

**PROPERTY OWNERSHIP OF THE SOCIETY OF JESUS IN THE  
PROVINCE OF MADAGASCAR**

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## ABBREVIATIONS

<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
BIANCO	Bureau Indépendant Anti-Corruption
c.	canon
cc.	canons
cf.	confer
<i>CIC</i>	<i>Codex iuris canonici</i> (1983)
CICLSAL	Congregation for Institutes of Consecrated Life and Societies of Apostolic Life
<i>CLD</i>	<i>Canon Law Digest</i>
CLSA	Canon Law Society of America
d.	decree
GC	General Congregation
S.J.	Society of Jesus (Jesuits)
USG	Unione Superiori Generali

## GENERAL INTRODUCTION

A lack of proper documentation on land-ownership is a nationwide problem in Madagascar. After colonization, most of the land appropriated (or occupied) by the French reverted to the State. Those who own land today either inherited it from ancestors or bought it from inheritors, although title to the land itself was not legally registered. Customary law still subsists alongside the civil law which governs the process of owning property in the country, while other proofs of ownership, unless challenged are recognized by law as legitimate. The canon law of the Catholic Church could be recognized in some circles as legitimate when it brings proof of ownership that could be legalized by civil law. Unfortunately, there is widespread corruption in many places, and people with knowledge of the law governing land-ownership have a tendency to register any piece of land that is not legally owned, even if it was inherited by others. When conflicts of ownership arise, those who follow the legal process often win the case.

The Society of Jesus in Madagascar is not spared this problem due to the way its properties were originally acquired. Because of the inaccuracy in or lack of documentation, some stable patrimony, especially portions of land owned by the Jesuits in Madagascar, have been lost while others are still under litigation. According to the available historical information, when the first Jesuit missionaries arrived in Madagascar, patches of land were offered to them by the Malagasy royalty, the civil government in power at that time, or were bought at symbolic prices. A system for land registration was not in place then, and since the inhabitants were few, most of the properties were owned simply by cultivating them. One could squat on an unoccupied portion of land, and

consider it as his own. Nevertheless, that patch of land might have been inherited by someone who could challenge the squatters with proof of ownership, or a “Land title.”

The present study intends to provide a response to the following questions: how can the ecclesiastical law relating to temporal goods enhance the mission entrusted to the Society of Jesus in Madagascar? What steps should the Society of Jesus in Madagascar take in order to preserve its stable patrimony so that the sustenance of its members and its independence as a province will not be endangered, all the time keeping in mind the spirit and expression of poverty?

An appropriate response to these questions calls for answers to other intrinsically related ones: would it be advisable for the Society of Jesus to integrate the provisions of the Church’s universal law into its proper law in the context of Malagasy society so as to administer in an appropriate way its temporal goods for the sustenance of its members? Land is a visible “sign” of wealth in Malagasy society. Therefore, would such action on the part of the Society of Jesus to safeguard its temporal goods, including land and properties, be construed as a counter testimony to the evangelical poverty its members vow?

Although poverty is not considered as a positive value, especially in a poor country such as Madagascar, the Society of Jesus has been renewing its understanding of it according to the signs of time and the reality of each country. A circular letter on poverty by Father P.H. Kolvenbach, at the time superior general of the Society, invited all

Jesuits to rediscover the evangelical character of poverty.<sup>1</sup> “It is spiritual poverty—living the mystery of the poor Lord—that ought to give form to, inspire and motivate our actual poverty,” he stated. Poverty for the Society has its source in Christ himself who, “though rich, became poor so that through his poverty we became rich” (2 Corinthians 8:9). Jesuits, therefore, are not to be afraid of poverty but rather are to embrace its various expressions in their heart.

This poverty is to be lived according to the direction of the *Spiritual Exercises* and applied with discernment. Even Ignatius did not want to decide for himself on how to be poor, but asked the Lord to give him the concrete form of his actual poverty. It is through prayerful discernment that the Society will live poverty.

The Jesuit way of poverty has to be seen in the life, missions, and work of the Society through its solidarity with the poor. It is recommended that each community live a modest life, according to the reality of the place where it is situated. Evangelical poverty has to be manifested in their choice of ministry and their preference for the poor and the marginalized. A sign of the actual misery of today’s world is the growing injustice afflicted on the vulnerable and the defenseless. The Society considers its preference to be with the marginalized as a new frontier, where its presence should be prominent.

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<sup>1</sup> P. H. KOLVENBACH, *On Poverty*, Rome, March, 25, 2003, [http://www.sjweb.info/documents/sjs/docs/2003poverty\\_en.htm](http://www.sjweb.info/documents/sjs/docs/2003poverty_en.htm) (May 02, 2018).

Apart from this letter from Father P.H. Kolvenbach, two recent Vatican documents<sup>2</sup> have been issued and have become a very significant means, not only for the Society of Jesus but for all religious institutes, to ensure the proper administration of their temporal goods. These guidelines invite all religious institutes to approach the acquisition, retention, administration, and alienation of temporal goods in relation to the charism and mission proper to each institute.

Despite the existence of these important letters and documents, the problem of ownership of properties of the Society of Jesus in Madagascar has remained unresolved. The actual problem, therefore, calls for more in-depth studies on this matter. The following cases are simply a reminder of what might happen to some of the temporal goods of the Jesuits. When the Malagasy people received their independence, a large portion of the Jesuits' land was considered part of the land occupied by the French. Therefore, the state confiscated it and gave it to people who had the means to pay for its registration. The same thing happened a few years later when even the means of subsistence of some Jesuit communities were put at risk. To add to that, in October 2011, a group of people who had settled on one of the Society of Jesus' properties claimed ownership of it because the leasing contract on the properties was unclear. The litigation in this last-mentioned case is still in process.

In order to find responses to the questions posed above, we will divide our study into four interrelated chapters.

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<sup>2</sup> CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, *Guidelines for the Administration of the Assets in Institutes of Consecrated Life and Societies of Apostolic Life*. Vatican City, 2014, and CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, *Economy at the Service of Charism and Mission*, Vatican, Libreria editrice Vaticana, 2018.

Chapter One will focus on the arrival of the Jesuits in Madagascar and their initial difficulties in acquiring land to build up the mission. To situate this in its proper historical and cultural context, however, we must begin by examining the circumstances surrounding the coming of the first missionaries to the country and their eventual establishment of the Catholic Church there. We will then review the issue of land ownership, showing in particular how the Jesuits were able to acquire certain properties in Madagascar.

Chapter Two will study certain principles taken from the universal law relating to temporal goods. This chapter will be more concerned with norms relating to the acquisition, administration, and alienation of temporal goods as found in the two recent Vatican documents concerning financial administration in religious institutes. Its objective is to determine the current law governing temporal goods and to clarify the responsibilities of those who administer them in religious institutes, so that the goods owned by each institute would remain a source and means of its sustenance rather than a threat to its existence. Although our intention is not focused primarily on the alienation of acquired property, it will be necessary to address this issue briefly because of the particular issues faced by the Society in Madagascar.

Chapter Three will focus on financial administration within the Society of Jesus as an expression of Jesuit poverty. This will open another perspective in relation to property holdings. It will begin with an analysis of the Society of Jesus and evangelical poverty, in which Father P.H. Kolvenbach's letter will be examined in detail. A review of the norms governing the acquisition, administration, and alienation of goods in the proper law of the

Society of Jesus will follow. A study of the procedures for financial administration within the Society of Jesus will constitute the last section of this chapter. That study will begin with a review of norms and policies governing financial administration at the community level. The analysis will focus on the roles of each administrator and the management of the work of the Society. It will continue with a consideration of financial administration at the province level, referring to those who are in charge of financial matters in the province and of the various activities related to it. The analysis of financial administration at the level of the *Curia Generalis* will close this chapter by emphasizing the responsibilities and faculties of administrators.

Chapter Four will focus on marrying the duties of administrators with the overriding concerns to promote evangelical poverty. A certain number of practical situations will be reviewed, seeking to determine which lessons can be learned from these sad experiences, and to see whether there could be prudent possibilities for the future to safeguard the patrimony of the Jesuits in Madagascar, thus ensuring the future of the mission and providing for the support of the members.

This study will be circumscribed by two limitations. First, it will be restricted to the administration of temporal goods within the Society of Jesus in Madagascar. Second, this will be done in light of the current legislation for religious institutes in the Latin Church without entering into any comparison between this law and the provisions of the *Code of Canons of the Eastern Churches*.

**CHAPTER ONE**  
**THE SOCIETY OF JESUS AND LAND OWNERSHIP IN MADAGASCAR:**  
**AN OVERVIEW**

*Introduction*

The belief in a supernatural being, master of the universe, is not new for the Malagasy people. They have always believed in the existence of one God. That God is not only the creator but also the highest among the “divinities”<sup>3</sup> and can be reached through the intercession of diviners and ancestors. This belief leads to the respect and visible cult of the ancestors. The Malagasy people recognize that the ancestors are the true owners of the land.<sup>4</sup> Therefore, selling it or giving it away means disrespect to the ancestors and could bring wrath and calamities to families.

This belief in the existence of one god and the respect of the ancestors was an advantage as well as an obstacle to the foundation of Christianity in Madagascar. It was an advantage because it facilitated the efforts of the early missionaries to instill in the Malagasy people belief in one God. For the Catholic missionaries in particular, it helped them to introduce the belief in the intercession of the blessed and the saints. But it was also a disadvantage because it developed a strong syncretism among Christians, which in a way weakens the Christian faith in Madagascar, especially among Catholics. The Catholic missionaries more or less accepted the traditional belief of the Malagasy people. That was not the case for the Protestants. They took a different path by converting the

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<sup>3</sup>The literal meaning of “Zanahary” or Andriananahary” is “I, the Creator” or “the Prince who created.”

<sup>4</sup>In the Malagasy language, Madagascar (the country) and all inherited properties are called *tanindrazana*, the land of the ancestors.

queen and most of the leaders at that time. As a result, the diviners were punished and their idols burnt.<sup>5</sup>

The introduction of Christianity in Madagascar brought another category or class of people in Malagasy society in the nineteenth century: the missionaries. Each category of people in the Malagasy society (the slaves or “*andevo*,” the free people or “*hova*,” and the nobles or “*andriana*”) had different ways to own property.

This chapter traces the history of Christianity in Madagascar and the establishment of the Catholic mission and the arrival of the last missionaries, especially the Jesuits. The obstacles to their settlement will be emphasized to bring us to the actual problem of ownership of properties they have been facing until the present time.

### ***1.1 – Christianity in Madagascar in the Early Nineteenth Century***

Madagascar (commonly called the “Big Island”) is a large island located off the east coast of Africa in the Indian Ocean. It became a favorite destination for the

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<sup>5</sup> A. BOUDON, *Les jésuites à Madagascar au XIXe siècle*, vol. 2, Paris, Gabriel Beauchesne et ses fils, 1940, 37-41 (= A. BOUDON, *Les jésuites à Madagascar*, vol. 2). The following detail shows the change of religion of the queen that will affect the life of the Catholic missionaries later. All translations from French to English are mine.

“The *Fisehoana* or apparition or coronation of the Queen took place on September 3, 1868. The royal *sampy* (idols), *Kelimalaza*, *Manjakatsiroa* and their companions were displaced. Instead, a large Bible was enthroned at the right hand of the sovereign, and some verses from it were read during the ceremony [...] On July 1869, the guardians of the *sampy* tried to intimidate the Queen and informed her that if she did not revert to the cult of the ancestors, they had ody (amulets) or medication that would kill. This insolence cost them dearly. [...] Some officers left for Ambohimambola, the sacred village responsible for the cult of *Kelimalaza* and its protection, burned the idol, destroyed the house where it was kept and all the objects used for his worship. Four other well-known royal *sampy* underwent the same kind of treatment.”

(Le 3 septembre 1868 eut lieu le *fisehoana* ou ‘apparition’ ou couronnement de la reine. Les *sampy* royaux, *Kelimalaza*, *Manjakatsiroa* et leurs confrères, sont mis en pénitence. A leur place une grosse bible trône à la droite de la souveraine, et on en lit quelques versets au cours de la cérémonie. [...] Le 20 juillet 1869, les gardiens des *sampy* essayèrent d’intimider la Reine et lui fit dire que si elle ne revenait pas au culte des ancêtres, les *sampy* avaient des ody ou médecines qui tuaient. Cette insolence leur coûta cher. [...] Des officiers partaient pour Ambohimambola, village sacré de *Kelimalaza* dont il avait la garde, brûlaient l’idôle, détruisaient sa maison et tous les objets de son culte. Quatre autres *sampy* royaux les plus célèbres subirent le même sort.)

missionaries once European sailors discovered it in the thirteenth century. They came from many parts of Europe, but it was the English (Protestant) missionaries, represented by the London Missionary Society, and the French (Catholic) missionaries, represented by the Society of Jesus, who laid the foundation of Christianity in the nineteenth century.

### 1.1.1 – Foreign Settlement and Missionaries

Although the European discovery of Madagascar occurred in the thirteenth century by Marco Polo,<sup>6</sup> that exploration did not produce lasting effects, and the Portuguese navigators “rediscovered” the island in 1500. Later, different merchants from Europe, including Portuguese, Dutch, and French (around 1640), tried to settle in Madagascar, but they had a hard time doing so because of natural disasters and fierce attacks from the native inhabitants.<sup>7</sup> More than any other settlers, the French people had already tried to evangelize the native people. They had sent Catholic missionaries with the merchants. In 1648, the Congregation of the Mission, under the leadership of Vincent de Paul (canonized in 1737), sent missionaries to Madagascar: “Vincent attended to needs and

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<sup>6</sup> Cf. P. BECK, *History of Madagascar: The Progress of Christian Mission and an Account of the Persecution of the Native Christians*, Philadelphia, PA, American Sunday School Union, 1839, 10. This was among the earliest reports made about Madagascar by the Protestant missionaries (London Missionaries Society = LMS). In this very English oriented book, they stated that “the existence of the island was first made known to Europeans, in the 13<sup>th</sup> century by Marco Polo, who brought to Europe the accounts he had received concerning it while in Asia. By him it was called Magaster.”

<sup>7</sup> A. BOUDON, *Madagascar: La mission de Tananarive*, Antananarivo, Imprimerie Catholique, 1940, 17 (=A. BOUDON, *La mission de Tananarive*). Boudon recites the story in *La mission de Tananarive*: “Des navigateurs portugais découvrirent l’île en 1500 et lui donnèrent le nom de l’île Saint-Laurent. Souvent visité depuis, elle fut d’abord fort inclément aux Européens. Ils n’échappaient aux naufrages que pour succomber aux massacres, qu’ils eurent parfois d’ailleurs le tort de provoquer. Les Portugais au XVI<sup>e</sup> siècle, puis les Hollandais, d’autres encore, tentent à s’établir à Madagascar. La France y prend pied dès 1642.” “Portuguese navigators discovered the island in 1500 and gave it the name of Saint Lawrence Island. Although it was often visited in the intervening years, it was very difficult for Europeans. They escaped shipwrecks only to die later in massacres, which they themselves had, at times, wrongly provoked. In the XVI<sup>th</sup> century, the Portuguese, then the Dutch, and others, attempted to settle in Madagascar. France came there in 1642.”

invitations beyond the border of France. The activity of the Congregation of the Mission extended beyond France to Italy (Genoa, Turin and Rome), Sardinia, Ireland and Scotland. [...] In 1648 a group of missionaries left for Madagascar and in 1651, another to Poland.”<sup>8</sup>

This effort of the Congregation of the Mission was unable to establish its roots on the big island. These missionaries and the French settlers either died because of diseases or the atrocities committed by the native people, or they returned to Europe.<sup>9</sup> Not until the mid-nineteenth century did the French return to Madagascar. The settlement, although not as dangerous as it had been two centuries earlier, was also not easy because the Malagasy royalty started to become organized. The local king allied himself to the neighbouring kingdoms to form a stronger one.

The most famous king was Andrianampoinimerina (1745-1810) who unified almost all the small kingdoms in Madagascar either by war or by alliance. Being the King of Madagascar, he became, therefore, the supreme owner of every property. He placed the boundaries of his kingdom at the ocean, with his famous statement: “The ocean is the limit of my rice fields.”<sup>10</sup> That statement made it difficult, even impossible, for the Europeans to enter the territory of his kingdom. The highland region in the middle of the

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<sup>8</sup> R. FRANCES, E. J. RYBOLT (eds.), *Vincent de Paul and Louise de Marillac: Rules, Conferences and Writings*, Mahwah, NJ, Paulist Press, 1995, 28.

<sup>9</sup> A. BOUDON, *La mission de Tananarive*, 17-18. Boudon records one incident: “*Le jour de Noël 25 décembre 1672, pendant que la plupart des Français de Fort-Dauphin assistaient à la messe de minuit, ils furent soudain assaillis et 17 assaillés. Deux ans plus tard, les restes de la garnison française furent rapatriés et quittèrent l’île le 4 septembre 1674.*” “On Christmas day, December 25, 1672, while most of the French of Fort Dauphin were attending Midnight Mass, they were assailed and massacred. Two years later, the remaining members of the French garrison were repatriated and left the island on September 4, 1674.”

<sup>10</sup> “*Ny riaka no valam-parihiko*” (F. CALLET, *Ny tantaran’ny andriana*, vol. 2, Antananarivo, Imprimerie Officielle, 1908, 493).

island was his stronghold. Therefore, the foreign settlements remained in some remote coastal areas of Madagascar or outside the country in the neighbouring islands, such as Mauritius and Seychelles. It was only at the end of the reign of this unifying king that the Europeans, led by the English, started to come to the highlands.

### **1.1.2 – Protestant and Catholic Missions and their Relationship to the Local Government**

#### *King Radama I (1810–1828) - The blooming of the Protestant mission*

When King Andrianampoinimerina passed away in 1810, his son, Ilaidama, succeeded him and chose the name of “Radama I.” He was in favour of the European settlement because of the so-called “western civilization” that the Europeans brought into his kingdom—mainly weapons, education, and, of course, Christianity. Like his father before him, Radama I was the supreme owner of the land, and to be able to have “ownership” of any property, one must have the approval of the king. He also wanted to confirm his reign over the entire island and needed some support.

Colonial rivalry between the French and the English had continued for centuries in the Indian Ocean territories. They neglected the treaty established in 1814<sup>11</sup> and affirmed that Madagascar was an independent territory. It belonged neither to the English nor to the French. Thus, the English government took advantage of the openness of the Malagasy king and offered its full support in his needs and ambitions.<sup>12</sup> This allowed the

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<sup>11</sup>. Cf. BOUDON, *La mission de Tananarive*, 18. The Treaty called “*Le traité de Paris*” or the Treaty of Paris on May 30, 1814 offered the island of Madagascar to be part of the French territory and the neighboring islands (Bourbon and Mauritius) were assigned to England.

<sup>12</sup>BOUDON explains how the English managed to influence the king and settled in the core of his kingdom: “*Le jeu de Farquhar fut de soutenir le roi hova dans ses prétentions, de l’aider de ses conseils, de lui fournir des instructeurs et des armes pour ses soldats, d’établir sur lui son influence. [...] Le gouverneur de Maurice ne négligea pas le facteur religieux. Il encouragea de son mieux la London*

English missionaries to settle, begin proselytizing, and acquire properties. They came from London to Madagascar in order to teach the native people how to read, write, and pray.

Education, manual activities, and evangelization necessitated appropriate locations and facilities. Because it was King Radama I's will to have the English in his kingdom and to start these works, he offered them land on which to build schools, churches, and shops. The English government, alongside the missionaries, sent carpenters, weavers, blacksmiths, tanners, and shoemakers.<sup>13</sup>

The English had high aspirations for their mission. They provided education mostly to the "high-class" families, the royalty, and the nobles. Relatives of the King received special treatment from the missionaries. Some of them were even sent abroad (to England) to study to become ambassadors. King Radama I was so pleased with the English that whoever did not respect them was punished or, at least, given a strong warning. During one of his court meetings, for instance, he reminded his council, officers, and valets about the good things the "white men" had given to them.<sup>14</sup>

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*Missionary Society à envoyer à Madagascar ses premiers missionnaires.*" "Farquhar's plan was to support the hova king (the tribe of the highland) in his pretention, to assist him with his advice, to give him instructors and weapons for his army, to establish his influence on him. [...] Nor did the governor of Mauritius neglect the religious dimension. He did his best to encourage the London Missionary Society to send its first missionaries to Madagascar" (ibid., 18-19).

<sup>13</sup> Cf. ibid., 20.

<sup>14</sup> BOUDON reported one of the government councils that happened regularly in the king's palace: "*Qu'étiez-vous avant la venue des 'Vazaha' (Blancs), et qu'êtes-vous maintenant? Qui vous a appris à lire et à écrire? A qui devez-vous la poudre, les canons, les fusils? A qui, les habits de drap, les parasols, 'l'Eau de Cologne'?*" "What were you before the coming of the 'Vazaha' (the Whites), and what are you now? Who taught you to read and write? To whom do you owe the powder, the cannons and the guns? Whose are the clothes, the bed sheets, the umbrellas or the 'Eau de Cologne'?" (ibid.)

One important achievement of the Protestant missionaries was the establishment of a printing house. They needed it for their schools, but their first preoccupation was to print the Bible in the native language, Malagasy. They sent an experienced printer from London, who had worked in Russia, to do the job. A second printer was sent after the first one suddenly passed away because of illness, which showed how determined the Protestant missionaries were to finish the translation and the printing of the first Malagasy Bible. They finished their work in 1835.

The Catholic missionaries also wanted to take advantage of King Radama I's openness and come to Madagascar. As was the case with the Protestant missionaries, the idea was to reach the highlands (*Imerina*) where the core of the kingdom was to be found. With permission from the King, it would be easier to preach to the rest of the island.

