among the important issues to be discussed is the reason for seeking this union or reorganization, and the fundamental individual and communal identity as religious.¹³² Another important issue for the viability of any religious community is to discern the common focus of its mission. The members of the community must be led to know themselves and each other better, and to see their present and future lives as religious in light of the paschal mystery.¹³³ Of course, any foreign mission communities dependent upon the respective provinces should be included in this process.

In all of these community gatherings, as is suggested by *Ecclesiae sanctae* II, the assistance of competent facilitators is highly recommended. As persons trained in group dynamics and consensus, facilitators would be best qualified to help draw up a process for a particular community, given its particular situation and culture. Other valuable assistance could be provided by a trained canonist who could help

¹³² B. EICHEN, "Merger Issues and Ways to Address Them", in *Review for Religious*, 57 (1998), p. 395.

¹³³ In the study of the life cycles of religious communities, the sociological studies mentioned above, especially those of L. Cada, R. Hostie, and D. Nygren and M. Ukeritis insist on this point. Cada goes on to explain the ongoing growth of the community in terms of E. Kubler-Ross' dynamic stages of death and dying. See CADA, *Shaping the Coming Age*, p. 100.

the leadership become aware of the juridical requirements in the process. The role of leadership is also of the utmost importance, as the literature suggests, especially in the style of leadership.¹³⁴

Preliminary collaboration between provinces is beneficial in this preparation process, for example, by sharing in areas of formation, ministries and governance.¹³⁵ Opportunities for cross-province sharing are important ways to build relationships and break down possible barriers and fears of the unknown. Members could be encouraged to volunteer for inter-provincial ministry sites, or to attend inter-provincial annual spiritual retreats. Students in formation could be exchanged, or interprovincial formation programs established. Given the background situation and the history of provinces contemplating uniting, this collaborating status might even need several years to show any durable benefits.

As the leadership and members decide whether to petition for union or reorganization, certain financial preparations must also be made. For the benefit of the new administrators, an accurate inventory of movable objects and immovable property should be prepared (c. 1283, 2°). Also included could be a title search for all properties, a report of all provincial investments and trusts, pension funds, personal patrimonies held in trust and all community insurance policies.¹³⁶ Each province should note which properties or funds are included in its stable patrimony. With regard to the civil law, there should be a report of any present or potential

¹³⁴ NYGREN and UKERTIS, *The Future of Religious Orders*, pp. 37-98. Also G. ARBUCKLE, "Provincials as 'Cultural Revolutionaries': The Role of Superiors Today", in *Review for Religious*, 44 (1985), pp. 175-190.

¹³⁵ In the case study of a merger of provinces in a women's congregation, this cross-provincial sharing in commissions and other groups led to a successful merger. See BARTUNEK, "Changing Interpretative Schemes and Organizational Restructuring", pp. 362-364.

¹³⁶ Also, this report should mention any particular directives or acquired rights in gifts, bequests or trusts that may be adversely affected by the proposed union of the provinces. For example, monies that must be used within a particular jurisdiction, administered by a particular group of persons, or other such stipulations.

liabilities and lawsuits, outstanding debts or mortgages and a listing of all civil corporations for which the province is responsible. An important related issue to determine will be the site of the new province's headquarters, which will directly determine issues of staffing and searches for support personnel, especially when legal, financial and investment advice is received.

After the respective provincial superiors and councils discern that the union or reorganization is both feasible and desirable, they can begin the canonical process to petition the competent authority of the institute to initiate the changes. This process would vary from institute to institute, depending upon the case at hand and who is the competent authority making such a decision. Questions relating to the motive, the purpose and the vision of the structural changes should be addressed by the leadership.¹³⁷ In the spirit of renewal, reasons promoting the merger should be more than simply assuring survival of certain apostolates. Possible special statutes or procedures might be drawn up to provide for new government structures and policies. The petition to the competent authority, besides giving the reasons for the petition, a listing of province members and any proposed special statutes, should also include a summary report of the financial condition of each province. Once the competent authority has received a formal petition for a union or reorganization, the process of canonical consultation begins.

The consultation usually takes the form of personal interviews and written ballots administered by the representatives of the institute, for example, members of the general administration. This could include a list of questions to be asked of each member, with ample opportunity for personal comments and opinions. Written ballots could also be provided to allow the members to express their opinions directly and privately.

¹³⁷ ARBUCKLE, "Merging Provinces", pp. 359-360.

If the decision is in the affirmative, a formal decree establishing the fusion or union of provinces is issued.¹³⁸ If a new province is formed, a new juridic person is established, usually entailing the suppression of all or some of the former juridic persons. When two or several provinces are joined in a fusion, one of the provinces' juridic personality remains while the others are suppressed. As required by c. 121, the new province as a juridic person assumes the goods and patrimonial rights of the former provinces, as well as any of their obligations, respecting the rights of donors and the intentions of founders. Special statutes or policies for the new province could be approved for a probationary period of a few years so as to verify the lived experience. The competent authority would also allow several months for the consultation process for the new provincial leadership and for executing the necessary arrangements to protect the assets of the new province under civil law. Where such are foreseen, a provincial chapter could be convened for the purpose of laying out a vision for the new structure and electing the new leadership.¹³⁹

The provinces would then establish committees to discuss formation and other personnel issues such as ministry placements and retirement. Contacts should be made with all the respective dioceses in which the province ministers to inform them of the administrative realignments, and, once they are determined, indicate to the diocesan bishops who the responsible religious superiors will be. A joint planning committee could look at the commitments the provinces presently have in the areas of public policy education and social justice, and decide how to plan for future involvements. The transition process involves other opportunities to create a sense of unity and break down any residual prejudices among the former provinces.

¹³⁸ Commentators note that where the decision is made by the superior general in council, this would require the consent of the council. See GAMBARI, *Religious Life*, p. 527; and, D. J. ANDRÉS, *Il diritto dei religiosi: commento esegetico al Codice*, 2a ed. italiana, versione integra aggiornata della 4a ed. spagnola, Roma, Edurcla, 1996, p. 23.

¹³⁹ See JOHNSON, "The Choice to Begin Anew: Anatomy of a Provincial Merger", p. 22.

IV. JURIDICAL EFFECTS OF REORGANIZATION OF PROVINCES

The specific canonical type of provincial reorganization will determine the precise juridical effects which subsequently take place. In the situation of a canonical fusion, one or several provinces or smaller entities (vice provinces, delegations, vicariates etc.) are simply joined or fused to a larger or more stable province. Here, some juridic persons would be suppressed if these former units had juridic personality, being absorbed into another and perhaps larger existing province and juridic person. In other cases two or more provinces or smaller entities are joined or united to form a completely new province or juridic person. In the case of a canonical union, the former juridic persons are suppressed in favor of the newly erected province and juridic person. In cases of reorganization which simply involve realignment of a province's territorial boundaries or the inclusion of a smaller entity which has no juridic personality (possibly a mission or a delegation, for example), there may be no suppression of any juridic personality at all.

As the competent authority approves the fusion, union or reorganization of provinces, the new province or entity is given its name. In a fusion of a smaller province, provinces, vice provinces, etc. with a larger one, the name of the larger province could be retained, although sometimes a new name is chosen to signify a new beginning. In a union of two or more provinces where all become a new juridic person, a new name is usually given. The authority decides whether to approve or amend any proposed special statutes or procedures, perhaps approving them for a probationary period. Included in the decision could be approval of particular administrative structures (provincial superior, council and treasurer) as well as for the basic structure related to local communities and houses, taking into account the provisions of the proper law of the institute. At the same time arrangements are usually made for the consultation process for the new leadership in the province. A specific date is set for the leaders' appointment in office and for

the official inauguration of the province. The boundaries of the newly formed or reorganized province are determined, as is the site of its headquarters.

Upon the decree of establishment of a new province, whether it is a completely new juridic person or an existing one with reorganized territory, personnel, etc., the process of total or partial suppression of juridic personalities prompts important canonical implications. Canon 121 specifies some of these particular juridical effects of the reorganization:

This new juridic person receives all goods and patrimonial rights proper to the prior ones and assumes the obligations with which they were burdened. With regard to the allocation of goods in particular and to the fulfillment of obligations, however, the intentions of founders and donors and acquired rights must be respected.¹⁴⁰

The new province inherits both the assets and the liabilities of the former provinces. However, civil corporations of the former provinces may continue to exist for a certain amount of time to satisfy requirements related to acquired rights, bequests or liabilities. In due time, however, new civil documents for incorporation, property titles, mortgages, etc., should be drawn up to correspond with the new province's rights and obligations according to the civil law. The status of the newly reorganized province will, of course, have effect upon any sponsored apostolates of the former provinces, especially if they had been established with separate juridic personality.

We note that if the province itself is divided into parts which are joined to another province, or if one of the parts should become a province and juridic person itself, the norms of c. 122 would apply with regard to the division of common patrimonial goods and rights, debts and other obligations and also with regard to the use and usufruct of common goods that are not divisible. Since the usual procedure for a suppressed province is that it be joined either wholly or partially

¹⁴⁰ CIC, 1983, c. 121: "...nova haec persona iuridica bona iuraque patrimonialia prioribus propria obtinet atque onera suscipit, quibus eaedem gravabantur, ad destinationem autem praesertim bonorum et ad onerum adimpletionem quod attinet, fundatorum oblatoorumque voluntas atque iura quaesita salva esse debent." English trans. in *Code of Canon Law, New English Translation*, CLSA, 1999.

with another juridic person, the provisions of c. 123 would not be necessary. However, if in a certain case the province is simply suppressed, as for example in the case of a non-territorial province originally established for a specific language or cultural group where there is no longer a pastoral need, the provisions for extinction of a public juridic person in this canon would apply regarding allocation of its goods, patrimonial rights and obligations.¹⁴¹

The reorganization also brings about certain juridical effects regarding the relationship of the province to the institute. As the assets and income of the former provinces are combined, the amount of the newly established province's contribution to the institute's general fund will need to be determined. Also, the new province's alignment may imply changes in representation at the institute's general chapter and possibly even representation on the general council. Naturally, since the former provinces belong to the same institute, in the new realignment the members continue to have the right and obligation to preserve their institute's charism.

Members of any suppressed provinces or other entities now belong juridically to the new one, and are placed under the authority of its major superior. Unless changes have been made by the competent authority, the missions or delegations attached to the former provinces now become attached to the new one, and also become subject to the new major superior. A new policy or administrative manual should be developed to address issues of lifestyle and finances, so that administrative practices of the new province are clearly defined. Notification should be made to bishops of the respective dioceses where the members of the new province minister, giving the official name of the new province, the address of its

¹⁴¹ Another example of a reason for the suppression of a province would be adverse changes in the secular political government. Political upheaval in Laos and the forced expulsion of most of the Oblate missionaries led the Oblate Superior General in Council to suppress the vice province of Vientiane-Laos in 1976. A district in Thailand of the former Laotian vice province was later created into a separate Delegation. Recently, the process of canonization has begun for eight Oblates who were killed during the period of violence in Laos. See *Acta Administrationis Generalis O.M.I.*, 3 (1976-1977), p. 146.

headquarters, and its major superior and other superiors, when they have been named. Other possible juridical effects of the union or reorganization of provinces could be determined by the proper law of each institute.

V. PROPER LAW: 2000 CONSTITUTIONS AND RULES OF THE OBLATES OF MARY IMMACULATE

A. The competent authority

In the first chapter of this study we have shown how the structure of a province was introduced into the Congregation of the Missionary Oblates of Mary Immaculate. We have also explained the criteria and procedure for the establishment of a province found in the OMI 2000 *Constitutions and Rules*. Now we consider in this chapter the criteria and procedure for the union or reorganization of provinces within the Oblate congregation according to the current proper law and its praxis.

The present 2000 *Constitutions and Rules* of the Oblates reflect the changes in the universal law through the norms of Constitution 98.¹⁴² As expressed in Rule 146a, the competent authority for the union, suppression or reorganization of provinces in the Oblate Congregation, the superior general "in council",¹⁴³ makes these decisions in a plenary session.¹⁴⁴ The decision requires the council's

¹⁴² *OMI Constitutions and Rules* 2000, Const. 98: "It pertains to the Superior General in Council to establish Provinces, to change their boundaries, and to suppress or unite existing Provinces. Before taking any such actions, the Superior General will consult those concerned."

¹⁴³ In the Oblate proper law, "in council" denotes "with the consent of the council", as explicitly stated in Const. 86, *OMI Constitutions and Rules* 2000.

¹⁴⁴ *Ibid*, R. 146a. "Plenary sessions of the Council are held at least twice yearly. All the members of the Council are convoked to deliberate with the Superior General on major items of business, as determined by the Constitutions and Rules, by the Chapter or by the Superior General in Council. Major items of business are: ... —the determination

consent.¹⁴⁵ Any modification in this determination of the competent authority in the Oblates would have to be decided by a general chapter with approval from the Holy See.¹⁴⁶

B. Criteria used for union, suppression or reorganization of provinces

The Oblates, like most of the clerical congregations established during the 19th century, experienced continuous growth in numbers up until the mid 1960s.¹⁴⁷ This growth occasioned a revision of administrative structures as found in the experimental 1966 *Constitutions and Rules*¹⁴⁸ for the Oblate provinces and mission vicariates. The *province* remained the more stable and developed structure, still requiring permission of the Holy See to be established.¹⁴⁹ The other structures, somewhat less stable or developed and capable of being established and modified without intervention of the Holy See, were the *vice-province* and the *delegation*.¹⁵⁰

of the composition of the Regions, the establishment or suppression of Provinces and General Delegations, or the confirmation or the suppression of a Provincial Delegation, the acceptance of a new Mission.”

¹⁴⁵ “With [the superior general’s] council... the consent of the Council is required in the following cases: ... 15. To establish a Province or suppress it, to unite existing Provinces or change their boundaries...”, in *OMI Constitutions and Rules 2000*, the “Administrative Summary for Superiors and Councils”, pp. 208-214.

¹⁴⁶ *Ibid*, Const. 126.

¹⁴⁷ See the chart describing this evolution of clerical congregations from 1850 until 1970 in HOSTIE, *Vie et mort des ordres religieux*, pp. 352-353. The Oblates grew from 270 members in 1850 to 7,628 in 1965.

¹⁴⁸ *Constitutiones et Regulæ Congregationis Missionariorum Oblatorum Sanctissimæ et Immaculatæ Virginis Mariæ a Capitulo Generali XXVII Exaratae*, Romæ, 1966 (Latin/English version), 148 p.

¹⁴⁹ *OMI Constitutions and Rules 1966*, Const. 167.

¹⁵⁰ *Ibid.*, Consts. 167, 168. Following the approval of the 1966 *Constitutions and Rules* by the Holy See, in February, 1967, former mission vicariates began to be erected into provinces, beginning with Lesotho, Ceylon, Australia and the Philippines.

These distinctions were maintained in the 1982 *Constitutions and Rules*, but without reference to the intervention of the Holy See.¹⁵¹

With the steady expansion and growth of the Oblate Congregation, a procedure for the union, suppression or reorganization of provinces was only rarely called for until after Vatican II.¹⁵² However, as with most congregations, the effects of secularization and declining numbers of members began to be felt by the Oblates in the late 1960s. The issue of secularization affecting the life of the Oblates in a particular province was discussed by the Superior General, Fr. F. Jetté, in his report to the 1986 General Chapter. He related that this secularization was characterized by the following: a loss of a sense of charism of working with the poor, decline in community life, a diminished visibility as religious men of faith, and decreased emphasis upon directly proclaiming the message of Christ.¹⁵³ The renewal of the Church and religious life saw continually declining numbers within the Oblates, especially in the Northern Hemisphere. According to official Oblate statistics, there

¹⁵¹ *Constitutions and Rules of the Congregation of the Missionary Oblates of Mary Immaculate*, Rome, Missionary Oblates of Mary Immaculate, Casa generalizia, 1982, Consts. 78, 79.

¹⁵² One notable exception would be the civil dissolution of the two original French provinces, Midi and Nord, following political turmoil in France in the early 20th century. In 1904 some twenty-one Oblate communities in France were dispersed and Oblate properties were seized by anti-clerical French government forces. The majority of the Oblates stayed in France, living in small communities. The general chapter of 1904 created six districts under the direction of superiors, and these Oblates tried to maintain religious life and some apostolate despite adverse conditions. The province of France Nord reestablished some institutions for an interim period in Belgium, and France Midi did the same in Italy, leading to the birth of new Oblate provinces in those countries. Following World War I and an accord between the government of France and the Holy See, the Oblates began to reoccupy some of their houses in France. By the Oblate general chapter of 1926 both France Nord and Midi had taken root again in their native land. See D. LEVASSEUR, *A History of the Missionary Oblates of Mary Immaculate: Toward a Synthesis*, vol. II, 1898-1985, J. RHEIDT and A. KEDL (trans.), Rome, General House, 1989, pp. 23-38.

¹⁵³ *Acta Administrationis Generalis O.M.I.*, 9 (1986), pp. 166-167.

were 7,540 members worldwide in 1967, 5,739 in 1981, and 4,634 in the year 2000.¹⁵⁴

At the conclusion of the 1980 General Chapter, the capitulars mandated the general council to study the number and composition of the provinces and vice provinces within the Congregation. The purpose of this study would be to define more precise criteria for the establishment of provinces and, if necessary, to change boundaries inherited from the past.¹⁵⁵ In agreeing that the Oblate structures are at the service of the mission, the council expressed a need for flexibility in determining Oblate communities and apostolates so that they would remain life-giving. Realizing that the identification of an Oblate with members of his province and its mission is an emotional as well as an intellectual issue, the council concluded that fulfilling the chapter mandate would require dialogue with the Oblates involved.¹⁵⁶

In 1981, the OMI general council considered the distinction between provinces and vice provinces, applying the definitions found in the new *Constitutions and Rules* recently approved at the 1980 General Chapter. Provinces were distinguished as possessing greater stability, economic independence, and a larger number of members for the apostolate. Also, a province sends its provincial superior to a general chapter *ex officio*, while a vice province does not. Given these criteria, the general council decided not to establish a province with less than 100 members, nor a new vice province with less than 35 members. Later, a discussion was held with those provinces and vice provinces facing an eventual change in status based upon these new criteria. The superior general in council in June, 1981, decided that this policy would go into effect on 1 January 1985.¹⁵⁷ Following

¹⁵⁴ See *État général du personnel de la Congrégation des Missionnaires Oblats de Marie Immaculée*, Paris and Rome, 1880-2000, 23 vols.

¹⁵⁵ *Acta Administrationis Generalis O.M.I.*, 5 (1980-1981), pp. 256-257.

¹⁵⁶ *Ibid.*, p. 263.

¹⁵⁷ See *Acta Administrationis Generalis O.M.I.*, 6 (1982-1983), p. 152.

this decision, *restructuring* would become a commonly used word in Oblate reports to refer to the union, suppression or reorganization of provinces.

As an example of how these criteria were put to use, for some time there had been talk of restructuring the Oblate provinces in Canada. With an increase in population and fewer missionaries to serve such a vast territory, the Oblates of that region thought that they might regroup so as to serve their mission more effectively. The 1980 Chapter mandate, and the subsequent objective criteria adopted by the superior general in council, helped facilitate this process. The restructuring would take place at a different pace in each area, preceded by meetings and studies.¹⁵⁸ The first such restructuring of provinces in Canada in accordance with the 1982 *Constitutions and Rules* involved the suppression of the vice province of Keewatin and the province of Manitoba in order to be united and form a reconstituted "Province of Manitoba" in 1982.¹⁵⁹ As a preliminary step, the same priest was named provincial of both provinces, with a different council in each one. A similar process of suppression and union occurred at the same time when the Whitehorse vice province of the Yukon territory and St. Paul's province of British Columbia were suppressed to form a restructured St. Paul's province.¹⁶⁰

The formation of another new Canadian Oblate province, followed a somewhat different process. This new province, Grandin, resulted from the union in

¹⁵⁸ One earlier restructuring had taken place in eastern Canada when the vice-province of James Bay-Labrador, known before 1967 as the St. Francis Xavier mission vicariate, was suppressed in 1977. The territory was divided among St. Joseph, Holy Rosary and St. Peter's provinces. See LEVASSEUR, *A History of the Missionary Oblates*, vol. II, pp. 335-336.

¹⁵⁹ This decision was made by the superior general in council at a plenary session, November-December, 1982. See *Acta Administrationis Generalis O.M.I.*, 6 (1982-1983), p. 152. The Manitoba province would experience shortly another process of fusion, as the former vice province of Hudson Bay was also entrusted to it at the plenary session in April-May, 1983. The boundaries of the Manitoba province were further realigned in November, 1983. See *Acta Administrationis Generalis O.M.I.*, 6 (1982-1983), p. 289.

¹⁶⁰ See *Acta Administrationis Generalis O.M.I.*, 6 (1982-1983), p. 289.

September, 1985, of three former vice provinces by the superior general in council.¹⁶¹ In the new structures for this province, the superior general in council appointed five consultors to the provincial council, each representing a region of the province.

The goal in all these restructuring efforts in Canada was to assist the needs of Oblate personnel and to establish greater cooperation among the Oblate works.¹⁶² In his report to the General Chapter of 1986, Fr. Jetté, the Oblate superior general, included the following reasons for these re-divisions among Canadian provinces:

[The] aging of Oblate personnel in the North, changes in missionary pastoral care, the lack of local vocations, and the need to involve the Oblates of southern Canada more intensely with the people of the North.¹⁶³

This example of restructuring among the Canadian Oblate provinces illustrates an important principle governing the relationship between Oblate life and governance articulated in the present *Constitutions and Rules*:

Our organizational structures, accordingly are set up in function of [...] mission. Following the guidelines of the *Constitutions and Rules*, those in authority will make sure that the structures are flexible enough to evolve with our lived experience.¹⁶⁴

The norms and criteria for restructuring would continue to evolve into the 1990s.

¹⁶¹ Grandin province was formed from the union of three vice provinces: Alberta-Saskatchewan, Grouard and Mackenzie. The decision for the suppression of the vice provinces and erection of a completely new provincial structure was made by the superior general in council at plenary session in September-October, 1985. This result came after consultation with all the Oblates concerned. See *Acta Administrationis Generalis O.M.I.*, 8 (1985), pp. 142-143. [We note that the former province of Alberta-Saskatchewan had become a vice province on 1 January 1985 when its total membership fell below 100 members. See *Ibid*, p. 86.]

¹⁶² LEVASSEUR, *A History of the Oblates of Mary Immaculate*, vol. II, p. 350.

¹⁶³ Report of the Superior General to the 1986 Chapter, 20 May 1986, in *Acta Administrationis Generalis O.M.I.*, 9 (1986), p. 149.

¹⁶⁴ *OMI Constitutions and Rules 2000*, Const. 72.

As we have shown in Chapter One, the 1992 Oblate General Chapter mandated a committee to study all the Oblate organizational structures. This committee on structures, in the report presented at the 1995 Oblate Inter-capitular Meeting, discussed modifying the structures of the provinces in the Congregation, abolishing the classification of vice-province and proposing a new method of representation at the general chapter. These suggested modifications would be reflected in a revision of the Oblate *Constitutions and Rules*. Following the 1981 precedent of the superior general in council, it was decided to include an objective numerical criterion for the definition of a province in the revised *Constitutions and Rules*, besides the more subjective general criteria and definition that we have previously seen above in Constitutions 78 and 97 and Rule 97a.¹⁶⁵ Thus, Rule 98b gives both an approximate minimum membership number for a province, and a general procedure to follow if the number falls below that minimum number:

Normally, a Province should have some forty members in order to assure a proper functioning and stability. If the number falls significantly below forty, the Superior General will initiate a dialogue with the Province leadership in order to address the situation and provide for the future.¹⁶⁶

The generic process of restructuring includes the union, suppression or reorganization of the provinces under the care of the superior general and his council. Such restructuring involves planning with a vision for areas of future growth and development. Even the more onerous procedure, suppression, is usually not to be undertaken unless part of a larger process of restructuring, as qualified by Rule 98c:

Normally, the suppression of a Province takes place only within the framework of a restructuring process.¹⁶⁷

¹⁶⁵ For these definitions and discussion, see above in Chapter One, Section IV, B & C.

¹⁶⁶ *OMI Constitutions and Rules* 2000, Rule 98b.

¹⁶⁷ *OMI Constitutions and Rules* 2000, Rule 98c.

This rule in the Oblate proper law complements the universal norm governing the joining together of public juridic persons as found in c. 121 of the 1983 *Code*.

C. Procedure for the union, suppression or reorganization of provinces

In the 1990s there were several other restructuring efforts within the Oblate world.¹⁶⁸ From these experiences we can deduce a general procedure that has been used, with a few variations, for the union or reorganization of provinces.¹⁶⁹ We might note that although the superior general and council oversaw these processes, the initiative for restructuring often originated among the membership of each particular province or delegation.

The actual union or reorganization of provinces usually begins several years before, as the Oblates in a particular geographic area begin to collaborate together in their ministry. The most common form of collaboration has been in the area of formation, possibly sharing the same novitiate or post-novitiate program. This involves a sharing of formation personnel, as well as a mix of the candidates from the various provinces or other units. A unified formation program answers a common need for suitable formation personnel, as well as the dilemma of too few candidates in a program to experience formation beneficially within an Oblate community setting.

Next, the initial collaboration is reinforced by other contacts. These could be on the level of administration, such as occasional meetings of provincial or

¹⁶⁸ Besides the case of the union of five provinces into one in the United States in 1999, three provincial delegations in Indonesia united to form one province in 1993 and the three provinces of France united into one province in 1996. Other recent restructurings include: Scandanavia (1998), Cameroon-Chad-Figuil (1997), Kimberley-Bloemfontein-Western Transvaal (1998).

¹⁶⁹ Among resources used for this summary was a report prepared by L. Roy and submitted to the Oblate General Council Plenary Session, April-May 2000 in Rome.

delegation superiors, their councils or committees, or gatherings of the members in annual retreats or special conferences. Through these cross-provincial contacts, the individual Oblates begin to know something of the other groups' history, traditions and way of life. These meetings on a human level could help to break down barriers, sharing stories of the past and hopes for the future with respect to their mission and community life.

As the collaboration continues, and as the various groups begin to see more clearly their common situation and needs, consolidation is seen as a desirable option. Through more common meetings, the groups, their superiors and the general membership, discuss amongst themselves the possible models of this restructuring. When these discussions become more concrete, the superiors submit a petition to the superior general and council for approval to unite in one common province.

The next phase involves the official consultation of the membership by the superior general and council. This consultation includes both written ballots and a systematic visitation of the provinces or units by the superior general himself and/or his councillors. After a specific time period has expired, the written ballots and the verbal and written reports of the official visits are given to the superior general and council meeting in plenary session.

In the discussion of the superior general and council, a new status is proposed for the groups making the petition. The final decision comes after a long process of discussion and development. Important to the discussion is the common missionary aim of the new province which can unite all the Oblates of the concerned provinces or units. Proposed special statutes may be discussed, timetables proposed, and the respective superiors are consulted and informed of the final decision.

A decision for union into a new province includes a transitory period of some three years before the new status is definitively accepted. After the decision is announced, plans are made for the nomination, consultation, appointment and

installation of the new provincial and his council.¹⁷⁰ One of the most sensitive points of the restructuring must be carefully planned, that of the transfer of the funds of the previous separate units into a common fund. This has been overseen in particular by the general treasurer of the congregation. Committees are established to oversee other practical aspects of the union, such as formation, personnel issues, ministry sites and retirement. A special gathering is held for the official inauguration of the new province and of its new provincial leadership.

CONCLUSIONS

1. The development of universal ecclesiastical legislation on the fusion, union and reorganization of religious provinces parallels the pattern of development of the laws for their initial juridical erection. Before the 20th century and the promulgation of the 1917 Code, the position of the universal legislation on provinces was unclear in many respects. The 1917 Code clarified that the authority for modification of the province structure in religious institutes rested with the Holy See.

2. Pius XII noted decreases in the numbers of entries in men's and women's religious institutes in Europe, and recognized both the need and the occasion for uniting monasteries of nuns by the 1950s. Vatican II's call for renewal in religious institutes and their return to the original sources, as well as an adaptation to the needs of the modern world, caused further changes in the structures of religious institutes. The post-Vatican II renewal among religious institutes led to amendments in the universal law, allowing greater license for religious institutes in

¹⁷⁰ In the unique procedure adopted for the union of the provinces of France, a provincial of France was appointed, while the three provinces would continue to remain in existence for three more years with their proper provincials. The provincial of France's council consisted of the three other provincials along with three more councillors appointed by the superior general in council, one from each province. According to most accounts this two-tiered transitional structure proved a difficult experience.

determining their own internal structures, especially through the faculties granted by the decree *Ad instituenda experimenta*.

3. The process of revision for the 1983 Code led to a conferral to the institute of complete authority over the structure of its provinces. With the Council's spirit of subsidiarity and deference to proper law in such matters, each institute was to articulate in its constitutions the authority and procedures governing the fusion, union and reorganization of provinces.

4. There is little mention of any criteria for the union, fusion and reorganization of the province either in the pre- or post-Vatican II legislation. Some criteria might be ascertained by drawing parallels with those used in the Vatican documents which treat the fusion and union of religious institutes. The most specific criteria for renewal of governance structures and for the union of institutes or monasteries, which were first developed by Vatican II in the decree *Perfectae caritatis*, are found in the *motu proprio Ecclesiae sanctae*. According to this document of Paul VI, the union or fusion of institutes must seek above all the good of the Church, the uniqueness of each institute and the freedom of choice of each member. In particular, institutes or monasteries should consider a union with another institute when the numbers remain small, there is a lack of new entries and the number of elderly members continues to rise.

5. There have been numerous studies of the effects of the post-Vatican II changes on religious life, especially in North America. An analysis of the conclusions of these studies can illustrate further general criteria for the viability of religious communities as well as point to areas requiring future development when assessing the present and future structures of provinces. There have been other studies done on structural changes in specific religious communities and sponsored by conferences of bishops and major religious superiors. These movements towards structural change have been facilitated by four principal elements: a focus on a mission related to the founding charism, a critical mass of active members to

carry on that mission, a sufficient number from which to draw leadership, and adequate financial resources to maintain the institute and support the mission.

6. The present canonical process for the fusion, union and reorganization of provinces can differ greatly among institutes. The competent authority for making these decisions should be specified in the institute's constitutions. The canonical process involves a time for spiritual, psychological and juridical preparation among the membership. The members of the respective communities should be fully involved in the spiritual and psychological preparation process. Juridical preparation includes a gathering of financial reports, inventories and audits which can give an accurate view of the scope and practical effects of the possible fusion or union. As the competent authority in the institute discerns whether to restructure, it must consult with the entire membership. Once the decision has been made to unite or reorganize provinces, the consultation process begins for provincial leadership positions.

7. The juridical effects of the union or reorganization of provinces could include a simultaneous erection of a new juridic person and suppression of the former ones. Care must be taken that proper regard be given to the intentions of founders and donors, any acquired rights and any particular customs of the former provinces. The newly established province which has a new juridic personality would also have to develop a new structure in the civil law, able to support canonical requirements. Not every reorganization leads to a new juridic person. In restructuring processes where an existing juridic person assumes personnel, temporal goods, and possibly territory of other provinces or lesser entities, corresponding amendments might need to be made in the civil corporate structures. Members which belong to a new or different juridical person and province are subject to the authority of its major superior.

8. The proper law of the Oblates has evolved with the changes in the universal church law as regards the union or reorganization of its provinces. Like many religious congregations, the Oblates have been affected by the societal and cultural

changes in Western Europe and North America. Since Vatican II there have been a series of restructuring phases, based upon emerging criteria for such changes in the Oblate proper law. The most recent unions and reorganizations of provinces show a progressive movement from collaboration in ministry by two or more provinces to cross-provincial contacts involving administration and members, followed by an official proposal for consolidation, a formal consultation by the superior general and council, and, finally, an affirmative decision which usually includes a three-year probationary period before definitive acceptance of the new status. The decision for union initiates a consultation process for the new provincial leadership.

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We have now considered the religious province and the issues related to its structural modification in universal ecclesiastical law and the proper law of the Oblates. The union or reorganization of the province structure has certain juridical effects both in the spheres of canonical and civil law. In the following chapter we will apply these basic principles to our study of a particular case - the restructuring of the Oblate provinces in the United States which was completed in 1999. Following an examination of the background and procedures followed in this particular unification, we will examine and evaluate its resultant structures and their internal and external relationships.

CHAPTER THREE

THE OBLATES OF MARY IMMACULATE IN THE U.S.A: DEVELOPMENT & UNIFICATION PROCESS

We will begin this chapter with a survey of the growth and development of the Oblate presence in the United States. This will provide the context in which to relate the events which led to the decision to unite the five provinces into one. Next, we will describe the canonical process that was followed for the eventual unification of the provinces, noting the relevant norms in the universal law and the proper law of the Oblate congregation. This will be followed by a canonical analysis of the structures of the newly formed province, particularly in light of the 2000 Oblate *Constitutions and Rules*. Finally, we will conclude this chapter with an analysis of consequences this new structure brings to relationships among the Oblates, both within the province and internationally. We will also consider the relationships of the new Oblate province with the particular churches in which it ministers.

I. A UNITED STATES PROVINCE: FOUNDATION AND DEVELOPMENT

When Eugene de Mazenod received papal approval for the Rule of the nascent Missionary Oblates of Mary Immaculate on 17 February 1826, the small community had not spread very far from the area in southern France where he had founded it some ten years earlier in 1816. Although the preaching of parish missions in rural southern France was the first ministry of the Oblates, de Mazenod had envisioned a much wider reach, a mission *ad gentes*, to use today's terms, for his infant congregation.¹ However, he waited for the providential moment to embark on such

¹ See J. LEFLON, *Eugene de Mazenod: Bishop of Marseilles, Founder of the Oblates of Mary Immaculate, 1782-1861*, F. FLANAGAN trans., New York, Fordham University Press, 1961-1970, vol. III, pp. 123-127. In the manuscript of the 1818

an adventurous move for his fledgling group of missionaries.

As Eugene de Mazenod considered possible sites for missions in nearby Europe, the tense political situation in France, which for a time prohibited the popular parish missions, made it more important that there be some foreign mission site to ensure the Oblates' future. That opportunity was realized in 1841, when, upon the invitation of Bishop Ignace Bourget of Montreal, Oblate missionaries were sent by the now Bishop of Marseilles to minister in that distant and vast diocese in Canada. This request to send missionaries to North America was seen by de Mazenod as part of the providential plan for the Oblates which would lead to expansion to other mission fields.² Indeed, the new mission led to an expansive growth in numbers of Oblate personnel and works. With these first Oblates who arrived in Canada in 1841, the history of the Oblates in the United States really begins, for it was through them that the first establishments in the United States originated.

A. The first phase: a mission

The initial phase of the Oblate foundation in the United States consisted in sending missionaries to Oregon, to Texas and to the Northeast. The first Oblate establishment in the U.S. was in the Oregon Territory in 1847. This area had been established as a vicariate apostolic by the Holy See in 1843. Soon thereafter, it

Constitutions et Règles de la Société des Missionnaires de Provence, de Mazenod expressed his aspiration for an eventual worldwide extension of the missionaries' zeal. See *Missions de la Congrégation des Missionnaires Oblats de Marie Immaculée*, Rome, General House, 78 (1951), p. 15, (=Missions).

² Letter of Bishop de Mazenod to Fr. J.B. Honorat, 9 October 1841: "To you is given the task of implanting [the congregation] in those vast regions, for Montreal is probably only the door which will lead our family to the conquest of souls in several countries. When you arrive there, study the situation. We must first become well established where we are being called. Later, if God blesses our efforts, we will know what to do," in E. DE MAZENOD, *Oblate Writings*, Y. BEAUDOIN, ed., Rome, General Postulation O.M.I., 1978-1993, vol. 1: *Letters to North America, 1841-1850*, J. MOLE trans., p. 16.

was established as an ecclesiastical province (1846), with three dioceses: the metropolitan see, Oregon City, and the suffragan sees Walla Walla (Washington) and Vancouver Island (British Columbia). This rapid development was the result of a missionary plan developed by some Canadian secular missionary priests in coordination with the Congregation for the Propagation of the Faith (*Propaganda Fide*).³ The Holy See's decision to divide the Oregon vicariate apostolic was facilitated by a treaty signed by the United States and England on 14 June 1846, which defined the forty-ninth parallel as the international border. With an almost equal number of Catholic and Protestant settlers (around 7,000 respectively), the vast territory contained a much larger population of native peoples, estimated to be as high as 200,000, who would be the primary object of the Oblates' efforts.

After earlier failed attempts to secure the Oblates as missionaries in Oregon, Bishop Magloire Blanchet of Walla Walla was able to convince Fr. J.E. Guigues, the Oblate Canadian superior, of his great need, and Bishop de Mazenod agreed in 1847 to send 5 Oblate missionaries to Oregon.⁴ The great distance and isolation of the mission, separated by miles from any other Oblate, and the harshness of conditions across the Rocky Mountains forced the Founder to choose one of his most trusted men, Fr. Pascal Ricard, to be the superior.⁵ He, therefore, was sent,

³ See R. YOUNG, *The Mission of the Missionary Oblates of Mary Immaculate to the Oregon Territory (1847-1860)*, Romae, Pontificia Universitas Gregoriana, Facultas Missiologiae, 2000, pp. 24-29.

⁴ The decision to send Oblates to Oregon was not an easy one for Bishop de Mazenod. However, his hesitation was not over the type of mission work but more about the structure in which the ministry was to be carried out. One of de Mazenod's greatest desires was for his Oblates to minister amongst the native peoples of America. See LEFLON, *Eugene de Mazenod*, vol. III, p. 134.

⁵ In a letter dated 8 January 1847, de Mazenod wrote to Fr. Ricard: "This is a matter quite remote, my dear Father Ricard, from that of a hall and recreation room for Lumières [Ricard's present assignment]. You are destined for higher functions than those of an architect or mason. Monseigneur Blanchet, Bishop of Walla Walla, wishes to confide his interesting mission to our Congregation.

"So there, my dear Father, is where you are called by Divine Providence. You will come to me towards the end of next week to receive my instructions and will then depart

along with four others.⁶ The small mission band arrived in Fort Walla Walla in September, 1847, and assumed responsibility for evangelizing the native peoples who lived north of the Columbia and Snake Rivers. In its first couple of years the Oblates experienced relative political stability in the mission establishments with the Yakima peoples, on Puget Sound and on Vancouver Island. In view of this stability and because of the remote distance, the Oblate General Chapter of 1850 established a mission vicariate in Oregon,⁷ and Fr. Ricard was named Vicar of Missions.⁸

Nevertheless, from the beginning, the Oblates encountered several difficulties of another nature, the most serious of which included finding themselves involved

with your traveling companions in time to embark before the end of the month at Le Havre.

"Adieu, my dear Father Ricard. In leaving Lumières take all that is assigned to your use because you will not pass that way again," from Letter of Bishop de Mazenod to Fr. P. Ricard, 8 January 1847, in MAZENOD, *Oblate Writings*, vol. 1, pp. 147-148.

⁶ The other missionaries were Jean-Charles-Jean-Baptiste-Félix Pandosy and Eugène-Casimir Chirouse, scholastic brothers and Célestin Verney, a lay brother. As superior, Ricard was given extensive faculties by de Mazenod, over all the missions in Walla Walla, any new sites in British Columbia and even into California. His faculties were those of the Superior General in these territories, except for the convoking of a General Chapter, dismissal of an Oblate and admission of any novice to perpetual vows. See Letter of Bishop de Mazenod to Fr. Ricard, 22 January 1847, in MAZENOD, *Oblate Writings*, vol. 1, pp. 154-156. Bishop de Mazenod described Ricard's exceptional delegated powers of authority as equivalent to making him his *alter ego*, and necessary due to the remoteness and difficulty of the Oregon mission. See Letter of Bishop de Mazenod to Fr. Guigues, 24 January 1847, in *ibid*, vol. 1, pp. 159-160.