M. Pastre, a priest from Lyon, France, who lived in Bourbon (now La Réunion)—an island in the Indian Ocean, east of Madagascar—had the desire to evangelize the big island, Madagascar. The openness of King Radama I to European civilization gave Pastre great hope. Thus, he sent a letter to the King on August 19, 1820 to show his interest in coming not only to Madagascar, but also and especially to the heart of the kingdom and the island's capital city, Antananarivo. The reply from the King, although polite, and although it recognized Pastre's interest in his kingdom, was not favourable. Radama I simply made known to Pastre his inseparable tie with the English. Therefore, any attempt by a French missionary to come to his kingdom would be a vain effort.<sup>15</sup>

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<sup>15</sup> A. BOUDON, *La mission de Tananarive*. Knowing that King Radama I had no French background, and thus neither spoke nor wrote in French, the authenticity of his reply written in a very formal French was doubtful. It was, however, the official letter from the King with his signature and seal and there was nothing the Catholic missionary could do but accept. Here is an extract of the letter: "*Monsieur, en réponse*

*Reign of Queen Ranavalona I (1828–1861) – Christian missions shut down*

The blooming of the Protestant mission during the reign of King Radama I ceased when he passed away in 1828. His wife, Ranavalona I, succeeded him to the throne, and that put an end to any foreign settlement in Madagascar, especially in Antananarivo. Of a different mind than her late husband, Queen Ranavalona I rejected not only all foreign religions, but also any European influences. She relied only on the traditional ones—the cult of the ancestors and the Malagasy god—and persecuted all Christians, foreigners, and Malagasy alike.<sup>16</sup> She was so jealous of her kingdom and so proud of her independence that anything which hindered her patriotism had to be stopped or eliminated. The first thing she forbade was Christianity and its practices. As a result, the Europeans no longer could teach their religion to the Malagasy people. They were only allowed to teach how to read and write. The Bible became their main book for teaching,

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*à votre lettre du 19 août 1820, je juge à propos de vous faire connaître l'alliance faite avec moi et le gouvernement anglais, ce qui m'a procuré les personnes dont je pouvais avoir besoin, entre autres, des gens de votre profession, missionnaires comme vous, de la Religion Protestante, ce qui m'empêche de vous inviter et d'adhérer à votre demande [...]. Ce refus est occasionné par une cause légitime, vu que la Religion que vous professez n'est pas la même que celle des Protestants à qui j'ai accordé une pleine liberté et protection.”* Sir, in response to your letter of August 19, 1820, I consider it important to inform you of the alliance I entered into with the English government, and from this I was able to receive those persons that I needed, including among others, persons of your profession, missionaries like you, but of protestant religion. This prevents me from inviting you and accepting your requests [...]. This refusal is based on a legitimate cause, since the religion that you profess is not the same as that of the Protestants to whom I have granted full freedom and protection. (32-33)

<sup>16</sup> A. BOUDON, *Les jésuites à Madagascar au XIXe siècle*, vol. 1, Paris, Gabriel Beauchesne et ses fils, 1940 (= A. BOUDON, *Les jésuites à Madagascar*, vol. 1). In one of her powerful speech "Kabary," she affirmed: "*Je vous le déclare, je ne prierai pas les ancêtres des Vazaha (blancs) mais mon Dieu et mes ancêtres; car chacun a ses ancêtres, et ce sont les nôtres qui ont fait régner les douze rois et moi-même et ce qui a été transmis par vos ancêtres à vous, Ambanilanitra! Et s'il y en a qui suivent cette religion, je les tuerai, ô Ambanilanitra!*" "I declare, I am not going to pray to the ancestors of the *Vazaha* (the Whites) but to my God and ancestors; each person has his or her ancestors, and ours made the twelve kings and myself reign, and they are the ones who taught us what we now have by our ancestors, *Ambanilanitra* (People)! And if there is anyone who follows that religion, I will kill them, o *Ambanilanitra* (People)!" (233-234)

but they could no longer continue to teach. Their belongings were confiscated and returned to the Queen who was the supreme owner of all properties.

Feeling hopeless in their mission, being suspected of plotting against the royalty, and being supervised everywhere, the missionaries left the country. Anyone who claimed to be Christian was forced to deny his or her faith. Many were persecuted and killed; others were turned into slaves. Those who could escape from the tyranny of the Queen fled far away from the highland. This dark side of the history of Christianity in Madagascar ended only with the death of Queen Ranaivalona I in 1861<sup>17</sup> when her son, Radama II, became King.

### ***1.2 – The Development of the Catholic Mission in Madagascar***

Begun by the French missionaries, the Catholic mission started from the surrounding islands, moved to the coast of Madagascar, and, finally, arrived at the centre. Even though that trajectory lasted for a few years, it was considered the missionaries' journey to the capital. The first temporary church building was built during that trip, on the island of Sainte-Marie (then part of the Island of Bourbon, a French department).<sup>18</sup> The development of the Catholic mission itself started at the centre, and then spread to the surrounding provinces.

#### **1.2.1 – Settlement in the Capital City**

*Reign of King Radama II (1861–1863) – Christian missionaries welcomed back*

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<sup>17</sup>A. BOUDON, *La mission de Tananarive*, 21.

<sup>18</sup>It is not clear if the portion of land where the church was built was bought or donated. One thing is sure, it was the first church built by a Catholic missionary in the Malagasy territory, even if it was part of the French colonies at that time. The building, which was made with wood and leaves, could not be considered a real building. It was, however, the largest structure on the island.

It is only during the reign of King Radama II that the Catholic missionaries could come to “the heart of the l’*Imerina*” (the center of Madagascar) and settle in the capital city, Antananarivo. Unlike his mother (Queen Ranaivalona I), Radama II was open to all foreign missionaries. He proclaimed freedom of religion in his kingdom, and he invited all missionaries to return to Madagascar. During his short reign (1861-1863)—which would end with his assassination—he allowed the missionaries not only to preach, but also to buy and own properties.<sup>19</sup> He also favoured the Catholic missionaries and gave them a large property for their headquarters.<sup>20</sup> As we shall see, Radama II’s openness provided an opportunity for the newly settled Catholic missionaries to begin their mission and for the Protestants to continue what they had started before the persecution under Queen Ranaivalona I.

### ***1.2.1.1 – The Arrival of Missionaries***

Once the portal of Madagascar was opened to the missionaries by King Radama II after the death of his mother, the Protestant missionaries returned to Madagascar immediately. After receiving the King’s invitation, the French took the initiative as well and sent missionaries, such as the “Christian Brothers,” the Sisters of Saint Joseph of

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<sup>19</sup> A. BOUDON, *La mission de Tananarive*, 53. On the one hand, Radama II’s speech was so promising for the missionaries because it helped them to evangelize in the kingdom of Madagascar with entire freedom. On the other hand, it was the beginning of the plot against him, because some noble families saw the king’s move as betrayal of the country. Here is an extract of that speech: “*Non seulement je vous permets, mais j’ordonne, je veux que vous ayez toute latitude de prêcher la religion ouvertement avec le plus d’éclat possible [...] Cherchez les terrains et les maisons qui vous conviennent, achetez les des propriétaires, fut-ce le terrain du commandant en chef, en ville, en campagne, partout: car je crains qu’après moi le pays ne retombe dans la barbarie.*” Not only do I allow it, but I also order it, and it is my wish that you enjoy complete freedom to preach your religion openly and with the greatest publicity possible [...] Seek out parcels of land and houses that are suitable for you, and purchase them from the owners, even if it were the chief’s property, in the city, or in the country, anywhere, because I fear that after me the country will fall back into its former barbarous ways.

<sup>20</sup>Cf. *ibid.*, 54.

Cluny, and the Jesuits (discussed below). Nevertheless, the Protestant missionaries already had advantages because of their previous presence in the country. Not only did they continue their former works and acts of charity, but they also expanded their efforts by trying to address other needs of the population. They started to build dispensaries and hospitals; they brought in nurses and doctors. These new endeavors required new facilities, which were granted to them by King Radama II himself. Thus, in terms of “owning” or managing properties, the Protestant missionaries had great advantages over the Catholic missionaries because of their seniority in the country. Indeed, the Catholics were slowed down because of the presence of other missionaries—the Methodists, the Anglicans, and the Lutherans.<sup>21</sup>

Radama II was more interested in the civilization brought by the Europeans than in the many different religions coming into his kingdom. In one of his early letters, or a letter written by one of his counselors but signed by him while he was still a prince, he declared:

Honestly I am going to tell you, if I ruled (the kingdom) and I commanded, I would take trade and arts as the only source of true progress. As for religion, each and everyone would follow what he or she wanted. Catholics, Protestants, Muslims, or pagan, I would not impede any religion [...]. I simply believe in the God who created the universe.<sup>22</sup>

He followed this policy when he came to power: any religion that wanted to settle in his kingdom was allowed to build churches or temples and was able to “own” or manage

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<sup>21</sup>Cf. *ibid.*, 22.

<sup>22</sup>C. LA VAISSIÈRE, *Histoire de Madagascar, ses habitants et ses missionnaires*, vol. 1, Paris, Librairie Victor Lecoffre, 1884, 359 (= LA VAISSIÈRE, *Histoire de Madagascar*, vol. 1). “*Je vous dirai franchement que si je régnais et commandais, je ne regarderais comme source de véritable progrès que le commerce et les arts. Quant à la religion, que chacun suive celle qu’il voudra. Catholiques, Protestants, mahométans ou païens, je ne puis empêcher aucune religion[...]. Je crois simplement au Dieu qui a créé l’univers.*”

properties. To make trade easier, he even opened up all the ports of Madagascar and allowed all foreign ships to enter with their goods without paying any tax.<sup>23</sup>

The Catholic missionaries also responded to King Radama II's invitation to come to Madagascar, and they not only came to the big island, but they also reached the capital city. Joseph Webber, a member of the Society of Jesus, was among the first priests who returned to Antananarivo after receiving the official letter of invitation from the King, brought by one of his officers.<sup>24</sup> Webber's arrival in the capital had considerable impact on the kingdom of Radama II. The English would not be the only foreigners in the kingdom; because of Webber's teaching, a new wave of teaching would spread, and conflicts were bound to arise. Nevertheless, King Radama II allowed both the Catholic and the Protestant missionaries to come because, for him, what was important was the "civilization" they brought. Being Catholic or Protestant amounted only to fanaticism.<sup>25</sup>

Webber's first visit with the King was promising because the King himself orally gave Webber permission, and even a recommendation, to preach, to teach, and to build houses, schools, and churches. As well, Radama II fulfilled his promise to make changes in the law by abolishing the "*tangena*" — punishment by forcing the guilty to drink a

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<sup>23</sup>Ibid., 360.

<sup>24</sup>Cf. A. BOUDON, *Les jésuites à Madagascar*, vol. 1, 275-292. In reality, this marks the official arrival of the Catholic missionaries in Antananarivo. Nevertheless, during the reign of Queen Ranavalona I, three Jesuits had already come into her kingdom without her knowing it. The first was Marc Finaz, a Jesuit priest, who arrived in Antananarivo on June 13, 1855. He came as the secretary of a mining entrepreneur Joseph Lambert, under the name of Mr. Hervier. The second and the third were Louis Jouen and Joseph Webber, all Jesuit priests, who reached the suburb of Antananarivo on October 6, 1856. They came, as a nurse and a pharmacist respectively, with a medical doctor, Milhet-Fontarabie. Jouen was to be called M. Duquesne and Webber, Joseph.

<sup>25</sup>A. BOUDON, *Les jésuites à Madagascar*, vol. 2, 368. "*Je sais en vérité que les catholiques et les Protestants et les mahométans et les païens, ce sont contes que tout cela, ce sont tous des fanatiques et ils sont dans l'erreur.*" "I truly know that Catholics and Protestants and Muslims and pagans, these are all just tales, they are all fanatics and they are all in error."

poisonous liquid—by waiving taxes, and even by prohibiting some superstitious practices in the capital. All this was to assure that the missionaries, and thus the French, would stay in his kingdom.<sup>26</sup>

The second wave of Catholic missionaries to come to Madagascar (from 1861 onwards) included the Sisters of Saint Joseph of Cluny, who came both to educate girls and to help the priests and brothers to teach catechism. They were so successful because many of the King's relatives (nieces and cousins) were the first beneficiaries of the Sisters' skills.

The last early missionary to be mentioned, but among the first to come to Madagascar, was Jean Laborde, a lay man who had previously ended up in Madagascar during the reign of Queen Ranavalona I because of a shipwreck in 1831. He was an engineer and had helped the monarchy at that time to improve its industry, mostly by manufacturing steel and iron for tools and weapons. In time, Laborde developed a strong friendship with the Queen's son, Prince Rakoto, and that had protected him from the Queen's xenophobia. It, however, did not stop the government from expelling him from the country. He went to Bourbon, an island east of Madagascar, and stayed there until the death of the Queen in 1861. His friend, Prince Rakoto, who by this time had become King Radama II, called him back to work with him for the Malagasy kingdom, under his reign.<sup>27</sup> Later, he was the key person to help the missionaries in their settlement, both materially and administratively.

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<sup>26</sup> Ibid., 373.

<sup>27</sup> Cf. H. DE REGNON, *Madagascar et le roi Radama II*, Paris, Imprimerie de L. Toinon, 1863, 50-55.

After these pioneers, many missionaries came and joined the Catholic mission in Madagascar to respond to a call Webber had made. Religious congregations such as the Congregation of the Holy Spirit (the Spiritans) and the Society of Jesus (the Jesuits) were the first to send their men to this new mission in the French colony. To organize the task of evangelization, each congregation was assigned to a proper territory (for instance, the Jesuits in the south and the highlands; the Spiritans in the north). The main problem they faced was, however, the lack of property to start their foundation. They had to work for their right to own property.

### ***1.2.1.2 – The Battle for Properties***

When the missionaries arrived in the capital, Antananarivo, one of the challenges they faced was the search for accommodations. Some noble families voluntarily received them. Not only did they offer the Catholic missionaries a place to stay, but they also allowed them to use these accommodations for worship and as classrooms. Shortly after the missionaries moved in, however, they had to find a different location because of the poor conditions of their facilities.<sup>28</sup> Some of them resided at Jean Laborde's place. Laborde, who had been living in Antananarivo before the expulsion of foreigners during Queen Ranaivalona I's reign, had a house where he temporarily accommodated some of

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<sup>28</sup> A. BOUDON, *Les jésuites à Madagascar*, vol. 1, 384. Here is how Father Boy, one of the missionaries, described the condition of the house they were in: "*Elle (la maison) nous sert de chappelle, d'école, de dortoir, de tout en un mot; mais elle est mal couverte et les murs sont percés à jours à maints endroits, ce qui nous procure des courants d'air assez incommode car, sur ces hauteurs, les nuits sont aussi froide qu'en Europe, et notre lit et une natte posée sur la terre nue.*" "The house is at the same time used as a chapel, a school, our dormitory, as everything in a word; it is however badly roofed and there are holes on the walls which allow drafts. It is quite uncomfortable because at such a height, the night is as cold as in Europe, and our bedding is just a mat on the floor."

the Catholic missionaries, priests, brothers, and nuns. With King Radama II's promise,<sup>29</sup> they had the freedom to buy or rent any land they wanted. Nevertheless, they faced two major problems: the refusal of the local people to sell properties and the high cost.

First, the Malagasy people have the belief that they do not really own the land; it belongs to their ancestors. The "owner" is just the one who takes care of it and will give it to his descendants. During the monarchical period, everything, including and especially land, was also considered to be the king's or queen's property. To sell a portion of land was (and still is) taboo. When the Catholic missionaries started to look for land to buy, they were refused. They, however, suspected that it was not fear of the taboo that prevented the Malagasy from selling their properties, but mostly the influence of their "rival" missionaries. The Catholic missionaries had to seek help from the King to intervene on their behalf. This opened the way for all their purchases.<sup>30</sup>

The second problem was the high cost. When the owners of the lands felt obliged to sell their properties, they decided to raise the cost, especially those portions of land that were close to the palace. That situation pushed the Catholic mission to buy land away from the palace. This was a key moment in the history of the mission because it was a sign of the Catholic missionaries' permanent settlement in Madagascar. They began to buy property in the suburbs.<sup>31</sup> They soon turned run-down housing into a cathedral by

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<sup>29</sup>Cf. A. BOUDON, *La mission de Tananarive*, 53.

<sup>30</sup>Cf. LA VAISSIÈRE, *Histoire de Madagascar*, vol. 1, 386-387.

<sup>31</sup>Cf. A. BOUDON, *Les jésuites à Madagascar*, vol.1, 386. Contrary to the Protestant missionaries who could get places within the palace or close to it, the Catholic ones had to go a bit further, not only because of the cost, but also because of the dominance of the presence of the Protestant mission around that area. In June 1862, the Catholic missionaries owned their first property, which was their previous accommodation owned by Ramboasalama. When he (who was the king's cousin and rival to the throne) passed away, they bought the place from the heirs.

destroying the housing and by rebuilding. That was the situation in Andohalo. They transformed steep and dangerous land into flattened land and on this built sanctuary of prayer and worship. The church building in Mahamasina is an example. They also received some property from the local people to build a church. This was the case in Ambavahadimitafo.<sup>32</sup>

Finally, King Radama II himself gave a large place of property to the Catholic mission in Ambohipo. They turned this place into a farm and a vast vineyard, which became both a model for the Malagasy farmers and an important source of wine for the mission.<sup>33</sup> Unlike the other properties, the one in Ambohipo was offered ceremoniously and before more than two hundred witnesses. All the procedures were followed and all the necessary documents were signed and sealed.<sup>34</sup> This gesture by the King was vital for the survival of the Catholic mission in Madagascar, as will be explained later on.

Apart from building churches and residences, the Catholic mission needed to focus on education as well. That was one of the purposes of the arrival of the Sisters of Saint Joseph of Cluny. They came mostly to educate women and girls. This required schools, or at least decent places to accommodate a large gathering. Because of the continuous support of the King, the Sisters were able to find what they needed. The King, who so favoured the French presence in his kingdom, made a “treaty of peace and trade” with the French Emperor, Napoleon III.<sup>35</sup>

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<sup>32</sup>Cf. *ibid.*, 386-387.

<sup>33</sup>Cf. A. BOUDON *La mission de Tananarive*, 54.

<sup>34</sup>Cf. A. BOUDON, *Les jésuites à Madagascar*, vol. 1, 388.

<sup>35</sup>A. CARETTE, P. GILBERT (eds.), *Lois annotées: ou lois, décrets, ordonnances, avis du conseil d'État, etc., avec notes historiques, de concordance et de jurisprudence*, Paris, Administration du recueil général des

King Radama II's broad openness to European civilization was not appreciated by some of the noble and traditionalist families. They feared that the King would lead the kingdom into anarchy if he continued to reign in that way. Therefore, a plot was mounted against him and he was murdered in his own palace after ruling for only two years.<sup>36</sup>

*Reign of Queen Rasoherina (1863 - 1868) – Prime Minister governs the kingdom*

King Radama II's wife assumed power under the name of Rasoherina. Nevertheless, she became, for the most part, a powerless figure of the royal family because Prime Minister Rainilaiarivony was the one who governed the entire kingdom and made all the decisions. The Queen was there to accept and to sign. Supported and influenced by Great Britain, the Prime Minister copied the style of the English government. He "learned that in Great Britain, the Queen reigns but does not govern. He seized that formula and thus exercised limitless authority" in his way of governing.<sup>37</sup> He "governs; the Queen simply reigns [...] All the business of the kingdom is done in her name, but she knows almost nothing about it and is rarely consulted."<sup>38</sup>

When the reign of Radama II ended in his tragic death, the privileges that the Catholic mission enjoyed ended as well. After what had been a short period of expansion

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lois et des arrêts, 1863, 12. The decree 4 of the treaty reads: "*Les sujets français jouiront de la faculté d'acheter, de vendre, de prendre à bail, de mettre en culture et en exploitation des terres, maisons et magasins dans les Etats de sa Majeste le Roi.*" "French subjects will enjoy the faculty to buy, to sell, to lease, to cultivate and exploit lands, houses and shops in the kingdom of His Majesty, the King."

<sup>36</sup> Cf. O. S. PASFIELD, *Madagascar: An Historical and Descriptive Account of the Island and Its Former Dependencies*, vol. 1, New York, Macmillan, 1886, 105.

<sup>37</sup> A. BOUDON, *Les jésuites à Madagascar au XIXe siècle*, vol.1, 526. "*Il a appris (des Anglais) que dans la Grande-Bretagne, la Reine règne et ne gouverne pas. Il s'est emparé cette formule et exerce ainsi une autorité sans limite.*"

<sup>38</sup> *Ibid.*, 529. *Le Premier Ministre "gouverne; la Reine se contente de régner [...] Toutes les affaires se traitent en son nom, mais elle n'en connaît presque rien et on la consulte peu."*

under Radama II's reign, the Catholic mission now began to have a difficult time in Antananarivo. Prime Minister Rainilaiarivony who, before he had become the prime minister, had had a good relationship with the French during the reign of Radama II, distanced himself from Catholicism and favoured the Protestants. He removed his relatives from Catholic schools and placed them in Protestant ones. As a result, the Catholic missionaries drastically lost favour with the royal family. They no longer enjoyed the same privileges as the Protestants.

The Prime Minister concluded treaties with the English government, which gave the Protestant missionaries protection and authority to own land and to build schools, churches, dispensaries, or anything else they found necessary for their missions.<sup>39</sup> The treaty that had been made with the French Emperor, Napoleon III, was transferred to Queen Victoria of Great Britain. The new regime, led by the Prime Minister, had to pay a large fine to the French Emperor because the officials physically destroyed the treaty Radama II had made with him, which had provided ownership of lands to the Catholic missionaries. In 1865, the French empire sent an imperial commissioner, the Comte De Louvières, to renegotiate a new contract of ownership with the Malagasy kingdom. This

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<sup>39</sup> A BOUDON, *Les jésuites à Madagascar*, vol. 2, 4-5. The Treaty of June 27, 1865, entitled "*Treaty of Peace, Friendship and Trade*" with the English government was a pertinent one. It gave full license to the English colony to own properties. The article 5 of that treaty states: "The British subjects will have full and legitimate permission, like the most favored subject or citizen of this country, to purchase, rent or lease a portion of land, houses, shops and all other kinds of properties, in all parts the kingdom of H[er] M[ajesty] the Queen of Madagascar that are under the authority of a governor duly appointed by the Malagasy authorities. They will have the freedom to build houses on the purchased, rented or leased portion of land with any materials they want, except in stone or clay in the capital of Madagascar and other cities where such constructions are prohibited by the law of the country."