⁷ The Oblate *mission vicariate* was a community possessing more autonomy than a local community, but less stability than a province. The *vicar of the mission* was the proper Oblate superior in the vicariate, under the direct authority of the Superior General. He possessed most of the authority but not the stability of a provincial superior. These structures were defined for the first time in the Oblate Congregation at the 1850 Chapter and confirmed in the approved 1853 Oblate rule. See *Constitutiones et Regulæ Congregationis Missionariorum Oblatorum Sanctissimæ et Immaculatæ Virginis Mariæ, Massiliæ*, Marius Olive, 1853, Pars III, Caput I, § VII.

⁸ D. LEVASSEUR, *A History of the Missionary Oblates of Mary Immaculate: Toward a Synthesis*, J. RHEIDT and A. KEDL trans., Rome, General House, 1985, [2 vols.], vol. 1, p. 158, footnote 50. See also J. PIELORZ, *Les chapitres généraux au temps du Fondateur*, Ottawa, Éditions des Études oblates, 1968, vol. I, p. 284.

in the unrest and even in armed conflicts between the new American settlers and the native peoples of the region. The problems were compounded due to the distance from the superiors in Montreal and Marseilles, and the 1848 Revolution in France which made communication almost impossible. Misunderstandings with the bishop over the terms of the apostolate and the need to live a community life also created tensions.⁹ Because of his declining health, the difficulties with the local bishops, and the imminent Oblate General Chapter, Fr. Ricard was recalled to France by Bishop de Mazenod in 1856.¹⁰

The Oblates began to move further north into the diocese of Vancouver Island, British Columbia, where their evangelization efforts were more successful. A missionary presence was maintained on the Puget Sound region at St. Francis Xavier mission on the Tulalip reservation until 1878 when the last Oblates left what was the Oregon territory. Their ideals and the heroic sacrifices to evangelize the native peoples of Oregon were not without benefit, as these missionaries grew closer to the people and learned the ways of the native cultures, benefits that would help in the establishment of the Church in British Columbia.¹¹

The missions in Texas began under similar difficult conditions. The first bishop of the Texas diocese, Jean-Marie Odin, passed through Montreal in 1849, on his

⁹ LEFLON, *Eugene de Mazenod*, vol. III., p. 177. Due to these conditions, the Oblates considered leaving Oregon as early as 1853. However, in his communication with the Prefect of the Congregation of Propaganda Fide, Bishop de Mazenod was urged to allow the Oblates to stay. The bishops were urged to be more flexible with the missionaries in their dioceses. See Letter of Bishop de Mazenod to Fr. Ricard, 12 May 1853, in MAZENOD, *Oblate Writings, Letters to North America*, vol. 2, pp. 53-57.

¹⁰ Two successive extraordinary Visitors were sent to Oregon after Ricard by Bishop de Mazenod, the first one, Fr. L. D'Herbomez, to assess the situation and the second, Fr. F.-X. Bermond, to replace Ricard. However, Bermond returned abruptly to France, though Bp de Mazenod had wanted to name him as superior in Oregon. In April, 1858, the Oblate General Council decided to leave the mission to the Yakima due to the unrest and concentrate their efforts further north in British Columbia. See YOUNG, *The Mission to the Oregon Territory*, pp. 137-144.

¹¹ YOUNG, *The Mission to the Oregon Territory*, pp. 160-161.

way to the Council of Baltimore, looking for clergy and religious to assist in the pastoral care of his new diocese. He met Fr. Pierre-Adrien Telmon in Montreal who had earlier received Bishop de Mazenod's permission to begin an Oblate foundation in the United States.¹² Telmon had recently returned to Montreal from a failed attempt at setting up a seminary in Pittsburgh. Upon hearing Bishop Odin's plea, Fr. Telmon himself, presuming his permission from de Mazenod to establish a U.S. mission was still operative, immediately accepted the request. By October, 1849, he had set out for Texas, taking with him four other Oblates.¹³ Although Bishop de Mazenod heard of this venture only afterwards, he allowed the Texas foundation to go forward.¹⁴

The primary destination of the Oblates was Brownsville at the southern tip of Texas. Although the area was remote from the rest of the state, it comprised some

¹² Bishop de Mazenod had written to Bishop Guigues, 15 September 1848, of his future plans for the United States Oblates: "If we succeed at Pittsburgh, we will soon have other establishments in the United States. Already proposed is the seminary of Detroit. When we have a third establishment we will form a new Province; this is all the more desirable since already our Fathers in the United States have difficulty in receiving directions from Canada," in MAZENOD, *Oblate Writings*, vol. 1, p. 202. De Mazenod also expressed his intentions in a letter to Fr. Telmon, 5 November 1848: "In founding the house of Pittsburgh in the United States, you are laying the foundations of a new province ...," in *ibid.*, pp. 205-206.

¹³ Bishop de Mazenod wrote in his journal, 10 November 1849: "What is happening in Canada is unheard of. Here is Fr. Telmon who takes upon himself the mission of Texas, depending on the faculties I had given him when he was at Pittsburgh. He sets forth and takes with him some members of his choice.

"This is an abominable monstrosity. Fr. Telmon had certainly received the letter whereby it was very explicitly [sic] signified to him that he was duly returned to the jurisdiction of the Provincial of Canada, and he has apparently taken no notice of this because he found himself too committed to the Bishop of Texas who was waiting for him at Cincinnati or elsewhere. But harder still to take is that when writing, he does not try to regularize his conduct by asking me for a *postfactum* authorization.

"One would have to write pages on all that is happening in those distant regions; according to them however, I am wrong to be disturbed, they are all doing their duty perfectly!", in *ibid.*, p. 243, footnote 13.

¹⁴ R. WRIGHT, *The Oblate Cavalry of Christ*, #8 Oblate Heritage Series, Rome, O.M.I. General Postulation Series, 1998, p. 6; also LEFLON, *Eugene de Mazenod*, vol. IV, pp. 138-139.

9,000-10,000 Catholics of Mexican origin with a few other European and American immigrants. Fr. Telmon celebrated the first Oblate Mass in Brownsville on 8 December 1849. Two of the five missionaries remained in Galveston to assist with ministry in the see city. But, due to the nature of this isolated and difficult mission, Bishop de Mazenod called Frs. Soulerin and Gaudet back to Canada on 2 September 1850. Finally, Fr. Telmon, physically exhausted, returned to France on 22 January 1851.

After Bishop Odin's visit to Marseilles during that same year, 1851, and another plea for Oblate help, Bishop de Mazenod demonstrated his interest in the Texas mission by sending the largest group of missionaries he had ever sent at one time. Six priests and one lay brother were sent from France in March, 1852, arriving in Galveston by May.¹⁵ After a few months to become acclimated and study English and Spanish, three Oblates remained in Galveston to help establish a college and seminary, while the rest went to Brownsville, to continue the work Fr. Telmon's group had initiated. Following misunderstandings surrounding the ministry of teaching in the college in Galveston, most of the missionaries were eventually sent to Brownsville by 1857. The primary ministry of the Brownsville Oblates consisted in visiting the communities upstream on both sides of the Rio Grande as far as Laredo, including the settlements at Roma and Rio Grande City. Many of the communities were no more than a few grass-thatched huts called *ranchos* which were found scattered along the 200 miles from Brownsville to Laredo.

The mission in Texas, as with all the Oblate foundations in the U.S., met with many difficulties. The situation in Texas was particularly extreme due to political instability along the border,¹⁶ the prevalence of yellow fever from which several

¹⁵ The superior was Fr. Jean-Marie Verdet, with five newly ordained priests (Étienne Vignolle, Jean-Marie Gaye, Pierre-Fournier Parisot, Pierre-Yves Keralum, and Rigomer Olivier), and one lay brother, Pierre Roudet.

¹⁶ The United States was in civil war 1861-1865, and the Mexican side suffered from anti-clericalism, marauding droves of bandits, and the French Intervention 1858-1866.

missionaries died,¹⁷ and the great distance from the Oblate centers in Montreal and Marseilles. The mission had received favorable support from Bishop de Mazenod, especially in view of his desire to establish a further mission in Mexico. The Superior General who succeeded de Mazenod upon his death, Fr. Joseph Fabre, along with his council, named the Texas mission a mission pro-vicariate on 27 December 1861.¹⁸ However, the future of the Oblates in Texas remained in doubt until 1883 with the establishment of the U.S. Province.

The third mission area established in the United States was in the Eastern region bordering on Canada. As early as October, 1842, Frs. Telmon and Damase Dandurand had traveled to Cooperville, New York, then known as Corbeau, to conduct a parish mission at St. Joseph's Church. They directed the mission to French Canadian immigrants in the preaching style developed by de Mazenod and the Oblates of southern France. This mission was followed by others given to Canadian and Irish immigrants in northern New York and Vermont.

The bishops of dioceses in these areas began to request for the Oblates to take charge of parishes in communities of Canadian immigrants. Thus, the community took charge of parishes in Plattsburg, New York in 1853, and in Burlington, Vermont in 1854. However, the community in Burlington was recalled after two years

¹⁷ Following the death of five Oblates in Texas and the severe illness of a sixth one, Fr. Augustin Gaudet, the superior, Bishop de Mazenod wrote to Fr. Gaudet, 26 November 1858, exclaiming: "Cruel Texas mission, what terrible wounds you are inflicting on my soul! This is the fifth victim you have devoured, and what has become, I repeat, of the sixth whom you have struck with such fierce blows?", in MAZENOD, *Oblate Writings*, vol. 2, pp. 202-203. Three more Oblates would die of the yellow fever in 1862.

¹⁸ The Texas mission would remain under the direct authority of the Superior General until 1883. In the mission's early years, 1852-1861, it depended upon the Midi province of France, and the Texas superior was a local superior. When in 1861, the Oblate General Administration raised the Texas mission to a mission provicariate, Fr. Verdet's successor as superior, Fr. Augustin Gaudet, was named a Pro-Vicar, an office which possessed more autonomous authority than a local superior under the Oblate rule. See B. DOYON, *The Cavalry of Christ on the Rio Grande, 1849-1883*, Milwaukee, Catholic Life Publications, Bruce Press, 1956, p. 74, footnote 43. See also, *Registre des conseils généraux*, Rome, Maison générale oblate, vol. 2, p. 5.

because of the hardship imposed upon living a community life while traveling to far-flung missions.¹⁹

The Oblate general council ratified de Mazenod's decision to send missionaries to the bishop of Buffalo, New York, to run a Catholic college and a small parish in January, 1850. However, the three Oblates remained only two weeks before returning to Canada, due to some unfortunate misunderstandings between Bishops Timon (of Buffalo) and de Mazenod. However, following an agreement reached by the Visitor General, Fr. Francois-de-Paule-Henry Tempier, with Bishop Timon, five Oblates arrived at Buffalo in August, 1851, to direct this college-seminary and a small chapel nearby, headed by Fr. Edward Chevalier. Nevertheless, the provincial of Canada, Fr. Jaques Santoni, expressed his misgivings about the deal Fr. Tempier had made.²⁰

Though the college and seminary ministry was abandoned in July, 1855, due to financial difficulties,²¹ the Oblates remained working in the small chapel community which evolved into Holy Angels parish. Contrary to the fears of Bishop de Mazenod that they would be "merely" parish priests, Holy Angels served as a base from which the Oblates went out to preach many parish missions in the surrounding dioceses

¹⁹ LEFLON, *Eugene de Mazenod*, vol. IV, pp. 113-124, mentions many other requests from bishops in the northern and eastern U.S. which Bishop de Mazenod turned down for one reason or another. Some were even initially accepted but soon abandoned or refused, such as Rochester (New York), Detroit and Pittsburgh.

²⁰ In a letter to Fr. Aubert on 14 August 1851, Fr. Santoni said: "This is the fourth establishment in the United States, and it offers no more hope of success than did the others," as quoted in LEFLON, *Eugene de Mazenod*, vol. IV, pp. 128-129.

²¹ The financial problems, including apparently another misunderstanding with Bishop Timon, led the provincial and council of Canada to decide to give up the college and later the seminary as well. This decision was made without consultation with Bishop de Mazenod, who had reserved the final decision to himself. Bishop de Mazenod eventually accepted the decision, though several of his letters illustrate the severe financial strain that the Buffalo college-seminary had caused. See *ibid*, pp. 131-133. Also, further reference to the Buffalo college's financial problems is discussed in Bishop de Mazenod's letter to Fr. Chevalier, 28 May 1855 and his letter to Fr. Santoni, 29 May 1855, in MAZENOD, *Oblate Writings*, vol. 2, pp. 94-96.

of Hamilton and Toronto, and as far as Philadelphia and Quebec.²²

Another important early Oblate work in the U.S. was the 1866 mission preaching ministry in Massachusetts led by Fr. André-Marie Garin who, with his companion B. Dédebant, visited various French-Canadian immigrant communities with much success. Their good work was noticed by Bishop John Williams of Boston who invited the establishment of Oblate missionaries in Lowell, Massachusetts in 1868. The Oblates were asked to minister to a growing population of French-Canadian and Irish immigrants who came to the area to work in the textile factories. The parishes of St. Joseph (French-Canadian community), and St. John's Chapel, later named Immaculate Conception (Irish immigrants), were established under the leadership of Fr. Garin, and served as bases for preaching missions in New England.

B. The second phase: a province

A second major phase of the Oblates' presence in the United States began with the establishment of a separate United States province in 1883. The 1882 visit of Fr. Aimé Martinet, an Oblate assistant general and Canonical Visitor to the missions of Texas, helped to solidify what previously seemed to have been a precarious establishment in the United States. Martinet's recommendations not only preserved the Texas mission, but also led the Superior General and Council to approve a U.S. Province.

For several years the general administration, apparently convinced that the Oblate presence in Texas was untenable due to great adversity, had sought other religious and secular priests to take over the mission.²³ But, in his 1882 visit to

²² C. MENARD, "Oblate Evangelization in the United States, Early Phase (1842-1883)", in *Vie Oblate Life*, 42 (1983), p. 262.

²³ These travails of the mission are discussed in detail in DOYON, *The Cavalry of Christ on the Rio Grande*, pp. 195-223.

Texas, Fr. Martinet experienced and appreciated the missionary work the Oblates in Texas were accomplishing, saw the love that existed between the missionaries and the people, and recognized the great hope that this mission held for future development.²⁴ He also perceived the importance of strengthening the Oblates' English-speaking ministry in Texas as a more solid foundation for the missions along the border.²⁵ He negotiated with Bishop John Neraz of San Antonio for St. Mary's Parish (San Antonio), an English-speaking parish for Irish immigrants, if the Oblates would also take the mission of Eagle Pass, another border mission in West Texas. The bishop of San Antonio accepted this proposal.

Fr. Martinet then proposed to the Oblate general administration that a separate province in the United States be established, uniting the three more stable communities of the Canadian province in the northeastern U.S. (Plattsburg, Buffalo and Lowell), with the Texas mission vicariate's houses or residences (Brownsville, Rio Grande City, Roma and Agualeguas, Mexico) presently attached to the General Administration.²⁶ The Canadian province itself was growing in many directions, and already had considered opening a novitiate in the U.S. to help in recruiting English-speaking members for the expanding ministerial demands. Therefore, a separate U.S. province would enhance the future of the Canadian province, as well as the established houses in the northeastern U.S. and the Texas missions.

The decision to found a U.S. province was reached by the Superior General, Rev. Joseph Fabre, in council, on 20 April 1883.²⁷ Before the Congregation of

²⁴ LEVASSEUR, *A History of the Missionary Oblates of Mary Immaculate*, vol. 1, p. 231.

²⁵ WRIGHT, *The Oblate Cavalry of Christ*, p. 30.

²⁶ LEVASSEUR, *A History of the Missionary Oblates of Mary Immaculate*, vol. 1, p. 234. Note that the mission in Tulalip, Oregon had been abandoned earlier in 1878, the Oblates there having gone up to British Columbia.

²⁷ The Superior General, Fr. Fabre, explains the decision and its implications more at length in Circular letter 35, 5 May 1883, in *Circulaires administratives des Supérieurs généraux aux Membres de la Congrégation des Missionnaires Oblats de Marie Immaculée*,

Propaganda Fide would authorize the new province, however, it asked that the bishops of Montreal and Boston give their advice, thus delaying the final approval by the Congregation until 20 July 1883.²⁸ The first provincial superior, Fr. James McGrath, was named at this time, along with four provincial consultants, including one from the Texas missions, Fr. Rigomer Olivier. The new province soon opened formation houses and new missions.

C. The third phase: the development of separate provinces

The number of Oblates in the United States province continued to grow, and by 1899 the personnel numbered 87: 62 priests, 1 scholastic and 24 brothers. New ministries were accepted in Texas at Del Rio, La Lomita, San Antonio and Puebla, Mexico. The houses and ministries in the Northeast continued to prosper. With time, though, what had been the *raison d'être* for the establishment of the U.S. province became a source of difficulty: namely, the great distance between the northern and southern sectors, as well as the two regions' differences in language and culture.²⁹

These differences presented several complications, including a divergent focus for the recruitment and formation of new Oblates to serve in the two regions. Thus, the provincial council proposed the idea of forming two separate provinces in the

Rome, Maison Générale O.M.I., vol. I, pp. 364-370. (=Circulaires administratives O.M.I.) The discovery of the remains of Fr. Pierre Keralum, a Texas missionary who had been missing for 10 years, during the time of decision and crisis in the Texas mission underscored for Frs. Martinet and Fabre the heroic sacrifices made in the past which should not be abandoned.

²⁸ DOYON, *The Cavalry of Christ on the Rio Grande*, p. 233, note 17. Apparently the Holy See later decided that the bishops' letter of *placet* was not necessary. See G. CARRIÈRE, *Histoire documentaire de la Congrégation des Missionnaires Oblats de Marie-Immaculée dans l'Est du Canada*, Ottawa, Éditions de l'Université d'Ottawa, 1957-1975, vol. 10, p. 55.

²⁹ LEVASSEUR, *A History of the Missionary Oblates of Mary Immaculate*, vol. 2, p. 196.

U.S., one based in the northeast at Lowell, the other centered in San Antonio, Texas. This proposal was submitted by the provincial, Fr. Joseph Lefebvre, to the 1904 General Chapter. The Superior General, Fr. Cassien Augier, formally created the new southwestern province, to be called the Second Province of the United States, and his decision was promulgated on 2 October 1904.³⁰

In a circular letter announcing the new province's establishment, Fr. Augier noted that Texas and Mexico possessed a sufficient number of houses and residences to become a province. He added that these foundations supplied sufficient income for the present needs, with a hope for future additional resources. The new scholasticate in San Antonio would prepare students for other provinces, as well as for the southwest.³¹ He also noted that according to the indult received from the Congregation of *Propaganda Fide* approving the new province, not only the present establishments in Texas and Mexico were included in its territory, but also many other states in the southern and western regions of the United States.³² The rest of the country remained in the territory of the existing province, to be called henceforth the First Province of the United States. The numerous and prosperous foundations in the Northeast, along with developing formation programs there provided hope for great expansion in that province as well.

Both provinces developed further apostolates and experienced a rapid growth. The First U.S. Province continued to expand its preaching ministry in parish missions and retreats, and, following the appeal of the 1938 General Chapter, it

³⁰ C. AUGIER, Superior General, Circular letter 80, 2 October 1904, in *Circulaires administratives O.M.I.*, vol. 3, pp. 33-37.

³¹ *Ibid.*, p. 34. Thus, he explained how the requirements for a province's establishment according to the Oblate rule had been satisfied in the new province.

³² The states included: Alabama, Mississippi, Arkansas, Louisiana, Indian Territory (Oklahoma), New Mexico, Arizona, Colorado, Utah, Nevada, California, Idaho, Oregon and Washington, in *ibid.*, p. 35. "By 1910 the Second Province had transferred to the First U.S. Province the following states: Alabama, Missouri, Arkansas, Oklahoma, Colorado, Arizona, Nevada, Utah, Idaho, Oregon and Washington." See LEVASSEUR, *A History of the Missionary Oblates of Mary Immaculate*, vol. 2, pp. 197-199.

added ministry to African-Americans in the South and Midwest. Groups of missionaries were sent to Natal, northern Canada and the Philippines, and the province began its own missionary ventures to Sao Paulo, Brazil in 1945, Japan in 1948 and Puerto Rico in 1975. Fr. Deschâtelets, Superior General, named "Our Lady of Hope" as the patroness and the special title of the province in 1964.³³

Meanwhile, the Second U.S. Province continued to add houses in Texas, Louisiana, New Mexico, and California. There was also a continued thrust towards the foreign missions. Beginning in 1920, the province accepted responsibility for the junior seminary in Urnieta, Spain, for the purpose of supplying needed missionaries for the Mexican missions and to prepare for the extension of the Oblate Congregation in Spain.³⁴ The Second U. S. Province joined in ministry with the Spanish Oblates for 12 years, which included opening a scholasticate in Spain and a mission in Uruguay. A separate Spanish vice province was established in 1932.³⁵

The Second U.S. Province eventually established additional formation houses in Texas and, together with the other U.S. provinces, began to send missionaries to the Philippines in 1939. Unfortunately, the persecutions in Mexico forced the Oblates to leave that country completely in 1914, although by 1943 they had returned to a parish in Mexico City. The provincial delegation in Mexico developed into a separate vice-province by 1985. In 1983 a new mission was accepted in Zambia.

³³ See *Circulaires administratives O.M.I.*, vol. 7, p. 136.

³⁴ See A. DONTENWILL, Superior General, Circular letter 128, 13 April 1921, in *Circulaires administratives O.M.I.*, vol. 3, pp. 368-369. This junior seminary, opened in 1898, had been the responsibility of the 1st Province of France.

³⁵ On 1 November 1931, the formation houses in Spain were placed under the jurisdiction of a vicar provincial attached to the 2nd U.S. Province. See *Missions*, 66 (1932), pp. 148-149. Later, on 8 December 1932, the Superior General in Council erected the Vice Province of Spain. See *Missions*, 67 (1933), p. 46. Also, LEVASSEUR, *A History of the Missionary Oblates of Mary Immaculate*, vol. 2, pp. 82-83.

As the First U.S. Province began taking care of additional English and French speaking parishes, it became apparent that there was a need to restructure once again. The apostolate with the French-Canadian immigrants was one of the first priorities of the Oblates in the northeast, and this need kept growing with a corresponding number of Oblate parishes. However, the Province was also being asked to care for various English-speaking apostolates. Therefore, "in order to better respond to the spiritual needs of the Franco-Americans and to unify the activity of the Oblates who were serving them,"³⁶ the province presented the General Chapter of 1920 with a proposal to create a separate Franco-American province.³⁷

The members of the Chapter discussed the arguments pro and con of having a province not based upon territory, and, thus, leading to overlapping jurisdictions. They concluded that the principle of territorial definition of province boundaries should be maintained, but that there could be grave reasons justifying an exceptional request to the Holy See to establish provinces otherwise, based upon the "needs of the faithful".³⁸ The Superior General, Archbishop Augustine Dontenwill, formally created the new vice-province, to be called St. John the Baptist

³⁶ LEVASSEUR, *A History of the Missionary Oblates of Mary Immaculate*, vol. 2, p. 199. See "Actes du vingtième Chapitre Général", pp. 323-325, in *Chapitres généraux, 1906-1938*, Archives Deschâtelets, Ottawa.

³⁷ The 1920 Oblate General Chapter, being the first held after the First World War, also discussed several other proposals for new provinces in Europe, at the request of the Superior General. See Archbishop Augustine DONTENWILL, Superior General, Circular letter 128, 13 April 1921, in *Circulaires administratives O.M.I.*, vol. 3, pp. 363-368.

³⁸ "Délimitation des Provinces: a) Le Chapitre maintient le principe de la délimitation territoriale pour la division des Provinces; b) Il admet qu'il peut y avoir des exceptions pour de graves motifs; c) Il déclare que les raisons invoquées pour demander quelque exception au Saint-Siege devront être basées uniquement sur le besoin des fidèles," in "Actes du Chapitre général de 1920", in *Circulaires administratives O.M.I.*, vol. 3, p. 412. The content of the discussion on the issue is presented by Archbishop A. Dontenwill, the Superior General, in his letter to the Oblate Congregation following the Chapter. See Circular letter 128, 13 April 1921, in *ibid*, pp. 365-368.

of Lowell, on 21 May 1921.³⁹

In doing so, he made an exception to the traditional practice of Oblate provinces and created this vice-province in the same territory as that of the First U.S. Province, citing the needs of the French-speaking faithful to whom the Oblates ministered. After a three-year provisional period and a further request to the Holy See, St. John the Baptist became a full province in 1924.⁴⁰ It continued developing the ministry of preaching parish missions and retreats among the French-speaking community whose population was estimated to be around two million at the time the province was established. Upon the request of Pope Pius XII, the province opened a mission in Haiti which began in 1943,⁴¹ and later a mission in Tahiti (1977).

In the 1980s, St. John the Baptist Province, originally established in 1921 for ministry among the French-speaking community in the northeast, had begun to evaluate its ministry. As the use of the French language by the third and fourth generations of the original immigrants began to decline, there was less actual French-speaking ministry. Thus, the need for a separate province based on language ceased to exist. The superior general and council agreed on territorial boundaries which would be worked out with the Eastern Province, and the St. John

³⁹ The indult from the Congregation of Religious authorizing the erection of the vice-province was granted 23 February 1921. For the Superior General's promulgation, see A. DONTENWILL, Circular letter, 1 March 1921, in *Missions*, 55 (1921), pp. 135-137.

⁴⁰ A. DONTENWILL, Letter to the Oblates of the Vice-Province of St. John the Baptist of Lowell, 7 May 1924, in *Missions*, 58 (1924), pp. 224-226. The rescript from the Holy See was dated 1 May 1924. At the time it became a province, St. John the Baptist counted 34 priests, 4 scholastics and 11 brothers. The province included the houses of Plattsburgh, NY, St. Joseph of Lowell, Our Lady of Lourdes of Lowell, and the residences of Aurora, Egg Harbor and Fond-du-Lac, Wisconsin.

⁴¹ See LEVASSEUR, *A History of the Missionary Oblates of Mary Immaculate*, vol. 2, pp. 217-218. The Oblates' acceptance of this mission was delayed by the onset of World War II, but eventually, due to direct intervention by Pope Pius XII, the Oblates were given responsibility for the Haiti mission. See also, "L'acceptation des missions d'Haïti, documents", in *Études oblates* 1 (1942), pp. 249-254. Haiti was made a separate vice-province in 1974.

the Baptist Province became the Northern Province in 1991.⁴² In another recent development, some of the original poorer French-speaking parishes which had become thriving were returned to the care of the diocesan bishops, and other less affluent parishes accepted by the province.

As the Oblate ministry in the southwestern and northeastern U.S. was expanding in the early 20th century, Oblates from the central Canadian provinces of Alberta-Saskatchewan and Manitoba had been doing some ministry in the north-central region of the U.S.⁴³ During the First World War, German Oblates from these Canadian provinces migrated to the U.S. Other German Oblates who had been expelled from Ceylon in 1916 and held in concentration camps in Australia, joined them in parish ministry in the Midwestern U.S. These Oblates remained dispersed and it became difficult for them to return to their former assignments after the war.

In a letter written by 15 of these German Oblates to the General Administration in 1919, they requested that they be united into a district, a vicariate or a province.⁴⁴ In 1921 some seven German Oblates ministered in the state of Minnesota under the jurisdiction of the Oblate province of Manitoba, and twelve others served in North Dakota and Wisconsin, and were attached to the province of Alberta-Saskatchewan. Later, all of these Oblates were confided to the Manitoba province which united all of them into a district in 1922 with its center established at Fletcher, Minnesota.

An Oblate assistant general, Fr. Maximilian Kassiepe, visited the Oblates of

⁴² *Acta Administrationis O.M.I.*, 14 (1991), p. 69. Also, see L. SAWYER, "A Brief History of St. John the Baptist Province of Lowell (1921-1999)", in OMI-USA the web site of the U.S. Province of the Missionary Oblates of Mary Immaculate, <<http://www.omiusa.org/jeanbapt-prov.htm>> (10 March 2000).

⁴³ In 1860, Bishop (later Archbishop) Alexandre Taché of St. Boniface, Manitoba had made plans to send Oblate missionaries into St. Paul, Minnesota. See "The Oblates of the U.S. Now One Province", in *OMI Information*, No. 377, 1999, p. 3.

⁴⁴ The petition of these German Oblates was discussed at the 1920 General Chapter.

Fletcher and received assurance that there would be an additional establishment in Belleville, Illinois.⁴⁵ Upon Fr. Kassiepe's recommendations, the superior general, Archbishop Dontenwill, then raised the status of the Fletcher district of the Manitoba Province to a Vice-Province in 1924, naming it St. Henry of Belleville.⁴⁶ He cited the following as reasons for establishing the new vice-province: the inconveniences of the German Oblates' dispersal, the distance from their provincial, the desire to bring them together to favor religious observance, and the development of the apostolate.⁴⁷ Although the Vice-Province was established without territorial boundaries,⁴⁸ the houses and apostolates included the states of Minnesota, Wisconsin, Illinois, Missouri and South Dakota.

The establishment of St. Henry's of Belleville in 1925 saw the development of various apostolates in the Belleville area. Most of the vice-province's parish communities were in bilingual German and English speaking areas. The priests also served as chaplains of hospitals and two Native American reservations in

⁴⁵ The Visitor sent from the General Council was the response to a decision made at the 1920 General Chapter where the question of a separate province for the U.S. German Oblates had first been broached. The chapter members expressed the need to gather more information before a decision would be made, noting the similarity to the decision for establishing St. John the Baptist Province, an exception to the usual Oblate principle of territorial provinces based upon a "need of the faithful". See *Chapitres généraux 1906-1938*, Ottawa, Archives Deschâtelets, pp. 334-336. The assurance of a future establishment in Belleville came from Bishop Henry Althoff of Belleville who ceded 53 acres of property to the Oblates with the request that they open a minor seminary there.

⁴⁶ A. DONTENWILL, Superior General, Letter to the Oblates of Belleville, 8 December 1924, in *Missions*, 58 (1924), pp. 228-230. According to this letter, the indult from the Congregation for Religious was granted 24 November 1924.

⁴⁷ "Désireux de remédier aux inconvénients qui sont le résultat de votre dispersion et du trop grand éloignement de votre centre provincial actuel, et voulant vous procurer, efficacement, le moyen de vous grouper en vue de favoriser l'observance religieuse et le développement des Œuvres, selon l'esprit de notre Congrégation, nous avons résolu de vous constituer en un organisme séparé, sous forme de Vice-Province," in *ibid*, p. 228.

⁴⁸ A definite geographical territory was not assigned to the province until it was established as the Central Province on 10 July 1953, by Fr. Leo Deschâtelets, Superior General. See *Circulaires administratives O.M.I.*, vol. 6, p. 3.

South Dakota at Sisseton. As formation houses were established and grew, the vice-province eventually accepted the foreign missions of Denmark-Greenland (1958), Sweden (1962), Recife, Brazil (1963), and Norway (1977).

D. The fourth phase: five provinces

After a period of sustained growth and development since the establishment of four United States provinces by 1924, a further restructuring was promulgated on 10 July 1953. With this restructuring phase, the Oblates in the U.S. entered a fourth period: one of spectacular growth at the onset which would be followed by a gradual decline in numbers following Vatican II. After consultation with the various provincial authorities, and having received an indult from the Congregation for Religious, the Superior General, Fr. Leo Deschâtelets, re-configured and renamed the four existing provinces. He also established a new vicariate for the western U.S.⁴⁹ The provinces were named: Eastern Province (formerly First American), Southern Province (formerly Second American Province), Central Province (formerly Vice-Province of St. Henry, Belleville), St. John the Baptist Province and the Western Vicariate. The superior general gave as his reasons for making this decision the same ones that had guided Bishop de Mazenod, namely, "the good of souls, the service of the Church, and the development of our religious family."⁵⁰

The new Western vicariate began with 24 priests and one lay brother; their greatest concern at the beginning was the recruitment of vocations. The majority

⁴⁹ L. DESCHÂTELETS, Circular letter to the Oblates of the Provinces of the United States, 10 July 1953, in *Circulaires administratives O.M.I.*, vol. 6, pp. 1-4. The Western Vicariate included the states of Washington, Oregon, California, Arizona, Nevada, Utah, Idaho, Montana, Wyoming and the territories of Alaska and Hawaii. The Central Province also was given a specific territory at this time: Illinois, Wisconsin, Minnesota, Iowa, Missouri, Kansas, Nebraska, North and South Dakota.

⁵⁰ *Ibid.*, p. 2.

of the ministry was amongst the Spanish-speaking Mexican population, preaching missions and in parish work. A priority in ministry during the 1950s and 1960s was administering Catholic high schools, which eventually included schools in the California cities of San Fernando, San Pedro and Oakland.

Having fulfilled the requirements in the Oblate *Constitutions and Rules* to be constituted a province, the Western vicariate was officially named "Our Lady of Angels Province" on 19 March 1963.⁵¹ However, when the province's membership fell to less than 100 members, it reverted to the status of a vice-province in 1985.⁵² The Western province accepted the missions of Mexicali (Mexico) and Alaska in 1971.

The five Oblate provinces in the U.S. experienced spectacular growth in personnel and works between 1953 until 1965. By 1967, they had reached their highest membership levels.⁵³

Eastern:	297 Priests, 19 Brothers, 51 Scholastics ⁵⁴ =307
Southern:	266 Priests, 22 Brothers, 47 Scholastics =304
St. John the Baptist:	179 Priests, 28 Brothers, 33 Scholastics =150
Central:	1 Bishop and 169 Priests, 25 Brothers, 59 Scholastics =224
Western:	69 Priests, 4 Brothers, 13 Scholastics = 86.

⁵¹ See *Missions*, 90 (1963), pp. 205-207. Also see L DESCHÂTELETS, "Aperçu général de la Congrégation en vue du XXVIIe Chapitre général - Evolution des territoires," in *Circulaires administratives O.M.I.*, vol. 7, pp. 135-137.

⁵² *Acta Administrationis O.M.I.*, 8 (1985), p. 86.

⁵³ See *Personnel O.M.I. 1967*, Rome, Administration Générale, 1967, pp. 9-10.

⁵⁴ In the Oblate Congregation a *Scholastic* is the title for an Oblate in a priestly formation program. Both non-ordained brothers and ordained student priests still in formation are included in the category of scholastics.

E. Vatican II and increased collaboration

The five provincials had begun to meet together occasionally for planning and coordination since the 1950s. Even earlier, the Oblates involved in education had been meeting in a group called the *Oblate Education Association (=OEA)*.⁵⁵ The 1966 *Oblate Constitutions and Rules*, in response to Vatican II's principle of cooperation, and in an analogous way to the principle of collegiality, called for regular *Conferences* to be held among provinces and vice-provinces of the same region.⁵⁶ The U.S. Provincials met in January, 1967, agreeing on a name for their conference, the *Oblate Conference of America (=OCA)*, and a tentative constitution. Besides coordinating efforts among the provinces' formation and study programs, in 1968 the OCA established a joint novitiate for all the U.S. provinces in Godfrey, Illinois.

The General Chapter of 1972 called for a renewal of structures in the Oblate general administration which would favor decentralization and apply the principle of subsidiarity, giving primacy to the Oblate mission to evangelize the poor. Taking the precedent of the 1966 *Constitutions and Rules* for inter-provincial conferences, the 1972 Chapter established *Regions* - the coordination of provinces of a given

⁵⁵ The first Oblate Formation Congress was held in Washington, DC, on 7-11 June 1948, inviting representatives from the U.S. and Canadian provinces, and the Superior General. The inter-provincial group (OEA) met bi-annually until 1966 when the new *Oblate Constitutions and Rules* officially introduced the concept of inter-provincial regions into the Congregation. The OEA group decided to wait and see how these regions would be set up before continuing their conference meetings.

⁵⁶ See *Constitutiones et Regulæ Congregationis Missionariorum Oblatorum Sanctissimæ et Immaculatæ Virginis Mariæ a Capitulo Generali XXVII Exaratae*, Romæ, 1966 (Latin/English version), Constitutions 193-199. An authorized Oblate commentary on these constitutions described the influences of Vatican II on this inter-provincial structure, especially as found in *Ad gentes* 28 and *Lumen gentium* 23. See also *The Congregation Renewed: A Reading Guide for the Constitutions and Rules*, Rome, The General House, 1968, pp. 314-317.

country or continent - as a permanent structure in the Congregation.⁵⁷ There would be one general councillor in Rome with responsibility for one of the Oblate regions of the world.⁵⁸ The United States provinces had been designated as a region,⁵⁹ and, thus, the OCA⁶⁰ began to meet with the General Councilor, who served as its executive secretary.

In a report to the inter-capitular meeting in 1977, an evaluation of the U.S. Oblate life and mission included some insight into future directions for inter-provincial cooperation:

The revision event of the Constitutions and Rules had led to Province-level workshops, as well as Corporate Reflection Workshops on an interprovincial, and even inter-regional level. This last effort we consider as extremely worthwhile in developing a sense of solidarity. The interprovince cooperation has also continued in areas of formation, continuing education, vocations, and, more recently Province bursars.⁶¹

Among the most pressing concerns felt by the provincials, it was noted that: "The deep solidarity needed to deal effectively with many of the contemporary issues

⁵⁷ "Regions are established principally for exchange of information and experience, and for dialogue between Provinces. Reunions are of a consultative nature with no juridical power." *In Administrative Structures*, Rome, Missionary Oblates of Mary Immaculate, 1972, p. 36.

⁵⁸ *Ibid*, pp. 20-21.

⁵⁹ The Oblate regions or conferences had originally been established in 1966 by Fr. Deschâtelets, Superior General, in Council by the mandate of the 1966 General Chapter. The regions named were: Europe, Canada, United States, Africa, Asia and South America. See *Circulaires administratives O.M.I.*, vol. 7, pp. 439-440.

⁶⁰ The OCA constitution was revised so as to reflect the 1972 Chapter's renewal of congregational structures. See *Constitution of the Oblate Conference of America*, November, 1975, 2 p., in the OCUS Archives, Washington, DC. Note: The Oblate Conference of America (=OCA) would later be called the Oblate Conference of the United States (=OCUS) in recognition of the Oblate conferences in Canada and Latin America. The terms "U.S. Region", OCA and OCUS are used synonymously.

⁶¹ "Reflections on Oblate Life in the United States of America Region", in *Vie Oblate Life*, 37 (1978), p. 124.

facing us is lacking. We must continue to develop common experiences and educational programs to enhance this sense of solidarity.”⁶² The report stated that “the most vital development in the region was the effort for renewal and reform,” but that there was a need for “deeper reflection on our specific mission as American Oblate religious.”⁶³

After the inter-capitular meeting in 1977, regional collaboration in the U.S. became more organized and regular. While the provincials and the regional councillor would meet to discuss planning and policy on various fronts, they also began to plan for “regional meetings” where all of the provincial council members would join the meeting as well.⁶⁴ These gatherings of the region’s combined leadership provided opportunities to discuss more broad-based issues, to establish goals and to accomplish collaborative planning.

The first regional meeting, held in 1979, took as a theme: “Our Oblate Mission in the United States’ Technological Culture”. The group succeeded in establishing three regional priorities:

- 1) Ministries to minorities, especially to Hispanics;
- 2) Development of lay leadership and ministries; and,
- 3) Renewal and reform of Oblate life in the United States.