*(Les sujets britanniques auront permission, aussi pleinement que les sujets ou citoyens de la nation la plus favorisée, en toute mode légitime, d'acheter, louer ou affermer de la terre, des maisons, magasins et toutes autres sortes de propriétés dans toutes les parties des Etats de S. M. la Reine de Madagascar qui sont sous l'autorité d'un gouverneur dûment nommé par les autorités Malgaches. Ils auront la liberté de bâtir sur la terre achetée, louée ou affermée par eux des maisons avec tels matériaux qu'il leur plaira, sauf en pierre ou en argile dans la capital de Madagascar et autres villes où de tels constructions sont défendues par les lois du pays.)*

diplomat himself had difficulty in carrying out his negotiations because he faced a “sympathetic but powerless queen and a hostile and hesitant prime minister.”<sup>40</sup> While waiting for the contract to be signed, some of the Catholic priests’ properties were demolished—although they were able to rebuild them later on.<sup>41</sup>

Despite his tendency to favour the Protestant missionaries, the Prime Minister tried to show impartiality toward the two countries, England and France, and let the two religions co-exist.<sup>42</sup>

#### *Reign of Queens Ranaivalona II and III – Conversion of the monarchy to Protestantism*

While the Prime Minister gained more and more power in terms of governing the Kingdom of Madagascar, especially during the reigns of the last two queens, Ranaivalona II and Ranaivalona III, with the Prime Minister successively becoming the husband of each, the British influence on the royal family did not cease. The Protestant missionaries reached the highest ranks of the Malagasy royalty by converting the queens and the Prime Minister to Christianity and by baptizing them in a Protestant church, which had been built within the palace court itself. The Christian wedding of the Queen and the Prime Minister was celebrated in that church as well.

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<sup>40</sup> A. BOUDON, *Les jésuites à Madagascar*, vol. 2, 2-3. “Il (De Louvières) trouvait en face de lui une reine sympathique mais impuissante, un premier ministre hésitant, hostile [...], et la rancune toute fraîche d’avoir dû, selon l’expression malgache, vomir 240.000 piastres afin de racheter et de brûler le malencontreux taratasy ou papier signé par Radama (II).” “He (De Louvières) faced a sympathetic but powerless queen, a hesitant and hostile Prime Minister, and now resentment for having, according to the Malagasy expression, to vomit (pay) 240,000.00 piasters to buy and to burn the unpleasant taratasy or document signed by Radama II.”

<sup>41</sup> Cf. *ibid.*, 5.

<sup>42</sup> Cf. A. BOUDON, *La mission de Tananarive*, 61-62.

The conversion of the monarch to Protestantism worsened the situation for the Catholic mission. Queen Ranavalona II and Prime Minister Rainilairivony made it the religion of the kingdom. The Protestant missionaries of the London Missionary Society were allowed to evangelize within the palace and among the royal couple's relatives. They needed to train more local pastors to preach in the areas away from Antananarivo. Property rights were ceded easily to them while the Catholic missionaries had to fight for them. The coming of another imperial commissioner was again required. In 1868, Benoît Garnier represented France and made another treaty of peace and trade with Madagascar, in order that French subjects would be able to buy, acquire, and lease any property in the land of Her Majesty the Queen of Madagascar. They would also be capable of hiring people under their service. Garnier actually obtained the copy of the treaty of peace and trade that had been made with the English, but his was made for French subjects. The difference between this treaty and the one made earlier in 1865 with Louvières was a paragraph allowing the Queen, whenever she needed them, to take, for her own personal service, the Malagasy who worked for the French.<sup>43</sup> That paragraph was inserted, according to the Catholic missionaries, to slow down the progress of their work. It was assumed that any Malagasy person, at that time, had to respond positively to the Queen's request for the needs of the monarch (military service, construction of buildings and roads, etc.), unless there was a major reason preventing them from doing so; and the fact that someone worked for the French was not considered sufficient reason for preventing

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<sup>43</sup> Ibid., 49. Here is the famous paragraph: "*Cependant, si la Reine requiert ses travailleurs pour son service personnel, ils pourront se retirer après avoir préalablement prévenu ceux qui les auraient engagés.*" "Nevertheless, if the Queen needs the workers for her personal service, they may withdraw (from their work) having informed their employers beforehand."

the Queen from calling that person to her service. That was not, however, the case for those who worked for the Protestant mission.

Despite some negative reactions from certain noble families, the Queen respected this latest agreement. During the war between the Malagasy and the French (1883 – 1886), Queen Ranavalona III proclaimed that all the properties of the Catholic missionaries belonged to her in order to prevent them from being looted. Because of that proclamation, the local authorities had the responsibility to protect Catholic schools, residences of the missionaries, church buildings, dispensaries, and anything else the missionaries used. When the war ended, the missionaries came back and saw their belongings intact except for those that needed regular maintenance.

During the reigns of Madagascar's last two queens, Ranavalona II and III, with Protestantism now the official religion of the kingdom because it was the religion of the royal family, the quality of life and existence of the Catholic mission continued to decrease. Even if the Queen showed protection to the Catholic missionaries and proclaimed freedom of religion in her kingdom, some lower commanders and officers were harassing Catholics. Not only did the Catholic missionaries fail to be dominant in and around the palace, but the local pastors of the Protestant churches and their followers, even in the remote villages, persecuted them. Their right to acquire property was doubted; their constructions were obstructed and damaged; and their workers were intimidated.<sup>44</sup> The Catholic missionaries complained to the Queen, and the situation was quieted for a while, but soon flared up again.

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<sup>44</sup>Cf. A. BOUDON, *Les jésuites à Madagascar*, vol. 2, 65.

Facing continuous rivalry with the Protestants and having lost the battle to educate and evangelize the royal and noble families in the capital city, the Catholic missionaries turned to the surrounding villages, towns, cities, and provinces, and focused their efforts on preaching the Gospel to the “grassroots.” In spite of all sorts of intimidation inflicted on the Catholic missionaries, the evangelization of the surrounding villages was successful. The people, especially the “*valalabemandry*,”<sup>45</sup> welcomed the missionaries and were grateful for their efforts to preach the Gospel to them. Some of the already baptized Catholics also helped the priests in their work of spreading the Catholic faith.<sup>46</sup>

In a word, the Protestants, led by the London Missionary Society, put all their efforts into evangelizing the monarchs of the kingdom of Madagascar, except one—Queen Ranavalona I, who rejected not only all foreign religions, but also any European influences. Only after the domination by the French over the Malagasy kingdom would the English influence on the Malagasy kingship begin to decrease. The Protestant religion would be totally put aside and diminished further after Madagascar became a French colony in 1896.

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<sup>45</sup> *Valalabemandry* (literally “The-numerous-grasshoppers-that-are-asleep”) is the population excluding the royal family, their relatives and the nobles. *Ambanilanitra* (under-the-sky) is how the entirety of the population in the king or queen’s speech was called.

<sup>46</sup> A. BOUDON, *Les jésuites à Madagascar*, vol. 2, 77. One of the pioneers recalled in his diary: “*Dans le Nord (d’Antananarivo), P. Delbosc fait bâtir une église provisoire à Imerimandroso, très important village qui montre les meilleures dispositions. Plusieurs autres gros villages, certains fort éloignés, ne cessent de réclamer des Pères: Ambohitrabiby, Ambohitraza, Andrainarivo, cette dernière localité à environ 60 km au Nord de Tananarive. Là, il y avait deux ménages baptisés à Tananarive qui [...], avant mon arrivée, avaient enseigné (aux gens) les prières, le chapelet.*” “In the North (of Antananarivo), Fr. Delbosc built a temporary church in Imerimandroso, a very important village where there were people of good will. Many larger villages continue to request the (visit of the) Fathers: Ambohitrabiby, Ambohitraza, Andrainarivo; this latter is about 60 km to the north of Antananarivo. There, there were two baptized families from Antananarivo. Before my arrival, they taught prayers to the people, and how to say the rosary.”

In contrast to the Protestants, the Catholic mission in Madagascar had a hard time to establish itself. Missionaries aspired to evangelize from “top to bottom,” that is, from the royal family to the people in general, but that did not happen. The higher ranks of the Malagasy kingdom, the royal families, and the nobles were already converted to Protestantism. The Catholic missionaries’ right to acquire, to own, and to lease properties was unstable from the beginning of their settlement in Madagascar. All the agreements the Catholics made with the Malagasy royalty and government seemed to be fragile and could be broken at any time. Their right to ownership of land depended entirely on the relationship between France and Madagascar. Although this “right” was given to them, it was always under certain conditions, even under Radama II. Later, when Madagascar would become a French colony in 1896, the French would confiscate the Catholics’ property. That situation would later become the major source of the problem concerning temporal goods for the Society of Jesus.

During the period when the Catholic mission was having a difficult time in developing in the capital city, the missionaries enlarged their field of evangelization, and began to preach throughout the surrounding towns and provinces.

### **1.2.2 – Catholic Settlements in the Surrounding Towns and Provinces**

The Catholic missionaries chose to evangelize the “grassroots” in the towns surrounding the capital, having faced unsatisfactory results from the royal family.<sup>47</sup> But

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<sup>47</sup>This is in terms of numbers. Compared to the success of the Protestant mission, the Catholics gained few followers from the royal and noble families because they came late. Nevertheless, in terms of quality, one could say they had the best fruit ever. It is from the royal family that the first and only Blessed Malagasy woman sprung. Victoire Rasoamanarivo was the leader of the Catholic faithful during the absence of the missionaries (1883 – 1886). With her royal statute (she was the niece of the Prime Minister) she protected the Catholic minority from the harassment it endured every day.

the mission outside Antananarivo also did not go without difficulty. The missionaries were treated with indifference by the local people and intimidated by the local administrators.

### ***1.2.2.1 – Settlement around the Capital***

Having their headquarters in Ambohipo, a property given to the mission by King Radama II, the missionaries built a church in the lower town, Mahamasina, with materials from outside the city. Betsizaraina, a village outside of Antananarivo, was the chosen place to make bricks and tiles, because of the quality of its soil. It was also an appropriate place to start evangelizing because the workers and their families lived with them during the time of construction. One of the missionaries was appointed chaplain to these workers. This post, however, did not last. When the missionaries finished the construction, there were no more material things expected from them. The missionaries continued to visit Betsizaraina in order to preach and to gain more catechumens, but the local people's enthusiasm faded. After a few trials, the Catholic community in that village disappeared.<sup>48</sup>

The Catholic community in Morarano also disappeared, not because of the unwillingness of the people, but because of the threats they received every day. For a community whose faith has not yet deepened, any difficult situation could lead to discouragement. Even if "freedom of religion" was proclaimed in the entire kingdom, the Catholic communities in remote areas received threats from the Protestants. The Catholic missionaries had complained about this situation to the Prime Minister several times.

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<sup>48</sup>Cf. A. BOUDON, *Les jésuites à Madagascar*, vol. 2, 64.

Either he acted and the problem was immediately resolved, or he just affirmed he was going to take care of it and nothing happened. Such a situation did not allow the Catholic community in Morarano to grow, and it faded away after a few years.<sup>49</sup>

In some places, however, the Catholic community became firmly rooted, and the local people embraced the faith and were baptized. This was the case in Ambohitsoa, a village about two hours away from the capital, where they initially held their Sunday gatherings in a private house. After receiving many requests from the local people, the missionaries decided to open a station in this village and built a church on land donated by a rich owner who later became a Catholic.

The Catholic missionaries encountered threats and intimidation even in places where they were well received. Some officers, claiming to be sent by the Prime Minister, warned the missionaries that they had no permission to build anything if they did not inform the government.<sup>50</sup> Although it was not written in either the 1865 treaty of peace and trade or the 1868 one, the missionaries agreed to follow this new rule in order to avoid disputes and conflicts. They posted on the gates at every construction site, church and/or school the sealed contract and permission from the Prime Minister's Office. This did not satisfy the local officers, who wanted to be informed as well before any further

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<sup>49</sup>Cf. *ibid.*, 66.

<sup>50</sup>A. BOUDON, *Les jésuites à Madagascar*, vol. 2, 69. Oral tradition was very strong in Malagasy society. It just needs the officers to proclaim the following words in the name of the Prime Minister and the missionaries were under the obligation to follow. "*Si dans les villages où vous êtes appelés on se réunit dans une maison malgache et qu'il n'y ait pas d'église à faire, il n'est pas nécessaire d'avertir le gouvernement. Mais si vous ou les malgaches, vous voulez bâtir une église, il faut avertir.*" "If, in the villages you are called into, you are gathered in a Malagasy house and there is no intention of building a church, it is not necessary to inform the government. If however, you or the Malagasy want to build a church, you have to inform them."

steps were taken. These rules and procedures imposed by the government officials were intended to discourage the missionaries from continuing to build schools and churches.

The threats were not limited to the French missionaries alone; threats were also made against the Malagasy people who associated with them. Owners who were trying to sell a portion of land to the missionaries were questioned even about their right to own property. This happened to a Catholic family who wanted to give their land to the missionaries. Once the officers heard of a project to build a Catholic church, they came to the place and told them that they were former slaves and thus could not own property. The land belonged to the Queen, anyway. Even if they had been farming there for years, they did not own the property. Nevertheless, if they wanted to sell or lease that portion of land to another Malagasy, they could do so, which was totally contradictory to what they had confirmed. This showed the Catholic missionaries that the prohibition was mostly addressed against them and not against the ownership of the land.<sup>51</sup>

Despite all these obstacles, the Catholic mission expanded to the villages surrounding the capital. The missionaries were able to build schools and churches. In some instances, however, they had to bring cases to court in order to get the authorization to build. Without the intervention of the Queen or the Prime Minister, or even the French government, they would lose these court cases.

#### ***1.2.2.2 – Catholic Settlements in the Provinces***

Antananarivo is in the central part of the island, and to be able to reach there, the missionaries had to pass through the eastern province, Tamatave (or Toamasina), where

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<sup>51</sup> Cf. *ibid.*, 71.

the largest port of Madagascar is found. While the city of Tamatave was a city of transition for the missionaries, they had established themselves there as well. As a result, Catholicism spread among the local people. In 1864, Catholics began to acquire lands and built the first church in the region. Unlike other cities such as Antananarivo and Fianarantsoa, the settlement in Tamatave neither encountered reluctance from the Malagasy people nor faced rivalry from the Protestant mission. Nevertheless, they had their own struggles due to natural disasters. Being a coastal city in a tropical island, Tamatave experiences cyclones every year, and the missionaries were not spared from disaster. Wind demolished the church in 1872. Until it was rebuilt in 1876, the school was transformed into a chapel on Sundays.<sup>52</sup>

Not discouraged by natural disasters that occurred every rainy season in that province, the missionaries expanded their territory along the eastern coast of Madagascar, from Fénériver-Est and Foulpointe in the north, southward to Mananjary, Mahela, Mahanoro, and Andevoranto. Andevoranto was a key village for the mission. It was the gateway to the capital city. Knowing its potential, the missionaries planned to have a station there. They could not stay or preach, however, while they were in this village because their main goal was to reach the capital city first. Besides, Andevoranto was less populated and infamous for its thick rain forest and the resulting malaria that killed missionaries. Moreover, the unbelief of its people and their long-time habit of drinking alcohol forced the missionaries to leave.<sup>53</sup>

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<sup>52</sup> Cf. *ibid.*, 103-104.

<sup>53</sup> C. LA VAISSIÈRE, *Histoire de Madagascar: ses habitants et ses missionnaires*, vol. 2, Paris, Librairie Victor Lecoffre, 1884, 193 (=LA VAISSIÈRE, *Histoire de Madagascar*, vol. 2). De LaVaissière told of the missionaries' experience at Andevoranto, the main city of the Eastern province at that time: "*La Mission*

They then chose to preach the Gospel in the southern part of the highlands, a region for peasants. There, the conflict with the Protestant church occurred right from the beginning because it always viewed the arrival of the French missionaries as a threat to its work. Such conflict made it difficult for the Catholic missionaries to rent houses or acquire properties in that province. The first location they had was a rented family house, which was used as a school during the week and a church on Sunday. The missionaries lived on the upper floor. This family, which had given the house to the missionaries, was originally from the capital city, and had been baptized Catholics before they moved to Fianarantsoa, the largest city of the southern part of the highlands.

The domination of Protestantism prevented the people of Fianarantsoa from publicly showing any interest in the new preaching of the Catholic missionaries. Those who wanted to follow or to attend a Catholic gathering were intimidated, in spite of the clear message from the Queen about freedom of religion. There were attempts to evict the missionaries from the houses they rented or even to destroy their place. Some rich people in the city asked the owner to sell them the house at any price. It was difficult for the missionaries to buy and own land. Anytime they wanted to acquire land, they had to remind the officers and administrators of the “treaty of peace and trade.” This treaty, however, seemed to be outdated or ignored by the officers in this province. The

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*dans ce village important de la côte Est n'avait pas produit ce qu'on en espérait. Le principal obstacle au bien se trouvait inséparablement uni à l'un des principaux motifs qui l'avaient fait choisir comme centre de Mission. Andovoranto, lieu de passage de tous les voyageurs qui allaient de Tamatave à Tananarive, ou qui poursuivaient simplement leur course dans la direction du sud, jusqu'à Mahanoro, Mahéla et Mananjary, était une ville tout entière livrée aux boissons alcooliques et à la débauche et où la prière et l'instruction ne pouvaient en conséquence que trouver le plus médiocre accueil.*” “The mission in this important village of the East coast did not produce what we hoped it would do. Andovoranto, a place that all travellers passed through on their way from Tamatave to Tananarive, or who were simply on their way to the South, on the road to Mahanoro, Mahela and Mananjary, was a town that was totally identified with the abuses of alcohol and debauchery, a place where prayer and instruction could not consequently find even the weakest of welcomes.”

missionaries had to call for help from the central government, and in his response, the Prime Minister forced the Governor of Fianarantsoa to give a location to the Catholic priests so that they could preach their religion and build a church.<sup>54</sup>

The local people of Fianarantsoa were initially hesitant to become members of the Catholic Church, yet they came in large numbers to see what the priests were doing and to hear what they were saying. It was families from Antananarivo who started the first Catholic community in Fianarantsoa, and the local people joined them with fervor later on. These latter were more affected by the threats from their fellow Protestant compatriots than from the people of the capital city because they had been physically harassed. Those who lived around Fianarantsoa were especially vulnerable.<sup>55</sup> Not only were the adults harassed if they followed the Catholic missionaries, but even their children were bullied and forbidden to go to their schools. An account in a letter of Mgr. Jean-Baptiste Cazet, Apostolic Prefect of Madagascar in 1879 in De La Vaissière's book illustrates what happened to the Catholic students.<sup>56</sup> Despite all the hardships they endured, Catholic missionaries and the Catholic Church in Fianarantsoa grew quickly in the number of faithful and the number of buildings, and the people became stronger in the

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<sup>54</sup>Cf. A. BOUDON *Les jésuites à Madagascar*, vol. 2, 90-92.

<sup>55</sup>Ibid., 94. Fr. Finaz, one of the Catholic pioneers in the south, said: "Aucun *Betsileo* n'avait encore osé revenir à l'assemblée Catholique depuis qu'on les avait fait sortir." "No *Betsileo* dared return to the Catholic gathering since the last time they had to leave."

<sup>56</sup>LA VAISSIÈRE, *Histoire de Madagascar*, vol. 2, 306 – 308. "Ils (les Protestants) ont choisi, parmi leurs adeptes, un certain nombre de gros gaillards, et après leur avoir promis une belle paye, tant par tête, ils les ont lancés à la recherche et à la poursuite de ce qu'ils appelaient les réfractaires. Nous apprenons donc tout à coup que nos élèves, garçons et filles, sont arrêtés sur toutes les routes, qu'on va même les saisir dans leur maison pour les amener de force dans les écoles Protestantes; que s'ils refusent ou résistent, on les attache comme des coupables, on les frappe, on les insulte et on les maltraite, et cela sans que personne ose prendre leur défense. [...] En effet, la chasse à nos élèves continua avec plus de rage que jamais. Plusieurs d'entre eux, qui étaient arrivés des campagnes environnantes, restaient chez nous nuit et jour, sans oser faire un pas en dehors de l'emplacement, car ils étaient attendus par des individus qui les épiaient pour se saisir d'eux."

faith. While the Jesuits began in 1871 with one rented house in Fianarantsoa, a decade later there were seventy-seven stations in Fianarantsoa and the surrounding villages, which included ten Jesuit priests, seven brothers, and four nuns of the Sisters of Saint Joseph of Cluny.<sup>57</sup>

The second city which received Jesuit missionaries in this province was Ambositra. Compared to the negative conditions they had endured in the main cities, such as Antananarivo and Fianarantsoa, the missionaries encountered very few in Ambositra. There were already enough Jesuits to be sent to this new emplacement. Ambositra was distinguished, however, by the participation of lay people from Antananarivo who helped the missionaries in teaching catechism and in initiating the local people into the Catholic faith. They also helped the Jesuits to deal with property issues, such as: renting houses and locations for gatherings and prayers; buying lands, schools, and churches; and even finding workers to help to renovate old houses or to construct new ones. The presence of the Protestant missionaries – foreigners and Malagasy – did not affect much the growth and settlement of the Catholic mission in Ambositra because, during the visit of the Queen, accompanied by some Catholic missionaries and the presence of the French government in the person of Jean Laborde, freedom of religion was once again pronounced, affirmed, and signed.<sup>58</sup>

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<sup>57</sup> Cf. A. BOUDON *Les jésuites à Madagascar*, vol. 2, 95.

<sup>58</sup> Cf. *ibid.*, 96-102.