At the conclusion of the regional sessions, there was a joint meeting with the Superior General and the members of the General Council. In his closing address, Fr. Fernand Jetté, the Superior General, offered three expectations of the U.S. Oblates:

First, to promote unceasingly cooperation and unity among yourselves, so that the Oblate identity is even more clearly evident within the American Church.

⁶² “Reflections on Oblate Life in the United States of America Region”, p. 125.

⁶³ Ibid, p. 126.

⁶⁴ The U.S. Oblate Regional Meetings were held as follows: San Antonio, Texas, 1979; Belleville, Illinois, 1981; West Palm Beach, Florida, 1984; Burlingame, California, 1987; San Antonio, 1991; Waltham, Massachusetts, 1994; and Belleville, 1996.

Secondly, do not be afraid to re-evaluate your apostolic commitments and even existing structures in the light of actual needs and of our vocation in the Church.

Thirdly, pursue with confidence and tenacity the work undertaken to promote vocations and to assure the quality of first and ongoing formation.⁶⁵

The second regional meeting (1981), with no specific theme, added two more priorities: the ministry of justice and peace, and policy and direction in the area of national coordination. A regional commission for justice and peace was established, coordinating the justice and peace committees of each province. The priority chosen for national coordination led to the establishment of the office of a national coordinator for the Oblate Conference of the United States (OCUS), who began serving in 1983, with offices in Silver Spring, Maryland. The coordinator worked under the OCUS provincials, helping to coordinate their meetings and their implementation of decisions taken.

Some terminology and the functions of various bodies were also agreed upon. The five U.S. provincials, their councils and the U.S. Region's General Councillor were designated as the *policy body* which would meet every two years; the provincials and the General Councillor were designated as the region's *Executive Board*.⁶⁶ It was recommended that each province and its leadership adopt a policy of regional collaboration, and a better communication strategy was agreed to among all the provinces. The Superior General, Fr. Jetté, was again present at this meeting, and he repeated the challenges to the participants which he had made at

⁶⁵ F. JETTÉ, "To the Oblates in the United States," 12 October 1979, in F. JETTÉ, *Letters to the Oblates of Mary Immaculate*, Rome, General House, 1984, pp. 186-188.

⁶⁶ See *By-Laws of the Oblate Conference of the United States*, 10 August 1987, 6 p., in OCUS Archives, Washington, DC. These replaced the previous *Constitution of the Oblate Conference of America*, November, 1975. In the early days of the OCA, the provincials met twice a year, but, later, the five provincials, the regional councillor and the executive coordinator were meeting four times yearly. As the restructuring work grew more intense, conference calls were also scheduled in between the regular Executive Board meetings.

the 1979 meeting, with an additional one: "To be always witnesses to the faith by your life and works, and also by your word."⁶⁷

The third OCUS regional meeting of 1984 carried the theme: "Leave Nothing Undared". The participants established task forces on renewal, formation and minorities, which related to the priorities the region had previously chosen. This meeting's decisions showed a significant shift in emphasis from coordination to collaboration. As the group reviewed past accomplishments and considered the significance of a study of 'Faith and Culture in the United States', another significant decision was made. A new commitment to regional life, as a way of relating internationally to all Oblates in the Western Hemisphere, evolved into the inter-regional meetings known as the North/South Dialogue, the first of which took place in Lima, Peru in 1984.

The fourth Regional Meeting of 1987, with the theme: "Missionaries in the U.S. Today", though not achieving a clear decision on the future directions of the region, did provide for serious in-depth planning. This meeting was a joint session with the newly-elected Superior General and Council. The group studied a summary report commissioned by the OCUS provincials from the *Center for Applied Research in the Apostolate* (=CARA), a personnel projection of the U.S. Oblates up unto the year 2006. The findings of the CARA report helped the participants identify both optimistic and pessimistic future scenarios regarding the stable core of future U.S. Oblates available for ministry.⁶⁸

Besides some projects enhancing collaboration in the areas of post-novitiate

⁶⁷ F. JETTÉ, "To the Members of the Provincial Councils in the United States", 4 December 1981, in JETTÉ, *Letters to the Oblates*, pp. 192-194.

⁶⁸ The report projected that pessimistically over the twenty year period (1986-2006) the U.S. Oblates would experience a total personnel reduction of 53 percent and a reduction in those involved in active ministry up to 60 percent. These figures would be accompanied by a significant increase in average age. See T. KURVILLE, Project Director, *Personnel Projections to the Year 2006, Oblates of Mary Immaculate, United States Region, Summary of the Report on the Region*, CARA, September, 1987, 8 p., in OCUS Archives, Washington, DC.

formation, the media and ministries to minorities, the principal outcome of the regional meeting of 1987 was the creation of the "Task Force on Critical Issues".⁶⁹ The "promotion of vocations" was also added as a sixth mission priority for the U.S. Region. The new Superior General, Fr. Marcello Zago, urged the leadership of the U.S. Oblates to a more focused sense of mission, a clearer missionary identity, to pursue greater regional collaboration and to face up to the crises in vocations and challenges in formation. Following a proposal and discussion at this meeting, and building upon the Western Province's 1971 initiative, a U.S. regional mission in Alaska was ultimately approved by the Superior General in Council in June, 1988, in which all five provinces would participate.

The Critical Issues Task Force was given a mandate to research major areas of concern and identify critical issues which the U.S. Oblate Region would be challenged to address as it approached the 21st century.⁷⁰ Four areas were chosen as particular, though not exclusive, concerns: organization, ministry, sharing of finances and facilities, and personnel. The Task Force would develop a plan which would be implemented by OCUS within two years.

The Critical Issues Task Force's Report of June, 1990, was a pivotal moment for the process towards restructuring, as it sowed the seeds of a restructured presence for the U.S. Oblates. The comprehensive report identified three critical issues for the United States Oblates: 1) lack of a clear, shared mission (there was more of a fragmentation than a unified diversity); 2) lack of congruence between officially espoused Oblate values and the actual life-style (e.g., the prevalence of individualism and a lack of common sharing); and, 3) lack of adequate structures to support common mission and religious values (there existed as well a needless

⁶⁹ UNITED STATES OBLATE REGION, *Critical Issues Report*, [by Task Force on Critical Issues], June, 1990, 28 p. (ms), OCUS Archives, Washington, DC. This Task Force totaled 7 members, including the general councillor, the former general councillor and the executive coordinator of OCUS.

⁷⁰ *Ibid*, p. 3.

duplication of organizational structures).⁷¹ The Task Force also made several recommendations on how these crisis areas could be resolved. As each province was to make suggestions on how to respond to the report, the planning and collaboration began to take on a more serious tone.

The fifth regional meeting of 1991, with its theme: "Planning: Our Oblate Mission in the Third Millennium", among other goals, set about to develop more effective structures to support Oblate life and mission in the United States. Steps were taken to foster Oblate renewal and to enhance the spirit of collaboration. A system for prioritization of ministries throughout the region was developed among the provinces and also a process for making the region responsible by 1994 for all the post-novitiate formation programs was initiated. This was the first meeting to utilize an outside facilitator for the meeting process. Given the positive results of this effort, the same facilitator was retained for the 1994 and 1996 regional meetings.

F. The signs of the times: the need for restructuring

The provincials, general councillor and executive coordinator of the U.S. Region met while at the 1992 General Chapter in Rome. This was a key moment when the issue of restructuring the U.S. region was given a high priority.⁷² The group adopted a resolution to appoint a special committee to study the issue and make some concrete recommendations. The committee membership was composed of Oblates not presently holding any provincial or regional offices, but representative of the region. Its mandate would be "to develop a systematic and

⁷¹ Ibid, pp. 9-11.

⁷² The 1992 Chapter addressed the issue of restructuring in the Congregation itself. Restructuring processes were undertaken and completed in several regions before the 1998 Chapter meeting, besides that of the United States: Indonesia (1993), France (1996), Cameroon-Chad-Figuil (1997), Scandinavia (1998), and Kimberley-Bloemfontein-Western Transavaal (1998).

comprehensive strategy to address the issue of restructuring within the United States Region.⁷³ They were asked to look at the restructuring process in a series of stages, with an emphasis placed upon achieving positive, short term and intermediate goals which would help create the climate for further regional thinking and activity.⁷⁴ The provincials also asked that the committee develop four possible models for restructuring, considered as representing the intermediate and final stages of the process.

This restructuring committee, which began meeting in November 1992, examined the history of the Oblates in the U.S., and noted that restructuring had happened several times through the years for the purpose of helping to accomplish the Oblate mission more effectively. On 12 October 1993, the committee issued its final proposal which stated three objectives for any restructuring plan in the U.S. Region:

- 1) To create a better climate among the men of the region for collaboration and restructuring.
- 2) To consolidate places where we are missioned so we can live community better.
- 3) To reshape the presence of provincial leadership to be closer to the geographic spread of Oblates.⁷⁵

This committee presented possible models for the restructuring, including: 1) a three province model in the traditional style; 2) a three province model with two attached delegations (Western with Southern and Northern with Eastern); 3) a three province model with twelve districts (each province having four districts, one provincial, one vicar provincial and treasurer); and, 4) a one province model (with

⁷³ OBLATE CONFERENCE OF THE UNITED STATES (= OCUS), *History of Restructuring*, November 1997, p. 1, in OCUS Archives, Washington, DC.

⁷⁴ See Memo from J. DEEGAN to OCUS Executive Board, 9 October 1992, 3 p., in OCUS Archives, Washington, DC.

⁷⁵ OCUS, *History of Restructuring*, p. 2.

thirteen districts, one provincial, two vicar provincials, thirteen district leaders and one treasurer). This was the first time that a possible one province model was officially mentioned.

Around the same time, in response to a questionnaire presented to the leadership in 1993, the provincials and councils were asked to report on how they viewed restructuring. In response to one of the questions, they shared what they and their councils identified as the forces that favored restructuring and those that hindered it. Among the forces which favored restructuring, the following were noted: a shift in the number of personnel, the call to a better utilization of resources, increasing collaboration over the past years in regional projects and activities, the regionally based formation programs (particularly the novitiate), a growing clarity around identifying the call to live as apostolic communities, and the regional project of prioritizing ministries in which all the provinces were presently engaged. Among the forces which might hinder restructuring, the following were mentioned: the province sub-cultures, ties to institutions, inertia based on the aging factor, prejudice based on past experiences, financial issues, fear of the unknown, the lack of trust and the gap between espoused and operative values.

Another committee, representative of the region's leadership, conducted a dialogue with the membership of the five provinces centered around the issue of possible restructuring. Each community of Oblates across the region was to meet and discuss a series of questions, in order to gain their opinions and to inform them of the results of the Restructuring Committee's report.⁷⁶ In this way the provincial

⁷⁶ These meetings were held March-May, 1994. The following questions were asked. "When you look at the possibility of restructuring in our Region: 1) What hopes does it inspire in you? 2) What fears does it provoke in you? 3) What are the advantages of restructuring for ministry of your district community? 4) What are the disadvantages of restructuring for the ministry of your district community? 5) At this point, which of the four OCUS models for restructuring which were presented by the Restructuring Committee is the one most acceptable to your district? 6) Which other model of restructured Oblate presence in the U.S.A. would your district think feasible and workable?" The results of the responses were reported in the Proposal sent to 1994 OCUS participants on August, 1994. In OCUS Archives, Washington, DC.

leadership would have a sense of what level of support the restructuring proposals had across the region's membership.

With the report of the Restructuring Committee in hand and the results of the regional dialogue, the sixth OCUS regional meeting of 1994 gathered with its theme "Structuring for Unity for Mission". The meeting would include joint sessions with the Superior General and members of the General Council. The U.S. general councillor saw this meeting as a critical one to affirm the vitality and viability of the Oblate missionary presence in the U.S. This regional meeting, perhaps due in part to the presence of the superior general and council, marked possibly the beginning of a new era for the Oblates in the U.S.

Through the course of discussions and meetings, three resolutions were approved by the participants which gave substance to the decision for restructuring. The first resolution stated:

That the OCUS Executive Board work toward a new organizational structure in the following ten areas: vocations, formation, retirement, lay association, community animation, finances, missionary commitments, legal concerns, health insurance and [provincial] policies.⁷⁷

Secondly, the participants decided that:

The OCUS Executive Board will strive for unanimity in making decisions. However, an absolute majority, i.e., three of the five provincials, is authorized to act in the name of the region.⁷⁸

Finally, at this meeting, the OCUS provincials, with the support of the Superior General and council, were given a mandate to work on a new organizational structure for the U.S. Oblates:

That the OCUS Executive Board continue to identify and bring together the elements necessary to petition the Superior General and

⁷⁷ OCUS, *Proceedings from Sixth Regional Meeting, Waltham, Massachusetts, 6-13 November 1994*, pp. 6-11. (= 6th OCUS *Proceedings*).

⁷⁸ *Ibid*, p. 11.

Council for a new organizational structure by, at the latest, the year 2000, and, if possible, by the Chapter of 1998.⁷⁹

These decisions set the stage for the next regional meeting which would make a definitive decision about the future of the Oblate presence in the U.S.

In a joint session of the OCUS Executive Board and the Superior General and Council following the regional meeting, the Superior General, Fr. M. Zago, expressed affirmation and encouragement on the approved resolutions. He also highlighted a few areas which the General Administration wanted to bring to the attention of the OCUS provincials: community animation, formation, regional missionary commitments and involvement of lay associates.⁸⁰ He also offered some challenges in the areas of mutually supportive leadership, better communication and a common commitment to vocation recruitment. One of the region-wide activities to improve community animation was the scheduling of regional retreats open to all U.S. Oblates and held in different locations throughout the year 1996.

At subsequent meetings of the OCUS Executive Board, the by-laws of OCUS, approved in 1987, were revised to reflect the changes in regional governance structures made at the 1994 regional meeting.⁸¹ These revised *Interim Statutes*

⁷⁹ 6th OCUS Proceedings, p. 11.

⁸⁰ Report of Joint Session of the OCUS Executive Board with the General Administration, 13 and 16 November 1994, 8 p., in OCUS Archives, Washington, DC.

⁸¹ Among the changes made to the 1987 OCUS By-Laws, the OCUS *Interim Statutes* prescribed collaboration in ten areas called for by the 1994 regional meeting. The OCUS Policy Body would now include the provincials, their councils and the provincial treasurers; the General Councillor was a liaison with the General Council, but a non-voting member. The Executive Board was comprised of the provincials and the General Councillor, but, again, the Councillor did not have a vote. In certain cases, the authority of the Executive Board was delegated to a designated member of the Board, acting as a Liaison Officer. Matters entrusted to Liaison Officers were in the 10 areas chosen for regional collaboration by the 1994 regional meeting. There was concern among some as to the canonical legitimacy of a provincial delegating the exercise of his authority in certain areas, especially that of approval of candidates in formation for vows and orders. The OCUS *Interim Statutes* went through several revisions and were unanimously approved by the OCUS provincials. See OCUS *Interim Statutes*, confirmed by the Superior General

were approved by OCUS and confirmed by the Superior General in Council in October, 1995.

II. PROCESS USED FOR DECISION TO UNITE OR REORGANIZE PROVINCES

A. Plan for procedure is developed

Thus, in 1996, at what was to be the seventh and final regional meeting of OCUS (because after the restructuring a new model evolved), the provincials and their councils met to decide how to implement a plan for restructuring. Although the process seemed open to allowing several models for consideration, by the third day of the meeting it seemed the group preferred to look at one organizational structure for the entire Region. After prayer and some strongly expressed reservations, the group reached consensus, unanimously approving a model which envisioned one province for the United States.

According to the model preferred by the group, the U.S. province would be divided into six areas, each led by an area superior who would also participate as a provincial councillor. This change in structure was seen as a way to further the unified missionary presence of the Oblates, and could continue to implement the mission priorities established by OCUS since 1979. The concern of diminishing numbers of personnel weighed heavily on the decision to restructure now rather than wait until later.⁸² The participants at the Regional Meeting saw this new province not simply as a merging of the older structures, but as a challenge "to

in Council 5 October 1995, 10 p., in OCUS Archives, Washington, DC.

⁸² The 1996 Belleville Regional Meeting report included a comparison of U.S. Oblate personnel statistics for the past fifty years: 1946, 716 (total professed members); 1966, 1071; 1995, 540, excluding those serving in Recife, Zambia and on leave of absence (of the 540, 185 were 60+ years, and 175 were 70+ years). The past ten years (1987-1995) averages per year for novices: 9.3; first vows, 7.1, final vows, 2.8; ordained, 2.8; deaths, 17.6. See, OCUS, *Proceedings from Seventh Regional Meeting, Belleville, IL, 8 - 12 April, 1996*, Appendix 3.

develop new ways of supporting one another in our vocation and mission as we enter the third millennium."⁸³ In particular, what would distinguish this model from the old structures is "a dynamic interaction among the three levels of leadership": provincial, area and local.⁸⁴ The model of one province was chosen as a way of "re-founding the [Oblates] in this region of the world."⁸⁵ The landmark decision to form one province for all the U.S. Oblates was announced at the conclusion of this meeting:

Gathered in Belleville in this De Mazonod Year [following the canonization of St. Eugene], we, the members of the Seventh Regional Meeting of the Oblate Conference of the United States, gratefully announce our decision to form one province in the United States.⁸⁶

A follow-up task force of four Oblates was selected by the Executive Board to flesh out the general plan for restructuring, draw up a questionnaire to be distributed to the general membership and identify presenters for the consultation process. This committee anticipated the need for special statutes to govern the structures of the new province, and began to prepare a first draft. The Oblate General Administration would be kept informed of the process through the U.S. General Councillor's reports. The General Administration expressed their support, and encouraged the process of restructuring to continue.

⁸³ OCUS, Handout (yellow pages), entitled "The United States Province" background materials packet prepared by OCUS for the leadership consultation process, November, 1997, number 10, in OCUS Archives, Washington, DC.

⁸⁴ The provincial level would be concerned with vision, planning, direction of mission and administration. The area level would be closer to Oblates in local situations, helping them to discern, plan and carry out mission initiatives. The local level would be "the living cells of the congregation," as defined in *O.M.I. Constitutions and Rules, 2000*, Const. 91.

⁸⁵ See OCUS, *Proceedings from Seventh Regional Meeting*, text from "Letter from OCUS to the Oblates of the United States", 12 April 1996, p. 12.

⁸⁶ *Ibid.*

In the course of the restructuring process, besides consultations with the General Administration, the U.S. provincials communicated with the Oblate leadership in France. In 1995, the three French provinces had consolidated into one province, and their advice and suggestions were sought as the consultation process and development of the statutes went forward. There was also communication with Oblates in other regions, notably Canada, who were also initiating a process of restructuring. Likewise, contacts were made with other communities of women and men religious in the U.S. who had restructured their provinces.

B. Consultation among members, the hearings

1. The preparation by the 7th OCUS Task Force

The Task Force set up after the 7th OCUS meeting convened three times in the Spring and Summer of 1996 to carry out its mandate of fleshing out the proposed structure, putting together a questionnaire and identifying presenters for the members' consultation. A proposed set of statutes, some pertinent background information and some graphics were drafted, revised and prepared for distribution to the members of the various provinces. The Task Force recommended that there be a special task force for the sole purpose of addressing legal and financial issues related to the proposed restructuring. It also recommended a plan for the provinces' leadership during the transition which would ensure that any expiring terms of office for provincials be extended until the restructuring is complete. This would help to maintain stable leadership in the Region and not complicate the region's consultation for new structures with an individual province's consultations for leadership.⁸⁷ Finally, the Task Force developed a plan for the hearings and

⁸⁷ The Superior General in Council considered but did not approve this recommendation in November, 1996, but rather asked that the consultations go forward

consultation process among the membership for the Fall, 1996.

2. The hearings

The background paper and draft statutes were mailed out to the Oblates of the Region in September, 1996, with eleven hearings scheduled during the months of October and November. Feedback would be solicited in two forms: through attendance at the hearings as well as through a brief questionnaire which could be sent back at a later date (see Appendix I). The hearings would include a presentation on the work of the Task Force, any clarifications as needed, and a review of the draft statutes both in small and large group processes. In the large group setting, feedback would be received on the proposed location of the new provincial offices (Washington, DC).⁸⁸ The written questionnaires were presented to each participant, and mailed to those who were unable to attend a hearing.⁸⁹ The recorded notes of the hearings were distributed to all members of the Region so that everyone would have some indication of the questions raised and answers given in the various hearings.

When the hearings had been completed, in December, 1997, the Task Force considered the input, and made the necessary changes in the text of the draft statutes to be presented to the OCUS Executive Board. The Board then made its

for provincials in two of the provinces. Even though their terms of office would probably be shortened due to the possible unification into one province, new provincial leadership seemed to be the preference of the provinces themselves.

⁸⁸ The choice of Washington, DC, met with some opposition and querying, but, overall the response was favorable. Though ultimately approving the choice of the DC site, the Oblate General Council said they also understood some of the reservations that had been made.

⁸⁹ These questionnaires asked in the first question whether each member "basically supported the decision" to move in the direction of restructuring five provinces into one. The second question asked if there were any feelings regarding the process leading up to that decision. The remaining questions (3 - 9) related to the structures of the new province as proposed in the Draft Statutes, September, 1996. See Appendix II - A.

final decisions regarding the organizational structure and model for the proposed U.S. Province, and forwarded a formal petition for the approval of the statutes to the Superior General and Council. Included in the proposal was a report on the eleven hearings and the results of the completed questionnaires received from the members.

In December as well, following the final consideration by the OCUS Executive Board, a reflection and summary report of the hearings was prepared by the OCUS Executive Coordinator, who attended all of the hearings. This report was distributed to the members of the region. At the same time they also received a summary of the combined answers to the questionnaire and a copy of the statutes sent to the Superior General and Council. In response to question #1, asking if the Oblates basically supported the decision of restructuring five provinces into one, 81% answered favorably.⁹⁰ Only in one province, the Southern, was the response unfavorable, with 52% of those responding to the questionnaire opposed and 45% in favor of the restructuring model of one province, with 3% undecided.⁹¹

3. The Legal/Financial Committee

Following the recommendation of the 7th OCUS Task Force, the Executive Board appointed a Legal/Financial Committee in August, 1996, to research the legal and financial dimensions of the requirements of restructuring, to make appropriate recommendations to the Executive Board, and to supervise the

⁹⁰ Out of a total of 522 Oblates in the U.S. provinces, 261 said yes, 53 said no, and 9 were undecided on whether they supported the decision. It was somewhat surprising that almost 200 members did not participate in the written consultation.

⁹¹ Considering the majority negative vote from the Southern Province, one might ask why it was not let to remain separate, as it evidently would have been viable in terms of personnel and finance. However, as we shall see below, after further consultation and discernment among the membership, the Southern Province's leadership resolved it would be best to join with the other provinces from the start rather than wait until later.

implementation of these recommendations, as indicated. The membership included treasurers from three of the provinces, assisted by the Executive Coordinator of OCUS.

Unlike many of the lifestyle, formation and ministerial areas of common interest in the region, the legal and financial structures of the five U.S. provinces had not experienced the same level of coordination and collaboration through the years. Also, there was some variety in the structures and procedures which had developed among the provinces. For instance, several had major institutional commitments, while one had none. Two of the provinces were financially self-sufficient and supported the international efforts of the Congregation through major fund raising efforts; the others ranged from comfortably self-sufficient to struggling. Two of the five provinces had a well developed administrative/financial structure; the others less so.

The committee first met in September, 1996, and its work continued right up through the actual inauguration of the new province. Among the committee's major tasks were: facilitating the process for hiring legal, financial and accounting experts, working with these experts to develop a corporate civil structure for the new province, gathering of necessary legal and financial documentation from the provinces, and maintaining communication about their work both with the province membership in general and the provincial leadership of the respective provinces. Two members of the committee were eventually named as co-treasurers in the new province. We will look at the procedures and tasks of this committee more in-depth in Chapter 4.

C. Consultation with the Oblate General Administration

In December, 1996, the five provincials of the OCUS Executive Board unanimously approved the statutes as amended through the eleven regional hearings, the result of corporate consensus of the members of the region. The

statutes were then sent to the Superior General for review, comments and suggestions. The U.S. provincials also requested an overall assessment of the proposed provincial structures which had evolved over the past several years of regional meetings.

The Superior General and Council received the statutes favorably, seeing the levels of local community, area and province as an interactive framework which represented the spirit of compromise and offered hope for future needs in a diverse region. Four substantial suggestions were offered for further revisions, as well as some other editing suggestions.

The next step would be the visitation by the general councillors to the members of the five provinces for consultation on the ultimate decision of whether to approve the unification of the provinces into one. Questions for these consultation visits were prepared by the U.S. regional councillor to help the Superior General and Council arrive at its decision.⁹² Though written responses were welcomed, the emphasis would be on the one-to-one meetings between the councillors and the Oblates of the U.S. region.

For two reasons, this was a difficult moment in the process. First of all, the OCUS Executive Board would need to coordinate the official consultation by the General Administration with the timetable that the Superior General had encouraged. The majority of the provincial and general leadership preferred that the General Council's decision be made before the General Chapter (7 September - 5 October) of 1998, at which time a new Superior General and Council would be

⁹² The four basic questions suggested for the consultation were: "1) What has been your experience of the restructuring process? 2) Where are you presently in terms of the emerging proposal for one U.S. Province? 3) Do you have any comments on the proposed statutes? 4) Would you have any suggestions for the future?" These questions were included in a memo from R. CARRIGAN to the Superior General and members of the General Council, 12 January 1997, General House, Rome. In a report given on these consultation visits during the October-November, 1997, plenary session of the General Council, it was reported that a fifth question was added: "Are there any other reactions or remarks?"

elected. Secondly, both the OCUS leadership and the General Administration realized that the consultations themselves would need to be handled delicately. Potential approval of the new province and its statutes had to be seen as a confirmation of what the U.S. Oblates were requesting and not the General Council's own promotion of restructuring.

During the consultation period, the provinces' leadership continued to inform the members of the progress in restructuring and to seek their input. In March, 1997, the OCUS provincials sent a letter to the members of the U.S. provinces informing them of the Superior General and Council's decision to give a general approval to the statutes. A transition time line was developed, and the provincials tentatively set the inauguration of the new province for October, 1998.

Among the members of the various provinces, there were on the one hand some who favored that the process and decision be done quickly, and on the other those who resisted the change. It was seen that those who provided the greatest resistance had the greatest loyalty to their province and experienced their province's mission to be more focused. Thus, the resistance was not due to vested personal interests. In particular, members of the Southern province feared that their focus on Hispanic ministry would be diluted within the larger province structure, and they were opposed to being transferred outside the Texas area. The history of the Oblates of Texas up to the present has consistently shown a predominant mission focus on ministry within the Mexican and Mexican-American community.⁹³

⁹³ See B. DOYON, "The Response of the Oblates to the Founder's Call to Evangelize", in *Vie Oblate Life*, 42 (1983), pp. 241-256. This article, given as a talk to an Oblate Congress on Evangelization, narrates how in the history of the Oblates in Texas there was a consistent ministerial outreach to the Spanish-speaking population, ever since Bishop de Mazenod sent the first missionaries to work along the Texas-Mexico border. Most of the Oblates in Texas today minister in the Spanish language, which is not common for the rest of the U.S. Oblates. The other non-English language Oblate ministries in the U.S., particularly French and German, diminished with later generations. Due to demographic realities, the demand for Spanish-speaking ministry, especially in the Southwest, has increased.

There was an effort on the part of leadership in the region to look at compatible values among both groups, those who supported and those who resisted the structural changes. In spite of this resistance, the majority of members in the Southern Province indicated a willingness to support whatever direction was chosen by their new provincial leadership. Thus, the provincial of the Southern province decided it best to join with the other provinces. However, in an effort to be responsive to those who more strongly resisted the structural changes, a preference was expressed for an extension of the time line and the inauguration of the new province only after the 1998 Chapter. Due to these and the scheduling concerns of the General Council meetings, the time line was indeed adjusted and the official request for the inauguration of the new province put back to the latest by May, 1999.

A consultation with the men of the provinces throughout the U.S. Region by six members of the General Council was carried out between February and September, 1997. Those general councillors who carried out the consultation would make a joint report to the General Council, based on both the oral and written consultations.

Each member of the U. S. provinces was given an opportunity to meet with a councillor, and, according to the summary report, 370 out of 522 did so. The councillors found that over 70% of these U.S. Oblates favored the restructuring plan proposed by OCUS. While some indicated a preference for a model different from the one proposed, most agreed that there was a need for a radical structural change. Those opposed to the OCUS model nevertheless expressed a willingness to support the decision of the Superior General and Council.

After the consultation visits had been finished, on 6 September 1997, the OCUS Executive Board made an official petition to the Superior General for the five U.S. provinces to be united into one. In this letter, the provincials reviewed the history of the increased coordination and collaboration among their provinces throughout the past thirty years. They restated that the reasons for the petition, having come from the OCUS regional meetings, especially those of 1994 and 1996, were:

improved collaboration, coordination and cooperation could further enhance our missionary presence in the United States, bring together a more effective administrative structure to continue to plan and support that missionary presence, allow us a greater stewardship of the resources which have been entrusted to us to continue in this mission, and support the missionary efforts of the Congregation worldwide.⁹⁴

D. Decision of Superior General and Council

The Oblate Superior General, Fr. Marcello Zago, and the general council meeting in Rome unanimously approved the formation of one province for the Oblates in the U.S. on 3 November 1997, creating a new province to be named "The United States Province of the Oblates of Mary Immaculate" under the patronage of St. Eugene de Mazenod:

It is with great hope that I officially announce the restructuring of our missionary presence in the United States into one single Province. This is indeed a very important event for the whole Congregation. Along with the members of the General Council, I want to compliment you on what you have achieved thus far in your journey towards unification, and I urge you to continue to move together with generosity through the next stages of its realization.⁹⁵

The statutes of the new province were approved *ad experimentum* for three years, and the provincial council would be composed of both three councillors-at-large and of councillors from the six areas of the province who would also serve as *area superiors*. The provincial and the three councillors-at-large would be appointed by May, 1998; the other six, after the 1998 General Chapter by the new

⁹⁴ Letter of OCUS Executive Board to the Superior General, Rev. M. Zago, 6 September 1997, p. 3, in Archives of the Oblate U.S. Province, Washington, DC.

⁹⁵ M. ZAGO, Letter of Superior General to the Oblates in the United States, 5 November 1997, p.1, in Archives of the Oblate U.S. Province, Washington, DC. We note that the OCUS Executive Board added the word "Missionary" to the official canonical title at its meeting in August, 1998. See, OBLATE CONFERENCE, Executive Board Meeting [Minutes], 1-5 August 1998, in OCUS Archives, Washington, DC.

superior general. The provincials would be responsible for the discernment process leading to the selection of the new provincial and council. The provincial-elect and the councilors-at-large-elect were authorized to select a treasurer to be appointed eventually by the full provincial council and confirmed by the superior general in council.

In an appendix to the letter of establishment of the province, the superior general noted the various concerns addressed by the men during the consultation process, several of which are related to community development issues.⁹⁶ The general administration offered comments addressing some of the following concerns: development of a province directory, the *ad experimentum* intent of the statutes, the review and adjustment process for the role of the area superiors, and the choice of location of the province offices.⁹⁷

The new province was formally established on 10 February 1999. Besides the inauguration liturgy at the site of the new province headquarters, simultaneous ceremonies were held in the six new province areas for the area superiors' oath of office.⁹⁸ A telephone hookup was set up at each of the seven ceremony sites so that during the formal swearing-in ceremony, each area could listen to the provincial and his council taking the oath of office across the country. In his homily at the ceremony in Washington, DC, the new Superior General, Fr. Wilhelm Steckling, outlined several challenges to the U.S. Oblates: 1) to evangelize in a daring way in the context of the United States; 2) to be religious, giving Gospel witness through

⁹⁶ These concerns included: the geographical expanse of the province-to-be, the location of the province offices, clarity and flexibility with the role of Area Superiors, the emerging structures not clearly seen as at the service of our mission, too much importance given to organizational issues, not enough importance given to community animation and personnel development, lack of grass-root involvement in the development of policies and procedures, and, finally, lack of attention to the areas of vocation and formation, in ZAGO, Letter to Oblates in the U.S., Appendix 2.

⁹⁷ Ibid.

⁹⁸ At each site of the area ceremony a special retreat day was held with the common reflection on re-visioning the new province's mission.

the vows; 3) to live community, that is “learn to live and work together in small fraternities more in keeping with the needs of today”⁹⁹; and, 4) to have the active involvement of all in vocation recruitment. At the time of the inauguration of the new U.S. province, there were 503 professed members: 3 bishops, 452 priests, 35 brothers, and 13 in first formation (this total does not include those serving in the foreign missions).¹⁰⁰ The final census totals for membership of the separate provinces, *including* their foreign missions, numbered 565 professed Oblates:

Eastern: 113 Priests, 7 Brothers and 6 in 1st Form.¹⁰¹ =126

Southern: 1 Bishop and 131 Priests, 5 Brothers and 26 in 1st Form. =163

Northern: 74 Priests, 10 Brothers and 0 in 1st Form. =84

Central: 2 Bishops and 114 Priests, 16 Brothers and 8 in 1st Form. =140

Western: 46 Priests, 2 Brothers and 4 in 1st Form. =52

III. STRUCTURES OF THE NEW PROVINCE

A. Canonical effects in former provinces

In the joining of the five provinces to form a new province, besides the canonical effects in the new province, we must also consider what consequences this unification process had upon the members, structures and temporal goods involved. We do not find these effects listed in any one place in the Code of Canon Law and the Oblate *Constitutions and Rules*; however, by considering the canonical principles involved in the unification process we can draw some

⁹⁹ W. STECKLING, Superior General, *Address to the New St. Eugene de Mazenod Province of the United States*, 10 February 1999, p. 2, in the Archives of the Oblate U.S. Province, Washington, DC.

¹⁰⁰ *OMI Information*, “General Statistics” and “Statistics of Provinces”, No. 376, February 1999, pp. 1-2.

¹⁰¹ “1st Form.” includes scholastics and brothers in first formation.

conclusions.¹⁰² This listing of canonical effects is not intended to follow any hierarchical order of importance.

The five U.S. provinces ceased to exist canonically at the moment of the inauguration of the new province, on 10 February 1999. At the suppression of the former provinces, their former officers, offices and canonical provincial juridic structures ceased, including the juridic personality of the provinces.¹⁰³ According to the province statutes, Oblates who were assigned to one of the five U.S. provinces, including their delegations and missions, belonged to the new province. This new province also received the patrimonial rights and obligations of the former ones, as well as all assets and liabilities in the civil law. Those institutions, organizations and properties considered as the patrimony of the new province were listed in Appendix A of the Statutes. The varied financial practices and histories of the five provinces led to a time-consuming preparation process, especially by the provincial treasurers, financial committees and their financial and legal advisors.

One of the important canonical effects of the joining of juridic persons so as to form a new one is to respect the intentions of the donors, c. 121. In the transition period before the inauguration of the new province, the treasurers and their consultants reviewed the various bequests in the five provinces to see if there were any which might be adversely affected by the provinces' suppression. As a means of ensuring that the rights and obligations of these gifts and bequests be honored, the civil corporations of the former provinces remained in force even after the official inauguration of the new province. A notice from the co-treasurers-elect determined the effective date of transfer of all financial functions from the five

¹⁰² Among recent articles which have treated the canonical effects of internal restructuring of religious institutes, see C. DARCY, "Restructuring Religious Institutes: A Canonical Perspective", in *Bulletin on Issues of Religious Law*, 15 (Fall, 1997), pp. 10-12.

¹⁰³ The relationship that the five provinces had established through the Oblate Conference of the U.S. (OCUS) also ceased. The OCUS *Interim Statutes*, 1995, also were suppressed.

provinces to the new provincial office in Washington, DC.¹⁰⁴

Each of the provinces had been operating under its own customs and traditions, some of which were enshrined as their specific policies in areas such as budgets, vacations, ethics, etc. During the transition process, as the OCUS provincials developed the statutes and the formal petition for unification of the five provinces, a special committee was appointed to study the provinces' policies and to begin preparing a common policy directory. A preliminary draft was sent to provincials and their councils for review, and after revision, a second draft was sent out to all the U.S. Oblates in the Fall, 1998. It was understood that existing province policies would remain in effect in the new province until they had been replaced by the policies proposed in the Policy Book. In the Fall, 1999, the second draft of the policy directory was discussed at meetings of the six areas. Revising the draft in light of these comments and suggestions, the provincial and his council submitted the final policy directory for confirmation. The new policy directory was confirmed by the Superior General in Council and went into effect in May, 2000.¹⁰⁵

Perhaps a more subtle canonical effect in the former provinces is that their articulated mission became the mission of the new province.¹⁰⁶ Furthermore, in the case of the U.S. Oblates, the priorities espoused by the provinces when they

¹⁰⁴ Letter from R. MOOSBRUGGER and R. WHITLEY to U.S. Oblates, 5 January 1999, in Oblate U.S. Province Archives, Washington, DC. The financial functions included subsidy checks, transfer income (salaries, health contributions, etc.), health care billing, administration of personal patrimonies, property and auto titles, and social security payments.

¹⁰⁵ See *Provincial Directory of the United States Province, The Missionary Oblates of Mary Immaculate*, approved by the General Administration, 25 May 2000. The directory amended some of the procedures from the *U.S. Province Statutes, Final Version, 1999*. See discussion below on Province Statutes, and Appendix II - D.

¹⁰⁶ *OMI Constitutions and Rules, 2000*, Const. 96: "Each Province is in its own way a true apostolic community with its priorities and goals which, to be attained, require the participation of all." Certain conditions must be met for a Province to establish priorities or apostolic projects. See F. JETTÉ, *O.M.I. The Apostolic Man*, Rome, General House, 1992, pp. 446-448.

collaborated as a U.S. region and articulated at the regional meetings became the priorities of the mission of the new province, as articulated in the statutes.¹⁰⁷ However, at its founding, the mission of the new province remained somewhat diffuse, and, thus, in the first province convocation held in November, 2000, the important topic of mission was discussed and articulated by a group now unified in a new structure.¹⁰⁸ The priorities of the mission of the U.S. Oblates took on a more nuanced and developed definition in light of the contemporary situation in the U.S. society and in the Oblate community.

B. Consultation for new provincial leadership

Following the resolutions of the Superior General in Council, consultation procedures for the leadership selection process were drafted by OCUS and approved by the Superior General in Council. The process for the selection of the provincial and councilors-at-large included four steps:

- 1) a reflection process in local Oblate groupings,
- 2) a Province-wide straw ballot,
- 3) a convocation held in all of the six new Province Areas and, finally,
- 4) an official consultation ballot from the Superior General.

The Superior General in Council named the provincial and councilors-at-large on 21 May 1998. The provincial-elect and the councilors-at-large-elect named two

¹⁰⁷ These priorities were discussed beginning at the 1979 regional meeting, and developed in the subsequent meetings in 1981 and 1984 in particular: ministry to minorities especially Hispanics, development of lay leadership, reform and renewal of Oblate life, the ministry of justice and peace, and policy and direction in the area of national coordination and the promotion of vocations. See *The UNITED STATES PROVINCE OF THE [MISSIONARY] OBLATES OF MARY IMMACULATE, Statutes*, 10 February 1999, article 7, in Oblate U.S. Province Archives, Washington, DC. In Appendix II - C.