### 1.2.3 – Development of the Catholic Church in the Capital City in the Nineteenth Century

Although larger in size than the surrounding islands, Madagascar had been part of the Apostolic Prefecture of Bourbon<sup>59</sup> since 1829. Bourbon was part of the French colonies and one of its overseas departments. Madagascar was not part of the Apostolic Prefecture of Bourbon until 1829 with a decree from the Congregation for the Propagation of the Faith.<sup>60</sup>

Immediately after becoming the Prefect of Bourbon and Madagascar, Mgr Gabriel-Henri-Jérôme de Solages wanted to come to Madagascar, and already had asked missionaries, including the Jesuits, to help him spread the Gospel on the big island. No one else seemed too eager to evangelize Madagascar. Moreover, this was the period when the island broke off its foreign relations because of the new policy of Queen Ranaivalona I.<sup>61</sup>

Despite the interdiction from the Malagasy government to enter the country and the discouragement from many in his entourage, Mgr de Solages traveled to Madagascar on July 17, 1832. There, he appointed Mgr Jean-Pierre Dalmond as temporary Vice Prefect of Bourbon and Madagascar and attempted to go to the capital after having sent letters to the Queen asking for permission to enter her kingdom. Knowing that a missionary wanted to come into her territories, the Queen sent soldiers to stop Mgr de

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<sup>59</sup>Bourbon is a small island east of Madagascar in the Indian Ocean, now called Réunion.

<sup>60</sup>Cf. A. BOUDON, *Les jésuites à Madagascar*, vol. 1, 9.

<sup>61</sup>Cf. *ibid.*, 14-16.

Solages at Andevoranto, the famous village with indifferent inhabitants.<sup>62</sup> De Solages and the Queen exchanged letters for months, but the Queen never responded favourably. Exhausted by the deplorable condition of his stay that seriously affected his health, the Apostolic Prefect passed away in Andevoranto without reaching his hoped-for destination, the capital.

After the death of Mgr de Solages, the Cardinal Prefect of the Congregation of the Propagation of the Faith wanted to appoint Mgr Jean-Pierre Dalmond, the Vice Prefect, to carry on the office. After the refusal of Dalmond, Mgr Jean-Louis Pastre was appointed Prefect for the Apostolic Prefecture of Bourbon and Madagascar. Despite his good will, Mgr Pastre was never able to come to his prefecture. Another was appointed to replace him: the General Vicar of Paris, Mgr Poncelet, in 1835.<sup>63</sup>

Mgr Jean-Pierre Dalmond was convinced that the mission started by de Solages had to be continued. The mainland, however, was still inaccessible to the missionaries, so Dalmond began his proclamation of the Gospel on the islands of Nosybe (off the west coast of Madagascar) and Sainte-Marie (off the eastern coast). Although they belong to Madagascar, these two islands did not accept the rule of the Queen, Ranavalona I.<sup>64</sup> Dalmond's mission was successful in Sainte-Marie, and he was able to baptize and to build a church there. But that was not the case in Nosybe because of the influence of Islam and the people's distrust of Europeans. The zeal of Mgr Dalmond and the success of his mission in Sainte-Marie did not pass unnoticed by the Congregation for the

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<sup>62</sup> Cf. LA VAISSIÈRE, *Histoire de Madagascar*, vol. 2, 193.

<sup>63</sup> Cf. A. BOUDON, *Les jésuites à Madagascar*, vol. 1, 40-41.

<sup>64</sup> Cf. *ibid.*, 55-56.

Propagation of the Faith. In 1841, he was appointed Prefect of the newly erected Apostolic Prefecture of Madagascar.

This new prefecture was a vast area to be covered by just one man. Even if Dalmond could not reach the central part of the island (because it was under the rule of the Queen), the southern part and the surrounding islands, not under her rule, were large areas to be evangelized. Like his predecessor, de Solages, Dalmond decided in 1843 “to return to Europe to seek help [...]. The Society of Jesus responded to his request and he came back with six Jesuits, including Father Joseph Webber and two secular priests.”<sup>65</sup>

The two secular priests stayed in Mayotte (an island close to Madagascar in the Mozambique Channel and a French overseas department), and the six Jesuits went to the big island. They began immediately to work in the southern part of Madagascar, thinking of continuing the work the Congregation of the Mission had started in the seventeenth century but had to abandon. This part of the island was, however, a strategic area for the business of many European merchants. Afraid of being observed by these men of the Church, the merchants did everything to make the Jesuits’ mission fail. Once again, like the earlier missionaries, the Jesuits had to leave the area and joined the Prefect who was working alone in Nosybe.

This time, the Catholic mission started to expand and to draw many committed followers. The work of the missionaries became known not only in Bourbon, but also in France and other parts of Europe, including Rome. In 1848, the Apostolic Prefecture of

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<sup>65</sup> “Dalmond décide de partir en Europe pour y chercher de l’aide [...]. La Compagnie de Jésus répond à son appel et il revient avec six Jésuites, dont le père Joseph Webber, et deux prêtres séculiers.” B. HÜBSCH, “Difficultés des missions catholiques à Madagascar (1820 – 1861),” in B. HÜBSCH (ed.), *Madagascar et le christianisme*, Antananarivo, Édition Ambozontany, 1993, 246 (=B. HÜBSCH, *Madagascar et le christianisme*).

Madagascar was “elevated” into the Vicariate Apostolic of Madagascar. The Jesuits were able to convince some noble families to allow their children to be baptized, to receive some education, and even to be sent to Bourbon for further studies. Obedient to the Roman Pontiff, the Jesuits followed his instruction *Neminem profecto* (1845) and did their best to promote vocations to the priesthood and to introduce their students to priestly life. Among their students was Basilide Rahidy, who became the first fruit of their efforts; he joined the Society of Jesus and pronounced his vows in 1865. Later, in 1874, he was ordained and became the first native Malagasy priest.<sup>66</sup>

When Queen Ranavalona I passed away in 1861, the missionaries gained access to the main island and thus to the capital. Meanwhile, the Jesuits left Nosybe, which had become part of the Apostolic Prefecture of the Small-Islands, and went to Antananarivo. They started to extend their works from the central to the southern part of the highland. In this more populated area of Madagascar, the church quickly grew in numbers despite the already dominant presence of Protestant missionaries. The continuation of the mission in the Apostolic Prefecture of the Small-Islands, including Nosybe, Mayotte and Zanzibar, was given to the Congregation of the Holy Spirit. “The Spiritan fathers solemnly took possession on June 1, 1879, on Pentecost Sunday. [...] Because of the lack of means of transportation to enable them to move elsewhere, the [remaining] Jesuits continued to help their successors.”<sup>67</sup>

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<sup>66</sup> Cf. *ibid.*, 248.

<sup>67</sup> A. BOUDON, *Les jésuites à Madagascar*, vol. 2, 205. “*Les Pères du Saint-Esprit prirent solennellement possession le 1er juin 1879, en la fête de la Pentecôte [...]. Faute d’occasion pour quitter Nosybe, les [restes des] jésuites continuèrent d’aider leurs successeurs.*”

The conflict between the Malagasy royalty and the French Government took place not only during the reign of Ranavalona I; two wars broke out after her reign, leading to the colonization of Madagascar in 1896.<sup>68</sup> Despite that, the Catholic faith continued to grow in the country and be embraced by the Malagasy people. It was no longer seen as a foreign religion but rather as another way of relating to *Zanahary*, the Creator. During the absence of the missionaries, the newly converted Catholics took care of the Church. One of them was Blessed Victoire Rasoamanarivo. She was the daughter-in-law of the Prime Minister, and because of her interventions, Catholic schools and churches were kept open. She defended the innocence of Catholics whom the Protestants treated as traitors because they followed the religion of the enemies, the French. One of her famous interventions in court was quoted by Mgr E. Foucardier in his book *La vie heroïque de Victoire Rasoamanarivo*.<sup>69</sup>

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<sup>68</sup> The Merina tribe was the ruling tribe in the Antananarivo, who dominated almost the whole country. It had the queen and the Prime Minister as its head. Foreign settlement was their concern, since they had dominated many small kingdoms in the country. After the reign of Ranavalona I, during which the tension between the Europeans and the Malagasy was so high, the first war between the Merina tribe and France started in 1883. All French settlers, including missionaries, were once again deported. When the war ended in 1886, they were able to return and continue their previous occupations. The second war broke out in 1894, the Malagasy lost it and Madagascar became a French colony in 1896. See A. BOUDON *Les jésuites à Madagascar*, vol. 2, 255-300; 377-445.

<sup>69</sup> E. FOUCARDIER, *La vie heroïque de Victoire Rasoamanarivo*, Paris, Éditions Dillen, 1937, 82-83; also see A. BOUDON *Les jésuites à Madagascar*, vol. 2, 281. “*Les Vazaha Français qui nous ont enseigné la prière sont partis. Eux étaient Français. Mais nous, catholiques malgaches, nous ne cessons pas d’être malgaches parce que nous sommes catholiques. Que voulez-vous dire quand vous nous accusez d’être traîtres? L’affaire des écoles regardent M. le Président. Quant à la prière, je suis autorisée par la reine et le premier ministre à protéger les catholiques, s’ils sont molestés injustement. La Reine et le Premier Ministre n’en veulent pas à la prière. Ils combattent contre la France et non contre la prière. Alors, de ce que nous sommes catholiques, ne nous accusez pas d’être traîtres à notre pays.*” “The French people who taught us this prayer were gone. They are French. We Malagasy Catholics, we do not cease to be Malagasy because we are Catholics. So what do you mean when you accused us as betrayers? The school business concerns president, but as far as prayers, I received permission from the Queen and the Prime Minister to protect the Catholics, when they are unjustly harassed. The Queen and the Prime Minister have nothing against prayers. They are fighting against France and not against prayers. Therefore, do not treat us as betrayers in our country because we are Catholics.”

The courage and zeal of the Catholic leaders, religious, and lay people kept the faith alive until the return of the missionaries. These latter were amazed to see how the church had grown during their absence. Nonetheless, more missionaries were needed to work throughout the country. Yet, because of the vastness of the island and the growth in the number of Catholics, the Congregation for the Propagation of the Faith decided to divide Madagascar into three new Vicariates. In January 1896, the Holy See issued a decree erecting the Apostolic Vicariate of the South of Madagascar, under the jurisdiction of the Congregation of the Mission.<sup>70</sup> The choice of these missionaries was not arbitrary. It was linked with their affiliation to this part of the island back in the seventeenth century when Saint Vincent de Paul, the Congregation's founder, sent the first Catholic missionaries to this region. The Central Vicariate Apostolic, which included the entire highlands, remained under the Jesuits' care. The erection of the Vicariate Apostolic of the North of Madagascar took longer because of the negotiations with those who were to take charge. Finally, in June 1898, the new jurisdiction was given to the Congregation of the Holy Spirit, who had already been ministering to the people there for a few years.<sup>71</sup>

That was the canonical division of the island by the end of the nineteenth century. In a word, the Church in Madagascar quickly developed during that century, and Catholicism became rooted in this country whose people already believed in the existence of one god. Obstacles such as disease, lack of means, antagonism between the local government and the French settlers, and competition among missionaries did not stop the

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<sup>70</sup>Cf. A. BOUDON, *Les jésuites à Madagascar*, vol. 2, 521.

<sup>71</sup> The newly erected vicariates apostolic of Madagascar were divided, not according to its regions and provinces, but according to the circles of latitude. The southern part was below the 22<sup>nd</sup> Parallel South, the central between the 22<sup>nd</sup> and the 18<sup>th</sup> parallel south, and the northern part was above the 18<sup>th</sup> south.

growth in numbers. From being part of the Apostolic Prefecture of Bourbon, it became three Apostolic Vicariates by the end of the century. It drew the attention of many missionaries, including the Jesuits, who will be the focus of the following section.

### ***1.3 – The Society of Jesus in Madagascar***

This section attempts to cover the history of the Society of Jesus in Madagascar. It will focus mainly on a brief history of the life of the Jesuits' founder, their mission, and their landing and development in Madagascar.

#### **1.3.1 – The Foundation of the Society of Jesus**

The founder of the Society of Jesus, Ignatius of Loyola, was born to a noble family in the Basque province of Guipúzcoa in northern Spain in 1491. Ignatius received the proper education for children of a noble family and had a strong loyalty to the Catholic faith. He was interested, however, in a military career and serving in the royal court as a Spanish gentleman and courtier. An injury during the battle of Pamplona in 1521 was a turning point in his life. During his convalescence, Ignatius read books containing the lives of the saints. One such book, *The Golden Legend* by Jacopo da Varazze, a Dominican, described the saints as the “knights of God.” Soon Ignatius' ambition as a knight took on a spiritual dimension.

Ignatius arrived at a fundamental and central idea: Christ is the King, the saints are his knights, and human souls are the battleground of a momentous conflict between God and Satan. Ignatius' admiration for the saints, especially in their heroic penance and

hard labor for Christ, grew into a firm resolve to do just as they had done.<sup>72</sup> This was a turning point in his life. The seed of the idea of “knights of God” was sown into his mind and started to take root. This idea would be important for the Society of Jesus, as well, when it would come into existence a few years later (1540). It has become one of the characteristics of the Jesuits in their mission as inherited from their founder. Often, because of that original motivation of Ignatius, people refer to the Jesuits as “God’s soldiers.”<sup>73</sup>

In March 1522, Ignatius abandoned his former life-style and embraced a new one. He gave away his belongings, including his sword, took a pilgrim’s rough cloth, and went on a long pilgrimage. He planned to stop for a few days in a small village called Manresa, but ended up staying there for almost a year. There he underwent profound spiritual experiences that changed his life. He came out of that village “another man,” he wrote his famous book, the *Spiritual Exercises*, and then continued his pilgrimage to the Holy Land where he wished to stay forever. Because of the tension between Christians and the Turks at that time, his wish could not be fulfilled. He had to head back to Spain.<sup>74</sup> There he decided to study for the priesthood in order to “help other souls to achieve their divine purpose.”<sup>75</sup>

From 1524 to 1528, Ignatius studied in Spain and then went to France. Slowly he met fellow students who had desires and goals similar to his. He formed a small group

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<sup>72</sup>W. BANGERT, *A History of the Society of Jesus*, Saint Louis, Missouri, The Institute of Jesuit Sources, 1972, 6 (= W. BANGERT, *A History*).

<sup>73</sup>Cf. J. WRIGHT, *God’s Soldiers: Adventure, Politics, Intrigue, and Power: A History of the Jesuits*, Pennsylvania, The Doubleday Publishing Group, 2005.

<sup>74</sup>Cf. W. BANGERT, *A History*, 7-11.

<sup>75</sup>*Ibid.*, 11.

and, after pronouncing vows of poverty, obedience and chastity, chose Jerusalem as the field of their mission. But in 1537, they had to abandon their hopes of heading to Jerusalem because of the situation in the Holy Land. Therefore, they went to Rome and placed themselves at the disposal of the Roman pontiff. In September 1540, they received papal approval as a religious order with the name of the Society of Jesus.<sup>76</sup> They spread throughout Europe first, and then beyond, for the salvation of souls. One of their first overseas missions was to the land of the Indies in the Far East. Francis Xavier, who was one of Ignatius' first companions, was sent there as early as 1541. In May of the following year, he landed in Goa, the capital of Portuguese India.<sup>77</sup>

### **1.3.2 – The Settlement of the Society of Jesus in Madagascar**

The Portuguese Jesuits from India initiated the mission to Madagascar. Begun by Xavier, the Far East mission had flourished and was able to send its own missionaries.<sup>78</sup> Madagascar was one of the preferred destinations of the Portuguese merchants based in India because the southern part of the island provided a place of supply for the merchants on their way to or from the eastern part of Africa.

The Society of Jesus took every available opportunity to send Jesuits to Madagascar to evangelize. In 1615, the Portuguese merchants kidnapped a teenage boy from Madagascar, brought him to Goa, and put him under the instruction of the Jesuits. Three years later, the Portuguese merchants, accompanied by some Jesuits, brought the boy back to his homeland and the Jesuits came with him to the island. Once

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<sup>76</sup>From the very beginning, the members of the Order have been popularly known as the Jesuits.

<sup>77</sup>Cf. *ibid.*, 29.

<sup>78</sup>Cf. *ibid.*, 237. In 1626, there were three hundred and twenty Jesuits in the Jesuit Province of Goa and one hundred and ninety in the Jesuit Province of Malabar.

settled on the island, they started to preach. The mission went well at the beginning, and they were able to baptize children and adults alike. The relationship between the Europeans and the local people, however, turned sour. As a result, the Portuguese merchants or missionaries had to leave the island, and one of the Jesuits was killed in the process.<sup>79</sup> The Society of Jesus abandoned the mission in Madagascar for more than a century. Only after the “Restoration” in 1814 did they plan to return to the island.<sup>80</sup>

The settlement of the Jesuits in Madagascar began mostly with a request from the Apostolic Prefect, Mgr Dalmond, to the superior general of the Jesuits in 1841. The latter accepted Dalmond’s request, and as a result of negotiations with the Jesuit Provinces of France, Madagascar became a mission of the Jesuit Province of Lyon.<sup>81</sup> While the mainland was closed to foreigners, the Jesuit missionaries started preaching from the small island of Nosybe to the north and the semi-desert area to the south. They used those places as gates to access the central part of the island. Once the relationship between the French and the Malagasy kingdom was re-established after the death of Queen Ranaivalona I in 1861, the Jesuit missionaries pitched their tents in the highlands. They grew in numbers, and even local Malagasy men joined their Order. The Province of Lyon continued to be in charge of the mission until the end of the nineteenth century.

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<sup>79</sup>Cf. LA VAISSIÈRE, *Histoire de Madagascar*, 4.

<sup>80</sup>In 1773, Pope Clement XIV signed *Dominus ac redemptor noster*, a brief decree suppressing the Society of Jesus. It was promulgated almost all over Europe, except in Prussia and White Russia, where the Empress Catherine the Great refused its execution in her empire, and in British dominions including colonial Canada. Pope Pius VII restored the Society of Jesus in 1814 with the bull *Sollicitudo omnium ecclesiarum*. See W. BANGERT, *A History*, 363-430; see also M. FOSS, *The Founding of the Jesuits*, London, Hamish Hamilton, 1969, 278-294.

<sup>81</sup>Cf. A. BOUDON, *Les jésuites à Madagascar*, vol. 1, 75, 83, 89. The Jesuit Province of Paris was supposed to be in charge of the mission in Madagascar. Paris, however, just took charge of the mission to Canada and China. The second option for the superior general, Jan Philipp Roothaan, was the province of Lyon, which was already in charge of a few other missions including Madurai. Discerning on those assignments delayed the coming of the missionaries, even if the individual Jesuits were for a long time ready for the mission.

In 1901, because the mission to Madagascar had become prominent, the Jesuit Provinces of Champagne and Toulouse took it over from the Province of Lyon. The Province of Champagne was in charge of the southern part of Madagascar, including Fianarantsoa and Ambositra, while the Province of Toulouse was in charge of the centre: Antananarivo. Not only did the Jesuits grow in numbers, but they also started to acquire lands and build churches and schools, a sign of their long-lasting establishment.

After the Second World War, other groups of Jesuits came to reinforce those who were already present in Madagascar. The largest groups were from the Provinces of Turin and Sicily, which respectively joined the Jesuits in Antananarivo and Fianarantsoa. Also, but in smaller numbers, some Jesuits came from Holland, Spain, Germany, Switzerland, Belgium, Poland, and Canada. That was to give a new face to the Jesuit mission in Madagascar, which had unfortunately seemed to be linked with the colonizers, the French people.

By 1957, after having been a dependent region for almost half a century, Madagascar had sufficient human and financial resources to become independent and so became a Vice Province (this move paralleled the political change in Madagascar around that time).<sup>82</sup> The provincial superior was still a missionary, Jean M. Costa. For the next fourteen years, the Jesuits in Madagascar prepared themselves to become autonomous in

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<sup>82</sup> Cf. V. THOMPSON, R. ADLOFF, *The Malagasy Republic: Madagascar Today*, California, Stanford University Press, 1965, 87-122. After being colonized by the French from 1896, Madagascar, the Malagasy people fought for its independence. In October 14, 1958, after a national referendum, Madagascar became an autonomous state within the French community. That was just a temporary situation. It was a transitional period from being a colony to a full independent country. Madagascar was declared independent on June 26, 1960.

administration and personnel. Then in 1971, Pedro Arrupe, the superior general at the time, erected the Jesuit Province of Madagascar; and Antoine de Padou Rahajarizafy was named the first Malagasy Jesuit provincial superior.

The Society of Jesus is one of the religious orders that brought Christianity to Madagascar. As a result of the relentless effort of the pioneers, Madagascar is now a Province, with thirty-eight canonically erected houses (cf. canon 609) spread throughout the island and two hundred and seventy members.<sup>83</sup> Apart from those who are still in formation, the members of the Society of Jesus continue the works of their predecessors and keep the spirit of their founder, Ignatius Loyola: to help other souls to achieve their divine purpose.

### **1.3.3 – The Jesuits’ Relationship with the Local Authority**

As we have seen, Christianity is not a native religion of the Malagasy people; European missionaries introduced it. To be able to accomplish their mission and reach the people, the missionaries needed to have a certain relationship with the local authority. The following section discusses that relationship, especially in the context of acquiring and owning temporal goods.

#### ***1.3.3.1 – During the Period of the Monarchy (1810 – 1896)***

Attempts to settle in Madagascar and to evangelize during the period of monarchy varied depending on the monarch. When Ranaivalona I was queen (1828–1861), all missionary ventures were in vain. She refused to have any agreement with foreigners, wanting to protect her people and her land from “invaders.”

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<sup>83</sup> Cf. COMPAGNIE DE JESUS, *Catalogue de la province de Madagascar*, Fianarantsoa, Imprimerie Saint Paul, 2014, 55.

The situation completely changed when King Radama II took power in 1861. Wanting foreign influences to shape his kingdom, he called back the missionaries—French (Catholic) and English (Protestant)—to instruct his people, to train his soldiers, and to reshape his palace. The Catholic missionaries, represented by the Jesuits, held favor with the king, and they took that opportunity to purchase properties for the sake of the mission. Being a foreigner, a missionary had no right to own land or a house. Nevertheless, because of his admiration for the Jesuits, the King not only allowed them to buy properties, but he also gave them some.