¹⁰⁸ The ongoing communication and coordination for 20 years among the U.S. Oblate provinces seemed to obviate the need for holding a special mission convocation of members prior to the actual consolidation. We note that other Oblate province restructuring efforts, v.g., in France and, presently, in Canada, included convocations of all the members prior to the actual consolidation to discuss common mission priorities.

candidates for the position of co-treasurer of the new province. The reasons for opting for co-treasurers rather than a treasurer were related to the size of the task of coordination and to facilitate the blending of the various provinces' histories and procedures.

The consultation process for the other six provincial councilors who would be area superiors was also divided into various stages:

- 1) meetings in the 6 areas facilitated by one councilor-at-large-elect which would gather a list of candidates for area superior,
- 2) a straw ballot is mailed to each member, listing the top three names that surfaced in each area,
- 3) a designated committee counts the straw ballots,
- 4) results of straw vote sent to each member with the official ballot from the Superior General.

After the consultation process was completed, the Superior General in Council on 30 December 1998 named the remaining members of the provincial council who would be area superiors.

C. Consultation for provisional provincial statutes

The 7th OCUS Task Force met in the Summer, 1996, to consider special statutes for the new province. They were written in conversation with the OCUS provincials as well as with a few others in the region. A canonical consultant gave comments and suggestions. After the working draft was completed by the committee, the provincials and councils were asked for their feedback. A subsequent draft was prepared in light of these comments and suggestions. This first public draft of the statutes was mailed to all members of the provinces in September, 1996, and was presented for discussion at the eleven hearings held throughout the region in October and November, 1996.

This first draft (Appendix II - A) was divided into the following parts: The Oblate Province of the United States, Mission, Organizational Structures, Province Areas, Local Communities, Institutions, Missionary Outreach and Amendments of the

Statutes. An appendix dealt with the question of transfers of assignments and the governance role of the area superior. An alternative appendix proposed by one provincial focused on the leadership role of area superiors in transfers of men in their area.

After the eleven hearings on the statutes, several concerns were expressed by the men throughout the region. The role of the area superior, seen as the “critical middle” level of provincial leadership by the 1996 regional meeting, needed some further refinement. As the intermediary authority between the provincial and local levels of authority, the area superior would serve as a channel of communication, for the provincial to the members in a particular region, as well as for the members of the particular region to have better access to the leadership.¹⁰⁹ With a province as geographically expansive as the envisioned U.S. Province, and with the membership totaling around 500 members, provision for access to leadership by the members and the sharing of the provincial’s workload were practically a necessity.

During the process of revision of the statutes, it was noted that the Oblate *Constitution and Rules* permit only three levels of governance in the Congregation: congregational, provincial and local. Therefore, the area superior cannot have proper governance authority, as this would create another level of governance, and, thus, go contrary to the Oblate proper law. For example, the area superior could not possess proper ordinary power of administration, nor could he have a council.¹¹⁰ Though some had proposed that the area superior could at least possess delegated authority from the provincial, the majority of members were unsure.

The lack of clarity regarding the area superior’s role was further exemplified when considering what the Oblate *Constitutions and Rules* provide for in the

¹⁰⁹ See DARCY, “Restructuring Religious Institutes”, p. 11.

¹¹⁰ What could not be delegated would be an institute leader’s responsibility for which the consent of the council is required [both those mentioned in the Code of Canon Law, and those in the *OMI Constitutions and Rules*, 2000]. See DARCY, “Restructuring Religious Institutes”, p.11.

appointment of a provincial councillor.¹¹¹ As a member of the provincial council, he must be appointed solely by the Superior General in Council, with appropriate consultations both in the areas and in the whole province. Therefore, the area superior cannot simply be *appointed* by the provincial and confirmed by the Superior General as had been stated in the first draft of the statutes.¹¹²

Unlike the model envisioned in the first draft, where the area superior would have been delegated to be a sort of mini-provincial,¹¹³ in the approved final version he takes on dual roles: he acts as a provincial councillor who relates to the whole province, and, as an area superior who serves as an animator of community life in his particular area. In the regional hearings during the revision process, some members had expressed a desire for the area superiors to have governance authority even as a vicar provincial; however, this was not the preference of the larger group. Though perhaps canonically he does not have ordinary authority as such, nonetheless, as an animator of community life and as a representative delegate of the provincial, his role is vital. As an innovation in the Oblate proper law, it was seen that the area superior's role must remain flexible to be able to adapt to circumstances which could arise.¹¹⁴

¹¹¹ See *OMI Constitutions and Rules*, 2000, Rules 106a, 146a.

¹¹² See *U.S. Province Draft of Statutes*, September, 1996, Part III, 15d, in Appendix II - A.

¹¹³ "It would not seem possible for the institute leader to delegate those matters which belong directly to an authority/obedience relationship, such as, missioning members," in DARCY, "Restructuring Religious Institutes", p. 11.

¹¹⁴ Perhaps this is an area such as alluded to by John Paul II in *Vita consecrata*, par. 37 which calls Institutes of Consecrated Life to the initiative, creativity and holiness of their founders and foundresses. "It is a call to ... develop a dynamic fidelity to their mission, adapting forms, if need be, to new situations and different needs, in complete openness to God's inspiration and to the Church's discernment." See JOHN PAUL II, Apostolic Post-Synodal Exhortation, *Vita consecrata*, March 25, 1996, Città del Vaticano, Libreria editrice Vaticana, 1996, 138 p. English trans. in *Consecrated Life, Post-Synodal Apostolic Exhortation, Vita consecrata, of the Holy Father John Paul II, On the Consecrated Life and Its Mission in the Church and In the World*, Sherbrooke, QC, Médiaspaul, 1996, p. 63, par. 37.

Other changes reflected in the second revised statutes (see Appendix II - B) included: more emphasis upon the importance of apostolic community life, revisions in the consultation process for the selection of area superiors and a revised geographic definition of some of the areas. The delicate process for assigning personnel was refined further, with a more nuanced understanding of the role of the center, which includes the provincial, vicar provincial, and two councillors-at-large. There was a reordering of various articles of the statutes to delineate more coherently the roles of the organizational authority, both at the province and local community levels. Finally, the text of the statutes was revised so as to conform with the provisions of the *Constitutions and Rules*, e.g., procedures for extraordinary administration of temporal goods (no. 15), the procedures for the approval of provincial directories (no. 16), and the right of local communities to own and administer property (no. 34).

Taking into consideration these concerns, the OCUS Executive Board prepared a second draft of the statutes which was sent to the Superior General and Council in December, 1996. These revised statutes reflected a more logical and simplified division into parts which now included: The Oblate Province of the United States; Mission; Organizational Structures; Ministries, Institutions and Organizations; Missionary Outreach, and, Amendments to the Statutes. At the conclusion were two appendices: "A" which lists all the entities under immediate supervision of the provincial, and "B" which contains the protocol guiding transfers of assignments within the province.

The approval of the statutes and recommendations for further amendments were received from Rome in February, 1997. The response from the Superior General was favorable to the proposed statutes; they were seen as compatible with the Oblate *Constitution and Rules*, and integrated the thrust of the recent General Chapters. Furthermore, the Superior General found that the statutes reflected a spirit of compromise that bodes well for future needs in a diverse area. The structures on the three levels, local, area and province, provide an interactive

framework which allows for effective and comprehensive animation. The Superior General stated:

All in all, our assessment was quite positive. We find that the statutes offer a shared vision, one that can bring about the refounding you seek as a region. Your focus on community as the living cells of a unified missionary body should contribute to this effort.¹¹⁵

Four substantial suggestions were made to the proposed statutes.¹¹⁶ First of all, the statutes were to be *ad experimentum*, and subject to review and amendment by the province as a whole. Secondly, the provincial and council would determine the process for surfacing names of candidates for the area superiors. Thirdly, there was confusion with regard to the term "area superiors"; the Superior General suggested other possible terms more in keeping with the experience of the Congregation, such as "area delegate". Finally, there was a question about how the statutes would include the missions of Mexicali and Puerto Rico in the six province areas. The response also included a list of editing suggestions as well as some additional comments by the procurator general.

The final text of the statutes (see Appendix II - C) was prepared in September, 1997, by the OCUS Executive Board and included with the formal petition for approval of the restructuring. This final draft of the statutes reflected most of the comments and editing suggestions made by the Superior General in February, 1997. The U.S. provincials had preferred to retain the title "area superiors", wanting to avoid confusing *areas* with *delegations* which could be implied by using the title "area delegate" as originally suggested by the Superior General. Besides the statutes, the OCUS Executive Board sent the latest draft of the provincial policy directory for comments.

Along with his decision to establish the new U.S. province, the Superior

¹¹⁵ Letter from Superior General Rev. M. ZAGO to Rev. D. KALERT, President of OCUS, 10 February 1997, in OCUS Archives, Washington, DC.

¹¹⁶ See *ibid.*

General approved the statutes *ad experimentum* for three years. He remarked that with time and experience modifications perhaps might be made to parts of the statutes. The provincial leadership would be responsible for “an evaluation and an amendment process actively involving the full membership.” The General and Council would review such proposed changes and grant approval.

With regard to the area superior, the Superior General stated that the office is a new structure whose precise responsibilities remain to be determined; however, his principal role is to “carry out an effective animation, particularly for the development of mission and the building-up of community.”¹¹⁷ He also noted that the statutes give sufficient flexibility to allow for evolution of the area superior’s relationship with the provincial and the councillors-at-large, since his authority is delegated by the provincial.

After the inauguration of the province in 1999, area consultation meetings were held to discuss the proposed policy directory. In the course of these discussions, and through the experience of living with the statutes for a few months, a few adjustments to the 1999 province statutes were made in regard to definitions and procedures.¹¹⁸ First, there was further development of the province’s priorities, particularly noted in the inclusion of ministry with youth as a province priority. Secondly, it was decided that even in cases involving transfers within the areas, the provincial rather than the area superior should formalize assignments. Thirdly, due to strong recommendations from the area consultations, it was decided that all province members be invited to every province convocation. Finally, the provincial and council preferred that, instead of having each area elect two advisors to form an area council, the area superior would simply consider all the local superiors his advisers. This was to obviate the fear that having a council in an area would make the area superior into a sort of *mini-provincial*.

¹¹⁷ See *U. S. Province Statutes*, 1999, nos. 25, 26, in Appendix II - C.

¹¹⁸ The changes in the wording of the text as amended by the Policy Directory are found in Appendix II - D.

D. Overview of the organizational structures in the final statutes

There exist two levels of governance: the local community and the province. These are linked by an intermediate level of animation and administration, which is called the *area*. Therefore, the province, encompassing the continental United States and Alaska, is divided into six geographic areas which include all the Oblate ministries, institutions and organizations. The provincial superior and the local superior receive their authority from the Oblate *Constitutions and Rules* and the *Code of Canon Law*. The area superior receives his authority as delegated by the provincial and provided for in the statutes, e.g., budget review, visitations, etc. The area superior's role is intermediate; he is not an autonomous authority as are the superiors at the other two levels.

The provincial council is composed of three councillors-at-large (one of whom is chosen as vicar provincial) and the six area superiors. In this way the council attempts to be both representative of the membership and conducive to the most effective leadership. The councillors, both those at-large and the area superiors, are co-responsible with the provincial for the government of the province. The provincial works with the council, overseeing the missionary thrust of the province and doing long-range planning.

The provincial and council (the councillors-at-large and the area superiors) are appointed by the superior general in council after consultation with the province members. The provincial treasurer is appointed by the provincial in council and confirmed by the superior general in council. The local superiors are proposed by the area superiors, in consultation with the local community, and appointed by the provincial and council. Local superiors' councils and the local treasurers are also proposed and appointed in the same way. The area superior may ordinarily serve for two consecutive terms, and, in exceptional cases, for a third one. The statutes envision the area superior as a full time role, and he will have no other

administrative or ministerial duties which would impede his service.

The statutes call for a central administrative team which includes the provincial, the vicar provincial, the two councillors-at-large, and the province treasurer. The provincial works closely with the members of the administrative team in developing strategies and carrying out the day-to-day animation and administration of the province, its institutions and missionary outreach. The administrative team plays a pivotal role in the supervision and coordination of various portfolios which relate to aspects of province life and mission.

The provincial, as the major superior, retains proper ordinary executive power in governance matters, particularly in the areas of personnel assignments, formation and the administration of temporal goods throughout the province. The provincial council provides advice and, when necessary, consent for acts of governance and administration. The provincial treasurer handles the ordinary administration of temporal goods; for acts of extraordinary administration he requires the permission of the provincial in council, and, if necessary, higher authorities.

The provincial and council provide for a good, cost effective administration by establishing a number of portfolios with clear role descriptions and guidelines, and by organizing the necessary offices, committees and services. These portfolios will oversee critical areas of the province's life: facilitate mission planning and development, the building up of local communities and the preparation of superiors, good communication and corporate reflection, vocation and formation activities, preaching and renewal ministries, personnel concerns, finances and fund raising, lay collaboration and association, justice and peace, social communications and media, networking of our institutions and public relations.¹¹⁹

At the area level, the superior works closely with all the superiors of the local

¹¹⁹ As a response to the need of the province expressed in the first provincial convocation in November, 2000, the provincial appointed one of the area superiors as a permanent vicar provincial for vocations, giving his ordinary power in the portfolio of vocations and searching for candidates to the Oblates.

communities and the directors of institutions in his area. The area superior will preside over meetings of the men in his area and can set up consultative committees as necessary. The areas, as groupings of local communities and institutions, enable the Oblates in a given geographical sector to pursue mission and life as a true apostolic community.

The province convocation provides a vehicle for corporate reflection on the life and mission of the province as well as a process for the direct involvement of the membership. These convocations are held at least every three years for all members of the province. The Provincial in council determines the time, place and the agenda of the convocation. The planning process involves all members and welcomes everyone's comments and suggestions.

IV. NEW STRUCTURES BRING NEW RELATIONSHIPS

A. Relationships among Oblates

The structural change in uniting the U.S. provinces created, first of all, a new juridical relationship among Oblates in the province. They now shared their major superior (and vicar) and provincial council, a common mission, and a common patrimony of temporal goods. Through the interconnected structure of the province areas, the local communities were united and represented together in leadership of the province. There existed now a common commitment to the foreign missions and delegations which the individual provinces had originally sponsored, including support in both personnel and financial commitments. Another way that these changed relationships were expressed was through an amended membership structure for the boards of various Oblate-sponsored institutions and organizations to include the common provincial leadership.

While they had shared the same spiritual roots from St. Eugene de Mazenod, the particular cultures, traditions, and histories of the former provinces were now

also held in common in a new way. Members of former provinces began to learn about the histories of the other U.S. provinces as the expression of a common missionary heritage in the U.S. The spiritual patrimony of the five separate provinces became that of all of them together.

Since the union of the provinces into one, the next General Chapter representation will also be different.¹²⁰ In the *Oblate Constitutions and Rules, 2000*, regions are now the basis for determining representation at the Chapters.¹²¹ After some discussion at the 1998 General Chapter, the U.S. Oblates were allowed to remain a region in the Congregation with their own general councillor for the time being. In the next Chapter, however, the U.S. province will most likely be joined with another region, probably Canada.¹²² Although this will not create any different juridical relationship, since the Oblate region is not a juridical structure, other relationships will be created.¹²³ The regional communication, collaboration and coordination achieved will now be transferred to a larger sphere. The U. S. province of the Oblates is related now as one to the rest of the Congregation.¹²⁴

¹²⁰ Due to a special concession by the Superior General in Council, the representation at the 1998 Chapter was based upon the five separate provinces' *ex officio* and elected delegates.

¹²¹ *OMI Constitutions and Rules, 2000*, Const. 128, Rules 128a, 128b. Especially Rule 128a: "Elected delegates will be determined on the following basis: 1) The elected delegates will be one for each one hundred members of a Region, plus an additional delegate if the remaining fraction is sixty or more. However, in order to strengthen the growing sectors of the Congregation, the Oblates in first formation in each Region are counted twice."

¹²² See *ibid*, Rule 120a: "As a general rule, the Region is international in its composition. This favours a broader missionary consciousness within the Congregation."

¹²³ See *ibid*, Const. 119: "The Regions profit from their collective experience and develop common approaches to Oblate life and mission."

¹²⁴ *U.S. Province Statutes, 1999*, nos. 6, 39, in Appendix II - C.

B. Relationships with the local Church

The U.S. province statutes define the relationship with the U.S. Church in these terms: "...this missionary presence is at the service of the Church in the United States in its evangelizing mission to the poor and most abandoned..."¹²⁵ The territory of the province covers many dioceses across the country which represent the diversity of the U.S. Church. Through its statutes, the province states that it relates to the U.S. Church's mission particularly through the expression of the traditional Oblate charism, evangelization of the poor and most abandoned. In its expressed priorities or apostolic projects, the U. S. Province must relate to the needs of the local Church where it serves, as explained by Fr. Jetté:

The apostolic project must take into account the pastoral plan of the diocese, of the country. It will make its own particular, original contribution to the plan, taking part in it while remaining faithful to its religious charism for the greater good of the local Church.¹²⁶

During the restructuring process of the U.S. provinces, there was no formal inclusion of the bishops and local churches, nor is this required by the present Code.¹²⁷ Informally, the provincials sounded out a few bishops and even shared with them a video prepared after the 1994 OCUS regional meeting on the restructuring proposals. Following the approval of the unification in November, 1997, the OCUS Executive Board prepared a letter to be sent to all the bishops of dioceses where the U.S. Oblates minister, informing them of the approval. A further

¹²⁵ *U.S. Province Statutes*, 1999, no. 6, in *ibid.*

¹²⁶ JETTÉ, *O.M.I. The Apostolic Man*, p. 447.

¹²⁷ We have noted above that, as the first Oblate province in the U.S. was being established in 1883, the Congregation for Religious asked that a letter be sent to the bishops of Montreal and Boston requesting their opinion on the proposed new establishment. In the present restructuring process, the provincials thought it preferable to retain some official distance from the bishops so as to arrive at their decisions on restructuring more independently.

letter was sent to them upon the formal establishment of the province in February, 1999, informing them of the name of the provincial and address of the new provincial office, as well as the name of the pertinent area superior and his address. Several bishops participated in the various ceremonies held in Washington, DC, and in the six areas formally establishing the province and installing the new leadership.

CONCLUSIONS

1. The establishment of the Oblate Congregation in the United States followed several different strands, all of which resulted in today's Oblate missionary presence. The founder of the Oblates, Saint Eugene de Mazenod, envisioned from the beginning an Oblate province in the United States which he hoped would eventually expand into Mexico and other regions of the Americas. Although the Congregation was young and its members were few, de Mazenod responded to the urgent requests of several distant missionary bishops. The groups to which the Oblate missionaries responded were the native peoples of the Oregon territory, the Mexican settlers along the Texas-Mexico border, the French-Canadian immigrants in the Northeastern U.S., as well as staffing several diocesan seminaries. Although not all of these efforts brought positive results, the zeal and idealism of the first missionaries, pitted against challenges from nature itself and various cultural factors, resulted in the establishment of a separate province in the United States after 36 years of missionary presence. United into one province, the Oblates found themselves dedicated to diverse ministries separated geographically by great distances.

2. As the local population and its resultant ministerial demands continued to grow, the unity of diversity which had enabled the founding of the first U.S. province proved to create increasingly greater obstacles to its governance and formation. The subsequent phase of growth saw the Oblates divide the U.S. territory ultimately

into five separate provinces, each one originating with a mission focus unique from that of the others. Two of these units were not initially defined territorially, but rather by their mission to particular linguistic and cultural populations, French and German. The Oblate membership in the U.S. grew and expanded along with the growth and expansion of the U.S. Church, especially following World War II.

3. After the war and its forced isolation of the different regions of the Oblate world, communication and sharing of information became more common at the Congregational and inter-provincial levels. The U.S. Provinces initiated regular gatherings of the provincials in the 1950s and even earlier, by 1948, they joined with the Canadian provinces in meetings of educators. With the 1966 Oblate *Constitutions and Rules* and their further implementation at the 1972 Chapter, several values from Vatican II were introduced into Oblate communities and the Oblate mission. Particularly, the values of decentralization of authority, collegiality, subsidiarity and flexibility were actualized at the inter-provincial or regional level of the Congregation, for the purpose of being able to respond better to the avowed mission to the poor. The U.S. Oblate region began a new relationship of cooperation and communication after the Council, resulting in the decision to establish a joint novitiate in 1968 for the five provinces.

4. With the establishment of the U.S. region as the *Oblate Conference of the United States* (=OCUS) in the 1970s, cooperation and communication led to collaboration among the five provinces for the reform and renewal of Oblate life and mission in the U.S. A series of regional meetings was held, beginning in 1979, which gathered the provincials and their councils, to reach consensus on common mission priorities and to collaborate in their implementation. A pivotal moment occurred in 1990 with a *Critical Issues Study* which looked at three value-based deficiencies: lack of a unifying mission for the Oblates in the region, a lack of coherence between espoused values and lifestyle, and a lack of appropriate structures to support the common values of mission and community. Another piece of significant information was contributed by the *CARA* study which projected the

number of U.S. Oblate personnel up to the year 2006, based upon current trends. Specific collaborative projects included opening a regional mission to Alaska in 1988, and in 1991 a commitment to the consolidation of all formation programs.

5. Another key moment occurred when, at the 1992 General Chapter, the subject of restructuring the region surfaced for the first time in a discussion by the U.S. provincials and other chapter delegates from the U.S. This restructuring was seen as a necessity in order to develop a unified missionary presence for the U.S. region. In 1993, a committee selected to study the issue proposed models for this restructuring, which for the first time officially included a model of one province for the U.S. Oblates.

6. The leadership provided by the U.S. Oblate regional councillor, the provincial serving as OCUS president and the OCUS executive coordinator, with the support of the Superior General and Council, led to a final decision for unification of the provinces in two subsequent OCUS meetings in 1994 and 1996. At the regional meeting in 1994, the 1993 restructuring committee's report was received, and, with the encouragement of the Oblate General Administration, a decision was made to restructure the region. As a transitional step, the 1987 OCUS by-laws were revised, giving to selected provincials authority over certain areas when acting as Liaison Officers, in matters such as formation and retirement, in the name of all five provincials. Community animation was developed on the regional level with a gathering for superiors and inter-provincial annual retreats. Further discussion among the men of the provinces and their province leadership led to a unanimous decision to restructure into one province for the U.S. at OCUS' final regional meeting in 1996. However, some strong reservations to the proposed unification model were expressed by certain members.

7. This unanimous decision initiated the actual spiritual, theological and juridical preparation process for unification of the provinces. Two critical issues would need to be studied: 1) development of an organizational structure which, in deference to subsidiarity, would give life to the local level, and 2) coordination of

the financial issues involved. A series of hearings or meetings was held across the region to discuss among the membership the form this new province would take, basing the reflections upon a proposed set of special statutes. After a positive response in the consultation from the membership and the leadership of the provinces, revised proposed statutes were presented to the Oblate General Administration for comments. At the same time, another special committee was established to study and prepare a legal and financial structure for the unified provinces. The statutes were given tentative approval for a three-year experimental period.

8. The next phase involved the official consultation process by the General Administration with the Oblate membership throughout the U.S. The consultation consisted of individual meetings with general councillors and any member who wished to meet with them. Questions were prepared beforehand for these interviews and the members were invited to send in written comments if they so wished. Once the consultation process was complete, the U.S. provincials formally requested the Superior General that the provinces be restructured and unified. In their final unanimous decision, the Superior General and Council considered both the resisting and promoting forces within the membership for the unification into one province. Some recommendations were made regarding the statutes' provisional character, the site of the provincial headquarters, the role of the area superiors and the development of a province directory.

9. The structure of the new province included two juridical levels of governance: provincial and local. A middle level of leadership was instituted as an innovation: there would be area superiors whose role, besides being members of the provincial council, would be to be delegates of the provincial and representatives to the leadership of the area groups of local communities. The six geographical areas of the province would be groupings of local communities in communion with the rest of the province, but each is responsible for the accomplishment of the Oblate mission in its particular area. The financial

administration of the province would be centralized under the provincial and the treasurer.

10. The restructured province created new juridical relationships among the Oblates themselves, within the new province as well as on the congregational level. The exact nature of the relationship of the U.S. Oblate province with its neighboring Oblate regions has yet to be clarified. New relationships were established with the local churches with whom the unified Oblate missionary presence in the U.S.A. would now collaborate.

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In this chapter we have traced the developmental process which led to the unification of the U.S. Oblate provinces. We have also examined the structure and procedures for the new province as laid out in the statutes and the province policy directory. In our concluding chapter, we will consider the consequences of these structures of the province related to the two spheres in which it exists: as a juridic person in the canon law of the Church and as a not-for-profit corporation according to the civil law of the United States. We shall critically examine the interrelationship of these two simultaneous juridical states, and analyze some potential problems.

CHAPTER FOUR

CIVIL, LEGAL, CORPORATE AND FINANCIAL ISSUES IN THE UNIFICATION OF PROVINCES

This final chapter will examine the consequences of the unification of provinces from the civil, legal, corporate and financial perspectives. As we consider these issues with respect to the process of consolidation of provinces in general, we will use the consolidation of the United States Oblate provinces as our case study. In the first section of this chapter, we will give a general overview to the process of civil incorporation by religious provinces in the U.S. Following this, we will evaluate the unified U.S. Oblate province's civil legal structures to see how they conform to the civil laws in the United States. Next, some practical issues will be raised related to the joining of the financial resources and liabilities of the five U.S. Oblate provinces. The chapter will conclude with an analysis of these structural changes from the perspectives of civil law, canon law and the Oblate proper law.

I. RESTRUCTURING PROVINCIAL CORPORATIONS

In Chapter One, we described the religious province as a juridic person with certain rights and obligations. We also considered some possible civil law consequences for the province established as a juridic person. In Chapter Two, we analyzed the juridic consequences of the fusion, union and reorganization of provinces, including consequences relating to canonical juridic personality, as well as any civil law consequences that would need to be addressed. In both these chapters we also saw how the definition of a province and the reorganization or restructuring of provinces was treated in the proper law of the Oblates.

Now, we propose to consider some practical civil and canon law consequences of the unification of provinces in general, and, in particular, those arising from the consolidation of Oblate provinces in the U.S. We want to examine, especially, how

the existing civil law corporations applicable to five separate juridic persons, the former provinces, were evaluated and transformed to support the canonical reality of one united province. We will begin with some basic concepts and definitions, especially some taken from the United States' civil law tradition.

A. Relationship of civil and canon law

1. The place of civil law in the canonical system

In examining both the civil and canonical dimensions of the unification of provinces, we must consider how the two legal systems relate to one another. With regard to the place of civil law in the canonical sphere, we first look at a basic principle stated in c. 22:

Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.¹

This norm states that the canon law yields to civil law in certain areas with canonical effects, giving canonical force to some civil laws within the Church's legal system. This is sometimes referred to as the "canonization" of civil law. The key point is to determine the particular circumstances when the canon law yields (*remittit*) to the civil law. And, for our study, we must ask whether there are instances related to the process of consolidation of religious provinces where we should note this particular relationship of civil to canon law.

At the beginning of *Book V, The Temporal Goods of the Church*, as a general

¹ CIC, 1983, c. 22: "Leges civiles ad quas ius Ecclesiae remittit, in iure canonico iisdem cum effectibus servantur, quatenus iuri divino non sint contrariae et nisi aliud iure canonico caveatur." English trans. in *Code of Canon Law, Latin-English Edition*, translation prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, CLSA, Washington, DC, 1999. Note: the translation would have been more precise had it read: "Those civil laws to which the law of the Church yields..."

principle, the Code states that the Church has the right to use ecclesiastical temporal goods for the pursuit of its mission, and can do so independently from any civil jurisdiction (c. 1254). However, in other parts of *Book V*, we find canons which display a variety of stances to be taken with respect to civil law over temporal goods. For example, in c. 1290, on contracts, the Code “canonizes” the use of civil contract law, making the particular civil law on contracts the applicable canon law, but with the same reservations as articulated in c. 22: “unless it is contrary to divine law or canon law provides otherwise.” Therefore, as a concrete application within the context of our study, we could say that a religious province which enters into a civil contract is bound by that contract, and, in the case of reorganization of provinces, the contract’s force would usually be binding on the unified province as a juridic person as well.

We find also in *Book V* other canons which mention the civil law and which can be important in our study of the process of unification of provinces. In these instances, rather than “canonizing” the civil law as such, the Code exhorts administrators to obey the applicable civil laws, to use “civilly valid methods” to protect the juridic person’s temporal goods securely, and to observe civil laws so that the Church will not suffer damage from their non-observance (c. 1284 §2, 2 °, 3°).² Also, with regard to dispositions *mortis causa*, the Code states that the civil law formalities are to be observed, “if possible” (1299 § 2). It follows that in the processes of civil incorporation and financial restructuring, the civil laws and their effects are canonically significant with varying degrees for the religious province.

² See commentary in J. HUELS, “Ecclesiastical Laws”, in J. BEAL, J. CORIDEN and T. GREEN, eds., *New Commentary on the Code of Canon Law*, commissioned by the CLSA, New York, NY/ Mahwah, NJ, Paulist Press, 2000, p. 85. Also see J. OTADUY, “Comentario”, in *Comentario exegético al Código de derecho canónico*, obra coordinada y dirigida por A. MARZOA, J. MIRAS y R. RODRIGUEZ-OCAÑA, 2a ed., Pamplona, Ediciones Universidad de Navarra, 1997, vol. I, p. 412.

2. The place of canon law within the civil legal system

The civil law has also given us some indication of what significance it places upon canon law. For our purposes in this study, we consider the standing of canon law within the U.S. civil jurisdiction.³ A. Maida and N. Cafardi outline the precedents in the American legal system pertaining to the effects of canon law or the laws of other Christian churches.⁴ Based upon rulings in several Supreme Court cases,⁵ we see that the civil courts have usually deferred to the churches' jurisdiction on internal procedures.

In more recent times, however, a significant distinction was made by the courts regarding the application of what are termed "neutral principles" of law, i.e., in a

³ We note a similar study done on the relationship of canon law within the civil law system of Canada in which the author reviews civil court cases which have dealt with canonically related issues. See, E. CAPARROS, "Le droit canonique devant les tribunaux canadiens", in M. THERIAULT and J. THORN (eds.), *Unico Ecclesiae servitio: Canonical Studies Presented to Germain Lesage, O.M.I., on the Occasion of his 75th Birthday and of the 50th Anniversary of his Presbyteral Ordination*, Ottawa, Faculty of Canon Law, Saint Paul University, 1991, pp. 307-342. Further discussion on Canadian civil courts and canon law is found in F. MORRISEY, "Canon Law Meets Civil Law", in *Studia canonica*, 32 (1998), pp. 194-201.

⁴ A. MAIDA and N. CAFARDI, *Church Property, Church Finances and Church-Related Corporations*, St. Louis, The Catholic Health Association of the United States, 1984, pp. 103-113. See also, F. MORRISEY, "The Canons of Book V and Their Relation to Civil Law in North America", in *Prawo canonizcae*, 43 (2000), pp. 273-289. Note that the use of the word "churches" here relates to the secular terminology, not to any canonical or theological distinctions of the term. A topic of related interest and importance is how the U.S. tax law identifies Catholic religious institutes and their provinces as "churches" and, therefore, public charities eligible for tax exemption. See discussion in J. M. FITZGERALD, "The Official Catholic Directory: Civil and Canon Law Requirements", in *The Catholic Lawyer*, 30 (1986), pp. 113-114.

⁵ *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U.S. 1 (1929); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *The Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). See MAIDA and CAFARDI, *Church Property*, pp. 105-108.

legal challenge to a church's deeds, contracts, or corporate articles and bylaws.⁶ The civil courts decided that they could claim jurisdiction over the church's civil legal documents, if there was a defect in the church or religious organization's use or misuse of these "neutral principles". Two more recent Supreme Court rulings seem to lower the threshold over which federal and state laws may be applied to a church without violating the free exercise of religion.⁷ Therefore, more today than in the recent past, we can say that the canonical structures of the Catholic Church and its ministries must be harmonized with the U.S. civil law so as to be binding in the civil forum when necessary and to not give rise to civilly negative consequences and judgments.⁸

The Code itself charges administrators to observe the pertinent civil laws so as not to cause harm to ecclesiastical goods, (c. 1284 § 2, 2°, 3°). This is significant for administrators of juridic persons in general, but, in particular, when the administrator is overseeing a consolidation of provinces of a religious institute. Among other concerns, the administrator needs to pay careful ongoing attention to the civil documents which give protection to the province's assets, amending them

⁶ The Supreme Court case referred to here is *Jones v. Wolf*, 443 US 595 (1979), which set the precedent for the "neutral principles" of law standard. See MAIDA and CAFARDI, *Church Property*, pp. 108-110. More recent rulings by the Supreme Court which build upon this "neutral principles" of law standard have made it imperative that there be religious language used both in the writing of contracts as well as in civil corporate documents. See W. BASSETT, "A Note on the Law of Contracts and the Canonical Integrity of Public Benefit Religious Organizations", in *CLSA Proceedings*, 59 (1997), pp. 61-86.

⁷ These cases were *Employment Division, Department of Human Resources of Oregon v. Smith* [494 US 872 (1990)], and *City of Boerne, Texas v. Flores* [521 US 507, 117 S.Ct. 2157 (1997)]. "There is no right to an exemption of accommodation from generally applicable laws neutral on their face that burden the free exercise of religion, unless those laws are motivated by religious bias, directly target religion or religious practices, substantially oppress hybrid constitutional rights, or concern individuated state unemployment compensation decisions," in BASSETT, "A Note on the Law of Contracts", p. 67.

⁸ In particular, corporate law, trust law, contract law and income tax law that is general and universal will ordinarily apply to churches since they address legitimate government interests and use rationally related means to do so.

when necessary so they reflect the present character of the institute's or province's mission or purpose. Also, revisions must be made to property titles, contracts and insurance policies, among other documents. The consolidation process of provinces, therefore, requires attention to the Church's own canonical norms, as well as to the civil law requirements, in order to be judged favorably, if necessary, in a U.S. civil court.

B. Implications of the relationship of civil and canon law for the juridic person

In a process of consolidation or unification of provinces, the civil law issues take on significant importance. As J. Fox notes in his study of the relationship of juridic persons to their civil incorporation:

Perhaps the single most important role for civil law in the life and activity of public ecclesiastical juridical persons is that which the Code assigns for it in the administration of the temporal goods of the Church.⁹

The administrator, as overseer of the temporal goods of the juridic person, must see that the civil laws are observed and that the assets of the juridic person are protected in the civil law arena.

1. The canonical administrator and various civil law jurisdictions

In the pertinent canons of *Book V* related to our study, we have seen that the 1983 Code recognizes the applicability of civil law in the acquisition, ownership, administration and alienation of temporal goods. In brief, the Code mentions the use and observance of civil law with respect to: the role of administrators (cc. 1284 §2, 2°, 3°; 1286, 1°), the canonically binding effect of civil contracts (c. 1296), and

⁹ J. Fox, "Introductory Thoughts About Public Ecclesiastical Juridic Persons and Their Civilly Incorporated Apostolates", in *Angelicum*, 76 (1999), p. 605.

the status of dispositions *mortis causa* (c. 1299 §2).¹⁰ The administrator of a public juridic person must see to it that the ecclesiastical goods for which he or she is responsible are securely protected under the civil law and that all relevant civil laws are observed.

A principal way in North America¹¹ whereby administrators can ensure the protection of the temporal goods under the civil law is through *civil incorporation*. A civil corporation, known by other names outside common law countries, is similar to juridic personality in canon law.¹² Among the reasons for the incorporation of an institute or a province under the civil law, we could mention the following: a) to hold title to the assets; b) to manage those assets; c) to limit the liability of those with an interest in the organization; and, d) to provide for administrative ease in governing the group.¹³ The administrator, working with a civil attorney, and aware of the pertinent canonical issues, would have to decide how the temporal goods could best be held and protected under the civil jurisdiction.

Given the universal scope of the Church, the exact nature of the civil

¹⁰ Although the civil law is not *per se* "canonized" in these instances, the canon law certainly recognizes that these civil laws are applicable and requires their observance. See commentary in J. HUELS, "Ecclesiastical Laws", in *New Commentary on the Code of Canon Law*, p. 85.

¹¹ For a study of the civil incorporation of religious institutes in Canada, see J. MONCION, *L'incorporation civile des instituts religieux au Canada*, Ottawa, Université Saint-Paul, 1978, xi, 400 p. (ms.)

¹² "Corporation - An entity (usually a business) having authority under law to act as a single person distinct from the shareholders who own it and having rights to issue stock and exist indefinitely; a group or succession of persons established in accordance with legal rules into a legal or juristic person that has legal personality distinct from the natural persons who make it up, exists indefinitely apart from them, and has the legal powers that its constitution gives it," in B. GARNER, ed. et al., *Black's Law Dictionary: Definitions of the Terms and Phrases of American and British Jurisprudence, Ancient and Modern*, 7th ed., St. Paul, MN., West Group, 1999, p. 343 (=Black's Law Dictionary).

¹³ B. KENNY, "The Civil Law Corporation of the Religious Institute", in *1991 Legal Seminar, For the Major Superiors and Treasurers of Religious Institutes*, Office of Legal Services, LCWR-CMSM-NATRI, Louisville, KY, 1991, p. 23. Also, MAIDA and CAFARDI, *Church Property*, pp. 140-142.

incorporation or civil law protection of assets will vary depending upon the local circumstances of civil law jurisdiction. For example, in countries which enjoy a concordat relationship with the Holy See, the canon and civil law structures for the juridic person are often concurrent.¹⁴ Other countries, especially those which may even have an unfavorable relationship with the Church, as for example until recently in France or in Mexico, will require other types of protection under civil law.¹⁵ A religious province which possesses and administers temporal goods in several countries would need to be aware of the particular situations in each one. Thus, a religious province with attached foreign missions, such as the case of the Oblate U. S. Province, would have to consider how to best administer the temporal goods under a variety of civil jurisdictions.¹⁶

2. The canonical administrator within the U.S. legal system

In the United States, the relationship of the Church, and religious societies in general, with the civil government has evolved considerably since the country's

¹⁴ See D. ANDRÉS, "Propuesta de estatuto jurídico canónico para los institutos religiosos y sociedades de vida apostólica ante la ley e la autoridad civiles", in *Commentarium pro Religiosis et Missionariis*, 76 (1995), pp. 333-369; also, D. GARCÍA HERVÁS, "La personalidad jurídica civil de los entes eclesiásticos en España: una reflexión sobre el pensamiento de Pedro Lombardía", in *Ius canonicum*, (32), pp. 239-269; F. ADAMI, "I controlli canonici e civili sull'amministrazione dei beni temporali ecclesiastici", in *Monitor ecclesiasticus*, 111 (1986), pp. 69-85; M. PIERAZZI, *Il canone 1288 e la capacità delle persone giuridiche canoniche di stare in giudizio nel foro civile italiano*, Roma, Pontificia Università Lateranense, 1992, 87 p. An earlier study was done on the civil incorporation of juridic persons in concordat countries: O. SCHÄFER, *De rebus temporalibus Ecclesiae in concordatis postbellicis*, Romae, Pontificium Athenaeum Antonianum, Facultas iuris canonici, 1962, 118 p.

¹⁵ See, A. WEST, "Legal Status and Administrative Control of Religious Organizations and Groups in France", in *The Catholic Lawyer*, 33 (1988), pp. 285-304.

¹⁶ At the time of the consolidation of the U.S. Oblate provinces, temporal goods and property were owned and administered in Brazil, Mexico and Zambia. The 2000 *OMI Constitutions and Rules* in Rule 151b recommends civil incorporation among other ways to hold the Congregation's temporal goods securely.

foundation. The first amendment of the U.S. Constitution defines the fundamental relationship between churches and the U.S. civil government. This relationship is based on a respect for the free exercise of religion and a restraint on state establishment. These two poles are often in tension. As with all common law countries, the basic distinctions are subject to continuing interpretation and development as specific cases arise. Further state codes within the context of their own state constitutions provide detailed requirements for the incorporation of civil corporations and creation of trusts.