The privilege that the Catholic missionaries enjoyed under the reign of King Radama II ended with his death in 1863. The next and final three monarchs of Madagascar—queens Rasoherina, Ranavalona II, and Ranavalona III—were not against Christianity, but they were in favor of the English and, hence, the Protestants. This made the relationship between the Jesuits and the local authority always challenging. Even their ownership of the land given to them by the previous King, Radama II, was questioned because the officers had burnt the proof of ownership signed by Radama II himself.<sup>84</sup> To make matters worse, the political situation between the French and the Malagasy government did not facilitate the protection of the Jesuits' properties. "The hova (Malagasy) government visibly changed its attitude towards the French missionaries (the Jesuits) as soon as its weapons were against France."<sup>85</sup> Fortunately, the Jesuits had Garnier, the French commissary, to fight for their case when the tension was high and the

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<sup>84</sup> Cf. A. BOUDON, *Les jésuites à Madagascar*, vol. 2, 3.

<sup>85</sup> E. S. HOWE, *L'Europe et Madagascar*, Traduit de l'anglais par le Général Fillonneau, Paris, Berger-Levrault, 1936, 266. "*Le gouvernement hova modifia sensiblement son attitude envers les missionnaires français dès qu'il apparut que les armes n'étaient pas favorables à la France.*"

partiality towards the Protestants was so visible. He demanded total equality of treatment for all missionaries without any distinction.<sup>86</sup>

The second war between the French and the Malagasy (1894 – 1896) ended the kingship of the Merina.<sup>87</sup> Defeated, Madagascar became a French colony in 1896. Because Madagascar was now under French dominance, the relationship between the Jesuits and the local authority changed, sometimes for the worst.

### ***1.3.3.2 – During the Colonial Period (1896 – 1960)***

When the Malagasy kingdom was no more, with the French taking over Madagascar, Christianity in Madagascar took another form. The Malagasy saying, “*miova andriana miova sata*” (change of leaders, change of status), was widely applicable. The Malagasy people at that time wanted always to please their leaders so that they could receive all possible benefits from them. Because the French missionaries represented the Catholic Church, and the London Missionary Society, the Protestant Church, many Malagasy readily adopted Catholicism and even converted Protestant churches into Catholic places of worship.<sup>88</sup>

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<sup>86</sup> One of the interventions of Garnier against inequality of treatment among foreigners was noted by the missionaries: “*J’ai d’ailleurs protesté au sein de la conférence contre la partialité dont j’étais témoin de la part du gouvernement Malgache en faveur des Méthodistes, et j’ai réclamé pour nos missionnaires une complète égalité de traitement.*” A. BOUDON, *Les jésuites à Madagascar*, vol. 2, 50. “I also protested in the conference against partiality of the Malagasy government towards the Methodists in which I was a witness, and I claimed a total equality of treatment for our missionaries.”

<sup>87</sup> Merina and Hova are interchangeable. It was the tribe in the highland that dominated almost all the territories in Madagascar.

<sup>88</sup> Cf. B. HÜBSCH, “Dynamisme ecclésial et affrontement,” in B. HÜBSCH, *Madagascar et le christianisme*, 328.

Unlike the Malagasy government that favoured the Protestant Church during the period of the monarchy, the French governing colonialists wanted nothing to do with any church, including the Catholic Church. During the colonial period, France was extremely anti-clerical. Consequently, the relationship between the Jesuits and the local French authority was not easy, and even difficult at times.

The government of General Joseph Galienni, the first governor of Madagascar (1896 – 1905), forbade all subsidies to Catholic missionaries—subsidies which had been given for decades to the schools belonging to the Catholic Church. To provide for themselves and to extend their mission, therefore, the Catholic missionaries had to draw from their own funds.<sup>89</sup> Their lack of means forced them to use their church buildings as classrooms during weekdays.

Victor Augagneur, the second governor of Madagascar (1905 – 1910), used even more severe methods than his predecessor. Not only did he stop the construction of all new places of worship, but he also forbade the use of church buildings as classrooms.<sup>90</sup> Such actions created serious tension between the Jesuits and the French government. Nevertheless, the Catholic mission continued to grow in numbers, and the generosity of the Malagasy people helped the missionaries to build new schools, dispensaries, and small hospitals. Portions of land were offered to them, or bought at an affordable price, and the Christians themselves voluntarily helped with the construction.

The third governor, Albert Picquié (1910 – 1914), continued for a while his predecessor's policy until the decree of freedom of conscience and religion was

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<sup>89</sup>Cf. *ibid.*, 345.

<sup>90</sup>Cf. *ibid.*

promulgated in March 11, 1913. “The three principles on which the decree was founded are freedom of conscience and cult, laicity of the State and respect of the organization of each religion.”<sup>91</sup> This gave new life to the Catholic mission in Madagascar, although it did not change anything concerning the relationship between the local French colonizers and the Jesuit missionaries.

While the relationship with their fellow French citizens was worsening, the missionaries developed a close connection with the local people. They started to see a fledging and local Church because of the increased numbers joining the religious life and the priesthood. To form holy and competent clerics, not only did the Catholic missionaries build minor and major seminaries, but they also strengthened their philosophical and theological training. This would ensure the continuation of their mission and the endurance of the Catholic Church’s life in Madagascar. Although some Jesuits were ordained earlier, the first priestly ordination from one of the local seminaries was recorded as early as 1925.<sup>92</sup>

Not only did the Catholic missionaries focus on the formation of Malagasy clergy, but they also continued their mission to provide spiritual food and intellectual life to the Malagasy people. The missionaries were convinced that Christianity and civilization went hand in hand. Teaching the Malagasy people the Bible and introducing them to the Christian faith required teaching them also to read and write. A new approach in evangelizing was needed, however, and it involved sharing the daily life of the people, mastering their language, and understanding their customs, which they believed to be a

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<sup>91</sup>Ibid., 347.

<sup>92</sup>Cf. *ibid.*, 358.

guarantee of success.<sup>93</sup> The missionaries empowered the local people by giving them more freedom and the knowledge necessary to lead the local Christian community and to take over the role of the missionaries during their absences. Under diligent training from the missionaries, the local people chosen to be Catholic lay leaders excelled in rhetoric and leadership.

The French government did not approve of the Jesuits' efforts to empower the local people, and they became suspicious of the missionaries' intellectual activities. The Governor, along with the French administration, considered the Jesuit missionaries among those responsible for the changes in the Malagasy people's political behavior—indeed, political upsurges by the Malagasy against the French colonialists were spreading throughout the country; in effect, the Malagasy were fighting for the independence of Madagascar.<sup>94</sup> As a result, the relationship between the Jesuit missionaries and the French colonialists became almost non-existent.

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<sup>93</sup>Cf. *ibid.*, 351.

<sup>94</sup>B. HÜBSCH, "Dynamisme ecclésial et affrontement," in B. HÜBSCH, *Madagascar et le christianisme*, 363. The oppression from the colonizers and the realization of their weaknesses (especially after their loss in the first world war) awakened the spirit of nationalism in the heart of the Malagasy intellectuals. They started to gather, publicly or not, to reflect on the future of their country; they started to revalue the Malagasy culture, which was bashed as "savage, barbaric and uncivilized" by the French. Bernard Hübsch brings the reflection of many historians and sociologists in his analysis of the history of Madagascar: "*Aussi les ecclésiastiques ont-ils leur part de responsabilité dans l'émergence du nationalisme. L'ouverture intellectuelle offerte par les fameuses conférences d'Avaratr'Andohalo, la mise en honneur de la culture malgache à travers les revues confessionnelles, la renaissance, à l'initiative des missionnaires, des Fikambanan'ny Kristiana Tanora, les échanges entre jeunesse estudiantine et leurs directeurs spirituels, n'ont-ils pas favorisé l'éclosion de la VVS, société secrète regroupant une élite christianisée?*" "Likewise, the ecclesiastics too were partly responsible for the appearance of nationalism. Did not the intellectual awakening offered by the famous speeches of Avaratr'Andohalo, the honours shown to Malagasy culture in religious periodicals, the renaissance – upon the initiative of the missionaries – of Fikambanan'ny Kristiana Tanora, conversation between young students and their spiritual directors, all favour the development of VVS, a secret society grouping a Christian elite?"

### 1.3.3.3 – *After Regaining Independence in 1960*

Madagascar was declared an independent country on June 26, 1960, when the first Malagasy Republic came into being under President Philibert Tsiranana. The French government left the country, in theory. The Catholic missionaries wanted to hand the leadership of the Church over to the local priests whose numbers had grown quickly during a short period of time.<sup>95</sup> Victor Alphonse Marie Sartre, a French Jesuit missionary who had been appointed the first archbishop of Antananarivo in September 1955, “made known to the Pope [Pius XII], in December 1959, that he would voluntarily offer his resignation to promote a local clergy.”<sup>96</sup> He resigned in January 1960, and soon afterwards, on April 5, the first Malagasy archbishop, Jérôme Rakotomalala, was appointed. Handing over the leadership of the archdiocese to the diocesan clergy was a step forward for the Jesuits.<sup>97</sup>

With the change of government in Madagascar following independence, the relationship between the Jesuits and the local authority did not improve. The latter

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<sup>95</sup> Cf. *ibid.*, 403. While Catholics in Madagascar were about 5,000 in 1870, that number grew to 1,250,000 in 1960; among the 629 priests, 144 were Malagasy.

<sup>96</sup> Victor Sartre “*fait savoir au Pape [Pius XII], en décembre 1959, qu’il ‘offrirait volontiers sa démission pour promouvoir un prêtre du pays.’*” *Ibid.*, 386. A precedent was set for such a resignation by Thomas Roberts, an English Jesuit, who had been appointed archbishop of Bombay (Mumbai) in 1937. To Rome’s surprise, he resigned his archbishopric on December 5, 1950, in favor of local clergy. He then returned to England to spend his years in a Jesuit community.

<sup>97</sup> Considering themselves always as pioneers, the Jesuits in Madagascar would go to toil in new fields and try to establish the church in those areas. When the diocesan clergy are able to assume the responsibility of taking over the leadership, the Jesuits just move away. The case of the Archdiocese of Antananarivo is a typical example of that. After being the archbishop for five years, Victor Sartre resigned and Jérôme Rakotomalala was appointed. Rome, however, appointed another Jesuit after him, but such an appointment does not depend on the Jesuits. Their principle is clear: once the local clergy is mature enough to be in a position of leadership, the Jesuits hand it over to them. This is a noble practice on their part. Sometimes, however, it brings misunderstanding between the two entities, especially when it comes to the administration of temporal goods of the diocese, because of lack of documentation or ignorance of the law (civil and canon law).

continued to be suspicious of the Jesuits' activities, especially, because they continued to involve themselves in many social settings. Those who seemed to be a threat to the regime were deported. Jean de Puybaudet, a Jesuit priest who was one of the key leaders of the social movements of the Catholic Church in Madagascar,<sup>98</sup> was deported some eighteen months after Independence Day. The expatriation of another Jesuit missionary, Sylvain Urfer, occurred as recently as 2007. He was a pastor of a parish in one of the poorest areas of the capital city and was known for his involvement in the daily life of the poor and his continuous efforts to improve their lives. He was also famous for his criticism of those who perpetrated injustices or were guilty of corruption or mismanagement. The government of that time could no longer tolerate his presence in the country and issued a letter expelling him from Madagascar.<sup>99</sup>

The difficult relationship between the Jesuits and the local authority had an impact not only on Malagasy apostolates and missions, but also on the Jesuits' very existence in Madagascar. Many of their properties were confiscated by the state after independence. It became a continuous battle for the Jesuits to keep the remainder of their temporal goods, especially those they had acquired before independence. The change of regime in Madagascar to socialism in 1975 made the situation only worse.

#### ***1.4 – Land Ownership in Madagascar***

This section will focus especially on the categories of people in the Merina kingdom, how they relate to land ownership, and the impact of the Jesuits in their midst.

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\*Cf. B. HÜBSCH, *Madagascar et le christianisme*, 460.

\* Cf. N. RANDRIA, "Emoi chez les catholiques et la société civile: le Père Urfer expulsé," in *Madagascar Tribune*, 11 Mai 2007, <http://www.madagascar-tribune.com/Le-Pere-Urfer-expulse,072.html> (May 13, 2014).

### 1.4.1 – The Slaves and Their Struggles

The slaves, or “*andevo*,” were the lowest category of Malagasy people in the nineteenth century. Persons could fall into this category for various reasons. They could come directly from Africa through the slave trade—these slaves were called “*Masombika*” (from Mozambique) by the local people. Or they could be slaves from birth—if their parents were already slaves, they were born slaves. They could be people from different villages, clans, or tribes that were defeated during tribal wars, forced to leave their villages, and brought as captives to the conquerors’ kingdom. People could also be enslaved if they could not pay their debts or taxes or had a family member who was a convicted criminal or burglar.<sup>100</sup>

Slaves had no right to own property because they themselves belonged to their masters. Sometimes, they had the appearance of owning property when they remained in their villages after being enslaved, because their former belongings, now owned by their masters, remained with them. When the harvest time came, they had to give the fruits of their work to their slave masters. The latter, in turn, gave the slaves what they thought sufficient for a slave.

Seeing such hard conditions in which the slaves were living, the Jesuit missionaries tried to free them by buying them from their masters. This was the case for the Jesuit prefect of the Apostolic Prefecture of Madagascar, Jean Baptiste Cazet,

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<sup>100</sup>Cf. I. RAKOTO, “L’esclavage dans le royaume de Madagascar au XIXe siècle,” in I. RAKOTO, S. URFER (eds.), *Esclave et libération à Madagascar*, Paris, Edition Karthala, 2014, 25.

appointed in 1879. He opted to buy slaves and free them, and he even recorded the names and the price of those he bought.<sup>101</sup>

Although the nobles and the royal family were the first beneficiaries of the system of slavery, steps were already being taken during the reign of Queen Ranaivalona II to abolish slavery: “Realizing that the *Masombika* (slaves from Africa) were still being smuggled onto the big island with the complicity of some *Merina* officials working at the seaport, Ranaivalona II, by a royal edict in 1874, decided to immediately free all *Masombika* brought to Madagascar after the date of the treaty of 1865 with Victoria, Queen of England.”<sup>102</sup>

The French colonial government put an end to the system of slavery in Madagascar in 1896. Despite the legal abolition of slavery, the freed slaves remained with no land of their own to live on, so that they and their descendants remained dependent on their former masters and their descendants.

#### 1.4.2 – The Free People and Their Ascendancy

The second, or middle, category was the “*hova*” or the *hova* of lower caste. They came from two different castes of the Merina tribe—the “*Tsimahafotsy*” and the “*Tsimiamboholahy*”—and made up the majority of the population. Although not the reigning caste, they could, nevertheless, reach higher ranks in the government of the

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<sup>101</sup> Cf. *ibid.*, 89.

<sup>102</sup> *Ibid.*, 28. “*Constatant que des Masombika étaient toujours introduits par fraude dans la grande île, avec la complicité des fonctionnaires Merina résidant dans les ports, Ranaivalona II, par un édit royal de 1874, décida de libérer immédiatement tout Masombika introduit à Madagascar après la date du traité du 1865 avec la Reine d’Angleterre.*” “Having noticed that the *Masombika* were always fraudulently brought into the large island, with the complicity of the Merina public officials residing in the port towns, Ranaivalona II, by a royal edict of 1874, decided to free immediately any *Masombika* who was brought to Madagascar after 1865, the year of the treaty with the Queen of England.”

*Merina* kingdom. The Prime Minister and many officers in the queen's palace were from these two castes.<sup>103</sup>

The *hova* mostly lived from the land they owned or leased. They were also assigned to serve the upper category, the “*andriana*” (discussed below), and the entire kingdom as soldiers or courtiers. They were in charge of local trades only and not foreign ones because the latter required skills and money, which the *hova* did not have. Because of the expansion of their businesses, however, they started to dominate even in international trades and began to acquire and own more properties than some “*andriana*.” Since trade was theirs, the missionaries had to deal with them whenever they wanted—and were allowed—to buy, acquire, and own property.

#### **1.4.3 – The Nobles and Their Domination**

The third category, “*andriana*,” was the highest category in the Malagasy society during the *Merina* domination. They belonged to the “*hova*” of higher caste, such as the descendants of Ralambo and Andriamasinavalona (the two kings that began the *Merina* tribe). The kings and queens of Madagascar and their families belonged to this category and thus occupied the highest ranks in the army and became commanders, not because they were always the best, but because the royal family trusted them more.<sup>104</sup> The nobles also owned most of the properties in the kingdom, either by inheritance or by trade.

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<sup>103</sup> Cf. C. LA VAISSIÈRE, *Vingt ans à Madagascar: colonisation, traditions historiques, mœurs et croyances*, Paris, Librairie Victor Lecoffre, 1885, 176.

<sup>104</sup> Cf. *ibid.*

The Jesuit missionaries had to deal with members of this category, especially concerning the right to own property, the permission to build churches, schools, and hospitals, and any other investment they planned within the kingdom. The Jesuits' relationship with the nobles, and especially with the officers, was not always smooth because they saw the missionaries as thieves and threats. From the nobles' perspective, the lands belonged to their ancestors, and any foreigner (that is, anyone who is not a descendant of the ancestors) who claimed a land ownership was a thief. Consequently, the nobles always questioned the right of ownership of the Jesuits.

#### **1.4.4 – The Missionaries and Their Expansion**

From being a relatively unknown island to being an important crossroad for trade for the Europeans by the late sixteenth century, Madagascar began to attract the attention of missionaries. Among these missionaries, the Jesuits put considerable effort into establishing Catholicism in Madagascar. Their early attempts failed. Centuries passed before they were able to continue what they had begun. Their second attempt, in the nineteenth century (after the Jesuits' restoration), was successful to the extent that they had to call for help from other religious congregations. Together, all the missionaries formed a new category of people in the Malagasy society.

The missionaries' settlement was at times welcomed, but many times, refused or suspected. The question of ownership of properties was among the main reasons they were not always accepted in the Malagasy society.

Thanks to the hard work of Catholic missionaries to promote vocations, especially in the case of the Jesuits, the number of indigenous Jesuits increased. This created a new beginning for the Catholic mission in Madagascar because, as with any free people, there

were no obstacles to their right of ownership. This problem of ownership, however, remained for the Malagasy Jesuits because many of their temporal goods had been inherited from the Jesuit missionaries before independence.

Descendants of noble families claimed ownership of some of the Jesuits' property. As well, people who had had an agreement with the Jesuit missionaries to toil their land also claimed to be the owners. Later, the socialist/communist regime adopted by Didier Ratsiraka, the president during the Second Republic (1975 – 1992), confiscated some of the Jesuits' land titles. This regime considered some of the properties of the Society of Jesus in Madagascar as having belonged to the earlier French missionaries, and thus to the French colony. Therefore, these properties belonged to the government.

### ***Conclusion***

A thorough analysis of the problem the Jesuits in Madagascar are facing in terms of administering their temporal goods must begin with an overview of the history of Christianity in Madagascar, because therein lies the source of the problem.

The emphasis is on the properties owned, acquired, and registered in the name of the Society of Jesus in Madagascar because they are the dominant part of stable patrimony. When the Jesuits first came to the island in the sixteenth century, being foreigners, they had no right to own land, which had belonged to the ancestors and, afterwards, to those in the third category of people within Malagasy society—members of the royal family and the nobles (“*andriana*”).

The ancestors played, and still play, a large cultural role as intermediaries between god the creator and humans in Malagasy society. The Malagasy believe that the

ancestors can intervene on their behalf, that the ancestors are able to bring the blessings of the creator to those who follow the rules and regulations of the community. The ancestors can also, however, invoke god's wrath on those who ruin harmony and peace within that community.

The Jesuits, among many other Catholic missionaries, easily introduced Christianity into that cultural frame of mind of the Malagasy people. To them, God the Father of Christianity and the creator god of the traditional belief of the Malagasy are the same god; saints and ancestors have the same role and are owed the same respect. Although these similarities facilitated the reception of the Christian faith, the Malagasy did not give up their committed beliefs about the wrath of the ancestors and other taboos. For example, selling a portion of land is taboo and can trigger the anger of the ancestors; it would be even worse if the land were to be sold to a foreigner. That was one of the reasons the missionaries had such difficulty finding any properties to buy.

All missionaries had similar intentions when they came to Madagascar, that is, to evangelize the Malagasy people. Nevertheless, there was continuous competition amongst them, especially when it came to their relationship with the local authority. The political situation in Madagascar often made it difficult for the missionaries to establish themselves. During the period of the monarchy (1810 -1896), only one king, Radama II, was in favor of having the Catholic missionaries in his kingdom. During the subsequent period of colonization (1896 - 1960), secularism in France tremendously impacted Madagascar. As a result, the French Jesuits received little or no benefit from their fellow compatriots or from the French colonial government. After independence in 1960, the first Malagasy government kept the state secular, and the Second Republic added

Marxism to their way of governing the country. These regimes did not allow the Jesuits to work freely in their missions. Not only did they prevent the Jesuits from doing so, but they also confiscated some of their temporal goods, threatening the very existence of the Society of Jesus in Madagascar. The Jesuits had to struggle to maintain the remainder of their temporal goods.

The following chapter will examine the canonical norms on temporal goods of religious institutes, as they will eventually be applied more particularly to the Jesuits.

**CHAPTER TWO**

**THE UNIVERSAL LAW RELATING TO THE ACQUISITION,  
ADMINISTRATION, AND ALIENATION OF TEMPORAL GOODS IN  
RELIGIOUS INSTITUTES**

*Introduction*

In the previous chapter, we saw how Christianity arrived in Madagascar and how the first missionaries, especially the Jesuits, met with the local people. We noted some of the difficulties they encountered in their settlement, especially in regard to their access to ownership of properties.

In order to understand the issues that the Jesuits are now facing in Madagascar as they try to apply the proper law of the Society relating to temporal goods, it would be important to review the current canonical legislation that is applicable to religious institutes. Although there have been quite a number of works written on temporal goods in general,<sup>105</sup> little has been written on two recent Vatican documents specifically addressed to religious institutes.<sup>106</sup> It would be important to review these texts in order to

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<sup>105</sup> See J.A. RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, New York, Society of Saint Paul/Alba House, 2009 (=J.A. RENKEN, *Church Property*); R.T. KENNEDY, “Book V: Temporal Goods of the Church,” in J.P. BEAL, J.A. CORIDEN, and T.J. GREEN (eds.), *New Commentary on the Code of Canon Law*, Commissioned by CLSA, Bangalore, Theological Publications in India, 2004 (= J.P. BEAL, *CLSAComm2*); and P. KALETA, *Ecclesiastical Patrimonial Law*, Manchester, Catholic Printing Company of Farnworth, 2015.

<sup>106</sup> See, for instance, F.G. MORRISEY, “Vatican Guidelines for the Administration of the Temporal Goods of Religious Institutes”, in S. DUBIEL and P. KALETA (eds.), *The Temporal Goods of the Church. Selected Issues*, Lublin, KUL, 2016, 185-207.

have a full understanding of the Church's current expectations in relation to the acquisition and retention, the administration, and the alienation of temporal goods.

The first document, dated August 2, 2014, is entitled: *Guidelines for the Administration of the Assets in Institutes of Consecrated Life and Societies of Apostolic Life*.<sup>107</sup> The second, issued by the same dicastery, *Economy at the Service of the Charism and Mission. Boni dispensatores multiformis gratias Dei. Guidelines*, is dated January 6, 2018.<sup>108</sup> In addition, since the promulgation of the 1983 Code of Canon Law, the Holy See has sanctioned the establishment of a number of Ministerial Juridic Persons (=MJPs) to carry on the apostolates originally sponsored by religious institutes. Issues relating to the proper financial administration of the temporal goods administered by these MJPs have also shed new light on the application of the current canons.<sup>109</sup>

Although they do not change the text of the canons, both of these publications change somewhat the emphasis placed on temporal goods, because these are now seen in relation to the charism and the mission of the institute, and are not taken on their own. They have a special relation to the poverty which is proper to each institute:

Consecrated persons, incarnating the poverty of Christ in history and drawing inspiration from the life of the first communities, are called to make their own the urgency of

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<sup>107</sup> CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, *Guidelines for the Administration of the Assets in Institutes of Consecrated Life and Societies of Apostolic Life*. Vatican City, Libreria editrice Vaticana, 2014, 23p (= CICLSAL, *Guidelines*)

<sup>108</sup> CONGREGATION FOR INSTITUTES OF CONSECRATED LIFE AND SOCIETIES OF APOSTOLIC LIFE, *Economy at the Service of the Charism and Mission. Boni dispensatores multiformis gratias Dei. Guidelines*, Vatican City, Libreria editrice Vaticana, 2018, 136p (= CICLSAL, *Economy*).

<sup>109</sup> See P. MARTIN and F.G. MORRISEY, *Temporal Goods at the Service of the Mission of Ministerial Juridic Persons*, Washington, DC, Catholic Health Association of the USA, 2017, 112p. See also S. HOLLAND and F.G. MORRISEY, "Ministerial Juridic Persons and Their Communion with Diocesan Bishops", in C. BOUCHARD (ed.), *Incarnate Grace*, Saint Louis, MO, Catholic Health Association of the USA, 2017, 222-228; J. HITE, (et al.), *A Guide to Understanding Public Juridic Persons*, Washington, DC, Catholic Health Association of the United States, 2012, 97.

*koinonía*. It is the choice to follow the poor Christ which leads to choosing on behalf of the poor.<sup>110</sup>

This new emphasis on the relationship between charism, mission, and temporal goods, found its impetus in a message of Pope Francis, March 8, 2014, to the participants in the international symposium on the management of ecclesiastical goods, held at the Pontifical Antonianum University, March 8-9 of that year.<sup>111</sup>

In his message, the Pope outlined a number of general principles and ideals to be kept in mind when dealing with the management of temporal goods belonging to Church entities. He notes:

Institutes of Consecrated Life and Societies of Apostolic Life can and must be active protagonists in living and testifying that the principle of gratuitousness and the logic of gift find their place in economic activity. The founding charism of each Institute is fully inscribed in this “logic” of being gift; as consecrated people, you can make a true contribution to economic, social and political development. Fidelity to the founding charism and to the subsequent spiritual heritage, together with the finality proper to each Institute, remain the first criterion for evaluating the administration, management and all of the work carried out in the Institutes at every level.

We can note the relationship he draws between the founding charism of an institute and the proper administration and management of its assets. In other words, assets are for the mission.

The Pope continues his message with another set of principles:

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<sup>110</sup> CICLSAL, *Economy*, no. 10; see also CICLSAL, *Guidelines*, no. 1.1. For more background on the biblical and ecclesiological perspectives underlying the administration of temporal goods in religious institutes, see J.R. CARBALLO, “L’amministrazione e la gestione dei beni ecclesiastici degli IVC e SVA. Linee bibliche ed ecclesiologicalhe” in *Sequela Christi*, 40 (2014), 89-103, especially 92-94 on the sense of religious poverty.

<sup>111</sup> FRANCIS, Message to the participants at the International Symposium – Management of ecclesial goods of Institutes of Consecrated Life and Societies of Apostolic Life at the service of humanity and the mission of the Church”, Rome, March 8, 2014, [www.vatican.va/content/francesco/it/messages](http://www.vatican.va/content/francesco/it/messages) (May 10, 2018).

Attentive vigilance is needed in order to ensure that the goods of the Institutes are administered with prudence and transparency, that they are protected and preserved, combining the primary charismatic-spiritual dimension with the economic dimension and with efficiency, which has its own *humus* in the administrative tradition of the Institutes which does not tolerate waste and which is attentive to using resources properly.

The two Vatican documents we have just mentioned use this message as their starting point. *Economy* urges “institutes of consecrated life and societies of apostolic life, at all levels, from superiors to members, to rethink the economic reality in a manner faithful to each charism so as to be ‘for the Church and for the world, the outposts of care for all of the poor and for all material, moral, and spiritual poverty....’”<sup>112</sup> And, the *Guidelines* note that fidelity to the founding charism and to the subsequent spiritual heritage of each institute, and to the demands of the Gospel, is the first criterion whereby decisions and actions that take place at any level – local, provincial, congregational – are evaluated, because the nature of the charism directs energies, sustains fidelity, and guides the apostolic work of all towards the one mission.<sup>113</sup>

In other words, charism cannot be understood except in relation to mission, since the mission is a privileged expression of the charism itself, and serves as a means of evaluating new works and undertakings.

This leads us to an examination of the current legislation, but as interpreted in the light of these more recent statements.

### ***2.1 – Some Particular Terms***

Before entering deeper into the analysis of the canons relating to temporal goods and studying their relevance today, it would be good to clarify a few technical terms.

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<sup>112</sup> CICLSAL, *Economy*, no. 4.

<sup>113</sup> See CICLSAL, *Guidelines*, no. 1.1.

For instance, the term “temporal goods” or “goods” designates material properties in general, while the term “ecclesiastical goods”<sup>114</sup> applies to the properties of the Church, the Apostolic See and all public juridic persons who act in the name of the Church; these entities can own “ecclesiastical goods.” Private juridic persons, private associations of the Christian faithful, and physical persons cannot own ecclesiastical goods.

Another term to be considered is “stable patrimony.” Stable patrimony is “immovable and movable goods which, by legitimate designation or competent authority through an act of extraordinary administration, form the secure basis of a juridic person so that it can perform its works.”<sup>115</sup> When it comes to religious institutes, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life insists that every institute should “take the appropriate steps to inventory the assets ascribed to the stable patrimony, and where necessary, add items that should be included in the inventory [...] and this provision must appear in the fundamental code or in another normative document of proper law.”<sup>116</sup> Since stable patrimony guarantees the very existence of an institute, the Congregation went further to give the following text as a basis to make sure that its content will be included in an institute’s proper law.

The stable patrimony consists of all the immovable and movable property that by means of a specific assignment are destined to guarantee the economic security of the institute. For the goods of the entire institute, the General chapter or the General Superior with the consent of his/her Council makes this assignment. For the assets of a province, as well as for the assets of a legitimate established house, the Provincial Chapter or other similar assemblies (cf. can. 632) or the Provincial Superior with the consent of his/her Council and confirmed by the Superior General makes this assignment.<sup>117</sup>

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<sup>114</sup> For a brief commentary on this term, see E. McDONOUGH, “Bona ecclesiastica,” in *Review for Religious*, 66 (2007), 95-100.

<sup>115</sup> J.A. RENKEN, *Church Property*, 23.

<sup>116</sup> CICLSAL, *Economy*, no. 38.

<sup>117</sup> Ibid.

Another definition of stable patrimony is “all property, real or personal, movable or immovable, tangible or intangible, that either of its nature or by explicit designation, is to remain in the possession of its owner for a long or indefinite of period of time to afford financial security of the future.”<sup>118</sup> According to this definition, stable patrimony is a guarantee of the future existence of a juridic person.<sup>119</sup>

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<sup>118</sup> R.T. KENNEDY, “*The Administration of Goods*,” in J.P. BEAL, *New Commentary*, 1495.

<sup>119</sup> It is interesting to note that the recent CICLSAL Instruction, *Cor orans*, April 1, 2018, addresses the issue of the stability of a new monastery of contemplatives. One of the required conditions is: Art. 39, “d) Economic conditions that guarantee the community itself can provide for the needs of daily life.” This requirement is spelled out in detail in subsequent numbers:

“41 The erection of a monastery of nuns cannot proceed if prudence does not indicate it can adequately provide for the needs of the community and there is no certainty in regard to the stability of the monastery.”

“46 The autonomous monastery has the capacity to acquire, possess, administer, and dispose of temporal goods, in accordance with the universal and proper law.”

“47 The assets of the autonomous monastery are administered by a nun of solemn vows, with the office of Financial Administrator, constituted according to the proper law and distinct from the Major Superior of the monastery.”

“48 The community of the monastery considers the goods in its possession as gifts received from God through benefactors and the work of the community, as a necessary and useful means to achieve the proper ends of the Institute to which they belong, always respecting the requirements of the profession of the evangelical counsel of poverty by public vow.”

“49. Extraordinary administrative acts are those that exceed the usual needs for the maintenance and work of the community and for the normal maintenance of the buildings of the monastery.”

“50. Within the ordinary administration, the Major Superior and the Financial Administrator of the monastery carry out valid administrative acts within the confines of their roles.”

“51. For expenses and acts of extraordinary administration, the authorization of the Council of the monastery and of the conventual Chapter is necessary according to the value of the sum, to be determined by the proper law.”

“52. In derogation from can. 638, §4 CJC, for the validity of the alienation and of any other transaction by which the patrimonial situation of the monastery could be damaged, the written permission of the Major Superior is required with the consent of the Council or of the conventual Chapter, depending on the value of the sale and the transaction, and the opinion of the Federal President.”

“53. If it deals with a transaction or sale whose value exceeds the sum set by the Holy See for the individual regions or of votive donations made to the Church or of precious items of historical and artistic value, the permission of the Holy See is also required.”

To give more precision to juridic persons establishing their stable patrimony, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life states as follows:

In general, the following assets are considered elements of the stable patrimony: the foundation endowment of the entity, donor-restricted gifts received by the entity itself, and the assets so designated by the governing body of the entity. In order for an asset to be considered a part of the stable patrimony of a juridic person a “legitimate designation” is required.<sup>120</sup>

Non-stable patrimony is “immovable and movable goods which are not legitimately designated as stable patrimony.”<sup>121</sup> The main difference between stable patrimony and non-stable patrimony is that the former have been legitimately designated as such by the competent ecclesiastical authority. It is possible to find two buildings side by side, one listed as stable patrimony, the other not.

And the last term to be introduced is “person,” which will be used frequently. There are three kinds of persons mentioned in canon law: moral persons, physical persons, and juridic persons.

A moral person is a “group or succession of natural persons who are united by a common purpose, and hence who have a particular relationship, which may be conceived of as a single entity.”<sup>122</sup> Understanding of a moral person will be useful when it comes to speaking of the Church’s innate right to own property. The universal Church and the Apostolic See (Holy See) have in law the character of moral persons.

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<sup>120</sup> CICLSAL, *Guidelines*, referenced in P. A. MARTIN and F.G. MORRISEY, *Temporal Goods at the Service of the Mission of Ministerial Juridic Persons*, 107.

<sup>121</sup> J.A. RENKEN, *Church Property*, 23.

<sup>122</sup> R.T. KENNEDY, “Juridic Persons,” in J.P. BEAL, *CLSAComm2*, 154.

A physical person is a natural person. In the Church, physical personality is acquired through baptism.

A juridic person is an aggregate of persons or an aggregate of things that comes into being in the Church by a positive act of a competent ecclesiastical authority. It is an “artificial person, distinct from all natural persons or material goods, constituted by competent ecclesiastical authority for an apostolic purpose [...] with canonical rights and duties.”<sup>123</sup> It can be either public or private. Once erected, it is perpetual.

## ***2.2 – Universal Law on Acquisition of Goods***

Although the canons concerning temporal goods for religious institutes are gathered in Book II, “People of God,” references from time to time to the canons in Book V, “Temporal Goods of the Church,” are necessary to emphasize the connections and the inseparability of the section on temporal goods in Book II and the entire Book V. This also shows the inseparability of all religious institutes from the Church itself.

### **2.2.1 – The Right to Acquire Goods**

A society of human beings, just as every human being, needs certain material means to achieve the purpose(s) of its establishment. Although the needs exist for every human being, they may differ from one person to another, depending on situations such as age, gender, geographic location, and so on. A society probably has a greater need than would have an individual human person, since by definition, a society is a group of human beings that come together for a specific purpose. The greater the number of

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<sup>123</sup> Ibid., 155.

members, the greater the need. Therefore, owning or having access to temporal goods is a necessity for the very existence of a society.

The Church, being a universal society, has the right to acquire temporal goods. The first canon in Book V states that “to pursue its proper purposes, the Catholic Church, by innate right is able to acquire, retain, administer, and alienate temporal goods, independently from civil power.”<sup>124</sup> Because of the very natural right to acquire material goods, the Church declares its independence from any civil authority to exercise that right. Also, the Catholic Church, by divine law, has the character of a moral person, which means it does not need any intervention from an outside party to exist,<sup>125</sup> and thus, no authority should prevent it from exercising its right. However, we have to keep in mind the fact that not all governments accept this principle.

Canon 1254 is a repetition of canon 1495 §1 of the 1917 Code, reinforced by the documents of the Second Vatican Council. The Dogmatic Constitution on the Church *Lumen gentium* affirms that the Church, “constituted and organized in the world as a society, subsists in the Catholic Church [...] governed by the successor of Peter and the Bishops in communion with him.”<sup>126</sup> This society, continues *Dignitatis humanae*, “claims freedom for herself in her character as spiritual authority, [and] in her character as a society of persons who have the right to live in society in accordance with the precepts of the Christian faith [...] and who possess the civil right not to be hindered in leading their

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<sup>124</sup> *CIC*, c. 1254. See also Y. SUGAWARA, “Beni ecclesiastici e loro finalità nel CIC,” in *Sequela Christi*, 40 (2014), 104-113, especially 109-110.

<sup>125</sup> *CIC*, c. 113 § 1: “The Catholic Church and the Apostolic See have the character of a moral person by divine ordinance itself.”

<sup>126</sup> W.M. ABBOTT (gen. ed.), *The Documents of Vatican II: Lumen Gentium*, New York, America Press, Association Press, 1966, 23 (=W. M. ABBOTT, *Vatican II*).

lives in accordance with their consciences.”<sup>127</sup> Therefore, the Church holds firmly to the proposition that it has the right to acquire property for the purposes of its existence.

### 2.2.2 – Sources of Income

Canon 1259 states that “the Church can acquire temporal goods by every just means of natural or positive law permitted to others.” This canon claims the equality of the Church with any other secular society concerning its sources of income. There are many ways of acquiring temporal goods based on natural law:

Occupancy – the taking of something which has no owner with the intention of making it one’s own; accession – the acquisition of ownership by gaining something produced by what one already owns; contract – the transfer of ownership by consent between two or more persons who are naturally capable to make the transfer; testament – the disposition of one’s goods at the moment of death; labor – the acquiring of ownership of a good in return for work rendered to one who heretofore owns that good.<sup>128</sup>

Those methods of acquiring goods can be applied to the Church.<sup>129</sup> To be able to achieve its goal and to pursue its mission, the Church also needs continuous and/or regular sources of income. The Code of Canon Law presents several sources of income for the Church, from the support of its members to the donations that it may receive from outside.

Although many of these methods do not apply directly to religious institutes, they provide good background information for the proper financial management of goods belonging to these institutes.

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<sup>127</sup> Ibid., 694.

<sup>128</sup> J.A. RENKEN, *Church Property*, 64.

<sup>129</sup> Pawel Kaleta did an extensive study in his book *Ecclesiastical Patrimonial Law* on the ways ecclesiastical goods can be acquired. There, he described nine major ways juridic persons can acquire goods: voluntary offerings, such as collections and donations, offerings in response to appeals, pious foundations, various fees, diocesan tax (for a diocese), prescription, income from reorganized benefices, contributions to the Apostolic see and income derived from one’s own goods such as leasing goods and commercial activities. P. KALETA, *Ecclesiastical Patrimonial Law*, 55-108.

*Support from the faithful.* One of the first sources of income of the Church is the support of the faithful.<sup>130</sup> One of the responsibilities of the Christian faithful is to support the society to which they belong. This is not simply a recommendation for the faithful, because canon 222 § 1 “expresses the duty incumbent upon the Christian faithful ‘to assist with the needs of the church’ more specifically to ensure the Church can continue its divine mission through divine worship, the apostolate, charitable works, and the decent support of the Church’s ministers.”<sup>131</sup> This is a way for the Christian faithful to participate actively in the mission of the Church and to show their communion with it.

Communion with the Church “refers to two dimensions of an individual’s life: the internal, personal response to the divine invitation to enter into a relationship with God and the external expression of that personal response within the community of faith through reception of baptism.”<sup>132</sup> The participation of the Christian faithful in assisting to meet the needs of the Church is not only a way to help this society fulfill its mission and attain its purpose, but it also has a spiritual dimension, which expresses the relationship existing between the individual and God.

Being a member of a society includes some rights and has certain obligations as a consequence. To support the Church in its (material) needs is an obligation of the Christian faithful, since they enjoy many (spiritual) benefits from it.

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<sup>130</sup> For practical applications of this principle, see J.N. PERRY, “Support for the Church”, in K.E. MCKENNA, L.A. DINARDO, J.W. POKUSA, *Church Finance Handbook*, Washington, D.C, CLSA, 1999, 63-76 (= MCKENNA, *Church Financial Handbook*).

<sup>131</sup> R. J. KASLYN, “*The Christian Faithful*,” in J.P. BEAL, *CLSAComm2*, 282.

<sup>132</sup> *Ibid.*, 259.

*Fundraising.* Although assisting to meet the ordinary needs of the Church through regular donations and offerings is an obligation of the Christian faithful, they are also asked to respond to special requests and appeals, according to the situation of the church, both locally and universally.

Local needs could be greater and would not be covered by the normal ordinary support from the faithful, such as extraordinary renovations, response to natural disasters, and so forth. Contributions of the faithful through fundraising with the amount of their choice could be a way to assist the Church in addressing these special needs.

The specific reason for fundraising and the length of time it will take must be announced and respected. All funds collected from fundraising events should be used for that specific purpose and not for any other one, even if the funds gathered were more than what was expected. The intention of the donors must always be respected and observed.

That contribution could be also a way for the Church to manifest its universality and unity when it responds to an international appeal to help some churches facing difficult situations, such as in country where war and violence are happening, famine or any other (natural) disasters occur. This method of assisting the Church, however, is to be carried out in observance of the norms issued by the conference of bishops.

Fundraising is therefore called for a defined purpose and not “to fund undefined future needs or total financial security as contrary to the Gospel mandate to live by faith and trust in God.”<sup>133</sup>

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<sup>133</sup> R.T. KENNEDY, “*The Administration of Goods*,” in J.P. BEAL, *CLSAComm2*, 1462.

Although it does not refer explicitly to religious institutes when it comes to fundraising, canon 1265 has norms on physical persons (such as individual religious) questing for funds and the permission to be obtained beforehand.

*Taxation.* Canon 1263 on taxation does not apply directly to religious institutes, but its principles are helpful in understanding the various canonical mechanisms in play in such circumstances. Imposition of taxes could be a source of income for a particular church. According to canon 1263, “the diocesan bishop has the right to impose a moderate tax for the need of the diocese upon public juridic persons subject to his governance.” Pontifical religious institutes, such as the Jesuits, would not be subject to the ordinary diocesan tax because they are not subject in this matter to the governance of the diocesan bishop.<sup>134</sup> The same canon states that he is also permitted to impose “an extraordinary and moderate exaction upon other physical and juridic persons only in case of grave necessity and under the same conditions.”

Although the imposition of taxes could be a source of income for the diocese, this canon gave rise to many debates and criticisms during the drafting process. In the first draft, the term “good of the diocese” (*bonum dioecesis*) was considered to be too vague, and the term “persons subject to his governance” was not clear. And then there was no clear distinction between ordinary and extraordinary taxes.<sup>135</sup> Concerning the persons subject to such taxes, when “the Pontifical Council for the Interpretation of Legislative

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<sup>134</sup> See *CIC*, c. 593: “Without prejudice to the prescript of can. 586, institutes of pontifical right are immediately and exclusively subject to the power of the Apostolic See in regards to internal governance and discipline.” See R.L. KEALY, “Taxation, Assessments and Extraordinary Collections”, in MCKENNA, *Church Financial Handbook*, 77-90.

<sup>135</sup> Cf. *Communicationes*, 12 (1980), 401-403.

Texts was asked if ... the words ‘public juridic persons subject to his authority’ include external schools of religious of pontifical right, the Council replied in the negative.”<sup>136</sup>

The canon gives the diocesan bishop the right to impose taxes, but not an obligation. If the juridic person receives donations with designated intentions, these cannot be taxed, but if there is no specific intention accompanying the donations, they would be subject to taxes because they become sources of income for the juridic person who receives them.

Extraordinary taxes imposed on physical persons are for special needs and are to be imposed only when there is urgent necessity. The reasons for the imposition of an extraordinary tax have to be of grave necessity, and it cannot become a habitual way for the diocese to receive more income. Like the ordinary taxes, extraordinary ones should be also moderate so that they will not harm those who are taxed. Therefore, extraordinary taxes cannot be considered as a regular source of income. Religious can be subject to the extraordinary tax.