The recognition of the Catholic religious civil corporation has had a varied and, at times, problematic development from state to state.¹⁷ In the early 20th century, the Holy See itself offered an opinion as to what method of holding title and administering church property would be most suitable within the U.S., when asked by the U.S. bishops.¹⁸ Subsequently, various forms of civil ownership have been found necessary. The Oblates, who first arrived in the 1840s, have experienced some of this evolution in their own historical growth.

The vehicle most commonly used by the Church and the religious institutes for civil legal organization and title holding protection under U.S. civil law has been the *nonprofit charitable corporation*. At the present time, such corporations are governed by state law and by the Internal Revenue Code. A careful analysis must be made regarding both federal and state laws before any specific structures are developed.

¹⁷ See P. DIGNAN, *History of the Legal Incorporation of Catholic Church Property in the United States (1784-1932)*, Washington, DC, C. U. A. Press, 1933, viii, 289 p. For a more recent and comprehensive historical legal analysis of holding ecclesiastical goods in the U.S., see also P. DANIELLO, *An Analysis of Canon 1499.2 of the 1917 Code and Canon 1256 of the 1983 Code and Modern American Civil Law as to the Ownership and Modes of Tenure of Ecclesiastical Goods in the United States of America*, Romae, Pontificia Studiorum Universitas a S. Thoma in Urbe, 1996, x, 316 p.

¹⁸ See CONGREGATION OF THE COUNCIL, Private letter, 29 July 1911, in *CLD*, vol. II, pp. 443-445; also, J. DOYLE, *Civil Incorporation of Ecclesiastical Institutions: A Canonical Perspective*, Ottawa, Saint Paul University, 1989, p. 168.

In the U.S. legal system, norms for the corporate structure are the prerogative of the states, and not the federal level of government. The states' laws, while generally uniform, vary in some respects as to being more or less favorable to nonprofit charitable organizations. Specific state constitutions and state laws must be studied for their advantages and disadvantages.

With respect to federal U.S. law, the Group Revenue Ruling issued on 25 March 1946, by the U. S. Department of the Treasury to the United States Catholic Conference has determined how all Catholic organizations, including religious provinces, must be structured so as to qualify for federal income tax exemption.¹⁹ Any religious institute desiring to incorporate civilly in the United States must be aware of these two areas of civil jurisdiction. A listing in *The Official Catholic Directory* qualifies the religious institute for federal income tax exemption.²⁰

C. The civil nonprofit charitable corporation and the religious province

1. Definition of a nonprofit charitable corporation

First of all, we want to describe briefly the nonprofit charitable corporation and see how its structure relates to the religious province's juridic personality. A basic definition (of the nonprofit charitable corporation) would include the following:

A corporation organized for some purpose other than making a profit, and usually afforded special tax treatment.²¹

In the nonprofit, or sometimes called *not-for-profit*, corporation, any profit goes back to the corporation itself, rather than to the shareholders in the form of

¹⁹ See FITZGERALD, "The Official Catholic Directory: Civil and Canon Law Requirements", pp. 107-133.

²⁰ *The Official Catholic Directory*, New York, P. J. Kenedy, 1817-

²¹ *Black's Law Dictionary*, 7th ed., p. 343.

dividends, as would be the case of a *for-profit* or business corporation. Thus, whatever profit the religious province makes would be reinvested in the province itself or the institute, either for the needs of its personnel or for the apostolate.

However, a religious institute incorporated by the civil law and, thus, capable of acquiring its proper advantage in law, is not simply a nonprofit corporation. With respect to its true nature and mission, the civilly incorporated province is a *charitable* nonprofit corporation which is defined as

a nonprofit corporation that is dedicated to benevolent purposes and thus entitled to special tax status under the Internal Revenue Code.²²

While not tax exempt simply due to its religious identity and purposes, a church group, such as the religious province, qualifies for tax exemption through its civil incorporation as a nonprofit charitable corporation. The *Internal Revenue Code* (=I.R.C.) lists the exclusive purposes for which a nonprofit charitable corporation could qualify for tax exemption as: religious, charitable, scientific, literary or educational purposes. Certain requirements must be satisfied for the corporation's "exclusive purpose" to qualify for tax exemption.²³ As an aside, we note that these corporate purposes of the civil corporation of the religious province must also conform to its purposes as a canonical public juridic person holding temporal goods, as we have seen in cc. 114 § 2 and 1254 § 2. Finally, in order for the

²² *Black's Law Dictionary*, 7th ed., p. 341.

²³ The I.R.C., Title 26, Section 501(c)(3)(1990) of the Treasury Regulations describes organizations which are exempt from taxation: "Corporations, and any community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, [...] no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." See <<http://law2.house.gov/uscode.cgi/>> Also, see J. MANNY, "Governance Issues for Non-profit Religious Organizations", in *The Catholic Lawyer*, 40 (2000), p. 2, note 3.

religious province to maintain the most advantageous tax status, the corporate and trust documents must adopt appropriate language so that it does not appear to be a private foundation.²⁴

2. Corporate documents

To exist as a nonprofit corporation, the religious province must file with the secretary of state of a particular state the *articles of incorporation*, a document that sets forth the basic terms of its existence, as well as its purposes and duration.²⁵ Once the incorporation is approved, the province is then subject to the statutes of that state and the various offices and officers of that state as defined in the relevant statutes. Moreover, its assets in service of the public good must be perpetually dedicated to specific charitable purposes which are to be stated in the articles of organization.²⁶ For protection of the religious institute, some other items recommended for inclusion in the articles are: the indemnification of directors and officers; and, the *I. R. C.* § 501 (c)(3) exempt requirements related to the charitable

²⁴ Private foundations are subject to various requirements, restrictions and excise taxes that do not apply to public charities. Contributions to private foundations may receive less favorable treatment than contributions to public charities. It is to an organization's advantage to show that it qualifies as a public charity rather than as a private foundation if its activities or sources of income permit it to do so. In order to qualify as a public charity, the organization must receive at least 10% of income from governmental or public sources (individuals). See *Application for Recognition of Exemption, Under Section 501 (c)(3) of the I. R. C.*, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, September 1998, p. 5. <http://www.irs.ustreas.gov/forms_pubs/index.html>

²⁵ *Black's Law Dictionary*, 7th ed., p. 107. The exact procedure will vary from state to state. Other possible terms for this document are *articles of association*, *articles of organization*, or *certificate of incorporation*. The purposes listed in the articles should accurately reflect the present reality for which the province holds assets, namely, 1) support of religious and charitable works, especially on behalf of the poor, and 2) support of the province's members so that they may lead lives dedicated to the stated purpose. See B. KENNY, "The Civil Law Corporation of the Religious Institute", p. 25.

²⁶ B. KENNY, "The Civil Law Corporation of the Religious Institute", p. 20.

purpose²⁷ of the organization and the dissolution clause. Therefore, the document must provide that upon dissolution or termination, the organizations' assets would be transferred to another exempt organization as required by the *I. R. C.* § 501(c)(3).²⁸ Amendments to the articles of incorporation must be filed with the secretary of state.

A complementary document to the articles is the *bylaws*, which are enacted separately and not filed necessarily with the state. The bylaws should list the specific responsibilities of the board of directors, the procedures for valid corporate acts,²⁹ the committee structure and the designation of officers. As a civilly incorporated juridic person, the bylaws should conform to the province's canonical governance structures. For example, the bylaws list the provincial and council as members of the corporation with certain *reserved powers*.

3. Maintaining canonical control in the civil corporation

The recommended type of corporation for religious provinces is one that has membership limited to the major superior and the members of the council.³⁰ In this way, the civil corporation closely mirrors the canonical reality, where, although all professed members form the province, only the major superior and the members of the council perform the functions of governance, particularly administration over the

²⁷ "Charitable purpose", as defined legally, could include relief of the poor, distressed or underprivileged. See FITZGERALD, "The Official Catholic Directory", p. 110, footnote 16.

²⁸ See *ibid*, pp. 110-111.

²⁹ Among corporate canonical acts to define, an important one could be alienation, with reference to the particular canons on alienation, cc. 1291-1294. One author suggests possible wording for such a reference in the bylaws, see P. SHANNON, "Canon Law/Civil Law", in *The Jurist*, 45 (1985), p. 623. Also, see R. BECKER and J. SERRITELLA, "Problems of Ecclesiastical and Religious Organizations", in *The Jurist*, 44 (1984), p. 64.

³⁰ MAIDA and CAFARDI, *Church Property*, p. 144.

temporal goods, which is the concern of the civil corporation. Thus, the *members* of the corporation are distinct from the members of the religious province. However, the internal decisions of the institute would not be made in the civil forum, but rather in the religious province itself, according to the religious institute's constitutions and rules, and any special provincial statutes and policies.³¹ The necessary consultation and collaboration in a religious institute or province for governance exist as an ecclesial reality which is not limited by the civil corporate structure.

While helping the administrator carry out his or her duty to protect the temporal goods of the juridic person, civil incorporation will not change the juridic person's canonical status nor its duty to fulfill the prescriptions of canon law.³² The province exists in two distinct legal environments, with their own particular rights and obligations. The administrator of the province as a juridic person, the provincial superior, is to see to it that the ecclesiastical identity and its obligations take precedent and not those of the civil sphere. Besides the canonical consequences for not following the universal and proper law on temporal goods, there could also be certain adverse civil law consequences for the province if the canonical obligations are not closely followed. We have seen this above in the brief exposé of U.S. Supreme Court precedents.³³

³¹ *Ibid*, p. 143.

³² FOX, "Introductory Thoughts About Public Ecclesiastical Juridic Persons", p. 607.

³³ The earlier U.S. Supreme Court cases deferred to churches to handle internal matters. Now, given more recent rulings beginning with *Jones v. Wolf* (1979), religious institutes (provinces) must take the canonical requirements and give them civil law language, so as to be able to have effect in civil law. In general, we might say that the civil corporate documents should adopt specific language which refers directly to the specific canonical mission of the province, and the teachings of the Church. See, M.H. OGIIVIE, *Religious Institutions and the Law in Canada*, Toronto, Carswell: Thomson Professional Publishing, 1996, pp. 156-158, where the author lists seven principles by which the Canadian courts have been guided in making decisions about intervention in matters related to ecclesiastical tribunals. Also, F. MORRISEY, "Canon Law Meets Civil Law", in *Studia canonica*, 32(1998), pp. 194-201, where the author cites several examples of the

An important method for ensuring the protection of canonical control in the civil corporation is through the use of *reserved powers*. Through their implementation the major superior and the members of the council can maintain the purpose and, where canonically prescribed, the administration of the organization.³⁴ In brief, the provincial and council, as corporate members, reserve to themselves certain powers, while establishing a board of trustees (or directors) to run the day-to-day affairs of the corporation. The reserved powers of the members allow them to exercise their canonical faith and administrative responsibilities within the corporation, while delegating others to the board of directors. The members' reserved powers include:

- 1) to establish the philosophy according to which the corporation operates;
- 2) to amend the corporate charter (articles of incorporation) and bylaws;
- 3) to appoint or to approve the appointment of the Board of Trustees;
- 4) to lease, sell or acquire real estate in excess of the specified amount; and,
- 5) to merge or to dissolve the corporation.

The *faith obligations* of the canonical stewards include that of maintaining a Catholic identity by adherence to Catholic teachings in areas which affect the incorporated apostolate, covered by the first three reserved powers.³⁵ The fourth and fifth reserved powers allow the canonical leadership to exercise their canonical *administrative obligations* over the acquisition, use and alienation of property.³⁶ Additional reserved powers may be added which help the major superior and the members of the council to carry out their stewardship responsibilities:

- 1) to appoint or approve the appointment of the CEO;

negative consequences in civil courts for not having observed canonical norms. Also, W. BASSETT, "Christian Rights in Civil Litigation", in *The Jurist*, 46 (1986), pp. 229-288, gives examples of U.S. case law where internal church disputes have been handled in civil courts, sometimes due to a lack of canonical procedures for resolving them.

³⁴ See MAIDA and CAFARDI, *Church Property*, pp. 156-162.

³⁵ See *ibid*, pp. 312-313.

³⁶ *Ibid*, p. 302.

- 2) to approve the annual operating and capital budgets;
- 3) to approve the strategic plan; and,
- 4) to select the auditor.

The number of reserved powers should be held to the minimum so as not to diminish the role of trustees in any subsidiary corporations. However, in the principal title-holding corporation of the province, a tighter control of reserved powers is important.³⁷ According to their roles *de jure*, we can distinguish between the role of the corporate members and the board of trustees in terms of governance, and the members and the administrators in terms of management. It is up to the corporate members to use their reserved powers and exercise *de facto* their proper canonical leadership within the corporation.

4. Managing the incorporated apostolates of the juridic person

As a way to exercise stewardship of the apostolate more effectively and provide for the protection of the juridic person, the administrator may decide it best to incorporate certain apostolates separately.³⁸ Although they may be civilly incorporated, these apostolates remain part of the canonical juridic person of the province. Thus, they have a two-tiered level of governance, the corporate members (usually the major superior and the members of the council) and the board of trustees. Religious provinces could establish one or more civil corporations dedicated to their internal structures and administration, and another one or more

³⁷ MAIDA and CAFARDI, *Church Property*, p. 169.

³⁸ For a discussion of the advantages and disadvantages of separate incorporation from the civil law perspective, see BECKER and SERRITELLA, "Problems of Ecclesiastical and Religious Organizations", pp. 55-62. Also, for some practical canonical and civil law issues to consider in separate incorporation, see C. ROEBER, "Sponsorship of Ministries of Individual Religious", in *CLSA Proceedings*, 56 (1994), pp. 171-196.

corporations dedicated to their apostolic works.³⁹

In the separately incorporated apostolate, the use of reserved powers becomes more critical, for it is important that the canonical rights and obligations be protected as they are translated into the civil reality. The governance of the incorporated apostolate is maintained in the hands of the corporate members (the canonical provincial leadership), while the board of trustees exercises an administrative role in their name. By separating the administration of the apostolate and its finances from direct control by the corporate members, the religious province is also able to separate any liabilities directly related to the corporate members. Depending upon the type of apostolate, it could be also governed by additional ecclesiastical or civil laws, e.g., a seminary conforms to the *Program for Priestly Formation*,⁴⁰ and a nursing home conforms to the state and federal regulations for health care institutions and operates in accordance with approved ethical and religious directives.⁴¹

³⁹ We note that each canonically erected house is a distinct juridic person and capable of ownership of property (CIC, 1983, c. 634 and *OMI Constitutions and Rules*, 2000, const. 151). If all the assets are civilly owned by one civil corporation, how to safeguard the rights of the individual houses? A similar difficulty is experienced by diocesan corporations vis-à-vis the various parishes. See CONGREGATION OF THE COUNCIL, 29 July 1911, in *CLD*, vol. II, pp. 443-445.

⁴⁰ These would include the norms from the Holy See (CONGREGATION FOR CATHOLIC EDUCATION, norms, *Ratio fundamentalis institutionis sacerdotalis*, 19 March 1985, 2nd ed., Rome, Typis polyglottis vaticanis, 1985) and those from the national bishops' conference (for the U.S: NATIONAL CONFERENCE OF CATHOLIC BISHOPS (=NCCB), *Program of Priestly Formation*, Washington, DC, NCCB, 1993). By common law, the Norms from the national bishops' conference do not apply to scholasticates of religious. The Conference of Major Superiors of Men of the USA did adopt the NCCB's Program of Priestly Formation, while "preserving the rights and privileges granted religious in Church law, especially regarding the religious and spiritual formation of their own candidates." See *Program of Priestly Formation*, p. 3.

⁴¹ In the United States, these directives could be those approved by the bishops conference at their annual general meeting on 17 November 1994, and issued on 1 December 1994, as updated periodically, or a bishop could write his own directives. For the latest version, see UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, "Ethical and Religious Directives for Catholic Health Care Services", in *Origins*, 31(2001-2002), pp. 153,

D. The use of charitable trusts by religious provinces

Another way that the ecclesiastical juridic person, including the religious province, can seek protection of its temporal goods under the civil law in the United States is through the *charitable trust*. A charitable trust is similar in some ways to nonprofit charitable corporations, but possesses several advantages over the corporations. In general, there are three elements common to any trust: a trustee, a beneficiary, and a trust property, held by the trustee for the beneficiary.⁴² The trust is set up by a *settlor*, who gives the assets or trust property to the beneficiary.

A charitable trust is defined as

a trust created to benefit a specific charity, specific charities, or the general public rather than a private individual or entity. Charitable trusts are often eligible for favorable tax treatment.⁴³

A charitable trust can provide protection for the province's financial and property assets which have a designated purpose, such as retirement, formation or personal patrimony.

The charitable trust, like the nonprofit corporation, is determined by state law, which would need careful study to find particular advantages or disadvantages of each jurisdiction for the religious province. As noted in the above definition, the religious and charitable trust can also enjoy certain tax exemptions, and would need to be listed in the *Official Catholic Directory* to qualify under the NCCB/USCC's Group Ruling. The specific and exclusive tax exempt purposes listed in the trust document satisfies the canonical requirements of a stable patrimony, as well as

155-163. [Note: As of 1 July 2001, the name of the NCCB has been changed to the United States Conference of Catholic Bishops (USCCB)]

⁴² *Black's Law Dictionary*, 7th ed., p. 1513, as quoting the Restatement (Second) of Trusts, § 2 cmt. h, 1959.

⁴³ *Ibid*, p. 1514.

those called for by the civil law in the *Internal Revenue Code*. Finally, by naming the provincial superior, provincial council and treasurer as trustees, the province can ensure canonical ownership and control of the charitable trust.

There are several differences from the corporations, some of which include that the trust documents are not normally filed with the state government and there are no regular reporting requirements. Therefore, the only persons needing access to the trust documents would be the financial institution which serves as custodian and the province's legal firm. Another significant difference from the corporations would be that the trust is seen as more rigid and more difficult to be amended. Finally, depending upon state law and the specific trust document, the trustee of a trust could be judged by a higher standard of care than a corporate director of a corporation.

The charitable trusts could provide more secure protection for religious institutes' temporal goods than the nonprofit charitable corporation. In the U.S. civil law system, since there is a more developed jurisprudence for trusts and trustees than for nonprofit charitable corporations, they are seen as a more secure method of holding assets. Another way that trusts can provide better protection than the corporation comes through the use of an irrevocable trust with a spendthrift provision.

The trust can be created as *irrevocable*,⁴⁴ meaning that once it is done it cannot be undone. Though this can serve as a secure protection of stable patrimony, it could be that the act of creating this type of trust itself might be an act of alienation, depending upon how the funds were transferred from the former provinces. The trust can be created with a *spendthrift provision*,⁴⁵ a recognized

⁴⁴ "A trust that cannot be terminated by the settlor once it is created. In most states, a trust will be deemed irrevocable unless the settlor specifies otherwise," in *Black's Law Dictionary*, 7th ed., p. 1516. Additional property can be added depending on the terms of the trust.

⁴⁵ "A trust that prohibits the beneficiary's interest from being assigned and also prevents a creditor from attaching that interest," in *ibid*, p. 1518.

creation of law that prevents trust assets from being used to satisfy judgments or claims against beneficiaries of the trust. The corporation has no parallel provisions.

We have already discussed the listing of specific tax exempt purposes which conform to requirements of both legal systems. The possible advantages of the trusts in U.S. civil law also protect the canonical interests of ownership and control. Thus, through these legal instruments, the trust documents themselves can be written so as to protect especially the canonical and civil law concerns of the province as a juridic person.

The use of trusts, due to the advantages we have mentioned, could prove to be more common among religious institutes than corporations in the future. Besides the perceived greater legal protection for the province's temporal goods, the expressed purpose and structures of the charitable irrevocable trust with a spendthrift provision provide a better complement to the canonical realities of the province as a religious community and its commitment to the mission of the Church. Obviously, as with the corporate structures, both civil and canonical legal expertise should be used in the development of the trusts and their documents.

E. The consolidation or merger of juridic persons as civil entities

Above, in Chapter Two, we considered those canons in the 1983 Code which govern structural changes (division, union and suppression) in public juridical persons. In particular, we noted that c. 121 states that in the case of joining two or more previously existing juridic persons to form a new one, this new juridic person acquires the former persons' goods and patrimonial rights, as well as any obligations to which they were subject. When two or more juridic persons come together, from a canonical perspective, the canonical issues must be addressed first. Then, it must be determined which civil law structures and procedures could best serve these new canonical structures. Similar issues arise whether the juridic persons involved are religious provinces or separately incorporated apostolates,

such as health care institutions.⁴⁶

After the consolidation, the new juridic person assumes governance over all the assets of the previous juridic persons as well as taking responsibility for their liabilities. An inventory or search of all these assets and liabilities would be an important first step, so as to decide how best to manage them. Regardless of the number of civil law entities, the new major superior and the members of the council would assume both canonical and civil authority over any temporal goods which belong to the province. Most probably a certain amount of canonical and civil combinations of internal and external works will be necessary in the restructuring process so as to make governance less cumbersome and more efficient. However, again, the civil law procedures should depend upon the canonical reality.

As civil corporations are reorganized to fit the new canonical reality, the corporate members of each corporation will take the necessary steps to transfer rights, assets and liabilities to the new structures. This will require new or revised articles of incorporation and civil government approval, and amending, where necessary, the bylaws of each corporation. The articles of organization of any subsidiary corporations will need to be amended so as to reflect the new canonical provincial authority structures and relationships. In order to qualify for U.S. federal and state tax exemptions, the new nonprofit charitable corporations must meet the same standards as the previous ones.

Previous to the provinces' joining together, their assets are independent from each other. Possible liabilities in civil law occurring after the amalgamation of civil corporations must prompt a careful development of legal structures so that

⁴⁶ See J. NEWMAN, "Key Issues in Mergers and Acquisitions", in *Health Progress*, 72, no. 4 (1991), pp. 56-59, 65. The author lists 11 key issues to be considered in possible mergers or acquisitions in the health care field: 1) understand the transaction's magnitude, 2) assess the alternatives, 3) select potential partners carefully, 4) determine and examine threshold issues early, 5) focus on the right issues, 6) agree on a valuation approach, 7) recognize the importance of governance, 8) develop an acceptable structure, and use a memorandum of understanding, 9) establish and adhere to a communications policy, 10) perform due diligence, and 11) recognize the significance of activities after the transaction.

unrelated claims or judgments, especially those incurred by the new province's special purpose corporations and incorporated apostolates, not divert the province's assets from their original purpose or intent. In ceding control over these corporations, meaning possibly some loss of direction over mission, the canonical juridic person gives to the corporation more protection over the assets.⁴⁷ We could express this tension as a continuum: the lower degree of control, i.e., the fewer reserved powers, the greater civil law protection, and, conversely, the greater canonical control, i.e., including over mission, the less civil protection.

F. The U.S. Oblates: consolidation of five provinces and their civil corporations

As has been mentioned above, for the ecclesiastical public juridic person, the civil corporate structures should flow from the canonical ones. Thus, only after a distinct canonical personality had been established or agreed upon should any possible civil structures be put in place. As we have seen, the five U.S. Oblate provinces unanimously decided through their provincials and councils to consolidate into one unified province structure in April, 1996. Through a series of consultations, special statutes were drawn up to flesh out and concretize this reality. These statutes, and therefore also a proposed canonical structure, were given tentative approval by the Oblate General Administration in February, 1997. Following consultations by the Superior General and Council, the new province structure was formally approved in November, 1997, and formally inaugurated 10 February 1999.

⁴⁷ Although this position represents the thought of most authors, it has brought out a difference in legal approaches. Some commentators stress that legal protection should not be the primary criterion, but, rather the mission of the Church, thus opting for more canonical control. "They [Church public benefit organizations] should not be emptied of their religious mission and identity, even to gain greater financial stability or to garner economic resources in today's fiercely competitive commercial climate," in, BASSETT, "A Note on the Law of Contracts and the Canonical Integrity of Public Benefit Religious Organizations", p. 61.

In the Summer, 1996, as consultations on the statutes began around the provinces, a committee was established by the OCUS Executive Board⁴⁸ to address the many legal and financial matters which needed to be resolved before the official date of unification. This committee, known as the Legal/Financial Committee, and composed of three provincial treasurers along with the OCUS executive coordinator, held its first meeting in September, 1996. The members saw that key to the legal and financial consolidation would be, first of all, the development of a civil corporate structure.

With the goal of consolidating the civil corporate structure, the committee presented several requests to the OCUS Executive Board. Primary among these was that the first order of business be to hire:

- a) a *legal firm* that would provide the corporate guidance and legal structure;
- b) an *accounting firm* that would provide the financial infrastructure guidance; and,
- c) a *financial consultant* who would provide assistance in consolidating the various portfolios, winnowing investment managers, identifying custodial bank relationships, developing a primary corporate banking relationship, developing appropriate common benefit packages for lay employees, etc.

These experts were seen as necessary for the creation of an organizational structure for the proposed unified province. The Committee's requests were approved, and it was given authority to begin the hiring process, starting with the search for a province legal firm. Three principles were adopted in selecting professionals: 1) any firm that had a significant relationship with one of the provinces received a request for a proposal, 2) each provincial, provincial council and provincial treasurer were to provide recommendations, and 3) professional trade directories were also used.

The hiring process began with a "request for a proposal" letter sent to several potential legal firms whose first task would be to establish civil legal structures for

⁴⁸ As mentioned above in Chapter Three, the five provincials, the Oblate general councillor for the U.S. region, and the OCUS Executive coordinator composed the OCUS Executive Board.

the new province. The potential firms were sent a copy of the proposed statutes upon which to base their proposals for the civil legal structures. Since the restructuring would necessarily involve the expertise of a financial consultant and accountant, processes were also initiated to hire these at the same time. Thus, the legal, financial and accounting experts could begin to work together to establish the most appropriate legal and financial structure for the province.

1. Canonical and civil law concerns of the Legal/Financial Committee

The principal motivation for the restructuring in general, as we have seen, was to unify the provinces in order to have one Oblate religious and missionary presence within the U.S. The unification would hopefully result in a simplification of administration and, thus, free up more Oblate personnel for the apostolate of the province's mission. The restructuring of the provinces was to enable the mission in the U.S. to have a more effective focus, while avoiding duplications and offering savings on costs.

The first canonical concern of the Legal/Financial Committee, therefore, was that the mission of the province should take precedence over the legal and financial structures. Any plans regarding financial and administrative consolidation were to be developed in light of the mission, the primary purpose of the consolidation.⁴⁹ Secondly, the civil legal structures were to reflect the ownership as canonically defined in the mission, property, and assets of the province, and, therefore, with the civil corporation's decision-making structure imbedded in the *Constitutions and Rules* of the Congregation. This would necessitate, unless other circumstances

⁴⁹ This echoes the purposes for the use of temporal goods as stated by the 1983 Code in c. 1254, as well as the given purposes for the establishment of a public juridic person as described in c. 114.

intervened,⁵⁰ that the corporate members be the provincial leadership to the exclusion of other members of the province.

The Legal/Financial Committee established a set of fundamental goals for the restructuring of the civil law corporations. These goals included, first of all, to give the provincial superior and council both sufficient control and ease of administration over any corporations, consistent with the requirements of the Code of Canon Law, the *Oblate Constitutions and Rules*, and the proposed statutes of the United States Province. Secondly, the restructuring of civil corporations would have to ensure that the assets of the new province be directed for their intended use and not be misdirected by the new province, nor be available to satisfy unrelated claims or judgments outside the scope of their original intention. Finally, the structure should provide for maintenance of tax exempt status from federal income tax for the province and for the charitable exemption individuals could claim on their tax returns for donations given to the Oblate province. The structures should allow for, as well, the exemption from certain property and excise taxes according to state or district laws. Secondary or related concerns, with both canonical and civil law implications, were the modes of development of a unified employee pension plan, the possibility and advisability of a unified employee health care plan, and how to treat the reserved assets of the former provinces, both those which were donor-designated and those which were given specific designation by the former provinces.

⁵⁰ In order to take advantage of the most favorable corporate laws in the various civil law jurisdictions of the province, the board of directors and trustees of the U.S. Oblates' corporations and trusts do not include the entire provincial council. The civil jurisdictions include Massachusetts (corporations), and Texas (trusts). For the corporations, the provincial, provincial council and treasurer are members; the board of directors is a subset of the council which always includes the provincial. The trustees include the provincial and are a subset of the provincial council. Thus, the provincial leadership maintains canonical control.

2. The process of restructuring civil corporations

Once the legal, financial and accounting experts had been hired, the process for restructuring the civil corporations began. Having reached clarity on the proposed province's objectives in the unification process, the first step involved an in-depth study of the five provinces' existing corporate structures, financial obligations, employee benefit plans, legally significant holdings, and pending litigation. As the present legal structures were reviewed, it was also important to understand the legal relationship between each province and its subsidiary institutions. Prior to the consolidation, the legal firm would develop a plan of execution, describing the corporate actions to be taken, the legal steps necessary to preserve and protect significant assets, the allocation of liabilities and any risks associated with the process.

Given more than a century of presence as a separate province in the United States, and having eventually developed into five distinct provinces, the existing civil corporate structure was complex. Each province was an independent corporation, and spread out in states across the U.S. Several of the provinces had other corporations which owned and operated various apostolates across the country.⁵¹ Two of the provinces operated retirement centers for Oblate members. Three of them had formal lay employee pension plans. All of the provinces owned unrestricted and restricted endowment or investment funds for the internal purposes of health care, retirement, and the education and formation of new members.

The process of restructuring these corporations involved, as well, a study of the canonical structure proposed and finally approved for the new province. With the purpose in mind of unifying the Oblates behind a common mission, articulated through the seven OCUS regional meetings held since 1979, the civil legal structures would enable the unification in a common mission to become a practical

⁵¹ It would be important to note that none of these separately civilly incorporated apostolates had been given separate canonical juridic personality.

reality. In order to accomplish this goal for the consolidated province's administrative and financial organization, new corporations were created, major revisions were made in the corporate structures of several existing corporations, and several of the former civil corporations were eventually dissolved. This task encompassed all the people and works which make up the Oblate presence in the U.S. Given the state laws for creating charitable nonprofit corporations, the civil corporations were officially created several months before the actual canonical inauguration of the new U.S. Oblate province.

3. Present civil law corporations and charitable trusts

In order to reflect the canonical reality accurately, it was decided that a new civil nonprofit charitable member corporation should be established as the management arm of the new canonical province. The corporate name reflects the official canonical title of the province, "The U.S. Province of the Missionary Oblates of Mary Immaculate, Inc."⁵² The provincial, the provincial treasurer⁵³ and the provincial council⁵⁴ serve as the members of the province's civil corporation, and oversee the province revenues, retirement and benefit funds, as well as internal accounting

⁵² The word "Missionary" was added to both the canonical and civil titles of the province by the OCUS Executive Board at the meeting on 1-5 August 1998. This change occurred before either the canonical or civil structures were formally inaugurated. Minutes in OCUS Archives, Washington, DC.

⁵³ Although in the 1982 *OMI Constitutions and Rules* (Rule 80) the provincial treasurer was not automatically considered part of the provincial council, the OCUS Executive Board was of the opinion that the treasurer should be a member of civil corporations, a trustee in civil trusts, and a member of the Board of Directors of the civil corporations. The 2000 *OMI Constitutions and Rules* have maintained the 1982 definition of the treasurer's non-voting capacity at provincial council, unless he is also a consultor (Rule 88a).

⁵⁴ As noted above, given the requirements of corporate law in the various civil law jurisdictions of the province, not all members of the council serve as directors on every corporation and trust. However, the leadership of the province maintains canonical control through the reserved powers.

controls. In addition to this new operating corporation, the five principal operating corporations for the existing provinces were maintained as inactive corporations due to the fact that wills and bequests executed by living benefactors may specifically name these corporations as beneficiaries.⁵⁵

Three other nonprofit charitable corporations were established to control other canonical aspects of the province. The first of these, the "Oblate Service Corporation", serves as the employer of all the non-religious personnel employed by the province's entities in the United States. The provincial, the provincial treasurer and the provincial council serve as the members of this corporation. The corporation would provide a uniform package of health care, retirement and other benefits to all lay employees of the Oblates in the U.S. This arrangement allows the province to offer significant benefits while saving costs, but without depriving local superiors of their autonomy in personnel matters. The responsible superiors, directors or delegated managers would be responsible for hiring, work assignment, promotions, dismissals and related decisions.

Given the nature of their similar and distinct operations, a second additional civil corporation was established for the renewal centers and shrines which the province owns, titled as the "Oblate Shrines and Renewal Centers, Inc." Again, while maintaining the autonomy of the local superiors in the daily operations, this consolidation may also provide cost savings. Lay personnel are employed by the "Oblate Service Corporation" in relation with this corporation. The provincial, the provincial treasurer and the provincial council serve as members for this corporation.

Some of the real estate holdings of the province are owned, but not operated, by the "Oblate Title Holding Corporation." The provincial, provincial treasurer and

⁵⁵ This retention of the former province administrative corporations would only exist in "shell" form and for a limited time following the consolidation. This would involve a nominal cost and minimum legal formalities for the new province. Due to the results of previous litigation involving one of these former province corporations, long-term retention would be required.

the provincial council are the *ex officio* members of this corporation. The properties owned by this corporation are those not considered "institutional" properties. Other properties, considered as the province's stable patrimony, are held by the "Oblate Realty Trust". The provincial, the provincial treasurer and some members of the provincial council serve as *ex officio* trustees, wielding full control and acting on behalf of the members of the province.

Due to particularities of state law and some restricted use governed by intentions of donors and founders, several special purpose corporations were maintained for various apostolates. As with the other province corporations, through the use of reserved powers, control is maintained by the provincial, provincial council and the provincial treasurer acting as members of the corporations. Besides the use of reserved powers, control of the mission of these apostolates is maintained through a certain number of Oblates present on the boards of directors.

Restricted and non-restricted endowments and annuities for purposes of education, healthcare, and retirement of members were established as charitable trusts. All of these trusts name the provincial, some members of the provincial council and provincial treasurer as trustees. A separate trust has been maintained for Oblate members' personal patrimonies, which, under the 1983 Code (c. 668 §1) and the 2000 *OMI Constitution and Rules* (const. 23) must be entrusted to a third party for administration.⁵⁶

⁵⁶ "The Oblate Patrimonial Trust" is segregated from the province's operating and investment assets for accounting purposes. Both the 1983 Code and the Oblate *Constitutions and Rules* ensure the liberty of the individual Oblate in entrusting the administration of his personal patrimony and in the decision regarding its earnings. There is no norm which gives the Congregation or the Province any right that the administration of the patrimony be made in its favor, indeed there might very well be reasons why in a particular case that the Congregation ought not to accept the administration, v.g., where there are family complications. Each member choosing to place his patrimonial funds in the patrimony trust was given the choice to receive the earnings back into his patrimony or assign it to the province. If they chose to retain the earnings, the bank custodian issues an internal revenue form listing the income so generated and sends it to the member. If the amount reaches a threshold, the member then would have to file for federal income

As mentioned above, it was decided, for purposes related to any grants and bequests, to maintain the civil corporations of the former provinces for a certain period even after the new province was inaugurated. Appropriate changes were made in their articles of organization to reflect ultimate ownership by the new province and control by the present provincial and council. Any other special purpose corporations which were maintained by the new province also had their articles of organization revised so as to reflect the new province's name as owner and its civil and canonical structures.

An examination of the articles of organization and bylaws shows how the new province's management corporation, "The U.S. Province of the Missionary Oblates of Mary Immaculate, Inc.", is based upon the canonical structure. As the temporal goods of the province are ecclesiastical goods, Article VI of the articles of organization, in describing the purpose of the corporation, states that they [the purposes] must be consistent with missionary (religious), charitable, and educational purposes as described in the *I. R. C.* § 501 (c)(3), and the principles and tenets of the Roman Catholic Church.

The bylaws of the corporation, through the use of reserved powers, allow the members (the provincial, provincial council and treasurer) to maintain canonical control. These reserved powers, described in Article II of the bylaws, state that the members have the sole authority to:

- 1) change the philosophy or mission of the Corporation;
- 2) approve the establishment of any subsidiaries or reorganization of the Corporation;
- 3) approve the adoption of the Corporation's capital budget and the

tax. If the earnings are assigned to the province, there is not a reportable event. Some of the members exercised their canonical right to designate the earnings to another person (2000 OMI *Constitutions and Rules*, Rule 23a). The earnings then are forwarded by the custodian bank to the identified recipient, and the custodian bank is responsible for all reporting. See C. MEIGHAN, "Religious Institutes - Property and Tax Issues", in *The Catholic Lawyer*, 33 (1988), esp. pp. 29-34. Also, F. SACKETT and P. CAMPBELL, "Temporalities for Religious: Six Practical Cases", in *CLSA Proceedings*, 46 (1984), pp. 71-97.

incurrence of any indebtedness by the Corporation in excess of \$200,000; or
4) approve the sale, mortgage or other third-party transfer of any of the Corporation's real property.⁵⁷

The canonical control of the corporation by the provincial and council is also supported in Article VI of the bylaws which reserve any amendments or repeal of the articles of organization or bylaws to a vote of two-thirds of the members of the corporation. Finally, also, under Article VI, the Oblate *Constitutions and Rules* are adopted as part of the bylaws which "shall govern in all matters in conflict between them and the bylaws."⁵⁸ Thus, the Oblate proper law integrally controls the mission, ministry and financial assets of the provincial corporation by being included in its bylaws.

An examination of the province's charitable trusts shows how canonical control was also maintained in the trust documents. The general canonical mission of the province is stated in all the trusts as the tax exempt purpose, even though some of the trusts also have a more specific or narrow purpose, e.g., retirement. Likewise, all the trusts were created as irrevocable, with a spendthrift provision. Thus, the purpose of the trust would respect the donor's intent, but still be available to the Oblate leadership under the general purpose or mission of the province. The trustee membership would be limited to the provincial, council and treasurer.

The qualification of the new province for tax exempt status under the *Internal Revenue Code* Group Ruling with the United States Catholic Conference was another important civil law issue. This involved submitting to the Archdiocese of Washington, the site for the new provincial headquarters, a description of the province's canonical and civil corporate structure for inclusion in *The Official Catholic Directory* (see Appendix III). Likewise, since the civil corporations of the

⁵⁷ *Bylaws of the U.S. Province of the Missionary Oblates of Mary Immaculate, Inc.*, Article II, § 2.06.

⁵⁸ *Ibid*, Article VI, § 6.07.

former provinces would be maintained for a period of time, their descriptions would also need to be included in the *Directory*, so as to maintain their tax exempt status.

II. MERGING FINANCIAL RESOURCES AND ACCOUNTABILITY

The legal and the financial consolidation, as we have seen in the case of the U.S. Oblates, are intertwined, and the processes developed concurrently. With regard to the civil laws, the merging of the financial sectors of the provinces and the restructuring of the civil corporations are dependent upon each other, for the financial resources and their use determines the nature of the legal structures. In the process of merging the properties and financial temporal goods in a religious institute, the canonical norms for acquisition, ownership, administration and alienation should serve as the basis for any actions undertaken. Within a religious institute which is consolidating its provinces, these canonical norms, besides the *Code of Canon Law*, include the constitutions and rules, administrative and financial directories and any special statutes that may apply. Thus, in the case of the consolidation of the Oblate provinces in the U.S., besides the 1983 Code, the pertinent proper law included: the *Oblate Constitutions and Rules*, the *O.M.I. Administrative Directory*,⁵⁹ the *O.M.I. Directory for the Administration of Temporal Goods*,⁶⁰ and the *OCUS Interim Statutes*.⁶¹

⁵⁹ *O.M.I. Administrative Directory*, Rome, Casa generalizia O.M.I., 1985, 106 p.