*Fees and offerings.* Canon 1264 would apply to clerical religious institutes in a diocese, but normally it would not be applicable to communities of sisters or brothers. Like any other society, the Church also provides services to its members. Among these are acts of executive power, which could be subject to fees and which could become an additional source of income for the Church. As sources of income, fees are subject to regulations and rules, and if they are not already prescribed in the law, canon 1264 states that “it is for a meeting of the bishops of a province to fix the fees.”

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<sup>136</sup>Cf. *AAS*, 81 (1989), 991, cited in J.P. BEAL, *CLSAComm2*, 1464.

It is for the meeting of the bishops of a province to define the offering to be made on the occasion of the administration of sacraments and sacramentals. Among these fees are sacramental offerings or “stole fees” given to the ministers when administering sacraments or sacramentals. To avoid abuses, the provincial council or a meeting of the bishops of the province is required to establish the maximum limit on the offerings. Religious priests are to follow the diocesan norms in relation to fees to be collected.

Another type of offering is the mass offering or “stipend.”<sup>137</sup> It is given to the priest to celebrate a mass. In all of those offerings, however, “the minister is to seek nothing ... beyond the offerings defined by the competent authority,” as stated in canon 848.

*Begging for alms.* Begging for alms is one of the means of obtaining money, especially in certain religious institutes, and thus, can be considered as a source of income as well.<sup>138</sup> Although it was among the most practiced methods of asking for support in the past, the Church nowadays uses it less and less as a primary source of income. This is due to its consequence because, instead of bringing in support for the Church in its mission, it sometimes raises more suspicions.

Begging for alms is asking for money or for other goods from one physical person to another. In begging, there must be that one-to-one encounter between the one who begs and the one who is receiving the request. When that one-on-one dimension is

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<sup>137</sup> Cf. *CIC*, c. 952, §1.

<sup>138</sup> *CIC*, c. 1265 § 1: “Without prejudice to the right of religious mendicants, any private person, whether physical or juridic, is forbidden to beg for alms for any pious or ecclesiastical institute or purpose without the written permission of that person’s own ordinary and of the local ordinary.”

missing, then it is no longer begging. Begging requires written permission from the person's ordinary and of the local ordinary. Mendicant religious still practice this method as a source of income. Some other religious congregations, even if they are not mendicants, practice begging on specific periods. Jesuit novices in some countries, for instance, during their pilgrimage experiments, are asked to beg for food on their trip.

Since it is not a very reliable method of receiving support, it is more and more replaced with different ways of asking for help or assistance. One of the most practiced methods in churches today is asking for money through envelopes. The churches used to place envelopes throughout the building, with signs on them, asking the faithful for money, to support the needs of the church.

This method (envelope) is different from special collections or fundraising. A special collection happens during the celebration of the Eucharist, and is for a specific purpose, announced by a church official, either at the beginning of the mass or before the collection itself. Fundraising happens outside the mass, but could be announced during mass. It is also for specific purposes, and all the money so gathered will be versed for those purposes. Envelopes for support of the church do not have specific reasons and may be collected anytime, either during mass or outside it. Usually, this is not announced, but the members know that these specific envelopes are for supporting the ordinary needs of the church.

*Special collections.* The Church permits the local ordinary to order special collections in churches and oratories, which are habitually open to the Christian faithful. These special collections can be for specific parochial, diocesan, national, or universal projects, and the revenue generated must diligently be sent afterwards to the diocesan

curia.<sup>139</sup> In many places, especially in poor countries, since there is no collection during mass in the oratories of religious congregations, the Christian faithful prefer to attend Sunday mass there to avoid the pressure of giving to the special collection when they do not have resources.

If a special collection occurs, local ordinaries have the right to collect the proceeds. They are not for the benefit of the church or oratory. Since it is for a specific reason, it could not be a regular and continuous source of income. It has to be aimed at specific purposes, such as helping a parish victim of an earthquake, or a collection for the church in the Holy Land.

*Unsolicited offerings and gifts.* Offerings given to superiors or administrators of juridic persons are considered to be given to the juridic person unless they were given to them specifically for their personal use.<sup>140</sup> It could be a source of income for the Church received by superiors or administrators of public juridic persons. These offerings are not to be refused, unless for a just cause, and then with the permission of the ordinary.

*Acquisition of temporal goods through prescription.* Prescription can be a means of acquiring temporal goods when a period of time has passed.<sup>141</sup> Prescription can also be a means of losing property. Administrators on diocesan, parochial, religious, and other levels have the obligation to pay continuous attention to the law on prescription in canon law as well as in civil law. In some instances, instead of acquiring goods, churches and

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<sup>139</sup> *CIC*, c. 1266.

<sup>140</sup> *CIC*, c. 1267 §1: “Unless the contrary is established, offerings given to superiors or administrators of any ecclesiastical juridic person, even a private one, are presumed given to the juridic person itself.”

<sup>141</sup> *CIC*, c. 1268.

religious congregations have lost their properties because they were unaware of the law on prescription.

Instances like this happened to the Society of Jesus in Madagascar. A group of people had occupied an empty and uncultivated portion of Jesuit land. After using the properties for a few decades, they claimed to own the land, through the law of prescription. The result was not pleasant because it ended up in court. This could be a result of lack of due vigilance on the part of the administrators. This case will be developed more fully in the fourth chapter of this thesis.<sup>142</sup>

*Legacies and offerings for pious causes.* A rather common source of income for dioceses and religious institutes consists in receiving legacies from the faithful who, in their last will and testament, or by an act *mortis causa*, leave money for the Church.

At times, the money so donated is for a specified cause (*causa pia*).<sup>143</sup> At other times, no specific purpose is identified.

The Code of Canon Law contains a number of provisions relating to such offerings (canons 1299-1310). While it had been common in the past to accept “perpetual intentions,” especially in relation to the celebration of Masses, the common practice nowadays is to refuse gifts offered perpetually, unless there is also a clause

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<sup>142</sup> It is, however, worth mentioning here that this case is very much alive, and it hurts not only the institute, but and especially also the Christian faithful, and the Catholic Church in Madagascar. Cf. <https://www.youtube.com/watch?v=mPu-AvAFfE0&index=7&list=FLwqc7F8jdJZaLdRVa3WASPw&t=688s> (French Version of the national News on July 05, 2018); <https://www.youtube.com/watch?v=VG-LLFFayc8&index=6&list=FLwqc7F8jdJZaLdRVa3WASPw&t=2712s> Malagasy version of the case, with more details and concerns) (July 10, 2018).

<sup>143</sup> See *CIC*, c. 1299 § 1.

allowing the bishop or the superior to adapt the intention of the donor accordingly, but in an equitable manner (see canon 1310).

### ***2.3 – Universal Law on Administration of Goods***

The administration of temporal goods is addressed both in the universal and proper law of religious institutes. Acts of administration include “maintenance, repair and renovation of property, borrowing money, investment of revenue, entering into contracts and all other actions necessary to preserve, make fruitful, or put to proper use temporal goods once acquired.”<sup>144</sup>

According to this attempt of definition, the purpose of an act of administration is not only to take care of the goods acquired, but also to make them increase, keeping in mind the fulfilment of the mission of the Church. It “involves actions, which are necessary for the day-to-day life of a juridic person and for the routine maintenance of its property.”<sup>145</sup> To attain this purpose, a physical person is to be appointed by the competent authority to assure this responsibility on behalf of the juridic person.

The Church, as a universal society, has one supreme administrator of its goods. “By virtue of his primacy of governance, the Roman Pontiff is the supreme administrator and steward of all ecclesiastical goods.”<sup>146</sup>

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<sup>144</sup>R.T. KENNEDY, “The Administration of Goods,” in J.P. BEAL, *CLSAComm2*, 1474.

<sup>145</sup>D.J. WALKOWIAK, “Ordinary and Extraordinary Administration,” in MCKENNA, *Church Financial Handbook*, 187.

<sup>146</sup>*CIC*, c. 1273.

The Directory for the Pastoral Ministry of Bishops, *Apostolorum successores*, February 22, 2004,<sup>147</sup> addresses the criteria to govern the administration of ecclesiastical goods by diocesan bishops and their canonical equivalents. Five in particular are mentioned in this text: (1) pastoral and technical competence; (2) fostering participation; (3) seeing the Church as a communion, not as an institution – detachment; (4) concern for the apostolic dimensions of an act; (5) acting as a good father of a family. These ideals will come through in this section as we analyse the current legislation on administration, and its proper application in religious institutes.<sup>148</sup>

### **2.3.1 – Canon Law on Administration of Goods**

There are three categories of acts of administration: ordinary, acts of major importance (for dioceses only) and acts of extraordinary administration.

#### ***2.3.1.1 – Acts of Ordinary Administration***

An act of ordinary administration is any routine act of administration to maintain ecclesiastical goods, performed by the person appointed to do so by the competent authority; it is any transaction done routinely and regularly.<sup>149</sup> In other words, ordinary administration consists of those “regular (routine) activities carried out with the ecclesias-

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<sup>147</sup> See CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops*, Libreria editrice Vaticana, 2004.

<sup>148</sup> For an explanation of these criteria, see S. DUBIEL, “The Principal Criteria that Should Govern the Administration of Ecclesiastical Goods”, in S. DUBIEL and P. KALETA (eds.), *The Temporal Goods of the Church. Selected Issues*, Lublin, Catholic University, 2016, 101-112.

<sup>149</sup> Cf. A.J. MAIDA and N.P. CAFARDI, *Church Property, Church Finances, and Church-Related Corporations: A Canon Law Handbook*, Saint Louis, MO, The Health Association of the United States, 1984, 301-302.

tical goods, without any significant risk of incurring losses. They do not require the consent of the Ordinary or major superior.”<sup>150</sup>

In a religious institute, acts of ordinary administration can be performed validly by the superiors or other designated persons such as finance officers.<sup>151</sup> These routine acts include, but are not limited to, supervising the income and the expenses of the juridic person, making payments for ordinary expenditures and receiving ordinary donations.

Among the acts of ordinary administration,<sup>152</sup> we could note:

- To make sure and to take care that the entrusted ecclesiastical goods are not lost, to be vigilant so that no damage occurs;
- To make sure that these goods are legally protected by civil law, so that if any litigation occurs, they will not be lost or taken by anyone. Suing the Church to seize its property has become a trend for groups of people in recent times. Having every good protected under civil law would diminish its risk of loss;
- To observe the law and prescripts imposed by donors, or legitimate authority. Ignorance of civil law concerning prescription could end up with the loss of properties;
- To be vigilant and careful in gathering what belongs to the juridic person, as revenue, and use it according to the law or the intention of the founder;
- To repay debts and to eliminate them promptly. This will reduce the interest due on loans or mortgages;
- To invest money after all payments are made. This requires the consent of the ordinary;
- To keep an accurate financial record of all the expenses and income to facilitate the inventory when time comes or when an audit is to take place;
- To make an annual report of administration and protect all appropriate documents. This will facilitate the continuation of the work in the next fiscal year;
- To prepare an annual budget, which should reflect the purpose of the Church.<sup>153</sup>

Although particular law might not mandate the finance officer to have an annual budget, this would nevertheless assist him in planning, overseeing the total expenses and the possible future income and expenses.

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<sup>150</sup> P. KALETA, *Ecclesiastical Patrimonial Law*, 112.

<sup>151</sup> Cf. *CIC*, c. 638 § 2.

<sup>152</sup> Cf. *CIC*, c. 1284 §2, §3.

<sup>153</sup> J.A. RENKEN, *Church Property*, 210-218. See also *Guidelines*, no. 1.1, where an explanation is given of the purposes of sound budgeting: “Use budgeting not only for the works but also the communities as [1] a means to educate members of the Institute regarding the economic dimensions of our lives, [2] to increase common awareness in this area, and [3] to verify the actual degree of personal and communal poverty.”

The activities mentioned above do not constitute an exhaustive list of acts of ordinary administration but rather they are an indicative list. The limits and manner for an act to be ordinary should be defined in particular law, and “any provisions of particular law outlining acts of ordinary administration should be implemented.”<sup>154</sup>

### ***2.3.1.2 – Acts of Major Importance (for Dioceses)***

Canon 1277 notes that there are also acts of administration that are “more important in light of the economic condition of the diocese.” These are non-routine acts that only the diocesan bishop can perform. Even if he is the only one who can perform these acts, he is required to receive the counsel of both the diocesan finance council and the college of consultors to act validly.<sup>155</sup> Since the economic situation of each diocese differs one from another, the law does not determine which are non-routine acts of administration or which ones can worsen the financial situation of the diocese. Each diocese should determine them in its own statutes, and once determined, the diocesan bishop, the financial council and the college of consultors share the responsibility for respecting them. It could be noted that the canons on important acts of administration do not apply directly to religious institutes. This is left to proper law.

### ***2.3.1.3 – Acts of Extraordinary Administration***<sup>156</sup>

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<sup>154</sup> P. KALETA, *Ecclesiastical Patrimonial Law*, 112.

<sup>155</sup> Since this is required by law, the consultation or “hearing” of these two bodies is for validity, according to canon 127§ 1.

<sup>156</sup> See Y. SUGAWARA, “Amministrazione e alienazione dei beni temporali degli Istituti religiosi nel Codice (can 638),” in *Periodica*, 97 (2008), 251-282. He considers that the fact that the Code of Canon Law leaves to each institute the determination of acts of extraordinary administration, is an example of the application of the principle of subsidiarity and a sign of the respect of the rightful autonomy of each institute.

Contrary to the acts of ordinary administration, acts of extraordinary administration are non-routine acts. These are acts that exceed the established limits and the manner of ordinary administration. Acts of extraordinary administration are established in two ways, as Kaleta explains:

The Code identifies six acts of extraordinary administration which are *iure universali*:

- a- To refuse gifts in matters of greater importance (can. 1267 §2);
- b- To invest surplus after payment of expenses (can. 1284 §2,6);
- c- To begin legal proceedings to contest them in a secular court (can.1288);
- d- Designating legitimately the stable patrimony of the parish (can. 1291);
- e- To invest goods of the foundation (can. 1305);
- f- To erect a new parish church (can 1215).

The Code provides for the establishment of acts of extraordinary administration in *iure particulari*. The competent authority to define acts of extraordinary administration for the juridic person of the diocese is the Conference of Bishops (can 1277 in fine) The competent authority to define them for other juridical persons is the one who approved their statutes (see can. 117).<sup>157</sup>

For dioceses, according to canon1277, the conference of bishops is the competent authority to determine an action to be an act of extraordinary administration. For religious institutes, “it is either the general chapter or the congregational leadership that determines which acts come under this heading and what is required for carrying them out (see canon 638.1).”<sup>158</sup>

Beside those acts identified and provided by the Code and determined by the conference of bishops, the financial condition for the public juridic person could be a factor in determining an act of extraordinary administration. Since the financial condition of each diocese or religious institute could be defined by its location, territorial size, and population, an amount could be affordable for one diocese or institute but put at risk

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<sup>157</sup> P. KALETA, *Ecclesiastical Patrimonial Law*, 115.

<sup>158</sup> P.A. MARTIN and F.G. MORRISSEY, *Temporal Goods at the Service of the Mission of Ministerial Juridic Persons*, 46.

another one. Therefore, administrators should take into consideration the local economic condition.

The following list identifies some of the traditionally accepted acts of extraordinary administration. This listing is no longer “precise” since the Code now distinguishes acts of alienation from acts of administration (a distinction not evident in the following listing).

- To accept or renounce an inheritance, legacy donation or foundation;
- To purchase immovable property;
- To sell, exchange, mortgage or pawn immovable church property; or to subject it to any other servitude or burden, or to lease it for a period of more than three years,
- To sell, exchange, mortgage, or divert in any other way from the place for which they are destined, objects of art, historical documents, or other movable property of great importance;
- To borrow a large sum of money as a loan, or to make agreements or to make onerous contracts;
- To build, pull down, or rebuild in a new form any church building or to make extraordinary repairs upon them;
- To establish a cemetery;
- To start or suppress parochial institutions which are parish property;
- To impose a *per capita* tax, to put on a fund drive (*collectas inducere*), or to give to others things belonging to a church;
- To enter upon a lawsuit either as litigant or as defender.<sup>159</sup>

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<sup>159</sup> J.A. RENKEN, *Church Property*, 181; SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Collectanea Sacrae Congregationis de Propaganda Fide*, 2<sup>nd</sup> ed. vol. 1, “Congregatio generalis” (July 21, 1856), Vatican City, Ex. typographia polyglotta, 1907, no. 1127, art. 20.

Acts of extraordinary administration should not occur regularly since there could be a risk of loss of property, thus preventing the juridic person from fulfilling its mission.

### **2.3.2 – The Authorities Involved in the Proper Administration of Goods of Religious Institutes<sup>160</sup>**

The administration of the goods of a juridic person is entrusted to an administrator. There are various persons involved in this task, depending on the nature of the juridic person itself. Some of those in charge of the administration of temporal goods could be noted here.

#### ***2.3.2.1 – The Roman Pontiff***

According to canon 1273, “by virtue of his primacy of governance, the Roman Pontiff is the supreme administrator and steward of all ecclesiastical goods.” This canon states the primacy of governance of the Roman Pontiff over the entire Catholic Church, which “acknowledges in the Roman Pontiff the right, rarely exercised, to supersede the designated administrator and place, directly or indirectly, an act of administration, ordinary or extraordinary, on behalf of any public juridic person in the church.”<sup>161</sup> The canon, however, specifies the type of temporal goods that could be included in this category: only ecclesiastical goods.<sup>162</sup> The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life affirms that the Roman Pontiff has jurisdiction over the goods of religious institutes “which is proper to him as the supreme authority of the

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<sup>160</sup> See P. KALETA, “Administration of Ecclesiastical Goods in the Religious Institute”, in P. KALETA, *Legal Aspects of the Management of Church Property*, Lublin, KUL, 2017, 119-145, esp.130-134.

<sup>161</sup> R.T. KENNEDY, “The Temporal Goods,” in J.P. BEAL, *Commentary*, 1474.

<sup>162</sup> Ecclesiastical goods are goods that belong to public juridic persons, juridic persons that act in the name of the Church.

Church. This power of intervention finds its foundation not in the ownership of ecclesiastical goods, but in the function of the Supreme Pontiff to provide for the supreme government of the Church.”<sup>163</sup>

### ***2.3.2.2 – The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life***

Beginning in 2014 and continuing in 2018 with its detailed *Guidelines*, the Vatican Congregation for Institutes of Consecrated Life and Societies of Apostolic Life has been addressing new situations affecting the financial stability of religious institutes. These helpful Guidelines, which are the canonical equivalent of an instruction, shed new light on a number of issues related to the proper administration of temporal goods. We shall make abundant use of the pertinent sections of this document as the basis for what follows.

When it comes to acts of extraordinary administration and acts of alienation, some requirements must be fulfilled for validity act. For any alienation transaction exceeding the maximum defined by the Holy See, the permission of the Holy See is required along with any other mandatory consents. Canon 638 §3 states that “if it concerns an affair which exceeds the amount defined by the Holy See for each region, or things given to the church by vow, or things precious for artistic or historical reasons, the permission of the Holy See itself is also required.” For institutes of consecrated life and societies of apostolic life, Pope John Paul II, in his apostolic constitution, *Pastor bonus*, stated:

The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life deals with everything which, in accordance with the law, belong to the Holy See concerning the life and work of the institutes and societies, especially the approval of their constitutions,

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<sup>163</sup> CICLSAL, *Economy* no. 56.

their manner of government and apostolate, their recruitment and training as well as the rights and obligations of members, dispensation from vows and the dismissal of members, and the administration of goods.<sup>164</sup>

It is therefore CICALSAL which grants permission for transactions exceeding the limit set by the Holy See, which is usually the maximum amount determined by the episcopal conferences for the individual regions. This permission “is not an act of patrimonial domination, but rather of administrative authority aimed at guaranteeing the good use of the assets of public juridic persons in the Church.”<sup>165</sup> Even if this Congregation issues the permission for these kinds of transactions, it is not “assuming any economic responsibilities. The permission (actually) guarantees that the transaction is congruent with the purposes of the ecclesiastical patrimony.”<sup>166</sup>

### **2.3.2.3 – The General Chapter**

The general chapter is a collegial body that “holds supreme authority in the institute, according to the norms of the constitutions.”<sup>167</sup> One of its responsibilities is to protect the spiritual and temporal patrimony of the institute. “It is for the general chapter principally to protect the patrimony of the institute, promote suitable renewal according to that patrimony.”<sup>168</sup> It also has an important role in the administration of the goods of the institute. CICALSAL, in its *Guidelines*, defines that it pertains to the general chapter “to establish the fundamental ways of proceeding in economic-administrative matters and to elaborate a charismatic plan of the institute which also provides corresponding

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<sup>164</sup> JOHN PAUL II, *Pastor Bonus*, no. 108 §1.

<sup>165</sup> CICALSAL, *Economy* no. 57.

<sup>166</sup> *Ibid.*

<sup>167</sup> *CIC*, c. 631 §1.

<sup>168</sup> *Ibid.*

directives.”<sup>169</sup> Sound administration of temporal goods helps the institute to remain faithful to its nature, spirit, purpose and character and to continue its mission. Since it is a collegial body which comes together to discuss the future of the institute and to discern its way of procedures,

the general chapter prepares and approves an economic procedures manual or other similar text, which, also in the light of the experience gained over time, promotes a way of proceeding that is, as much as is feasible, in conformity with the institute’s charism, its mission and the guidance of poverty.<sup>170</sup>

### ***2.3.2.4 – Superiors and Council***

Superiors are the first administrators of the temporal goods of the juridic persons entrusted to them. They usually appoint a finance officer to carry out the acts of ordinary administration. Acts of extraordinary administration, acts that worsen the patrimonial condition of the juridic person, and acts of alienation, however, will be placed by superiors. In placing these various acts, the superiors must receive the advice or consent of their council. The *Guidelines* reminds them that “in economic-administrative matters, the superiors make use of their own council, according to the universal and proper law (cf. cc. 627 and 638 §1), and the foundational guidelines established by the general chapter, especially with respect to extraordinary administrative acts.”<sup>171</sup> If the council was not consulted and/or its consent was obtained, the superiors could well place an invalid act of administration.