⁶⁰ *O.M.I. Directory for the Administration of Temporal Goods*, Edition 20 October 1989, Rome, Oblate General House, 32 p.

⁶¹ *OCUS Interim Statutes*, confirmed by the Superior General 5 October 1995, Rome, 10 p. (ms).

A. Canonical considerations

Among the canonical norms and procedures which could be applicable in the case of the consolidation of the temporal goods of several provinces to become those of one unified province, we especially draw attention to the following ones. According to c. 636 in the 1983 Code, each province is to appoint a finance officer for the purpose of managing the administration of goods under the direction of the major superior.⁶² The 2000 *Oblate Constitutions and Rules* require that the appointment of the provincial treasurer be confirmed by the Superior General in Council (const. 109). As the new administrators begin their function, the Code requires them to make an inventory of the stable patrimony of the province (c. 1283, 2°), echoed in the *Oblate Administrative Directory* (Chap. 1, sec. 3.4).⁶³ The obligations for administrators of temporal goods outlined in the Code with regard to the goods themselves (cc. 636 § 2, 1284), to the members of the province (c. 281 §§ 1, 2; c. 1274 § 2) and to any lay employees (c. 1286) serve as basic canonical principles which would need attention during the consolidation process. In the 2000 *Oblate Constitutions and Rules*, superiors and treasurers are required to administer Oblate goods in conformity to the common law of the Church, the *Constitutions and Rules* themselves, and their respective financial directories (const. 153, rule 153a).

Depending upon the quantities of temporal goods being consolidated, with

⁶² Canon 636 also recommends that treasurers be appointed for local communities. With regard to Oblate proper law, the *OMI Constitutions and Rules*, 2000, Rule 158c, presupposes that there is a local treasurer, under the direction of the local superior. Some commentators have noted that the Code does not require that the finance officer be a member of the institute, though the proper law could do so. See, R. SMITH, "Finance Officer", in *New Commentary on the Code of Canon Law*, pp. 799-801.

⁶³ Besides an inventory of the stable patrimony, the Code also requires other inventories to be made. Historical or artistically significant goods should be noted and listed (c. 1292 § 2), and, also, goods which have been donated and accepted under certain conditions (c. 1267 § 3). Although not as common in the U.S., goods which have been donated by a vow should also be listed in an inventory (1292 § 2). Important relics are also protected by the Code, c. 1190.

implications during and after the consolidation process, the province would need to determine which acts exceed the limits of ordinary administration (cc. 638 §§1, 2; 1281 §§ 1,2) as well as to be aware of the limits and procedures on alienation of goods (cc. 638 § 3, 1291-1295). With regard to Oblate proper law on extraordinary administration and alienation, the 2000 Oblate *Constitutions and Rules* prescribe, in certain instances, the intervention of the Superior General in Council: 1) in determining the limits of financial competency of the provincial authorities; 2) in determining the amount each province contributes annually to the General Administration (const. 159); and, 3) in approving expenditures, alienations, and the contracting of debts or obligations when the amount exceeds the province's limit (const. 162).⁶⁴

An additional canonical concern for the consolidation or unification of the provinces' temporal goods is the requirement of c. 121 regarding respect for the intentions of founders and donors, as well as for any acquired rights. As we have seen, the prescription of c. 121 could possibly also include implications for the restructuring of the civil corporations. Failure to respect the intentions of donors, especially, could lead to unfavorable implications on the civil law side as well. Thus, any funds that had been labeled as *restricted* by any of the predecessor provinces must be studied carefully when they are merged with the other financial resources.

One important canonical question that could arise is whether the consolidation of provinces and their temporal goods involves the formalities of canonical alienation, as described in cc. 1291-1294. It is true that the consolidation does involve the conveyance of the stable patrimony from several juridic persons to a new one. However, in the case of internal consolidation of religious institutes, we note that, strictly speaking, the laws on alienation would not apply to the present

⁶⁴ Later, we shall see that additions were made to these norms on extraordinary administration by the Oblate General Administration as a result of the U.S. Oblate province consolidation process.

case since, ultimately, the provinces are dependents of the same juridic person: the religious institute.⁶⁵

Nevertheless, the Code's further description of alienation, as found in c. 1295, may lead us to examine the issue more closely:

The requirements of canons 1291-1294, to which the statutes of juridic persons must also conform, must be observed not only in alienation but also in any transaction which can worsen the patrimonial condition of a juridic person.⁶⁶

Therefore, we will want to see if, in the transfers of funds, there was a move of funds from a restricted fund, which had been considered the stable patrimony of one of the provinces, to an unrestricted fund in the new province, which would then be considered part of the province's free capital. By the same token, we would also want to examine whether any immovable property, considered by one of the former provinces to be part of its stable patrimony, was to be considered as investment property, and not part of the stable patrimony of the new province. Any mortgages taken out before or during the transition process which place at risk real property owned by the juridic person would be another example of acts to be considered. Such transfers or other acts could be determined to worsen or jeopardize the financial condition of the newly consolidated juridic person, and, therefore, indicate a canonical alienation.

⁶⁵ "A sale or donation from a parish to the diocese, from a religious house to the religious province to which it is subject, contributions of one religious province to another or to the generalate, transfer when a moral person divides or begets a new moral person (e.g., division of parishes, dioceses), are not acts of conveyance in the sense understood by canons 1530-1532," in F. MORRISEY, "The Conveyance of Ecclesiastical Goods", in *CLSA Proceedings*, 38 (1976), p. 129. See, also A. LARRAONA, "Commentarium Codicis, Can. 534", in *Commentarium pro Religiosis et Missionariis*, 13 (1932), pp. 187-188.

⁶⁶ CIC, 1983, c. 1295: "Requisita ad normam cann. 1291-1294, quibus etiam statuta personarum iudicarum conformanda sunt, servari debent non solum in alienatione, sed etiam in quolibet negotio, quo condicio patrimonialis personae iudicae peior fieri possit," English trans. in *Code of Canon Law, Latin-English Edition*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, CLSA, Washington, DC, 1999.

B. The U.S. Oblates' consolidation: some background points of interest and concerns

Following a decision mandated at the OCUS regional meeting of 1994, the treasurers began to study how the provinces could work together on the financial level in several areas.⁶⁷ These joint projects included, first, a consultation between the treasurers and the provincials for the purpose of establishing a mechanism to receive and allocate funds for the U.S. Oblate region in such common works as vocation recruitment, formation, health care, retirement, etc. Secondly, any plan for sale or purchase of property, or the initiation of major construction projects in any of the provinces which would need the approval of the Oblate General Administration (and possibly the Holy See) would be first evaluated by the OCUS Executive Board. The Board's evaluation would be included with any requests to the Superior General and the Holy See. Thirdly, the treasurers would study all of the provinces' financial resources, policies and obligations so as to move towards the development of coherent regional policies in areas such as: investment policies and procedures, health care, Oblate retirement, and lay employee pension plans. The treasurers were also charged to seek ways of cutting costs through consolidating such things as province property insurance and auto purchases. Finally, the treasurers would begin to coordinate fund-raising efforts so that the costs for formation, retirement and other ministries would be more equitably shared by all the provinces equally.

Although the treasurers had been meeting together as the OCUS Finance Committee since 1994 to discuss these issues, the decision reached in 1996 to restructure into one province gave these mandates greater urgency. In evaluating the financial condition and activity of the provinces, there were several areas of special concern that would need to be addressed. These practical concerns which

⁶⁷ See OCUS, *Proceedings from the Sixth Regional Meeting*, Waltham, MA, 6-13 November 1994, pp. 9-10.

touched all the provinces included: how to consolidate in the most equitable manner, treating the concerns of all provinces equally where possible, how to handle the issue of severance of longstanding firm relationships and dedicated lay employees, and to what level the new province would be able to match previous levels of financial commitments. Some of these areas had been studied more intensely than others.

The immediate canonical concern raised here included, among possibly other issues, how to arrange legally for the coordination of a complexity of ministries and administrative services under the provincial, provincial council and the provincial treasurer. Others included a concern and respect for different province cultures and histories,⁶⁸ and the need to encourage a forthright and honest reporting of financial procedures and auditing of financial records. As the process developed, further issues would possibly arise. An overview of the situation of the provinces as the financial consolidation process began included the following background information.⁶⁹

1. Investments

Although in the past few years there had been a study of the provinces' investments, there was not a study done of the way they were managed. Three of the provinces had investment portfolios which included both unrestricted and restricted funds, and for two of these provinces the investments provided substantial support to province ministries. The other two provinces had smaller investments. Two of the provinces with portfolios had developed professional

⁶⁸ We are considering this as part of the spiritual patrimony of the provinces, in addition to the spiritual patrimony which all share as members of the same congregation. See CIC, 1983, cc. 578, 586. See also, G. ARBUCKLE, "Merging Provinces", in *Review for Religious*, 53 (1994), pp. 352-363..

⁶⁹ The following summary is based upon a memorandum written to the OCUS Legal/Financial Committee by one of the province's treasurers, 26 April 1996, in OCUS Archives, Washington, DC.

relationships with managers, custodial banks and investment consultants. The investment mix and strategies varied among the provinces depending upon how they analyzed their needs and determined how best to use their financial resources. Ministry commitments, both external and internal, had played a part in determining the investment mix and strategy.

2. Commitments to Delegations/Missions

The five provinces had formal commitments to various foreign missions and delegations. Some of these were longstanding historical relationships, and some provinces were more involved financially than others. All of the delegations and missions depended upon the U.S. provinces for ongoing support in one way or another, and these commitments needed to be considered in planning financial consolidation. For their own confidence and planning, ongoing communication with the Oblates in these delegations and missions was important during the transition.

3. Commitments to specific ministries

a. External commitments

All of the provinces to some degree financially supported various ministries or apostolates. These included retreat houses, schools of theology, preaching bands, communication ministries, shrines, a mission institute and community organizing projects. Of these, some were themselves even separately civilly incorporated apostolates. The continuing support of these ministries had to be defined for planning purposes and to avoid undue disruptions in ministry. Here, the lay employees in fairness needed to know how the Oblates in the future would support the ministry so as to plan for themselves and their families. The communication of support by the transition committee needed to be clear and specific so as to provide stability to employees who, lacking a sense of future stability, might look elsewhere for employment.

b. Internal commitments

At the time of the consolidation, the provinces each saw after their own administration, vocation recruitment and pre-novitiate programs. Part of the planning had to take into consideration differences in formation philosophy, specifying whether it be centralized or more local and, thus, culturally sensitive. For the reasons mentioned above, there had to be clear and specific communication to the employees involved about the province's future plans. Also, this planning had to include how best to use property, buildings, office equipment, etc., presently dedicated to these purposes.

4. Fund-raising offices

Two provinces had major fund raising operations, and there existed smaller ones in other areas. These fund raising efforts had different foci and employed different methods. Both province external ministries and Oblate congregational ministries depended on these sources of revenue. The offices employed highly qualified personnel, some of whom had worked with the Oblates for many years. In the interest of retaining these important personnel and in not decreasing the fund-raising effectiveness for the good of the province's mission, definition of future direction in these offices was critical. It was asked whether there could be a coordination of these offices which would maintain the status quo but with redefined missions or goals.

5. Lay employee pension plans

There were three existing lay employee pension plans among the provinces with a variance in the provinces' contribution for each employee's pension. In one of these plans, employees were elected as trustees. Careful examination of the legal responsibilities and rights of the participants, especially the vested ones, had to be made. Moreover, one province was legally committed for the health care and retirement needs of two religious hermits.

6. Severance/employee termination

At various locations, each province employed lay persons who had dedicated significant years to the Oblates. The future plans of the province as regards their employment had to be clearly stated, so as to retain the loyalty of those who would remain in service and to provide the smoothest transition possible for those who were not to be retained. The longer time that the future remained ambiguous, the more administrative services would be disrupted. Sensitivity to this issue was required so that the lives of all employees and their families not be affected more harshly than necessary. Severance payments and other logistical arrangements were needed to support individuals in the transition to new jobs.

7. Accounting

Each province had a province accountant before the consolidation. The new province needed accounting services, including auditing. There had to be discussion and a decision on how this would be handled. Also, there had to be a discussion as to whether it was better to have one accounting firm for the province, which would be more efficient financially and for reporting purposes.

C. Time line and procedures for financial consolidation

From the above brief background description, obviously, one can see that the consolidation process involved a great number of preparatory steps before it could be smoothly executed. Thus, the time deadline given for finishing the task could exert influence on the process. At the OCUS regional meeting of April, 1996, the provincials and councils originally had voted that the unified province structure be inaugurated by Easter, 1998. Afterwards, in working with various details and in respect of the time line of different levels of government and organization within the Congregation, the OCUS provincials revised their plans and hoped to implement unification by October, 1998, which would fall after the 1998 Oblate General

Chapter. However, due to differing views on the process of unification among the U.S. regional Oblate members and in light of meeting schedules of the General Administration, the formal petition from the U.S. provincials to the Oblate General Administration (September, 1997) requested the date of inauguration of the new province to be no later than May, 1999.

Fortuitously, although the provincials and the Legal/Financial Committee had drawn up a time line which originally had planned for earlier implementation, with the final decision of the Oblate General Administration, the province was not to be inaugurated until February, 1999. This delay proved to be a helpful modification, since the task of financial unification proved to be larger than what had been originally envisioned. Particularly, the time period between November, 1997, when the unification was formally approved, and the official date of inauguration, February, 1999, proved to be very hectic. Although some background work had been done, the remaining time was filled with many important yet sensitive tasks, especially those directly involving Oblate and lay personnel.

Two primary decisions by the OCUS Executive Board determined the course that the financial consolidation followed. One important decision for the transition process was that the OCUS provincials agreed to maintain funding of ministries and communities in the new province for at least the first year at levels previously set by the five provinces. This made it unnecessary to make any critical mission and policy decisions before anyone could see how the new province structure, personnel, etc. would mesh. The inevitable decisions for consolidating or closing ministries would be left to the provincial and council of the new province.

The second decision involved choosing the site of the new provincial headquarters. Included as a discussion topic in the area hearings during the Fall, 1996, the question of the site for the new provincial headquarters evoked a variety of responses from some strictly practical to others mostly sentimental. The provincials decided to recommend to the Oblate General Administration that the nation's capital (Washington, DC) be the preferred site, although this was not a

unanimously supported choice. However, having made the decision sooner rather than later, the Legal/Financial Committee's work would be facilitated in the many other practical decisions that remained to be made.

With these two policy decisions clarified, the actual consolidation process time line could be planned. Although several of these procedures developed concurrently, the preparations for financial consolidation included the following:

- 1) Hiring of Legal Firm, Financial Consultant, Accounting Firm;
- 2) Decide a process for communicating financial changes with the respective provincials, provincial councils, provincial treasurers and the Oblate members of the region;
- 3) Information gathering from provinces: financial support provided to communities/ministries, personnel policies of province and key institutions, all real estate properties owned, reserved and unrestricted assets, present and future legal liability;
- 4) Initiate due diligence search for all existing civil corporations founded in the name of the Oblate provinces, including a review of the legal relationship between each province and its subsidiary institutions;
- 5) Development of new civil corporate organizational structure and its establishment;
- 6) Identification of new ownership names;
- 7) Identification of time lines for transferring ownership of properties;
- 8) Identification of accounts into which to transfer assets, of custodian and commercial banks, and of mechanisms for the transfer of accounts process;
- 9) Develop process for adoption of health plan, social security and pension fund for Oblates;
- 10) Develop process for adoption of lay employee pension fund;
- 11) Develop process for hiring firms for property, auto, and liability insurance;
- 12) Develop time line for moving financial records, personnel records, and archives to new provincial headquarters;
- 13) Develop process for hiring new provincial office personnel, job descriptions, etc.;
- 14) Develop procedures and dates for closing down former provinces' administrative offices.

Given the immensity of this task, it was important to keep the provincials, their councils and treasurers updated on the progress of the work and to ask for their input and information where necessary. Not everything was able to be accomplished by the date of inauguration of the new province, e.g., organizing the

administrative and financial records of the former provinces in the new provincial office. Other tasks, such as transferring the legal titles of deeds, took longer due to some previously unidentified properties. We shall summarize some of the “learnings” of the consolidation process below.

D. Outcomes of the U.S. Oblates’ financial consolidation

In retrospect, some practical benefits as well as some disadvantages were noted from the consolidation process and the way it was handled. Some of the more noticeable points are mentioned here.⁷⁰ Though these were particular to the experience of the U.S. Oblates, they could illuminate possible gains and pitfalls for other groups considering the consolidation of provinces. We first mention some of the practical benefits.

The reorganization obviously has reduced duplication of efforts in several areas of administration by having one financial administration office. While the work involved in consolidating the lay employees’ personnel policies, benefits, etc. had been underestimated, the consolidation into one employee pool of over 700 persons has given access to better benefit packages for them. Constant and accurate communication with personnel directors helped to allay fears and answer questions. Consolidation has also helped to reduce some property and casualty insurance costs by providing a larger pool of insured assets.

Some things which were overlooked or would be done differently include the following. Due to the variety in the provinces’ financial administration, the types of investments made by one province in limited partnerships and mutual funds have been difficult to identify, but the help of the financial consultant has been

⁷⁰ These conclusions were drawn from a talk given by a provincial treasurer of the U.S. Oblate province as found in the program book for *2000 Legal Seminar, For Major Superiors and Treasurers of Religious Institutes*, 16-19 March 2000, Office of Legal Services, Louisville, KY, pp. 455-496.

invaluable. Some irregular procedures from predecessor provinces, although developed over time with the best of intentions, have proven that the due diligence study of the provinces' policies and procedures should have been more comprehensive.

Related to this problem with the preliminary preparations, one of the professional firms originally hired proved to be unsatisfactory due to an overestimation of the amount of consultant assistance that would be received at a reasonable cost. The province treasurers learned that some firms view the relationship as only one to generate more business for their consulting and other divisions. Other firms will do the minimal necessary to accomplish a task. Care should be taken in making these hiring decisions.

Although communication with financial staff of the provinces had been done well, there were some gaps in meeting time lines, which could have been due to subtle and/or not so subtle resistance to the consolidation process. More effort could have been made to ensure that the financial staff were truly on board and working together. Some of the changeover in the social security direct deposit accounts, which on the positive side was able to be accomplished rapidly, resulted in misunderstandings with some Oblate members.

With regard to the establishment of the new provincial office, it was felt that the hiring of administrative staff should have been accomplished sooner before the office was to open. Hiring this personnel six months in advance of the new province's inauguration would have been a better time line. Due to a lack of planning regarding storage space and which records were absolutely necessary to transfer, there were still financial records that had yet to be filed away after one year of the new province's operation. The Internet access system proved to be inadequate, even though consultants were used in its choice. Even though it was more costly, investing in a state of the art connection from the beginning would have proved a wiser decision.

As is the case with many other documented consolidations, whether of

institutes or of provinces, financial issues can cause the greatest stress in community.⁷¹ Overall, the Oblate provinces in the U.S. displayed remarkable cooperation and generosity in pooling their financial resources for the purpose of strengthening the mission. However, resistance to the consolidation itself or the fear of losing control over one's "provincial" interests caused some inevitable conflicts. The choice of appointing co-treasurers,⁷² the former treasurers of two of the provinces, was an attempt to bridge any differences of understanding and policy that may have existed among the various provinces. It seems that this arrangement of shared financial administrative leadership at the beginning of the unified existence of the provinces did assist in better communication and a generally more beneficial policy development by the new province.

One example of a province policy which caused some differences of opinion due to divergent predecessor province cultures⁷³ was the question of personal budgets. While, for the most part, the provinces considered budgets of Oblate communities to be the standard procedure, one province had the custom of requiring most members to submit individual personal budgets for approval. As with the community budgets, the personal budgets were to be determined before the beginning of each fiscal year, in discernment with the area superior and approved

⁷¹ According to B. EICHEN, "These concrete tasks [management, financial and legal], all of which need doing, must be done within the emotional/spiritual realm - one could almost say 'minefield'"; see "Merger Issues and Ways to Address Them", in *Review for Religious*, 57 (1998), p. 400. Also see, T. JOHNSON, "The Choice to Begin Anew: Anatomy of a Provincial Merger", in *CMSM Forum*, No. 70 (Winter 1996), pp. 14-23.

⁷² The standard practice according to the 2000 *OMI Constitutions and Rules* is to appoint a treasurer and an assistant treasurer (const. 160, rule 160b). However, given the task of consolidation and the expertise of both these provincial treasurers, an indult was requested by the U.S. provincial and granted by the Oblate General Administration for appointment of co-treasurers.

⁷³ "Culture is not one facet of life nor merely what people visibly do; rather it is a complete set of feelings affecting, most often unconsciously, all of a specific behavior pattern of individuals and groups... A culture provides people with a much needed sense of order or security," in ARBUCKLE, "Merging Provinces", p. 354.

by the provincial and council. However, the personal budget system required that all income that a member received (including salaries, stipends, pensions, social security and disability payments) would be sent directly to the provincial treasurer's office.

The personal budget called for more individual financial accountability, and, in the eyes of some, an unwanted dependence. Each member would receive a subsidy, either monthly or however previously determined, from the provincial treasurer to cover expenses for that month or period of time. Also, each member would be expected to have a bank account in which to deposit these province payments, established under the name of the province as a corporate account. Although some argued that this process seemed too individualized and not in the spirit of a witness to poverty through sharing in common, the personal budgets were seen by others as a way to challenge each member to live simply and within his means. In this way, each Oblate could identify more closely with the poor, a traditional attribute of the Oblate charism. After a decision by the provincial council and consultation throughout the province, the personal budget was adopted as a province policy. Individual communities were given the opportunity to join together and as a group submit one budget, but so far apparently none has done so. The policy is still in the stage of reception and adaptation by the membership.

III. CIVIL LAW CONSEQUENCES OF CONSOLIDATION

We have analyzed the process of consolidation or unification of the U.S. Oblate provinces from the perspectives of civil and canon law with respect to the province's temporal goods. Now we wish to summarize the civil law effects or consequences of this consolidation. Most of these consequences have positive repercussions on the consolidated province; however, some deficiencies will be noted. Clearly, these effects depend upon the nuances of various state and federal laws, but it is possible to present an overall view of the results.

A. Civil incorporation

The canonical structure of the consolidated province resulting from the union of five separate provinces has now been reflected in the civil law. The reasons for civilly incorporating the province are the same as for any group who wishes to incorporate.⁷⁴ In the consolidated province, the canonical leadership (provincial and council, treasurer) are now the administrators of all the assets and liabilities of the former provinces. As the positive purpose for the consolidation was to pursue better the stated mission of the Oblates in the U.S., the civil law structures and procedures have been developed with that mission as the priority. The civil corporate structure has particularly had as its purpose to ease administration and to allow the provincial, council and treasurer to administer the consolidated temporal goods for the common mission.

Furthermore, the civil structure in serving the mission of the consolidated province ensures that the assets (financial and real) are directed to the purpose originally intended, either by the donor or one of the provinces participating in the merger. The civil structure protects the diminishment of these assets to satisfy unrelated claims or judgments that may be directed against the consolidated province. This purpose encouraged the leadership determining the civil structure to identify clearly the purposes of existing assets and channel those assets into the appropriate corporation or trust, in order that their purpose be respected and their safety from extraneous judgments and occurrences assured.

This required, first of all, that the consolidation process include a search to list all the assets which belonged to the different provinces. The titles of property deeds have been changed to reflect the new canonical reality. Depending on whether the property was held for investment purposes or was part of a former

⁷⁴ We summarized these reasons as the following: 1) to hold title to the assets; 2) to manage these assets; 3) to limit the liability of those with an interest in the organization; and, 4) to provide for administrative ease in governing the group.

province's stable patrimony, it has been placed under the title holding corporation or the realty trust. Some of the properties had not been clearly defined as Oblate properties, so the process of title change has taken a little longer for them.

The preparation for the consolidation included what is known as a "due diligence" search, where the civil corporations in the predecessor provinces were found and listed. Given the new canonical configuration, most of these corporations have been dissolved,⁷⁵ while the others have been transferred as special purpose corporations under the new corporate structure. Any corporations which were maintained have amended their articles of organization and bylaws so as to reflect the new province's leadership structures. The process of consolidation has helped to simplify the civil corporate structure, and many corporations which were dormant have been dissolved.

The present civil corporate directors⁷⁶ are now responsible for compliance with the civil requirements for all the province's corporations such as: holding annual meetings, paying annual dues, submitting reports to the state authorities and any other pertinent requirements. Also included is adherence to local, state and federal regulations governing the payment of taxes or in satisfying the qualifications for tax exemption.

With regard to the federal tax exempt status, the province has been listed in *The Official Catholic Directory*, being included under the Archdiocese of Washington, DC. This listing is, of course, rather complicated. Each civil corporation and trust requires a separate listing in the *Directory* in order to ensure its tax exempt status § 501 (c)(3) status by virtue of the Group Letter Ruling issued annually by the Internal Revenue Service to the officials of the United States Catholic Conference/National Conference of Catholic Bishops (see Appendix III). The *Directory* listing, with the inclusion of corporations and trusts, will need to be

⁷⁵ The predecessor provinces' operating corporations were maintained for the present time solely for purposes of wills and bequests.

⁷⁶ The Provincial, members of the Provincial Council and the Provincial Treasurer.

reviewed and, if need be, updated every year.

One possible deficiency which we have noted in the articles of incorporation and bylaws of the U.S. Oblate province corporation relates to the absence of an explicit mention of the dissolution of the corporation as a specifically reserved power of the corporate members. We note that there is mention in Article IV, "Committees", that "no committee shall have the power or authority to...dissolve the Corporation or revoke a resolution dissolving the Corporation",⁷⁷ however, dissolution of the corporation itself is not explicitly stated as a reserved power of the members. Possibly, dissolution could be implicitly contained in the second reserved power of the members related to reorganization of the corporation.⁷⁸ Since dissolution and distribution of the corporate assets could be a matter of canonical alienation, this control should rest with the province's canonical leadership and be so stated in the civil documents.⁷⁹ Inclusion of a dissolution clause, including provision for the disposal of the corporate assets, also contains implications for the province's tax exempt status.⁸⁰

Difficulties arise when trying to blend the canonical requirements into the U.S. legal context. According to U.S. tax law, the assets of a dissolved tax exempt corporation can be transferred only to a recipient charity which is domiciled in the U.S. Therefore, a dissolution clause specifying the Oblates as recipient including,

⁷⁷ *Bylaws of the U.S. Province of the Missionary Oblates of Mary Immaculate, Inc.*, Article IV, § 4.06.

⁷⁸ "The members of the Corporation shall have the sole authority to: b) approve the establishment or reorganization of the Corporation," in *Ibid*, Article II, § 2.06, b.

⁷⁹ See MAIDA and CAFARDI, *Church Property*, pp. 157-159. Also, M. DiPIETRO, "Incorporated Apostolates", in K. MCKENNA, L. DINARDO, and J. POKUSA, eds., *Church Finance Handbook*, Washington, DC, CLSA, The Catholic University of America, 1999, p. 303.

⁸⁰ "The organization's assets must be permanently dedicated to exempt purposes. The organizing document must provide that upon the dissolution or termination of the organization, its assets will be distributed to another organization which is exempt within the meaning of section 501 (c)(3)," in FITZGERALD, "The Catholic Directory", p. 111.

for example, the generalate in Rome would destroy the tax exempt nature of both the province trusts and corporations. Another legal issue involved is that if the power of dissolution is reserved too tightly in the civil law, there could be a danger of piercing the corporate veil and losing the very protection the province had sought.

We could say that, ultimately, the provincial and council would have authority over any decisions regarding the civil corporation's dissolution. Namely, according to the provisions of the 1983 Code regarding extraordinary administration and alienation, canonically the power of dissolving the civil corporation can remain only with the canonical authorities. Ultimately, according to the Oblate proper law, the provincial and council would need permission from the superior general, and possibly also his council, before they could act civilly.⁸¹ Perhaps there would be a way to include the power of dissolution in the civil documents so as to be faithful to canon law while still maintaining U.S. civil law protections.

B. Liabilities, present and future

Besides the restructuring of the corporations, and making name changes in title and ownership, the consolidated province has researched any known present or possible future liabilities of the predecessor provinces, both legal and financial, which it has inherited. Some apostolates have been separately incorporated civilly for various reasons, among which was protection from liability. The three operating corporations and the real estate corporation have been established as separate and distinct, due to the diverse character of the province's mission. This corporate structure has been developed so as to protect the consolidated province's assets from liabilities of members or employees as a result of torts or negligence which could adversely harm the assets and, thus, the pursuit of the province's mission. As far as possible, the new civil legal structures are protected from responsibility

⁸¹ *OMI Constitutions and Rules*, 2000, const. 162.

for liabilities of the predecessor provinces.

Other steps have been taken with regard to other present and future province liabilities. Financial liabilities, especially mortgages or lending agreements, have been renegotiated so as to reflect the new civil corporate reality. Charitable trusts have been established for the protection of the province's stable patrimony, pension, health care and education restricted assets. Insurance has been taken out to protect property and autos, as well as to cover professional employment liabilities.

C. Use of experts

The new province civil legal structure encompasses many civil jurisdictions. Thus, to aid in the ease of management, financial, legal and accounting experts had to be hired, familiar with both the needs of the province and the pertinent requirements in the civil law. For the most part, due to the national territorial expanse of the new province, new firms have been hired, replacing those who served the former provinces. These experts were instrumental in developing the civil corporate structure and financial organization of the province during the consolidation process. Since the canonical administrator could not possibly manage by himself both the daily operations and future planning of the legal and financial structure of the province, he continues to depend upon these skilled expert advisors for annual audits, budgets, fundraising, construction projects, investment consultation, etc. Given the canonical requirement for the consent of the provincial and council for certain decisions of extraordinary administration and alienation, the civil corporate structure facilitates the council's participation, after having heard from the treasurer and the province's legal and financial experts on these matters.

D. Other positive consequences in civil law

As a province in a religious institute, certain rights and obligations of individual members regarding temporal goods flow from the universal canon law and the Oblate proper law, and these, too, need civil structures for maintenance and protection. During the consolidation process, there were several actions taken to update some of the civil law protections of these rights and obligations so as to conform to the new province structures. First, members in perpetual vows were asked to make out a new will⁸² and a durable power of attorney for health care, recognizing in these civil documents the reality of the new province. Next, for those members who wished to have a living will or who intended to donate organs or their body for medical or scientific use, new documents were necessary so as to reflect the new canonical and civil corporate reality of the province. Finally, as mentioned above, a separate trust was established for the personal patrimony of those members who entrusted its administration to the province.

Bringing the five separate provinces into one also has led to some positive consequences in the development of uniform policies in the civil law related to employment and hiring, health, investments, pension plans, and audit reporting, among others. The consolidation has helped to economize in some of these areas, leaving more resources for development into the province's mission.

⁸² See CIC, 1983, c. 668 and *OMI Constitutions and Rules*, 2000, const. 23. Though the new province attempted to facilitate the execution of these documents so that they be civilly valid, it was not seen as an attempt to coerce members to unwillingly benefit the province. As in universal and proper law, the individual member of an institute maintains certain rights which cannot be taken away. One of these rights is to name an administrator for his patrimony, the province or someone else. However, it is recommended that the deed of cessation of administration of goods should be confirmed in a civil legal document. The new province wanted to ensure that the documents were civilly legally recognized as valid. For a general discussion of the canonical rights of religious see, E. McDONOUGH, "The Protection of Rights in Religious Institutes", in *The Jurist*, 46 (1986), pp. 164-204.

IV. CANONICAL CONSEQUENCES OF CHANGES IN THE NEWLY UNIFIED PROVINCE

The herculean task of consolidating the civil corporate structures and finances of five provinces which had almost 150 years of existence and more than 500 Oblate members can also lead to several canonical consequences which we now wish to summarize. As public juridic persons which were established at different times and places with diverse mission objectives, the provinces' financial procedures and makeup were extremely varied. Like many religious congregations, the financial administration of the Oblate provinces had not always been as uniform as perhaps is presently the case. As the canonical owners of temporal goods, each province had developed the procedures and policies which best fit its resources and ministerial needs, exercising its canonical autonomy over what belonged to it for cooperating with the mission of the Church. Perhaps in the provinces' past, in a pioneer age where survival itself was a struggle, uniform legal and financial structures were not a primary concern, nor were they as possible as they are now.

A. Canonical ownership

With regard to the important canonical issue of control over the province's temporal goods, the new canonical and civil legal structures have placed the decision-making and administrative power in the hands of those who now exercise governance in the province. The province statutes and the policy directory have clarified some of the special procedures and protocols, some of which will evolve with time and practice. As we have highlighted above, some clarification might still be needed regarding more explicit statement in the civil documents of the provincial and council's reserved power to dissolve the corporations and trusts.

In the process of researching this study, we have found that questions had been raised concerning the procedures followed during the interim unification

period (1994-1999). More specifically, some members in the provincial and congregational leadership asked whether canonical provincial autonomy, as provided for in the *Oblate Constitutions and Rules*, was circumvented while the OCUS Executive Board operated under its 1995 *Interim Statutes*.⁸³ However, as we have seen, the decision to restructure was ultimately a unanimous one, as was the approval of those interim structures by the five provincials. Of course, the *Interim Statutes* have been replaced by the new province structure.

B. Provisions for administration of goods

While acting within their role as the administrators of the temporal goods of the provinces, the provincial leadership continuously attempted to communicate their intentions and procedures to the broader membership of the provinces. During the consolidation process, the Legal/Financial Committee would write articles in the editions of the OCUS newsletter explaining their latest activities, which were outlined as well in the published minutes of the OCUS Executive Board. Regular updates were given to the Provincial Councils of the respective provinces, and the provincial treasurers were involved in assembling the financial information needed for the consolidation process.

With respect to the predecessor provinces' religious and lay employees, care was taken that they also were to be informed concerning the stability of their future employment. Both in the severance packages offered to certain employees, and in discussions on the just wages and benefits of the employees under the new

⁸³ We have referred to this concern above in Chapter Three, footnote 81. In particular, these questions related to formation issues. However, the apprehension of one provincial council centered upon the governance authority ceded to the OCUS Board, which could act as almost a provincial council over the five provinces with majority, rather than unanimous, decision-making power. The OCUS Board only concerned itself with formation issues until after the 1996 regional meeting, at which time the unanimous decision was reached to consolidate the five provinces. Financial decisions regarding the restructuring were made after the Oblate superior general had approved the new province.

province, the prescriptions of c. 1286, regarding employment of workers, were observed.⁸⁴ Care was taken that federal and state civil laws be followed in hiring procedures of employees in the new province.

After the U.S. Oblate province consolidation was completed, a province policy directory was completed, and, the norms for ordinary and extraordinary administration of temporal goods were determined (638 § 1). This included a listing of the categories of the competent authority and respective ordinary administration limits from that of an Oblate living alone up to the maximum amount the Provincial in council can approve in financial questions where alienation is not involved.⁸⁵ Provisions were also made for the extraordinary administration of non-Oblate property, where an Oblate is the canonical administrator.⁸⁶

C. Alienation issues

In the above discussion on financial consolidation, we raised a canonical concern about alienation. Commonly where consolidations or mergers take place among distinct juridic persons, canonical alienation is a result. We mentioned in our introductory remarks in part II that, in the case of internal restructuring in a religious institute, the canons on alienation do not necessarily apply. The reason for this is that the province is not an independent autonomous juridic person, but rather, while autonomous in most respects, it depends upon the institute itself for

⁸⁴ The OMI *Directory for the Administration of Temporal Goods* states: "The norms of social justice and Christian charity are to be observed in *our relationships with all our employees* [...] In those cases where civil laws do not adequately protect the social rights of employees, we will make proper provision for their needs, '*justitia duce, caritate comite,*'" in Chapter I, § 5.4, p. 5.

⁸⁵ U.S. PROVINCE OF THE MISSIONARY OBLATES OF MARY IMMACULATE, *Provincial Directory*, 2000, pp. 17-18.

⁸⁶ *Ibid*, 18-20.

establishment and ultimately for dissolution.⁸⁷

However, alienation issues could result in a consolidation of provinces of the same institute if care was not taken to maintain any previously defined stable patrimony in a consequent restructuring which might worsen the patrimonial condition of the juridic person (c. 1295). Therefore, certain alienation issues could well result in light of the restructured province. In the case of the U.S. Oblate provinces, all restricted funds were transferred to the new province under the same category, i.e., stable patrimony was transferred as stable patrimony, with care not to have worsened the condition of the new juridic person nor going against the wishes of the founders/donors. Trusts of the former provinces have been maintained as such in the new province, particularly restricted funds for pension, retirement, province development and education.

In the U.S. Oblate province statutes, it seems that the listing of the stable patrimony of the new province could include those properties and funds indicated in the list of "Entities Under the Immediate Supervision of the Provincial" in Appendix A. However, at present, definition of the province's stable patrimony is unclear. Due to the fact that alienations concern conveyance of the stable patrimony, it would be helpful for the province to draw up an inventory to be kept on file.⁸⁸ Further restructuring within the province will probably include the need to alienate some of the stable patrimony due to diminishing personnel, so the actual patrimony should be defined. It is also not clear which property or buildings would be of historical or artistic significance, nor whether explicit mention was made of

⁸⁷ See above, Footnote 65, for references. See also, R. KENNEDY, "Juridic Persons", in *New Commentary on the Code of Canon Law*, p. 168. This commentator offers additional reasons as to why the consolidation of provinces would not be considered canonical alienation.

⁸⁸ The competent authority for determining the stable patrimony according to Oblate proper law is the provincial in council. A copy of the patrimony inventory is to be kept in the archives of the Oblate General Administration. See *O.M.I. Directory for the Administration of Temporal Goods*, Chapter I, § 3, pp. 2-3.

any goods possibly given by a vow (c. 1292 §2) or to which conditions had been attached by the donor and accepted (c. 1267 §3).

D. Other issues

Probably one area which did not receive much attention during the financial consolidation process was the local community's temporal goods. It seems most of the communication and sharing of information concerned the provincial level, and perhaps rightly so given the major issues that had to be settled relative to incorporation and financial organization. However, there was little mention of the rights and obligations of Oblate houses and local communities pertaining to temporal goods.⁸⁹ This could be interpreted either as a violation of the principle of subsidiarity, or simply as an oversight.

Some canonical institutions required by Oblate proper law remained undefined until after the new province was inaugurated in February, 1999. These included the provincial finance committee⁹⁰ and the province directory for temporal

⁸⁹ See CIC, 1983, c. 634 and *OMI Constitutions and Rules*, 2000, const. 151. We have alluded to this issue in footnote 39 above. Perhaps the canonical houses did not own property or other temporal goods. Also, perhaps there was too much of a desire to centralize ownership in the Province. The healthy tension between the local community and the province, similar to that between a parish and a diocese, is an important one to maintain for the benefit of all. Too much centralization, besides an infringement of rights, can stifle apostolic initiatives and the role of the Spirit. An exaggeration of individual initiatives can lead to fragmentation of the common mission.

⁹⁰ While the 1982 *OMI Constitutions and Rules* "recommended" a provincial finance committee (Rule 149), the 2000 *OMI Constitutions and Rules* made the committee a requirement for every province (Const. 157). Previously, solely the provincial council had sufficed as the financial council where consent was required, as per CIC, 1983, c. 1280. [This practice is based upon norms contained in an instruction from the Holy See: CONGREGATIO DE RELIGIOSIS, Instruction, *Inter ea*, 30 July 1909, in AAS, 1 (1909), pp. 695-699.] However, financial expertise was not always available within the council. The members of the province finance committee are explicitly chosen for their expertise, and serve as an advisory council to the treasurer in preparing budgets, receiving financial reports and making financial recommendations which the treasurer will ultimately present to the provincial and council.

At the 2000 Spring plenary session of the Oblate General Administration, the

administration of goods. The finance committee is composed of the province treasurer and assistant treasurer, along with two permanent Oblate members.⁹¹ An interchangeable two additional Oblates will serve on the committee for different specific annual meetings, such as those meetings dealing with the budget, province investments, or special projects and financial development. Laypersons are invited to serve on the committee in order to provide expertise at specific annual meetings. The committee's structure and role will be subject to ongoing evaluation and adjustments.

The finance directory, as a reflection of the ongoing process of developing province financial policies and procedures, has yet to be completed as of this writing. Furthermore, the *OMI Directory for the Administration of Temporal Goods* is presently being revised and this might call for some additional changes at the provincial level. Some of the province's financial policies and procedures are contained in the U.S. Oblate *Provincial Directory*.⁹² Besides financial structures and procedures, the financial directory will also contain province investment guidelines, purchasing criteria, investment ownership responsibility and an alternative

superior general in council offered some further guidelines for the province finance committee: 1) the finance committee is a committee of the [provincial] council; 2) emphasis is to be put on close collaboration between the [provincial] council and the finance committee by the council confirming the agenda of the finance committee, naming professional lay experts and determining structures to strengthen the collaboration between the committee and the council; 3) for extraordinary financial matters the major superior and the members of the council need the opinion of the finance committee; and, 4) at least one member of the [provincial] council other than the treasurer be a member of the finance committee to strengthen the collaboration between the council and the finance committee. See A. KEUTER, General Treasurer, Letter to provincials and treasurers, Oblati de Maria Immaculata, Curia generalizia, Roma, 23 May 2000.

⁹¹ See CIC, 1983, c. 492 for possible parallel membership qualifications of this committee. The particular composition and job description of the province finance committee differs according to the needs of a particular province.

⁹² See U. S. Province, *Provincial Directory*, pp. 9-20.

investment policy.⁹³ It will have to be approved by the Oblate General Administration for it to take effect.

E. Resulting effects in Oblate proper law

The restructuring process in the U.S. Oblate provinces, as well as those in other regions, such as Canada, has led to some amendments in the procedures of Oblate proper law. Concern was expressed by the Oblate superior general and council that such restructuring processes as in the U.S. and Canada invited little intervention by them regarding the changes in civil legal and financial structures. Although the Oblate congregational governance is largely decentralized,⁹⁴ for the overall good of the congregation and its mission it was agreed that the Oblate general administration should have some intervention in these processes. Moreover, due to recent changes in the Oblate *Constitutions and Rules*, particularly the abolishment of the category of vice provinces, many restructuring processes are foreseen in coming years.

Therefore, in the interest of a more adequate oversight, some changes were introduced into the praxis of the financial administration which will affect any future consolidation processes within the Oblates. At the 2000 Spring plenary session of the Oblate superior general and council, three decisions were made concerning the civil corporations within the congregation:

1) the act of setting up the civil structure has been declared an act of extraordinary administration (Rule 155a) and these acts are to be governed by the sums established for financial competency in the matter of alienation subject to the competency of appropriate superior and/or governing body;

⁹³ The Investment Policy Statement has been adopted, which includes an alternative investment policy. Though the Financial Directory is at present in draft form, it guides the general financial policies, and has been reviewed by the provincial and council, as well as the provincial treasurers.

⁹⁴ "Each Province will determine how the goods of its communities are to be administered and how the day-to-day needs of the members in their life and apostolate are to be met," Rule 22b, *OMI Constitutions and Rules*, 2000.

- 2) the annual report of the financial status of the province or delegation to the general administration is to include reports of each separately registered civil corporation, association, trust or the equivalent for the country involved; and,
- 3) provinces and delegations with civil legal structures are asked to forward copies of the governing documents of the structures to the general administration for review and filing.⁹⁵

Due to the possibly large sums of capital and property implicated and the far-reaching effects into the future for the Oblate province structure, it was felt that the Oblate superior general and council needed to be better informed and involved not only with the canonical restructuring, but with the civil restructuring as well. Thus, the financial and legal consolidation of the Oblate U.S. provinces has had several consequences, including even changes within the administrative procedures and proper law at the general level of the Oblate congregation. Time will tell what other effects and consequences will come to light in the future.

CONCLUSIONS

1. The restructuring of provincial corporations implies an understanding of the relationship of the canon law and civil law within each other's spheres. Within *Book V* of the 1983 Code, canon law attributes different relationships with civil law. In some instances, as with contracts, the civil law is "canonized"; in others, the Code exhorts administrators to use the civil law for protection of the temporal goods of the juridic person. Generally, we have seen that the civil law in North America respects the internal canonical legal system of religious institutes. However, the canonical juridic person must be careful to observe both canon and civil law in order to protect its temporal goods for the purpose of the Church's mission, and, thereby, avoid adverse decisions in civil courts.

2. In the United States legal system, the most common method for canonical juridic persons to hold title to temporal goods and to protect them from liability is

⁹⁵ See KEUTER, Letter to provincials and treasurers, 23 May 2000.

through incorporation as a nonprofit charitable corporation. When the religious province incorporates itself civilly as a nonprofit charitable corporation, it can qualify for exemption from federal income tax by meeting certain requirements found in the *Internal Revenue Code* and granted as a Group Ruling to the Catholic Church by the Internal Revenue Service. For a religious province, as any juridic person, for successful civil incorporation, the canonical structure of governance must be mirrored in the corporation's articles of incorporation and bylaws. By means of reserved powers, the province can ensure that its canonical governance will be protected in the civil law structures. An alternative mode of civil law protection for the province's temporal goods in the United States is through the charitable trust. Though similar to the corporation, especially in how it relates to the canonical requirements, the charitable trust offers some advantages that the religious province might want to consider in developing an appropriate civil law structure.

3. In the consolidation or unification of several religious provinces into one, the consolidation of the civil corporations and trusts must take into account both the requirements of civil and canon law. First of all, the promotion of the mission should guide the development of canonical structures of governance and community life, as well as the ownership and use of temporal goods. Subsequently, once the canonical structures are in place, the process of civil incorporation takes effect, guided ultimately by the goal of effectively developing the province's mission. The restructuring of the civil corporate structure of the consolidated province must take into account several other elements we have considered in previous chapters; among these we might mention a certain period for consultation, the use of experts, and a respect for each of the predecessor province's apostolic works, available personnel and leadership pool, as well as their present financial assets and liabilities.

4. The process of consolidation of the U.S. Oblate provinces' civil corporations was the culmination of several years of collaboration, consultation and consensus. Once the decision to consolidate was officially made at the interprovincial level, the

preparations were begun for the process of civil legal and financial consolidation. With input from the provinces' leadership, a special committee was established to oversee the legal and financial consolidation issues. This group's initial decisions involved a reaffirmation of the province's mission as the guide for any restructuring, and the priority of the canonical structures and procedures for ownership over the civil ones. After an understanding was reached about some specific goals for the new civil corporate structure, legal, financial and accounting experts were hired who would develop the structure with the assistance of the present provincial leadership.

5. The new corporate structure was developed by the legal, financial and accounting experts, who continuously consulted with the leadership of the provinces. A canonist was also consulted. The legal firm initiated the process by doing a study of the current corporate structures and the relationship of the provinces with any subsidiary corporations. The process included a search for financial support provided to communities/ministries, personnel policies of provinces and key institutions, all properties owned, reserved and unrestricted assets, and present and possible future liability. The corporate documents developed for the new civil structure supported the canonical governance and ownership of the province through the implementation of certain reserved powers.

6. The financial consolidation of the provinces presented several canonical concerns. The canons in *Book V* of the 1983 Code and the Oblate proper law served as the sources for canonical guidance in the consolidation. Among the canonical concerns, we have noted the following: determination of present and future stable patrimony, the definition of what constitutes extraordinary administrative acts, clarity regarding those acts which constitute alienation, and whether any specific intentions of founders or donors had been attached to real and financial assets. An analysis of the situation has shown which canonical concerns merit future study.

7. Prior to establishing a time line for the financial consolidation procedures, some important empirical data served as practical background information for the

specific consolidation of the U.S. Oblate provinces. This data related to the following areas: investments, commitments to delegations and missions, external and internal commitments to specific ministries, fund-raising offices, lay employee pension plans, severance/employee termination and accounting procedures. With the help of the experts, the financial and legal transition committee developed a time line for financial preparations that needed to be completed by the time the consolidation took effect. (For a list of the procedures, see Appendix IV.) The overall task proved to be greater than first realized, due to human and time limit factors. Steps were taken to help ease the transition process for all those involved, and some decisions and policies were developed subject to review and experimentation.

8. The civil law consequences of the U.S. Oblate provinces' consolidation center upon the following areas: civil incorporation, present and future liabilities, the use of experts and some specific personal policy changes for Oblate and lay employees. The civil corporation of the consolidated province has maintained canonical ownership control in the province leadership. We have suggested the need to possibly include the dissolution of the corporation as a reserved power of the corporate members. By combining some former corporations and dissolving others, the structure has attempted to provide ease in management and to protect the province's assets from present and future liabilities. The new structure, especially through the development of charitable irrevocable trusts with spendthrift provisions, supports the province mission by ensuring that the assets go to the original purposes provided by the founding province or donors. The process sought to ensure that all legal documents have been updated to reflect the present status of consolidation, both those related to the province itself and to the individual members. Overall, the goals of province consolidation have given favorable results with respect to policies related to employment, health care, investments, pensions, and audit reports.

9. The consolidation of the U.S. Oblate provinces resulted in several canonical consequences, namely, canonical ownership of all temporal goods, a revised definition of ordinary and extraordinary administration, some alienation concerns were resolved, a need to define the new province's stable patrimony, a seeming inattention to the possibility that local communities owned temporal goods, the development of a new province finance committee structure and, finally, a process for developing a province directory of financial policies. The financial and legal consolidation in the U.S. Oblate provinces has led to some changes in Oblate procedure and proper law in the general administration, especially regarding the development and maintenance of civil legal structures.

GENERAL CONCLUSION

We have come to the end of our analysis of the fusion, union and reorganization of the religious province, with a case study of the consolidation or unification of the Oblate provinces of the United States. In a review of its canonical origins, we have shown that the religious province developed over time as a practical way to further the growth and development of the religious institutes' mission by decentralizing its authority. Although originally their erection and suppression was not uniformly regulated, after the promulgation of the 1917 Code, juridical authority over their development rested, for the most part, with the Holy See. As a result of the sociological, theological and subsequent juridical changes affecting the contemporary Church and religious life following Vatican II, the Holy See gave the institutes themselves jurisdiction over erection, modification and suppression of provinces.

Presently, according to cc. 581 and 585 in the 1983 Code, each institute looks to its own proper law for definition of the competent authority and the particular procedures for this internal restructuring. Any changes in the institute's constitutions for erecting, reorganizing or suppressing internal structures would require approval from the Holy See. Although, therefore, the universal and the proper law provide for the juridical process of internal restructuring, in this study we have attempted to describe some practical steps of the restructuring process based upon current praxis and mindful of both their civil and canon law consequences.

In the beginning of this thesis we asked, what concerns must be addressed in order to successfully consolidate provinces? We have demonstrated that consolidation can be managed canonically with some precaution and creativity, while dealing with the civil law issues may take some additional planning and finesse. However, the human and, ultimately, the spiritual dimensions must be

tended to above all for any consolidation to be deemed successful. In the end, leaders as well as members must be open to new possibilities in order to face a positive future.

If we believe that law follows life, then in this area of consolidations and mergers, the canonist must be prepared to observe where life is leading before any set and quick answers are given about present and future structures. What is our ultimate conclusion? Do the fusion, union and reorganization of their provinces provide solutions to religious life today? As with our Christian faith itself, in religious institutes some values are seen as more precious than life itself as we presently know it. Indeed, some religious institutes have preferred to die rather than to consolidate or merge with others. This thesis cannot answer these deeper and primary issues. Ultimately, we must conclude that no consolidation should be undertaken simply as a stop-gap effort for survival nor as a panacea for the struggles of contemporary religious life in North America. In this study we have attempted to frame some context for the institutes who are discerning if and how a province consolidation might be a viable choice and in their best interest for the purpose of ongoing renewal in commitment to their mission.

We shall now give some general conclusions to this research. Since many other religious institutes are in the midst of a similar restructuring process, the principles and applications developed here could be of practical assistance to them.

1. **Purpose: to develop mission and community.** In sum, we see that the province structure is not an end in itself, and can be modified to meet the present day needs of the mission of a particular religious institute. An important preliminary question would be the purpose of the consolidation. Some institutes are pursuing internal reconfiguration of provinces as part of a general plan to restructure the whole institute itself. This restructuring takes place especially in regions which have experienced a decrease in numbers of membership and new candidates. Other issues arise in contemporary religious institutes related to the predominance of individualism and a decrease in common apostolic works. It could be that the

impetus for consolidation comes from the provinces themselves and not the institute's general leadership. Again, given the research done in this study, we have found that, wherever the motivation to restructure originates, the primary purpose of the consolidation of provinces should be for making the mission and the practice of religious life more viable.

Restructuring must be more than simply a more efficient way to continue existing, solely for purposes of survival of the province and its ministries. The institute itself has a responsibility in this regard, to see that it furnishes the members those things necessary for achieving the purpose of their vocation (c. 670), spiritual and psychological goods, as well as temporal. A viable community structure for pursuit of the common mission is one of those needs.

2. Viability. An institute which is considering reorganizing provinces should do a study to see if the new proposed structure would be viable. Besides the canonical definition of a province found in the 1983 Code (c. 621), proper law could specify other criteria, such as a specific circumscribed territory, sufficient personnel, suitable vocation and formation programs, a means of subsistence, long term financial stability and a functional governing structure, including a community life and an apostolate.

Moreover, based upon the criteria used for studying the viability of a religious institute itself,¹ the province(s) which are candidates for reorganization should look to four essential areas. The key area for determining viability is that there be a corporate focus on the mission related to the founding charism, and a desire for renewal of the mission through the Gospel values in the common life, ministry and interior life in the group itself and in each individual. Secondly, there must be a critical mass of active members who will be able to carry out the renewed mission. A study of projections of membership into the future can be helpful. Thirdly, from

¹ See *A Critical Juncture: Assessing the Viability of Religious Institutes, An Instrument for Self-Evaluation*, 2nd edition, Silver Spring, MD, LCWR, NATRI, NRRO, 2000, pp. ii-iii.

among the membership, there must be sufficient potential leaders who possess a dynamic vision for the future of the group. Finally, there must be sufficient financial resources to maintain the institute's membership needs and to support the demands of the present and future regarding development for the mission.

The experience of the U.S. Oblates shows that restructuring processes with best chance for success should not be delayed until there are few alternatives. It is best to restructure while the leadership, membership numbers and sense of mission are still vibrant, rather than waiting until there is no other choice but when there may not be enough energy to pull it off.

3. **Prior collaboration/consolidation.** A consolidation of provinces presupposes successful coordination and collaboration with each other over a certain period of time. Coordination, as a possible first step, implies communication of programs and future plans regarding mission and formation of personnel. By collaboration we mean a further level of sharing of time, resources and personnel in certain projects in ministry and personnel formation and development. The membership must get to know each other on a personal level, sharing common experiences and the possible diversity of ministry experiences, province cultures and outlooks for the future. Holding annual retreats in common across province boundaries could be an important way of bridging and forming new relationships. Provincial superiors and councils of the respective provinces meet to discuss mission and community life, as well as how to coordinate joint projects. Committees can be established to plan and execute the practical aspects of these common efforts.

4. **Canonical preparation.** The canonical preparation for the consolidation of provinces includes three steps found in *Ecclesiae sanctae* II, art. 39 for the amalgamation of institutes: spiritual, psychological and juridical. The full participation of all the members in the spiritual and psychological preparation is essential. The role of the leadership in all the concerned provinces can provide the key to a successful consolidation and transition process. Renewal of the local

communities' life and mission is an important consideration for restructuring. The juridical preparation includes gathering financial reports, inventories and audits which can give an accurate view of the scope and practical effects of the consolidation. It could also involve drafting and consultation on any special statutes which would flesh out the proposed community and governmental structures for the new entity. The proper law of the institute must be carefully studied.

5. Expert consultants. The potential contributions by consultants should not be underestimated nor delayed. A canonical consultant, selected early in the canonical consolidation process, can give expert opinion for structural and leadership consultations, province statutes, as well as the development of civil corporate structures. Expert civil legal, financial and accounting consultants, selected early on in the process, can provide valuable insights for setting up the civil legal structure and helping to manage the financial consolidation successfully. However, care must be taken that the experts and the religious province have compatible goals for their professional relationship.

6. Consultation process. The official consultation process by the competent authority of the institute gives the opportunity for the opinions and advice of all the members to be heard. These consultations attempt to ascertain the level of support for the proposed new restructuring and the extent as well as causes of any resistance. The affirmative membership response of 80% or higher would give a clear indication of the members' support. The amount and source of resistance by membership to the proposed changes requires all levels of leadership to be attentive. Those who oppose the change could provide important insights or criticisms that would otherwise go unheeded.

7. Canonical structure. When the competent authority decides to approve the proposed consolidation, it could also give recommendations on the proposed governmental structure. Attention to the value of subsidiarity, concretely shown by affirmation of the ongoing viability of the local communities, is important for the most

effective development of the province's mission. The best structure is one which allows for exchange and communication between the higher and lower levels of authority. In a consolidation which includes a large geographic area, an intermediate level, such as an area, facilitates ongoing communication between the membership and its leaders. The area superior could possess delegated or perhaps even vicarious proper governance power; however, this superior's principal role would be one of leadership through animation.

8. **Statutes.** The proper law of the institutes serves as the primary statutes for the province (c. 118), but the province could also adopt some special statutes, especially if any innovative structures new to the institute are developed as a way to accommodate the former province communities. In the event of an affirmative decision by the competent authority, a probationary period *ad experimentum* would allow for any necessary adjustments and amendments to the community and governance structures and related policies. Flexibility is an important value in developing structures for the new entity.

9. **Initial actions.** Upon approval by the competent authority and notification to the membership, several procedures begin simultaneously. First, the consultation process for the leadership positions of the new province begins so that they can be named with sufficient time for transition. Secondly, the legal and financial transition team begins a search for necessary documents and the development of a new civil corporate structure. Decisions regarding the site for the new provincial headquarters should be guided by the province's mission. Also, the bishops of dioceses where members of the institute minister are informed of the imminent change. The actual date chosen for the inauguration of the new province should give ample time for the transition process.

10. **Leadership consultation.** The consultation process for the new leadership must attempt to involve all the membership and help them to begin to personally meet the prospective new leaders. Time and opportunity is given to the members to grieve the loss of familiar structures and to express their feelings and

opinions about proposed changes. Developing needs of the newly consolidated province for community and mission will need to be addressed by its new leadership. Community development needs include a desire to create unity among the former groups and a new esprit de corps. The development of a common mission with a renewed focus call for leaders who can overcome past divisions, and who can relate to a mostly older membership who may not find it easy to change. Important qualities in the candidates for leadership especially at this time are that they be visionaries, flexible, good at organizational skills and good listeners.

11. **Communication.** A successful legal and financial transition means that ongoing communication with leadership, members and lay employees throughout the process is essential. The cooperation of all the financial staffs is a necessity; it should not simply be presumed. Besides regular meetings with financial and administrative staffs, ongoing communication with the total group through newsletters and memos helps everyone stay informed. Key lay employees may decide to look elsewhere if not advised of their future employment status. Input from the province members should be sought and welcomed. In any reorganization the rights of individuals, members of the institute and its employees, must be safeguarded.

12. **Civil corporate structure.** Whether or not a new juridic person was created to form the new province, the civil legal structures must take their form following its canonical structure, the institute's proper law, and the principles of the 1983 Code, especially those found in *Book V*. The mission of the province must influence the legal and financial structures and not the other way around. New civil corporate structures must respect the intentions of founders and donors and any acquired rights from the predecessor provinces; the structures also assume the obligations with which the previous provinces were burdened (c. 121).

Religious provinces which are restructuring will find the nonprofit charitable corporation as the most common choice of civil vehicles for protection. However, provinces in the United States may find the charitable trust to be a more efficient

and secure civil vehicle for holding financial and property temporal goods. When created as an irrevocable trust, this civil structure should be given serious consideration due to its easier adjustment to civil and canonical concerns, especially through the use of a spendthrift provision and of broad language in the purpose which incorporates the canonical mission of the province.

The former provinces' stable patrimonies, of movable and immovable goods, including any restricted funds, must be noted so that they can be included in the new province. As much as possible, all the former provinces' assets and liabilities must be known before any structures are developed. This search includes any temporal goods owned by the province's established houses. Stable patrimony inventories (c. 1283, 3°) should be kept up to date.

Civil laws related to employment, taxes, contracts and incorporation must be known and observed. Titles to properties must be changed to reflect the new canonical ownership. The members' personal documents will also need updating, such as wills, powers of attorney and living wills.

13. Financial consolidation. Placing the province assets together can be a legal challenge when seeking protection from potential civil liability costs. On the other hand, consolidation can provide some significant cost savings, especially for employee benefits and various insurance premiums. Moreover, consolidating assets of the provinces facilitates a union of minds and hearts which is necessary for building a strong province capable of carrying out its common mission. A potential task list for financial consolidation is listed in Appendix IV.

14. First priorities. Once the new leadership has been chosen and the province has been inaugurated, several other important areas will need clarifications. Development of personnel and financial policies for the consolidated province needs a general consultation followed by a transition period, as members adjust to proposed changes. Ongoing consultation across the province regarding the province's mission can help to attain consensus across old province boundaries and make some critical decisions related to ministry and related stable patrimony

as a new group. As the members of the consolidated province can be committed to a common mission, the future life of the province has hope.

15. Alienation, extraordinary administration. One should not presume that consolidation of provinces does not involve canonical alienation. Canonical administrators must take care to transfer stable patrimony and restricted accounts from the predecessor provinces to the new entity. The intentions of the founders and donors must be respected. Congregational leadership could provide important oversight during the consolidation process. The establishment of civil corporations could possibly be defined as an act of extraordinary administration needing approval from the competent authority. Records of the stable patrimony of provinces and their civil corporations could be kept in the archives of the general administration.

16. Areas for further study. This study has restricted itself to discussion of consolidation of provinces for religious institutes similar in structure to the Oblates of the Mary Immaculate, and those in common law countries, such as North America. Areas for further study and consideration might include implications for other types of religious institutes, e.g., autonomous monasteries, institutes with several incorporated apostolates, or provinces whose territory extends across international jurisdictions. Also, future developments in civil law jurisprudence will warrant continuous monitoring by religious leadership and possibly new methods for provinces considering restructuring.

OCUS CONSULTATION QUESTIONNAIRE
[Distributed at Hearings, Fall, 1996]

1. Do you basically support the decision of the Seventh Regional Meeting of OCUS in Belleville last April to move in the direction of restructuring the five U.S. Provinces into one?
Yes No (Comments)
2. Do you have any particular feelings about the process leading up to the decision which you want to express at this time?
(Comments)
3. Do you generally support the proposed model of one U.S. Province organized into six areas?
Yes No (Comments)
4. Do you basically support the threefold level of leadership proposed for the new province in the present model; i.e., the *national* level, the *area* level, and the *local* level?
Yes No (Comments/Suggestions)
5. Do you support the proposed manner of selection of leadership?
Yes No (Comments/Suggestions)
6. Do you believe that the proposed size of the Central Team is adequate?
Yes No (Comments/Suggestions)
7. Is the proposed role and function of the Central Team sufficiently clear?
Yes No (Comments/Suggestions)
8. Do you believe that the Area Superior in the proposed model has sufficient authority to effectively exercise his responsibilities?
Yes No (Comments/Suggestions)
9. Do you basically support the proposed Area configuration?
Yes No (Comments/Suggestions)
10. What else do you wish to suggest or to say to the Restructuring Task Force or to the OCUS Board?

Signature

Draft of the United States Province Statutes September, 1996

The Oblate Province of the United States has been established and is governed according to the Constitutions and Rules of the Congregation of the Missionary Oblates of Mary Immaculate. The following statutes incorporate pertinent prescriptions from these Constitutions and Rules as well as particular applications adapted to the situation of the United States Province.

Part I. The Oblate Province of the United States

1. The Oblate Province of the United States is an autonomous and organic government unit in the Congregation grouping the local Oblate communities and institutions at the service of the Church. It brings together all the Oblates missioned in the United States of America: its individuals, its communities, its institutions. It also assumes responsibility for the delegations and missions under the sponsorship of the five United States Provinces at the time of unification.

2. All Oblates assigned to one of the five United States provinces at the time of unification belong to the Oblate Province of the United States and are called to participate in its life and mission. The local Oblate communities and institutions form the province as one body and constitute a unified missionary presence at the service of the Church and the Congregation.

Part II. Mission

3. The mission of the Oblate Province of the United States is to enable, nurture, and live a vital missionary presence, one that embodies the charism of St. Eugene de Mazenod. As such, this missionary presence is at the service of the Church in the United States in its mission to the poor and most abandoned as well as at the service of the Congregation in its global missionary outreach.

4. The province's priorities include ministry with minorities, especially Hispanics; the development of lay leadership and ministry; and the promotion of justice and peace. We also give priority to the renewal of our Oblate way of life and a commitment to increasing Oblate missionary vocations as essential means of achieving our missionary goals. Together these five major thrusts give a focus to our missionary planning and resource development.

Part III. Organizational Structures

5. The Oblate Province of the United States is a unified missionary body with a number of local communities as its living cells. These local communities are the primary units

of a missionary presence that also includes institutions to further its life and mission. Because of the province's geographical expanse and diverse missionary situations, a number of groupings of local communities and institutions are organized as distinct areas within the province.

A. Leadership

6. The provincial superior, assisted by a council, is called to the ministry of authority within the Oblate Province of the United States. His responsibilities embrace both the specific mission of the Congregation within the province and the religious apostolic life of its communities and members. His personal authority extends to all members of the province, as well as to all local communities and works, according to the Constitutions and Rules.

7. After consultation with the area superiors and other Oblates affected, the Provincial transfers Oblates from one community to another and assigns offices and ministries.

8. The provincial is assisted by a council. The council includes the vicar provincial, the three councillors-at-large, and the six area superiors. They share in the government of the province by their advice to the provincial, and by their vote as required.

9. The vicar provincial has the same power as the provincial for ordinary affairs and will exercise his authority in the province in accordance with the decisions and policies of the provincial.

10. The central team is made up of the provincial, the vicar provincial, three councillors-at-large, and the provincial treasurer.

11. In his animation of the province, the provincial meets regularly with the members of the council to oversee the missionary thrust of the province and pursue long-range planning. As its leader, he works closely with the central team in developing appropriate strategies and carrying out the day-to-day animation and administration of the province, its institutions and missionary outreach. He consistently collaborates with the area superiors in their animation and support of the local communities and their leadership.

12. Visitation is an integral part of the provincial's ministry. He shall visit the province areas, communities and institutions periodically to meet with the members both individually and as a group, supporting and encouraging them. He shall also provide for a comprehensive visitation of the province with the collaboration of the central team and the area superiors at least every three years. Provincial visitations are a time for community evaluation and renewal.

13. The administration of the common property of the Province is committed to the Provincial Treasurer, under the direction of the Provincial and his Council. The Provincial

Treasurer transacts ordinary matters of business, prepares the budget and makes periodic reports. He thus has responsibility for matters of investment, insurance, property, and legal issues. To help the treasurer in the exercise of his responsibilities, a Province Finance Committee will be appointed. The treasurer will not serve as the chair of this committee. The treasurer will be present at all council meetings and his opinion recorded on all financial matters. However, only the provincial and council will be present at executive sessions.

14. To provide a vehicle for sharing, mutual support and corporate reflection on the mission and life of the province as well as greater active participation in the government of the province by all Oblates, a province convocation will be held at least every three years. The convocation itself consists of the provincial, the provincial council, the treasurer, and a proportionate number of delegates from each area. The provincial in council determines the place, date, numerical representation and the agenda of the convocation. The convocation will be convened within a process which will invite the participation of all Oblates assigned to the province and welcome their insights and suggestions.

B. Consultation & Appointment

15. The following procedure will be used to enable the province to participate consultatively in the appointment of the provincial and councillors. The consultation process should be carried out in a spirit of discernment with procedures that facilitate a time of reflection and sharing throughout the province. Candidates will be surfaced through a straw-ballot process.

a) In a first consultation, the members of the province are individually consulted by the Superior General as to the most suitable candidates for provincial and councillors-at-large.

b) The provincial and three councillors-at-large are appointed by the Superior General in council.

c) The provincial appoints one of the councillors-at-large as vicar provincial.

d) The members of the province are consulted by the provincial regarding the choice of area superiors. In evaluating the results of this consultation, particular weight is given to the advice of the members of the area to be served by a particular area superior. An area superior need not be selected from among the Oblates of the area he is called to serve. The provincial appoints the area superiors subject to the confirmation of the Superior General in council.

e) The results of this consultation and the names of those chosen for area superior are communicated to the Superior General. Having consulted the members of the province, the Superior General in Council then appoints the area superiors to the provincial council.

16. The Provincial Treasurer is appointed by the Provincial in council; this appointment requires the confirmation of the Superior General in Council.

C. Administrative Functioning

17. The provincial in council establishes a number of portfolios with clear role descriptions and guidelines, and organizes the offices, committees, and services necessary for a good and cost-effective administration of the province. Appropriate instruments of organization are to be developed by those involved. The provincial in council approves these documents and appoints the necessary Oblate personnel.

18. Among the areas of province life to be facilitated by the above are: mission planning and development; the building up of local communities and the preparation of superiors; good communication and corporate reflection; vocation and formation activities; personnel concerns; finances and fund raising; lay collaboration and association; justice and peace; social communications and media; and public relations. The central team will play a pivotal role in the supervision and coordination of the various portfolios and auxiliary organizations.

Part IV. Province Areas

19. To foster missionary initiatives, a level of governance provides the link between the province and the local community. These groupings of local communities and institutions are called province areas and provide an opportunity for the Oblates in a given sector of the United States to pursue life and mission as a true apostolic community. Together they will listen to the call of Jesus Christ through people's need for salvation, plan appropriate responses, always seeking new missionary initiatives in pursuit of the province's mission.

20. There are six province areas in the Province of the United States. The Northeast region includes all the Oblates residing in Connecticut, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, and the District of Columbia. The Southeast Area includes all Oblates residing in Florida, Louisiana, East Texas and those assigned to the Mission of Puerto Rico. The Southwest Area includes all Oblates residing in other parts of Texas. The North Central Area includes all Oblates residing in Minnesota, South Dakota, and Wisconsin. The South Central Area includes all Oblates residing in Illinois, Kentucky, Michigan, Missouri, and Ohio. The Pacific Area includes all Oblates resident in California, Oregon, and Washington and those assigned to the Missions of Alaska and Mexicali.

21. The provincial in council will determine the area to which Oblates residing in other places belong. The provincial in council may make such adjustments to the composition of the areas as circumstances require. When new local communities are established, the provincial and council will determine to what area their members belong.

22. The leadership of a province area is entrusted to an area superior, who as a delegate of the provincial and in close collaboration with him is responsible to the whole province for the animation of the apostolic community which is the area. He does not, therefore, have any other administrative duties which might impede or otherwise limit the exercise of this ministry.

23. After consulting the members of the province and giving particular weight to the advice of the members of the area to be served, the provincial appoints the area superior for three-year term subject to confirmation by the Superior General in Council. This appointment is renewable for a second three-year term. The area superior is assisted by a council of at least two perpetually-professed members of the area, chosen by the perpetually-professed Oblates of the area. The authority of the area superior is like that of a provincial except in those matters which the provincial specifically reserves to himself. He will act in keeping with the directives of the provincial.

The area superior is a member of the provincial council by appointment of the Superior General in Council. Co-responsible with the provincial for the life and mission of the area, the area superior will be especially attentive to the personnel requirements for Oblate life and mission. In a spirit of collegiality and consensus, he will collaborate with the provincial and other council members in providing for these needs in all areas of the province.

The area superiors will work closely with the superiors of local communities and the directors of institutions, evaluating needs, developing goals, planning strategies, and identifying the necessary resources. The building up of Oblate communities and the facilitation of their animation will be of primary concern for him. As delegate of the provincial, he has the same authority as the provincial for ordinary affairs within the area he serves, saving matters reserved to the provincial by law or by the decision of the provincial in council. See appendix for details.

24. The provincial and council will review the needs of each area and, in consultation with the Oblates of the area, will plan the overall missionary thrust and priorities for each area, and seek to develop appropriate resources.

Part V. Local Communities

25. Local communities are the living cells of the province. They are the primary units of our missionary presence where life and mission find their inspiration and expression. They support both the missionary and the mission on a day-to-day basis, promoting religious

integrity and missionary authenticity. Every Oblate has the right and duty to belong to a local community and to participate fully in its life and mission.

26. The local community is based on a model of Jesus Christ calling the Apostles to gather around him and share in his life and mission. Thus it is a privileged place of fraternal charity and apostolic zeal. It calls for the sharing of life, prayer, mission, and material goods; for commitment and accountability to and for each other; for hospitality as an expression of our family spirit; for involvement with the local church; and for openness to collaboration with the laity and others.

27. The local community, whether a house or a district, consists of at least three Oblates. It is established by the provincial in council after consultation with the area superior and the Oblates involved.

28. The local superior has a vital role to play in fostering and animating community. At the service of his brothers, he brings the community together to evaluate its experience, to give itself a plan and goals for its common life and apostolic projects, and to develop appropriate missionary strategies.

29. Local communities conduct budgeting and other financial transactions directly with the provincial treasurer's office.

30. After consultation with the Oblates concerned, the area superior proposes an Oblate as superior of a local community. The local superior is appointed for a three-year term by the provincial in council. He may be reappointed for a second term and, exceptionally, for a third.

31. Each local superior is assisted by a council in animating and directing the community to further its mission and the best interest of its members. The area superior, after consulting the local community, proposes at least two Oblates as members of the council. In the case of a small community, he may recommend that all the members of the community function as a council. The local council is then appointed by the provincial in council. A local treasurer is also appointed in the same way.

Part. VI. Institutions

32. The province maintains certain institutions to further its life and mission. All institutions pertain to the province as a whole and each should serve a missionary purpose whether that of formation, evangelization, pastoral activity, fund raising, or resource development. The animation, direction and maintenance of these institutions are the responsibility of the provincial and council. In carrying out this responsibility they are to collaborate closely with the area superiors and the Oblates and lay persons who direct these institutions. These institutions conduct budgeting and other financial transactions directly

with the provincial treasurer's office.

33. The provincial in council names the directors of Oblate institutions. He does so after appropriate consultation and in keeping with the particular statutes of the institutions involved. He requests the approval of the Superior General and council when called for by the Constitutions and Rules.

34. The provincial and council act on behalf of the province in matters relating to subsidiary and associated entities. The nature of these relationships is determined by the pertinent statutory instruments and documents of agreement. Synopses of these documents are to be included in the province directory and kept up to date.

Part VII. Missionary Outreach

35. The Oblate Province of the United States participates in the missionary outreach of the Congregation. It does so by providing personnel and financial support to the extent possible and when called upon. It also assumes responsibility for all the missions and delegations sponsored by any of the five United States Provinces at the time of unification. To the best of its ability it will oversee a vital development of these entities in collaboration with the local and regional Oblate leadership of these missions and delegations.

36. Missions and delegations are governed according to the Oblate Constitutions and Rules and their own respective statutes. These statutes are included in the province directory. The provincial maintains a close contact with the Province's missions and delegations and, in dialogue with the superiors of these units, provides for the necessary personnel and material support.

Part VIII. Amendments of the Statutes

37. Changes in these statutes may be proposed to the Superior General by the provincial in council after consultation with the appropriate entities of the province. Any such changes take effect once approved by the Superior General in council.

APPENDIX

1. In consultation with all the Oblates involved and considering the needs in his area and in the entire province, the area superior proposes to the provincial transfers of Oblates within his area from one community, house, or district to another and from one ministerial setting to another. He collaborates with the other members of the provincial in council in evaluating the needs of the province and in recommending transfers between areas to the provincial.
2. After seeking "the views of the community concerned regarding the current situation and the qualities needed for the leadership of the group" (R89), inviting "suggestions about a suitable person for the office" and consulting "those who are to be appointed" (cf. R19), the area superior recommends to the provincial those Oblates whom he considers best suited for appointment as superiors of Houses or Districts within the area (C90, R92). He likewise recommends to the provincial, when necessary, the removal of local superiors before expiration of their terms (C98).
3. The area superior, with the consent of his council, appoints the local council and local treasurer (C19) and may prolong the powers of a local superior for a short time or appoint a temporary Administrator (C98). The area superior notifies the provincial and council of these appointments and he specifically notifies the provincial treasurer of the local treasurer's appointment.
4. "In grave and urgent cases", the area superior may, with the consent of his council, "intervene personally in the administration of a local community in order to do something usually done by the local superior or to correct and annul any of his acts and decisions." (R99).
5. As part of the ongoing process of mission planning and discernment, the area superior recommends to the provincial the establishment of houses or districts (C88), as well as changes to the composition of a district, or the proposal of the suppression of a house (R87). He also recommends to the provincial the acceptance of new ministries within the area and the acceptance of the administration of non-Oblate ecclesiastical goods as appropriate (C125). With his council, he should seek out new ministerial initiatives in pursuit of the mission of the province.
6. The area superior, with the consent of his council, sets up area committees as required and organizes "various meetings of a consultative nature according to the needs and possibilities". He will determine their composition, functions, and terms of reference. (C103).
7. The area superior may authorize ordinary acts of administration of the property of houses and districts to the same extent as the provincial acting without his council, provided

houses or districts have sufficient funds available. He may also grant the *nihil obstat* for acts of ordinary administration in the case of non-Oblate enterprises or of ecclesiastical property not belonging to the Congregation after consulting with the provincial and provincial treasurer.

8. At the direction of the provincial, the area superior will represent the province to dioceses and other civil and ecclesiastical entities in the area confided to him. Any contractual obligations undertaken on behalf of the province, however, requires [sic] the approval of the provincial.

9. In a spirit of dialogue and collaboration, the area superiors will keep the provincial informed in all matters of importance.

ALTERNATIVE SUBMISSION

by

XXXX XXXX, O.M.L, Provincial, Southern Province

APPENDIX

1: I assume that personnel and planning functions of the central team can work and that a spirit of collegiality takes place. And, in light of previous rationale (Number 22), I would re-word this to read: "Co-responsible with the provincial for the life and mission in the area, the area superior in Council will ordinarily be responsible for personnel changes in his area (except for specific Oblate institutions) subject to confirmation by the provincial in council. Transfers from one area to another are the prerogative of the provincial in council and will be worked out in a spirit of collegiality and consensus."

2: If his role is to work closely with superiors, area superiors in close collaboration with the central team should make these appointments subject to provincial in council's confirmation.

United States Province

Statutes¹

December, 1996

The Oblate Province of the United States is governed according to the Constitutions and Rules of the Congregation of the Missionary Oblates of Mary Immaculate. The following statutes incorporate pertinent prescriptions from these Constitutions and Rules as well as particular applications adapted to the situation of the United States Province.

Part I. The Oblate Province of the United States

1. The Oblate Province of the United States is a unit of government in the Congregation. It encompasses all the Oblates missioned in the United States of America: individuals, communities, institutions. It also includes the Delegations and Missions under the sponsorship of the five United States Provinces at the time of unification.

2. At the time of restructuring, all Oblates who are assigned to one of the five United States provinces, *including their delegations and missions*, belong to the Oblate Province of the United States.

3. The Oblate Province of the United States is a unified missionary body with a number of local communities as its living cells. Oblate life and mission finds inspiration and expression in local communities. They support both the missionary and the mission on a day-to-day basis. The communities promote religious integrity and missionary authenticity. Every Oblate has the duty and right to belong to a local community and to participate fully in its life and mission.

4. The local Oblate community is based on the model of Jesus Christ, calling the Apostles to gather around him and share in his life and mission. Thus it is a privileged place of fraternal charity and apostolic zeal. It calls for the sharing of life, prayer, mission, and material goods; for commitment and accountability to and for each other; for hospitality as an expression of our family spirit. It calls for an involvement with the local church and for openness to collaboration with the laity and others.

¹ The italicized parts of the text indicate that which was amended or added from the September, 1996, draft. There were numerous changes in the structure and ordering of the present document as compared with the first draft, however, most of the text remained unchanged.

5. Local communities, either constituted houses or districts, are the primary units of the Province. Because of the geographical expanse and diverse missionary situations within the United States Province, a distinct grouping of local communities and institutions within the Province is called an Area.

Part II. Mission

6. The mission of the Oblate Province of the United States is to enable and live a vital missionary presence, one that embodies the charism of St. Eugene de Mazenod. As such, this missionary presence is at the service of the Church in the United States in its *evangelizing* mission to the poor and most abandoned as well as at the service of the Congregation in its global missionary outreach.

7. The priorities of the Province include ministry with minorities, especially Hispanics; the development of lay leadership and ministries; and the promotion of justice and peace. In order to achieve these goals, we also give priority to the renewal of our Oblate way of life and a commitment to increasing Oblate missionary vocations.

Part III. Organizational Structures

A. Government and Administration

8. The Provincial Superior, assisted by a council, is called to the ministry of authority within the Oblate Province of the United States. His responsibilities embrace both the specific mission of the Congregation within the province and the religious apostolic life of its communities and members. His authority extends to all members of the Province, to all local communities and works, according to the Constitutions and Rules.

9. The provincial council includes a Vicar Provincial, the *two* councillors-at-large, and six Area Superiors. *In a spirit of collegiality*, they share responsibility for the government of the Province by their advice to the Provincial and their consent by their vote, as required *by the Constitutions and Rules*.

10. After appropriate consultation with the *individuals* concerned, the Provincial transfers Oblates from one *Area of the Province to another Area*. He appoints Oblates to formation ministry. The Provincial and Area Superiors collaborate in personnel appointments within the six Areas. *The assignment is formalized by the Area Superior with the appropriate delegation of the Provincial*.

11. The Vicar Provincial has the same power as the Provincial for ordinary affairs,

saving matters reserved by law or by the Provincial's decision. He will exercise his authority in the province in accordance with the decisions and policies of the Provincial.

12. The Provincial, the Vicar Provincial, the *two* Councillors-at-Large, and the Provincial Treasurer make up the central *administrative* team.

13. *In virtue of his office, the Provincial has the special responsibility of leadership and visioning for the entire province. As principal animator of the province, the Provincial meets regularly with the members of the council to oversee the missionary thrust of the province and to pursue long-range planning. He works closely with the members of the central team in developing strategies and carrying out the day-to-day administration of the Province, its institutions and missionary outreach. He collaborates with the Area Superiors in their animation and support of the local communities and their leadership.*

14. Visitation is an integral part of the ministry of the Provincial. He shall visit the Province Areas, communities and institutions periodically to meet with the members, both individually and as a community, supporting and encouraging them. With the collaboration of the central team and the Area Superiors, he also provides for a comprehensive visitation of the Province at least *once during his term of office*. Provincial visitation is a time for community evaluation and renewal.

15. The administration of the common property of the Province is committed to the Provincial Treasurer, under the *supervision* of the Provincial and his council. The Provincial Treasurer transacts ordinary matters of business, prepares the budget and makes periodic reports. *For acts of extraordinary administration, he requires the permission of the Provincial who obtains the consent of his council and, if necessary, of higher authorities.* He has the responsibility for matters of investment, insurance, property, and legal issues. The Treasurer is present at all council meetings and his opinion is recorded on all financial matters. *On occasion, the Provincial and council may choose to meet without the Treasurer present.*

A finance council, appointed *by the Provincial*, is to be established *to advise the Provincial and council on financial matters* and to assist the Treasurer. *Its chair will be named by the Provincial in council. The Provincial Treasurer shall not serve as the chair of this council.*

16. The Provincial in council establishes a number of portfolios with clear role descriptions and guidelines, and organizes the offices, committees, and services necessary for a good and effective administration of the province. Appropriate *directories* of organization are to be developed by those involved. The Provincial in council *reviews* these documents *and submits them to the Superior General for approval*. The Provincial in council also appoints the necessary personnel.

17. Aspects of Province life to be facilitated by the Provincial and his council are:

mission planning and development; the building up of local communities and the preparation of superiors; good communication and corporate reflection; vocation and formation activities; *renewal ministries*; personnel concerns; finances and fund raising; lay collaboration and association; justice and peace; social communications and media; and public relations. The central team will play a pivotal role in the supervision and coordination of the various portfolios.

18. A Province convocation will be held at least every three years in order to provide a vehicle for sharing, mutual support and corporate reflection on the mission and life of the province as well as greater active participation in the government of the province by all Oblates. The convocation itself consists of the Provincial, the Provincial Council, the Treasurer, and a proportionate number of delegates from each area. *Delegations and missions which are not part of an Area will also be represented.* The Provincial in council determines the place, date, numerical representation, and the agenda of the convocation. *The Provincial and council may decide to invite all members of the Province to attend.* The convocation will take place within a process which invites the participation of all members of the Province *in preparing the convocation* and welcomes their insights and suggestions.

[N.B.: The following procedures describe the consultations after the establishment of the Province. Special procedures will be developed for selection of the first provincial administration.]

19. The following procedure will be used in the consultation for and appointment of the Provincial leadership. The consultation process should be carried out in a spirit of discernment with procedures that facilitate a time of reflection and sharing throughout the Province.

A) In a first step:

1) Candidates for Provincial and Councillors-at-large are surfaced through a process which may include one or more written ballots, assemblies, mailings or other methods as determined by the provincial in council.

2) The members of the province are individually consulted by the Superior General as to the most suitable candidates for Provincial and Councillors-at-Large.

3) The Provincial and three Councillors-at-Large are appointed by the Superior General in council; they assume office following the appointment of the rest of the council.

B) In a second step:

1) The names of candidates for members of the council who will be Area Superiors are surfaced through a process to be determined by the Provincial in council.

2) The members of the Province are consulted by the *Superior General* regarding the choice of the other members of the provincial council who will also be Area Superiors. In evaluating the results of this consultation, particular weight is given to the advice of the members of the area to be served by a particular Area Superior.

3) The Superior General appoints them as members of the provincial council.

C) *The Provincial and council assume office*, and the Provincial *in council* appoints one of the Councillors-at-Large as Vicar Provincial and appoints the Area Superiors.

20. An Area Superior may ordinarily serve no more than two consecutive terms in that office. In exceptional cases, he may serve a third consecutive term. Each Area elects at least two of its local superiors to serve as advisers to the Area Superior. If the number of local superiors is not too great, all could serve as advisers.

21. The Provincial Treasurer is appointed by the Provincial in council; this appointment requires the confirmation of the Superior General in Council.

B. Areas

22. To foster missionary initiatives, the Areas provide the link between the *local community and the Province*. These groupings of local communities and institutions provide an opportunity for the Oblates in a given sector of the United States to pursue life and mission as a true apostolic community. Together they will listen to the call of Jesus Christ through people's need for salvation and plan appropriate responses, always seeking new missionary initiatives in pursuit of the Province's mission.

23. There are six Province Areas in the Province of the United States. The Northeast region includes all the Oblates residing in Connecticut, Maine, Massachusetts, New Hampshire, and New York. The Southeast Area includes all Oblates residing in Florida, Louisiana, and the District of Columbia as well as those assigned to the Mission of Puerto Rico. The Southwest Area includes all Oblates residing in Texas. The North Central Area includes all Oblates residing in Minnesota, South Dakota, and Wisconsin. The South Central Area includes all Oblates residing in Illinois, Kentucky, Missouri, and Ohio. The Pacific Area includes all Oblates residing in Alaska, California, Oregon, and Washington and those assigned to the Mission of Mexicali.

24. The Provincial in council will determine the Area to which Oblates residing in other places belong. The Provincial in council may make such adjustments to the composition of the Areas as circumstances require. When new local communities are established, the Provincial and council will determine to what Area their members belong.

25. The leadership of a Province Area is entrusted to an Area Superior. His authority is that of a delegate of the Provincial. The Area Superior, in close collaboration with the Provincial, is *co-responsible* to the whole Province for the animation of the apostolic community of the Area *to which he is appointed*. Because of the nature of his responsibilities to the Province and to his Area, the Area Superior will not have any other administrative or ministerial duties which might impede or otherwise limit the exercise of *those responsibilities*. The building up of Oblate communities and the facilitation of their animation will be his primary concern.

26. Co-responsible with the Provincial for the life and mission of his area, the Area Superior will be especially attentive to the personnel requirements for Oblate life and mission *in his area and throughout the Province*. In a spirit of collegiality and consensus, he will collaborate with the Provincial and other council members in providing for these needs in all Areas of the Province. The Area Superior will work closely with the superiors of local communities, evaluating needs, developing goals, planning strategies, and identifying the necessary resources. *With the advisers of his Area*, he will seek out new ministerial initiatives in pursuit of the mission of the province within his Area.

27. The Area Superior, shall set up consultative committees in the Area and organize various meetings as necessary. He determines their composition, functions, and terms of reference.

28. The Area Superior collaborates with the *Provincial* in preparing for personnel appointments within his area. *He formalizes these appointments with appropriate delegation from the Provincial*.

29. At the direction of the Provincial, the Area Superior will represent the province to dioceses and ecclesiastical and civil entities in the area confided to him. Any contractual obligations undertaken on behalf of the Province require the approval of the Provincial *in council if necessary*.

30. In a spirit of dialogue and collaboration, the Area Superiors and *the Provincial* keep *each other* informed of all matters of importance.

31. The Provincial and council will review the needs of each Area and, in consultation with the Oblates of the Area, will plan the overall missionary thrust and priorities for each Area, and seek to develop appropriate resources.

C. Local Communities

32. The local community, whether a house or a district, consists of at least three Oblates. It is established by the Provincial in council after consultation with the Area Superior and the Oblates involved.

33. The local superior has a vital role to play in fostering and animating community. At the service of his brothers, he brings the community together to evaluate its experience, to give itself a plan and goals for its common life and apostolic projects, and to develop appropriate missionary strategies.

34. *The local community owns and administers property in accordance with the Constitutions and Rules and Province regulations.* The budgets of the local community and of *individual Oblates* are reviewed *at the appropriate levels.*

35. After consultation with the Oblates concerned, the Area Superior proposes an Oblate *to the Provincial* as superior of a local community. The local superior is appointed for a three-year term by the Provincial in council. He may be reappointed for a second term and, exceptionally, for a third.

36. The local superior is assisted by a council in animating and directing the community to further its mission and the best interest of its members. After consulting the local community, the Area superior proposes *to the Provincial* at least two Oblates to be members of the superior's council. In the case of a small community, he may recommend that all the members of the community function as a council. The local council is then appointed by the Provincial in council. A local treasurer is also appointed in the same way.

Part. IV. *Ministries, Institutions, and Organizations*

37. The Province maintains certain *ministries, institutions, and organizations* to further its life and mission. These entities pertain to the Province as a whole and each serves a missionary purpose whether that of formation, spiritual renewal, evangelization, pastoral activity, fund raising, or resource development. *The Provincial in council determines which ministries, institutions and organizations belong to this category.* The animation, direction and maintenance of these entities are the responsibility of the Provincial and council. In carrying out this responsibility, they will collaborate closely with the Oblates and lay persons who direct *and work in them.* These *ministries, institutions, and organizations* conduct budgeting and other financial transactions directly with the Provincial Treasurer's office.

38. The Provincial and council act on behalf of the Province in matters relating to *these ministries, institutions, and organizations.* The specific nature of these relationships is determined by the pertinent instruments *of incorporation or documents of agreement*

between the Province and these entities. These documents are summarized in a special policy book and their governing force is respected by the Province, Provincial and the council.

Part V. Missionary Outreach

39. The Oblate Province of the United States participates *in various ways* in the missionary outreach of the Congregation. *Presently*, it does so by providing personnel and financial support *and by welcoming visiting and returning missionaries*. It assumes responsibility for the Missions of *French Polynesia, Baja California, and Puerto Rico as well as the Delegations of Recife and Zambia*. In collaboration with the local and regional Oblate leadership, the Province will oversee the vital development of these missions and delegations.

40. Missions and delegations are governed according to the Oblate Constitutions and Rules and their own respective statutes.

Part VI. Amendments of the Statutes

41. Changes in these statutes may be proposed to the Superior General by the Provincial in council after *appropriate* consultation with the *members* of the province. These changes take effect *when promulgated* by the Superior General in council.

NOTE: These Statutes will be considered ad experimentum for three years. At the end of this period, a review and amending process involving the whole Province will be carried out.

APPENDIX A: Entities Under the Immediate Supervision of the Provincial

At least at the beginning of each term of office of the Provincial, the Provincial in council confirms the identification of these institutions, organizations and ministries, adding to or deleting from the list:

Belleville: **Apartment Community**
Missionary Association of Mary Immaculate
Oblate Media
Our Lady of the Snows Shrine
Radio Information Service

Chicago: **Catholic Theological Union**

E. Chelmsford: **St. Joseph Cemetery**

Oblate formation houses, formation personnel and vocation directors

Oblate owned retreat houses and renewal centers:

Belleville, King's House
Buffalo, Christ the King House
Dickinson, Christian Renewal Center
Hudson, Oblate Retreat House
Marrero, Ave Maria Retreat House
Newburgh, Our Lady of Hope Center
San Antonio, Oblate Renewal Center (of Oblate School of Theology)
Willimantic, Immaculata Retreat House

San Antonio: **Oblate Madonna Residence**
Oblate Missions
Oblate School of Theology
St. Anthony's High School

Sarita: **Lebh Shomea House of Prayer**

Tewksbury: **Immaculate Heart of Mary Infirmary & Retirement Residence**

Washington: **Center for Mission Studies**
Oblate Provincial Residence + Office

From time to time, the Provincial and council review that part of the policy book which summarizes their relationship and responsibilities regarding these entities.

APPENDIX B: Transfer of Oblates

The following protocol guides the transfer of Oblates within the Province:

- a. The Provincial, the director of personnel, an Area Superior or any Oblate in the Province can initiate conversation regarding a possible change in location or ministry. As much as possible, all transfers are worked out in a spirit of discernment, consultation, and consensus.
- b. Dialogue regarding a possible transfer will ultimately include the superior of the local community in which the Oblate who is transferring resides or ministers and the superior of the local community to which the Oblate is being transferred.
- c. In every case of an Oblate transferring anywhere in the Province, the Provincial makes the ultimate decision.
- d. Regarding the transfer of Oblates from one area to another or assignments to formation ministry, the Provincial enters into dialogue with the Oblate to be assigned and others affected by the proposed transfer. The Provincial issues the letter of assignment. The Provincial also petitions the appropriate faculties from the local ordinary and signs the Statement of a Religious Superior regarding Ministerial Suitability (if required by the diocese to which the Oblate is being assigned).
- e. Regarding transfers of Oblates within an Area, the Area Superior consults the Provincial about any proposed change and enters into dialogue with the parties affected by it. Before issuing the letter of assignment, the Area Superior obtains a letter of delegation from the Provincial. The Area Superior obtains a letter of delegation from the Provincial. The Area Superior, at the direction of the Provincial, petitions the appropriate faculties from the local ordinary and signs the Statement of a Religious Superior regarding Ministerial Suitability (if required by the diocese to which the Oblate is transferred).

THE UNITED STATES PROVINCE OF THE OBLATES OF MARY IMMACULATE

STATUTES²

Final version, 1999

The Oblate Province of the United States is governed according to the Constitutions and Rules of the Congregation of the Missionary Oblates of Mary Immaculate. The following statutes incorporate pertinent prescriptions from these Constitutions and Rules as well as particular applications adapted to the situation of the United States Province.

Part I. The Oblate Province of the United States

1. *Placed under the patronage of St. Eugene de Mazenod, the United States Province of the Oblates of Mary Immaculate* is a unit of government in the Congregation. It brings together all the Oblates of Mary Immaculate missioned in the United States of America: individuals, communities, institutions. It also includes the Delegations and Missions under the sponsorship of the five United States Provinces at the time of unification.
2. At the time of restructuring, all Oblates who are assigned to one of the five United States provinces, including their delegations and missions, belong to the Oblate Province of the United States.
3. The Oblate Province of the United States is a unified missionary body with a number of local communities as its living cells. Oblate life and mission finds inspiration and expression in local communities. They support both the missionary and the mission on a day-to-day basis. The communities promote religious integrity and missionary authenticity. Every Oblate has the duty and right to belong to a local community and to participate fully in its life and mission.

² Italicized parts of text indicate substantive changes from the previous December, 1996, draft. There was some reordering of the text, most notably with regard to the office and role of the Provincial and council, nos. 14-17. Appendices A and B are new additions, though some parts of Appendix B were contained in the Appendix of the earlier draft.

4. The local Oblate community is based on the model of Jesus Christ, calling the Apostles to gather around him and share in his life and mission. Thus it is a privileged place of fraternal charity and apostolic zeal. It calls for the sharing of life, prayer, mission, and material goods; for commitment and accountability to and for each other; for hospitality as an expression of our family spirit. It calls for an involvement with the local church and for openness to collaboration with the laity and others.

5. Local communities, either constituted houses or districts, are the primary units of the Province. Because of the geographical expanse and diverse missionary situations within the United States Province, a number of local communities and institutions are organized as distinct groupings within the Province. These distinct groupings are called Areas.

Part II. Mission

6. The mission of the Oblate Province of the United States is to enable and live a vital missionary presence, one that embodies the charism of St. Eugene de Mazenod. As such, this missionary presence is at the service of the Church in the United States in its evangelizing mission to the poor and most abandoned as well as at the service of the Congregation in its global missionary outreach.

7. The priorities of the Province include ministry with minorities, especially Hispanics; the development of lay leadership and ministries; and the promotion of justice and peace. In order to achieve these goals, we also give priority to the renewal of our Oblate way of life and a commitment to increasing Oblate missionary vocations.

Part III. Organizational Structures

A. Government and Administration

8. The Provincial Superior, assisted by a council, is called to the ministry of authority within the Oblate Province of the United States. His responsibilities embrace both the specific mission of the Congregation within the province and the religious apostolic life of its communities and members. His authority extends to all members of the Province, to all local communities and works, according to the Constitutions and Rules.

9. The provincial council includes a Vicar Provincial, the two Councillors-at-Large, and six Area Superiors. In a spirit of collegiality, they share responsibility for the government of the Province by their advice to the Provincial and their consent by their vote, as required by the Constitutions and Rules.

10. After appropriate consultation with all involved, the Provincial transfers Oblates

from one Area of the Province to another Area and he appoints Oblates to formation ministry. The Provincial and Area Superiors collaborate in personnel appointments within the six Areas. The assignment is formalized by the Area Superior with the appropriate delegation of the Provincial.

11. The Vicar Provincial has the same powers as the provincial for ordinary affairs, saving matters reserved by law or by the Provincial's decision. He will exercise his authority in the province in accordance with the decisions and policies of the Provincial.

12. The Provincial, the Vicar Provincial, the two Councillors-at-Large, and the Provincial Treasurer make up the central administrative team.

13. In virtue of his office, the Provincial has the special responsibility of leadership and visioning for the entire province. As principal animator of the province, the Provincial meets regularly with the members of the council to oversee the missionary thrust of the province and to pursue long-range planning. He works closely with the members of the central team in developing strategies and carrying out the day-to-day administration of the Province, its institutions and missionary outreach. He collaborates with the Area Superiors in their animation and support of the local communities and their leadership.

14. Aspects of Province life to be facilitated by the Provincial and his council are: mission planning and development; the building up of local communities and the preparation of superiors; good communication and corporate reflection; vocation and formation activities; renewal ministries; personnel concerns; finances and fund raising; lay collaboration and association; justice and peace; social communications and media; and public relations.

15. The Provincial in council establishes a number of portfolios with clear role descriptions and guidelines. The central team will play a pivotal role in the supervision and coordination of these portfolios. The Provincial in council also organizes the offices, committees, and services necessary for a good and effective administration of the province. Appropriate directories of organizations are to be developed by those involved. The Provincial in council reviews these documents and submits them to the Superior General for approval. The Provincial in council appoints the necessary personnel.

16. Visitation is an integral part of the ministry of the Provincial. He shall visit the Province Areas, communities and institutions periodically to meet with the members, both individually and as a community, supporting and encouraging them. With the collaboration of the central team and the Area Superiors, he also provides for a comprehensive visitation of the Province at least once during his term of office. Provincial visitation is a time for community evaluation and renewal.

17. The administration of the common property of the Province is committed to the Provincial Treasurer, under the supervision of the Provincial and his Council. The Provincial

Treasurer transacts ordinary matters of business, prepares the budget and makes periodic reports. For acts of extraordinary administration, he requires the permission of the Provincial who obtains the consent of his council and, if necessary, of higher authorities. He has the responsibility for matters of investment, insurance, property, and legal issues. The Treasurer is normally present at all council meetings and his opinion is recorded on all financial matters. On occasion, the Provincial and council may choose to meet without the Treasurer present.

A finance council, appointed by the Provincial *in council*, is to be established to advise the Provincial and council on financial matters and to assist the Treasurer. Its chair will be named by the Provincial in council. The Provincial Treasurer shall not serve as the chair of this council.

18. A Province convocation will be held at least every three years in order to provide a vehicle for sharing, mutual support and corporate reflection on the mission and life of the province as well as greater active participation in the government of the province by all Oblates. The convocation itself consists of the Provincial, the Provincial Council, the Treasurer, and a proportionate number of delegates from each area. Delegations and missions which are not part of an Area will also be represented. The Provincial in council determines the place, date, numerical representation, and the agenda of the convocation. The Provincial and council may decide to invite all members of the Province to attend. The convocation will take place within a process which invites the participation of all members of the Province in preparing the convocation and welcomes their insights and suggestions.

[N.B.: The following procedures describe consultations after the establishment of the Province. Special procedures will be developed for selection of the first provincial administration.]

19. The following procedure will be used in the consultation for and appointment of the Provincial leadership. The consultation process should be carried out in a spirit of discernment with procedures that facilitate a time of reflection and sharing throughout the Province.

A) In a first step:

1) Candidates for Provincial and Councillors-at-large are surfaced through a process which may include one or more written ballots, assemblies, mailings or other methods as determined by the provincial in council.

2) The members of the province are individually consulted by the Superior General as to the most suitable candidates for Provincial and Councillors-at-large.

3) The Provincial and three Councillors-at-Large are appointed by the Superior General in council; they assume office following the appointment of the rest of the council.

B) In a second step:

1) The names of candidates for those who will be members of the council *from the six areas* are surfaced through a process to be determined by the Provincial in council.

2) The members of the Province are consulted by the *Superior General* regarding the choice of the members of the provincial council *from the six Areas*. In evaluating the results of this consultation, particular weight is given to the advice of the members of the area to be served by a particular *provincial councillor as their Area Superior*.

3) The Superior General *in Council* appoints *the six Provincial Councillors from the Six Areas*.

C) The Provincial and council assume office, and the Provincial in council appoints one of the Councillors-at-Large as Vicar Provincial and appoints the Area Superiors.

20. An Area Superior may ordinarily serve no more than two consecutive terms in that office. In exceptional cases, he may serve a third consecutive term. Each Area elects at least two of its local superiors to serve as advisers to the Area Superior. If the number of local superiors is not too great, all could serve as advisers.

21. The Provincial Treasurer is appointed by the Provincial in council; this appointment requires the confirmation of the Superior General in Council.

B. Areas

22. To foster missionary initiatives, the Areas provide the link between the local community and the Province. These groupings of local communities and institutions provide an opportunity for the Oblates in a given sector of the United States to pursue life and mission as a true apostolic community. Together they will listen to the call of Jesus Christ through people's need for salvation and plan appropriate responses, always seeking new missionary initiatives in pursuit of the Province's mission.

23. There are six Province Areas in the Province of the United States. The Northeast region includes all the Oblates residing in Connecticut, Maine, Massachusetts, New Hampshire, and New York.. The Southeast Area includes all Oblates residing in Florida,

Louisiana, and the District of Columbia as well as those assigned to the Mission of Puerto Rico. The Southwest Area includes all Oblates residing in Texas. The North Central Area includes all Oblates residing in Minnesota, South Dakota, and Wisconsin. The South Central Area includes all Oblates residing in Illinois, Kentucky, Missouri, and Ohio. The Pacific Area includes all Oblates residing in Alaska, California, Oregon, and Washington and those assigned to the Mission of Mexico.

24. The Provincial in council will determine the Area to which Oblates residing in other places belong. The Provincial in council may make such adjustments to the composition of the Areas as circumstances require. When new local communities are established, the Provincial and council will determine to what Area their members belong.

25. The leadership of a Province Area is entrusted to an Area Superior. His authority is that of a delegate of the Provincial. The Area Superior, in close collaboration with the Provincial, is co-responsible to the whole Province for the animation of the apostolic community of the Area to which he is appointed. Because of the nature of his responsibilities to the Province and to his Area, the Area Superior will not have any other administrative or ministerial duties which might impede or otherwise limit the exercise of those responsibilities. The building up of Oblate communities and the facilitation of their animation will be his primary concern.

26. Co-responsible with the Provincial for the life and mission of his area, the Area Superior will be especially attentive to the personnel requirements for Oblate life and mission in his area and throughout the Province. In a spirit of collegiality and consensus, he will collaborate with the Provincial and other council members in providing for these needs in all Areas of the Province. The Area Superior will work closely with the superiors of local communities, evaluating needs, developing goals, planning strategies, and identifying the necessary resources. With the advisers of his Area, he will seek out new ministerial initiatives in pursuit of the mission of the province within his Area.

27. The Area Superior, shall set up consultative committees in the Area and organize various meetings as necessary. He determines their composition, functions, and terms of reference.

28. The Area Superior collaborates with the Provincial in preparing for personnel appointments within his area. He formalizes these appointments with appropriate delegation from the Provincial.

29. At the direction of the Provincial, the Area Superior will represent the Province to dioceses and ecclesiastical and civil entities in the area confided to him. Any contractual obligations undertaken on behalf of the Province require the approval of the Provincial in council if necessary.

30. In a spirit of dialogue and collaboration, the Area Superiors and the Provincial keep each other informed of all matters of importance.

31. The Provincial and council will review the needs of each Area and, in consultation with the Oblates of the Area, will plan the overall missionary thrust and priorities for each Area, and seek to develop appropriate resources.

C. Local Communities

32. The local community, whether a house or a district, consists of at least three Oblates. It is established by the Provincial in council after consultation with the Area Superior and the Oblates involved.

33. The local superior has a vital role to play in fostering and animating community. At the service of his brothers, he brings the community together to evaluate its experience, to give itself a plan and goals for its common life and apostolic projects, and to develop appropriate missionary strategies.

34. The local community owns and administers property in accordance with the Constitutions and Rules and Province regulations. The budgets of the local community and of individual Oblates are reviewed at the appropriate levels.

35. After consultation with the Oblates concerned, the Area Superior proposes an Oblate to the Provincial as superior of a local community. The local superior is appointed for a three-year term by the Provincial in council. He may be reappointed for a second term and, exceptionally, for a third.

36. The local superior is assisted by a council in animating and directing the community to further its mission and the best interest of its members. After consulting the local community, the Area superior proposes to the Provincial at least two Oblates to be members of the superior's council. In the case of a small community, he may recommend that all the members of the community function as a council. The local council is then appointed by the Provincial in council. A local treasurer is also appointed in the same way.

Part. IV. Ministries, Institutions, and Organizations

37. The Province maintains certain ministries, institutions, and organizations to further its life and mission. *Although participating in the life and mission of the Area within which they are situated*, these entities pertain to the Province as a whole and each serves a missionary purpose whether that of formation, spiritual renewal, evangelization, pastoral activity, fund raising, or resource development. The Provincial in council determines which

ministries, institutions and organizations belong to this category. The animation, direction and maintenance of these entities are the responsibility of the Provincial and council. In carrying out this responsibility, they will collaborate closely with the Oblates and lay persons who direct and work in them. These ministries, institutions, and organizations conduct budgeting and other financial transactions directly with the Provincial Treasurer's office.

38. The Provincial and council act on behalf of the Province in matters relating to these ministries, institutions, and organizations. The specific nature of these relationships is determined by the pertinent instruments of incorporation or documents of agreement between the Province and these entities. These documents are summarized in a special policy book and their governing force is respected by the Province, Provincial and the council.

Part V. Missionary Outreach

39. The Oblate Province of the United States participates in various ways in the missionary outreach of the Congregation. Presently, it does so by providing personnel and financial support and by welcoming visiting and returning missionaries. It assumes responsibility for the Missions of French Polynesia, Baja California, and Puerto Rico as well as the Delegations of Recife and Zambia. In collaboration with Oblates at the local and regional levels, the leadership of the United States Province will oversee the vital development of these Missions and Delegations.

40. Missions and delegations are governed according to the Oblate Constitutions and Rules and their own respective statutes.

Part VI. Amendments of the Statutes

41. Changes in these statutes may be proposed to the Superior General by the Provincial in council after appropriate consultation with the members of the Province. These changes take effect when promulgated by the Superior General in council.

NOTE: These Statutes will be considered "ad experimentum" for three years. At the end of this period, a review and amending process involving the whole Province will be carried out.

APPENDIX A: Entities Under the Immediate Supervision of the Provincial

At least at the beginning of each term of office of the Provincial, the Provincial in council confirms the identification of these institutions, organizations and ministries, adding to or deleting from the following list:

Belleville:
 Apartment Community
 Missionary Association of Mary Immaculate
 Oblate Media
 Our Lady of the Snows Shrine
 Radio Information Service

Chicago: Catholic Theological Union

E. Chelmsford: St. Joseph Cemetery

Oblate formation houses, formation personnel and vocation directors

Oblate owned retreat houses and renewal centers:

Belleville, King's House
 Buffalo, Christ the King House
 Dickinson, Christian Renewal Center
 Hudson, Oblate Retreat House
 Marrero, Ave Maria Retreat House
 Newburgh, Our Lady of Hope Center
 San Antonio, Oblate Renewal Center (of Oblate School of Theology)
 Willimantic, Immaculata Retreat House

San Antonio:
 Oblate Madonna Residence
 Oblate Missions
 Oblate School of Theology
 St. Anthony's High School

Sarita: Lebh Shomea House of Prayer

Tewksbury: Immaculate Heart of Mary Infirmary & Retirement Residence
Oblate World

Washington:
 Center for Mission Studies
 Oblate Provincial Residence + Office

From time to time, the Provincial and council review *the ministry and responsibilities* of these entities.

APPENDIX B: Transfer of Oblates

The following protocol guides the transfer of Oblates within the Province:

- a. The Provincial, the director of personnel, an Area Superior or any Oblate in the Province can initiate conversation regarding a possible change in location or ministry. As much as possible, all transfers are worked out in a spirit of discernment, consultation, and consensus.
- b. Dialogue regarding a possible transfer will ultimately include the superior of the local community in which the Oblate who is transferring resides or ministers and the superior of the local community to which the Oblate is being transferred.
- c. In every case of an Oblate transferring anywhere in the Province, the Provincial makes the ultimate decision.
- d. Regarding the transfer of Oblates from one area to another or assignments to formation ministry, the Provincial enters into dialogue with the Oblate to be assigned and others affected by the proposed transfer. The Provincial issues the letter of assignment. The Provincial also petitions the appropriate faculties from the local ordinary and signs the Statement of a Religious Superior regarding Ministerial Suitability (if required by the diocese to which the Oblate is being assigned).
- e. Regarding transfers of Oblates within an Area, the Area Superior consults the Provincial about any proposed change and enters into dialogue with the parties affected by it. Before issuing the letter of assignment, the Area Superior obtains a letter of delegation from the Provincial. The Area Superior obtains a letter of delegation from the Provincial. The Area Superior, at the direction of the Provincial, petitions the appropriate faculties from the local ordinary and signs the Statement of a Religious Superior regarding Ministerial Suitability (if required by the diocese to which the Oblate is transferred).

**Amendments to the 1999 Statutes as found in the
Provincial Directory of the United States Province,
Approved by the General Administration 25 May 2000³**

Part II Mission, #7 The province's priorities include *ministry with Hispanics and with other minority groups as well; the empowerment of the laity* and the development of lay leadership and ministries; *ministry with youth*; and the promotion of justice and peace. In order to achieve these missionary goals, we also give priority to the renewal of our Oblate way of life and a commitment to increasing Oblate missionary vocations.

Part III Organizational Structures, A. Government and Administration, #10, Part III, B. Areas, #28, and Appendix B, e. After appropriate consultation, the provincial may transfer Oblates from one area of the province to another and appoints Oblates to formation ministry. The provincial, *the provincial Director of Personnel* and the area superiors collaborate in personnel appointments within the six areas. After consultation with all involved, *the assignment is formalized by the provincial. Normally, assignments/appointments are for two consecutive three-year terms with a review when approaching the completion of the first three-year term.*

Part III Organizational Structures, A. Government and Administration, #18. A province convocation will be held at least every three years in order to provide an opportunity for sharing, mutual support, and corporate reflection on the mission and life of the province as well as greater active participation in the government of the province by all Oblates. *The provincial in council will invite all members of the province to attend the province convocation.* The provincial in council determines the place, date, and the agenda of the convocation. The convocation will be convened within a process which invites the participation of all members of the province in preparing the convocation and welcomes their insights and suggestions.

Part III Organizational Structures, A. Government and Administration, #20. An Area Superior may ordinarily serve no more than two consecutive terms in that office. In exceptional cases, he may serve a third consecutive term. *All local superiors in the Area serve as his advisors.*

³ Italicized text note any changed wording from that of the approved 1999 Statutes. The Directory also has an appendix with an updated listing of the Institutional Responsibilities (listed under Appendix A of the 1999 Statutes), not included here.

taken from: *The Official Catholic Directory*, New York, P. J. Kenedy, 2000, pp. 1354-1355.

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Very Revs. David Kalert, O.M.I., Prov.; Charles D. Banks, O.M.I., Vicar Prov.; Revs. David Ullrich O.M.I., Councilor; Thomas Singer, O.M.I., Gen. Counselor; Robert Moosbrugger, O.M.I., Treas.; Jef Johnson, O.M.I., Dir. Communications; Seamus P. Finn, O.M.I., Dir. Justice & Peace; Armand Mathew, O.M.I., Assoc. Dir. Justice & Peace; Jose Arong, O.M.I.; Marc Boisvert, O.M.I.; Normand Bonneau, O.M.I.; William Clark, O.M.I.; Richard Cote, O.M.I.; James Datko, O.M.I.; Salvatore DeGeorge, O.M.I.; Jaime Dukowski, O.M.I.; Peter Gitendran, O.M.I.; Richard Haslam, O.M.I.; Joseph Hitpas, O.M.I.; Etienne LaRose, O.M.I.; Allen Maes, O.M.I.; Arthur Obin, O.M.I.; Dale Schlitt, O.M.I.; John Staak, O.M.I.; Richard Sudlik, O.M.I.; Rufus Whitley, O.M.I., Treas.

Legal Titles and Holdings:

The United States Province of the Missionary Oblates of Mary immaculate, Inc. Tel: 202-529-4505; Fax: 202-5294572.

Oblate Service Corporation. Tel: 202-529-4505; Fax: 202-529-4572.

Oblate Shrines and Renewal Centers, Inc. Tel: 202-529-4505; Fax: 202-529-4572.

Oblate Title Holding Corporation. Tel:202-529-4505; Fax: 202-529-4572.

Oblate Continuing Care Trust. Tel: 202-529-4505; Fax: 202-529-4572.

Oblate Education and Formation Trust. Tel: 202-529-4505; Fax: 202-529-4572.

Oblate Annuity Trust. Tel: 202-629-4605; Fax: 202-529-4572.

Oblate Endowment Trust. Tel: 202-529-4505; Fax: 202-529-4572.

Oblate Patrimony Trust. Tel: 202-529-4505; Fax: 202-529-4572.

Oblate Service Trust. Tel: 202-529-4505; Fax: 202-529-4572.

Oblate Real Estate Trust. Tel: 202-529-4505; Fax: 202-529-4572.

Oblate College/Center for Mission Studies Community, 391 Michigan Ave., N.E., 20017-1586. Tel: 202-529-5244. Revs. William Antonio; Charles D. Banks, O.M.I.; Matthew Casey, O.M.I.; Paul Costello, O.M.I.; Seamus P. Finn, O.M.I., Ph.D.; Charles W. Gilles, O.M.I.; Jef Johnson, O.M.I.; David Kalert, O.M.I.; John J. Leddy, O.M.I.; Armand Mathew, O.M.I.; Richard McAlear, O.M.I.; George F. McLean, O.M.I., Ph.D.; Robert Moosbrugger, O.M.I.; Jerry Orsino, O.M.I.; David N. Power, O.M.I., S.T.D.; Ray Prybis, O.M.I., Ph.D. Ed.; Edmund Reginald, O.M.I.; J. William Sheehan, O.M.I.; David Ullrich, O.M.I.; Rufus J. Whitley, O.M.I.; Giovanni Zevola, O.M.I.; Bros. Tim Higgins, O.M.I.; Michael Holly, O.M.I.; Bill Lundberg, O.M.I.; Andrew Small, O.M.I.

Priests 21; Brothers 4; Priests Foreign Countries 4.

List of Possible Procedures for Legal and Financial Consolidation

- 1) Develop and implement process and procedures for hiring legal, financial and accounting professionals
- 2) Decide and implement process for communicating financial changes with the respective provincials, provincial councils, provincial treasurers and all members of the institute within the region
- 3) Information gathering from provinces, including: financial support provided to communities/ministries, personnel policies of province and key institutions, all real estate properties owned, reserved and unrestricted assets, past and future legal liability
- 4) Initiate due diligence search for all existing civil corporations founded in the name of the provinces, including a review of the legal relationship between each province and its subsidiary institutions.
- 5) Development of new civil corporate organizational structure and its establishment
- 6) Identification of new ownership names
- 7) Identification of time lines for transferring ownership of properties
- 8) Identification of accounts into which to transfer assets, of custodian and commercial banks, and of the transfer of accounts process mechanics
- 9) Develop process for adoption of health plan, social security and pension fund for members
- 10) Develop process for adoption of lay employee pension fund and other lay employee benefit plans (health, personal leave days, etc.)
- 11) Develop process for hiring firms for property, auto, and liability insurance
- 12) Develop documents and execute process for members in final vows to make new wills and durable power of attorney. For those who wish living wills and organ/body donation, documents to be prepared, executed, copied and filed.
- 13) Develop time line for moving financial records, personnel records, and archives to new provincial headquarters
- 14) Develop process for hiring new provincial office personnel, job descriptions, etc.
- 15) Develop procedures and dates for closing down former provinces' administrative offices.

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