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<sup>169</sup> CICLSAL, *Economy*, no. 58.

<sup>170</sup> Ibid.

<sup>171</sup> Ibid., no. 59.

### ***2.3.2.5 – Provincial Chapter and Provincial Superior***

The provincial chapter allows the members of the institute to participate in the administration of the province at a certain level, according to proper law. Even if not all religious institutes and societies of apostolic life have a provincial chapter, this body has the responsibility to “draw up the proposed way to proceed concerning the respective permission that is sought.”<sup>172</sup> It is then the responsibility of the provincial superiors, “with the consent of their council, to submit to the superior general along with their council the deeds that require their approval.”<sup>173</sup>

### ***2.3.2.6 – Council for Economic Affairs***

For a better administration of the goods of the institute, the establishment of a financial council is required by the *CICLSAL Guidelines*. “The composition of this body can include collaboration with the laity and with those having specific professional skills.”<sup>174</sup> One of the weaknesses of the financial administration of institutes of consecrated life or societies of apostolic life is the lack of members financially and economically trained. This leads to the need for collaboration with skilled lay people. This provision could become a motivation for institutes to train some members in financial and economical matters.

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<sup>172</sup> Ibid., no. 60.

<sup>173</sup> Ibid.

<sup>174</sup> Ibid., no. 61.

### **2.3.2.7 – *The Treasurer***<sup>175</sup>

The Code of Canon law requires that “in every diocese, after having heard the college of consultors and the finance council, the bishop is to appoint a finance officer who is truly expert in financial affairs and absolutely distinguished for honesty. It is for the financial officer to administer the goods of the diocese under the authority of the bishop.”<sup>176</sup> The Code adds that: “in each institute and likewise in each province which is governed by a major superior, there is to be a financial officer, distinct from the major superior and constituted according to the norm of proper law, who is to manage the administration of goods under the direction of respective superior. Insofar as possible, a finance officer distinct from the local superior is to be designated even in local communities.”<sup>177</sup> It is required by law to have a treasurer in a diocese, as well as in an institute.

The treasurers or finance officers are not the administrators of the temporal goods of the diocese or the institute. Rather, they are to assist the administrators (bishops and superiors) in managing the administration of goods. Even in smaller communities, it is recommended to separate the tasks of superior and direct management of financial affairs. Although it is mentioned explicitly for the diocese that a treasurer is to be truly expert in financial affairs, this is omitted for religious institutes and societies of apostolic

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<sup>175</sup> See R. GEISINGER, “Some Ongoing Considerations in Canon Law for Treasurers General of Religious Institutes,” in *Periodica*, 95 (2006), 227-259, where he addresses various issues that touch on the role of the general treasurer in an institute.

<sup>176</sup> *CIC*, c. 494 §1, §3.

<sup>177</sup> *CIC*, c. 631 §1.

life. CICLSAL in its *Guidelines*, however, emphasizes the importance of having a skilled person for this task:

The option whether to elect or name a treasurer is left to the proper law of the institute. In both cases, however, the appointment must take into consideration the growing importance of the necessary professional skills appropriate to the nature of individual institutes (cf. can. 587 §1), the ability to collaborate with others, the appropriate attitudes for the task (cf. can. 636 §1), and no personal connection to the assets managed.<sup>178</sup>

This last clause must be given particular attention.

As part of the recommendation and to avoid confusion, CICLSAL states that the proper law of each institute should define the term of office of the treasurer and require regular reporting from him/her.<sup>179</sup>

### **2.3.2.8 – External Controllers**

One of the principal recommendations of the *Guidelines* from CICLSAL is collaboration with skilled people from outside the institute. Due to the increasing complexity of the economic and financial world today, institutes can no longer rely on their limited knowledge of financial matters. There are, however, criteria to be followed in selecting those people: “In choosing external professionals, one should seek those who are knowledgeable of the specifics of the institutes and who are experts in the respective arena, avoiding rash recourse to a single professional.”<sup>180</sup> At times, other qualified religious can also assist.

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<sup>178</sup> CICLSAL, *Economy*, no. 64.

<sup>179</sup> Cf. *ibid.* See also *CIC*, cc. 636 §2, 1284 §3.

<sup>180</sup> CICLSAL, *Economy*, no. 66.

### ***2.3.2.9 – Internal Controllers***

Nevertheless, working with external professionals is not sufficient to make for better administration of the goods of the institute.

As required by its proper law, institutes should establish procedures of internal control, which, through a balanced system of prior authorizations, followed by reports and documentation, allow the competent persons – and in particular the Superior with his/her Council – to supervise the activity of the treasurer, the legal representative and contracted professionals.<sup>181</sup>

This control is to verify that the goods are used for the purpose and the charism of individual institutes, and that they remain faithful to the spirit of the founder and the evangelical counsel of poverty.

### **2.3.3 – The Responsibilities of Administrators in Religious Institutes**

Temporal goods are to help the institute fulfil its mission and achieve its purpose. Consequently, administrators have important responsibilities to preserve the goods of the institute to assure its viability and sustainability.

#### ***2.3.3.1 – Long-term Planning***

Even if the day to day life of the institute seems to flow smoothly, administrators must have a mindset of long term planning due to possible unforeseeable circumstances. In the last few decades, for instance, the economic situation of the world has been unstable; recession has happened a few times that forced firms and organizations to close down. In places like Haiti, the Philippines, and Madagascar, natural disasters can happen

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<sup>181</sup> Ibid., no. 58.

at any time that can drastically change the financial situation of individuals, organizations, firms, and factories – and even of the country itself.<sup>182</sup>

The life and existence of institutes of consecrated life and societies of apostolic life are also threatened by these circumstances. It is the responsibility of administrators to foresee the viability of the institutes if any of those circumstances were to happen. The *Guidelines* of CICLSAL urge institutes to plan ahead.

It is urgent to acquire a mindset of planning. This will first of all lead to a way of proceeding and the development of tools which can anticipate, outline, and guide change and growth in daily operations. They can offer people, communities and works the ability to look beyond, to interpret the world and the current needs. It involves developing strategies and analytic techniques, assessing the real feasibility of a project.<sup>183</sup>

Planning, however, must not be limited to the sustainability of the material needs of the institute which, in a way, is only a tool for it to fulfil its mission and be faithful to its charism. “The planning mentality starts from the spiritual and ecclesial experience and from there makes real the vision of the future of the institute through a strategic plan of action, which makes use of shared approaches.”<sup>184</sup>

Working in the same vineyard and for the same Lord, though living different lifestyles and having different charisms, all institutes are encouraged to share experiences for their enrichment in terms of ideas, skills, and horizons. It is also “the fruitful starting

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<sup>182</sup> It is important to note that such responsibilities are not exclusive to the administrator. The 2014 *Guidelines*, Section 3, 21, note: “The training of treasurers should sensitize the brothers and sisters to the evangelical principles on which financial transactions are based and also provide them with the skills to carry out their financial duties according to the guidelines of good management.”

<sup>183</sup> CICLSAL, *Guidelines*, no. 26.

<sup>184</sup> *Ibid.*

point for processes of discernment, concerning the reorganization of works to safeguard the sense of one's own charism."<sup>185</sup>

### ***2.3.3.2 – Verifying the Sustainability of Apostolic Works***

Due to the development and evolution of the world and its environment, and the migration and immigration of human beings, things are changing. Means and methods that have been used in the last few decades may no longer be relevant today. This is palpable in our daily encounter with people in our mission, especially in works of such as education, communication, and so on. Verifying the sustainability of apostolic works is a major responsibility for administrators.

To evaluate the sustainability of the works, it is necessary to adopt a method that considers every aspect and all the possible interrelations, taking into consideration the charismatic, relational, and economic dimensions both of each work and of the whole institute.<sup>186</sup>

An apostolic work that was relevant 20 years ago, in a given place, may no longer be so today. Maybe it is not adaptable to the region or no longer fitting in with the charism of the institute. Pope Francis has said: “An act of courage is often required to be faithful to the charism ... [It] is not about selling everything or of divesting all the goods, but of undertaking a serious discernment.”<sup>187</sup>

### ***2.3.3.3 – Accountability (with Transparency and Trust)***

<sup>185</sup> Ibid., no. 27. See also JOHN PAUL II, *Vita consecrata*, no. 63.

<sup>186</sup> CICLSAL, *Guidelines*, no. 34.

<sup>187</sup> FRANCIS, *Message to the participants at the second international symposium on the theme: “In fidelity to the charism re-think the economy of Institutes of Consecrated Life and Societies of Apostolic Life,”* Rome (25 November 2016), [http://w2.vatican.va/content/francesco/it/messages/pont-messages/2016/documents/papa-francesco\\_20161125\\_messaggio-simposio-vita-consacrata.html](http://w2.vatican.va/content/francesco/it/messages/pont-messages/2016/documents/papa-francesco_20161125_messaggio-simposio-vita-consacrata.html) (August 20, 2018)

Accountability is also a responsibility of administrators. The administration of institutes cannot be carried out by one person alone. Collaboration is required; sharing of experience is needed. When it comes to temporal goods, credibility and trust are key. “Accountability and financial statements help to increase the credibility of the person who puts them in place and, therefore, help to increase trust.”<sup>188</sup>

Trust has to be built up among collaborators and partners to make the administration of an organization move forward and be successful. There must be mutual trust among the superior, the financial officer, the financial council, and the professional external controller. Accountability on the part of the administrator will increase this trust.

Administrators must understand that administering the financial part of the institute is to be done through teamwork. The new profile of the general treasurer is a true model for that “team-player.” It is not a one-person role: the administrator works with a “team, with both religious and lay experts that regularly coordinates with the (general) council and occasionally interacts with professional counterparts and collaborators outside the circle of the religious institute. ... Knowing his limitations, he (she) connects with people who are knowledgeable about things in which he (she) does not have expertise.”<sup>189</sup>

“Regular accountability also fosters prudence in the administration of assets.”<sup>190</sup> By being accountable in a regular manner, the administrator develops his/her awareness of possible financial mistakes, and increases his/her skills and ability in administering the

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<sup>188</sup> CICLSAL, *Economy*, no. 43.

<sup>189</sup> UNIONE SUPERIORI GENERALI, *Economy and Mission in the Consecrated Life*, Rome, Il Calamo, 2002, 107 (=USG, *Economy and Mission*).

<sup>190</sup> CICLSAL, *Economy*, no. 42.

juridic person. Genuineness of accountability could start with transparency, which is “the ability to report on the activities, the choice made, and the result achieved.”<sup>191</sup>

Being an administrator requires continuous learning. It is his responsibility to be updated regarding new situations concerning the administration of the goods of the institute. Here, the model for the general treasurer is also appropriate for all administrators:

We cannot know it all, all the time and all at once. There is always something to remain learned, and something to be improved. The working document has presented many new situations as regard the acquisition, administration and allocation of assets. ... He must be regularly updated about new legislation governing property, insurance, health, pensions, religious and educational institutions, labour, taxation, etc. ... Attendance in assemblies such as this are very helpful for our own conscientization.<sup>192</sup>

In a word, the accountability of the administrator is a key to the smooth flow of the administrative components because it increases his/her own ability and capacity to become a better manager and facilitates trust among collaborators and partners.

#### ***2.3.3.4 – Maintenance of Records***

One of the sources of problems for the proper administration of temporal goods in some countries who had for a long time used an oral tradition, is the lack of records. This can become a source of dispute later. This is what happened to the Jesuits in Madagascar.

It is the responsibility of administrators to records any acts of administration of temporal goods, even before they assume their office. The Code of Canon Law states:

Before administrators begin their function:

They are to prepare and sign an accurate and clear inventory of immovable properties, movable objects, whether precious or of some cultural value, or other goods, with their description and appraisal; any inventory already done is to be preserved;

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<sup>191</sup> Ibid., no. 41.

<sup>192</sup> USG, *Economy and Mission*, 108.

One copy of this inventory is to be preserved in the archive of the administration and another in the archive of the curia; any change which the patrimony happens to undergo is to be noted in each copy.<sup>193</sup>

The *Guidelines* from CICLSAL give even more details and instruction, for the safety and integrity of the institute in case of lawsuits. No necessary detail should be forgotten, and any tools that can help to keep those records must be used.

The inventory of assets should record the purchase, construction, donation or other civil act or business that adds to the assets, changes the condition or divests the assets. In particular, all documents proving the legal ownership of buildings and furnishings must be kept. The documentation appropriate to a business office makes it possible to know the administrative procedures of an institute; to provide for adequate planning that considers resources; to prove the legal rights in case of disputes, to operate in administrative transparency, to preserve historical memory; and to study the way in which the charism has been realized over time.<sup>194</sup>

### ***2.3.3.5 – Observance of Civil Law***

It is the responsibility of the administrators to observe civil laws, and to be certain that others observe them as well. “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.”<sup>195</sup> The law of the Church, to avoid conflicts with civil laws in many countries, canonizes them, which means, the “canonical system adopts as its own and grants complete force to the applicable civil law.”<sup>196</sup> The only time canon law does not follow the civil laws of a place, or a country, or a state, relating to contracts and similar acts, is when these laws are against divine law or the canons provide otherwise. The administrator must give an example to others for the respect of civil laws.

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<sup>193</sup> *CIC*, c. 1283, 2°, 3°.

<sup>194</sup> CICLSAL, *Economy*, no. 44.

<sup>195</sup> *CIC*, c. 22.

<sup>196</sup> J. HUELS, “Book I: General Norms,” in J.P. BEAL, *CLSAComm2*, 85.

Although our main focus of this chapter is the administration of goods, we must briefly overview some provisions relating to the alienation of goods in the universal law.

## ***2.4 – Universal Law on Alienation of Goods***<sup>197</sup>

The alienation of temporal goods is treated separately in Book V. In this last section, we intend to analyze more particularly the norms governing the alienation of temporal goods in religious institutes.

### **2.4.1 – Alienation**

According to its Latin root *alienare*, this means “to make something another’s.”<sup>198</sup> It is a transfer of ownership. Alienation occurs only when there is transfer of ownership. With the acts of administration, whether ordinary or extraordinary, there is no transfer of ownership. This makes alienation different from administration: even if there are some types of exchange, there is no transfer of ownership. the purpose of administration is to preserve the ecclesiastical goods of the juridic person; alienation is the opposite by transferring their ownership to another person.<sup>199</sup>

The following acts are considered as acts of alienation:

- Acts by which title to property (ownership) is transferred to another;
- Spending a part or all of immobilized goods for some purpose other than that for which they were immobilized. (For instance, using funds set aside specifically for cardiac research for a parking lot extension illustrates this point);

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<sup>197</sup> For a general commentary on the canons relating to alienation, see F.G. MORRISEY, "The Alienation of Temporal Goods in Contemporary Practice", in *Studia canonica*, 29 (1995), 293-316.

<sup>198</sup> R.T. KENNEDY, “*The Administration of Goods*,” in J.P. BEAL, *CLSAComm2*, 1493-1494.

<sup>199</sup> See CICLSAL, *Economy*, no. 80.

- Sale of precious or historical works.<sup>200</sup>

There are some acts that resemble an act of alienation but they are not considered as such and are not subject to the canons on alienation:

- Spending free capital;
- Transferring goods within the same [health] system;
- Registering assets under a new title;
- Assuming a mortgage;
- Transferring one title for similar title;
- Making a loan;
- Selling of furniture and equipment;
- Observing the intentions of the donors;
- Curtailing of property rights through negligence;
- Refusing of gifts;
- Involuntary surrendering of property.<sup>201</sup>

Spending free capital is not an act of alienation because these funds are not immobilized and thus they have not become stable patrimony. Free capital consists in the funds that are available for the day-to-day expenses of the juridic person. Even if a considerable amount of this capital is exhausted, it is not subject to the canonical norms for alienation. “Spending free capital, however, may be limited by the canons on administration or the statutes of the juridic person regarding either the amount spent or the nature of the transaction.”<sup>202</sup>

For instance, transferring goods within the same health system does not imply transfer of ownership. The property remains under the ownership of the same juridic person. Therefore, there is no alienation. The same applies to registering assets under a new civil legal title: only the civil title of the assets changes but not the ecclesiastical ownership.

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<sup>200</sup> P.A. MARTIN and F.G. MORRISEY, *Temporal Goods at the Service of the Mission of Ministerial Juridic Persons*, Washington DC, Catholic Health Association of the United States, 2017, 67.

<sup>201</sup> *Ibid.*, 68-69.

<sup>202</sup> J. HITE, “Church Law on Property and Contracts,” in *The Jurist* (44), 1984, 127.

Selling ordinary furniture and equipment are not acts of alienation because they are not considered precious or historical, and thus they are not classified as stable patrimony. Juridic persons may lose their property by negligence under the process of prescription. This is not considered alienation but poor administration.

Since stable patrimony is for the present and future financial security of a juridic person, it must be preserved. There are, however, reasons that the Code allows for a juridic person to alienate stable patrimony: there must be a just cause. This also means “the gain of the public juridic person must outweigh the loss of the portion of stable patrimony to be alienated.”<sup>203</sup> There must be evident advantage and urgent necessity, also religious, charitable, or grave pastoral reasons.<sup>204</sup>

#### **2.4.2 – Requirements of Alienation**

Canon 1291 states: “The permission of the authority competent according to the norm of law, is required for the valid alienation of goods which constitute by legitimate designation the stable patrimony of a public juridic person and whose value exceeds the sum defined by law.”

When the value of the stable patrimony exceeds the limit set by the law, alienation cannot occur validly if the permission of the competent authority is not obtained. The “permission” mentioned in canon 1291 is not just mere consultation but an

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<sup>203</sup> R.T. KENNEDY, *Book V: Temporal Goods of the Church*, 1500.

<sup>204</sup> Cf. P.A. MARTIN and F.G. MORRISSEY, *Temporal Goods at the Service of the Mission*, 69-70. Urgent necessity may include the need to pay debts, or the property has become a tax burden for the juridic person; a religious reason could be to use the building as a spiritual centre; a charitable reason may be assistance to a group that is working for social justice, or some similar apostolate and needs a place to serve as its headquarters.

act of “consent.” Canon 1292 confirms that, in case of a diocese, required is the consent of the finance council, the college of consultors, and those who are concerned.

The legitimate designation of a patrimony makes it stable. Stable is immobilized. The designation is a positive act by a competent authority. Therefore, there is no stable patrimony by accident. The purpose of designating patrimony as stable patrimony is for it to provide for the financial security of a juridic person. Alienation occurs when the designated patrimony is used for a different purpose than assuring the long term financial security of the juridic person.

The competent authorities to give permission (consent) are described in canons 1292 and 638 § 3. If the juridic persons are not subject to the diocesan bishop, the competent authority is determined by their statutes; if they are subject to him, then it is he who is the competent authority.

The conference of bishops defines the minimum and maximum amount for alienation. For institutes of consecrated life, if the contrary is not stated in their proper law, to be observed are the limits set by the conference of bishops or by the Holy See.

Depending on the value of the stable patrimony, this permission from the competent authority may or may not be needed for the validity of the act of alienation. If the value of the stable patrimony is lower than the minimum, no permission from a higher authority is required unless stated otherwise. It would be important to keep in mind that sums for the United States were changed as of December 1, 2011 and a dual system

introduced.<sup>205</sup> In addition to the approval of the diocesan bishop and the consents of these bodies, the consent of “those who are concerned”<sup>206</sup> is also required. In Canada, for acts of alienation:

Up to \$350,000 (10% of the maximum): the diocesan bishop may carry out such act alone;  
 From \$350,000 to 3,500,000: the diocesan bishop needs the consent of the college of consultors, the diocesan finance committee, and of the interested parties (canon 1292 §1);  
 From \$3,500,000: in addition to the three consents mentioned immediately above, the consent of the Holy See is also required (canon 1292§2).<sup>207</sup>

Note that in Canada, this sum is indexed. For 2018-2019, the maximum is \$5,473,686 CDN and the minimum is \$547,369 CDN.<sup>208</sup>

To obtain the permission of the Holy See for public juridic persons subject to the Congregation of Institutes of Consecrated Life and Societies of Apostolic Life, the following documents are required:

- Request of the competent person asking for permission to alienate the property.

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<sup>205</sup> 1- The maximum limit for alienation and any transaction which, according to the norm of law, can worsen the patrimonial condition is \$7,500,000 for the Dioceses with Catholic populations of half a million persons or more. For the other Dioceses, the maximum limit is \$3,500,000. (cf. C. 1295).

2- The minimum limit for alienation and any transaction which, according to the norm of law, can worsen the patrimonial condition is \$750,000 for the Dioceses with Catholic populations of half a million persons or more. For other Dioceses, the minimum limit is \$250,000.

3- For alienation of property of other public juridic persons subject to the Diocesan Bishop, the maximum limit is \$3,500,000 and the minimum limit is \$25,000 or 10% of the prior year’s ordinary annual income, whichever is higher. <http://www.usccb.org/beliefs-and-teachings/what-we-believe/canon-law/complementary-norms/canon-1292-1-minimum-and-maximum-sums-alienation-of-church-property.cfm> (July 15, 2018).

<sup>206</sup> That statement “those concerned” brought ambiguity to this canon, and needed to be clarified as well. Those who are concerned would be anybody who may have canonical right to act on behalf of the juridic person. For a parish, for example, it is NOT the parishioners even if the life of their parish concerns them. Many canonists believe that “this refers to property given to the Church for a particular purpose by donors who reserve certain rights with the approval under canon 1300 which reservation of rights was accepted by the Church at the time of donation.” See N. CAFARDI, “Alienation of Church Property,” in K.E. MCKENNA, L.A. DiNARDO, and J. POKUSA (eds.), *Church Finance Handbook*, Washington, DC, CLSA, 1999, 255.

<sup>207</sup> J.A. RENKEN, *Church Property*, 272.

<sup>208</sup> At its meeting of 20-21 March 2018, after taking into consideration the 2017 national cost-of-living increase of 1.9%. the Executive Committee determined that the current maximum amount allowed for acts of alienation without recourse to the Holy See is \$5,473,686 CDN. [http://www.cccb.ca/site/images/stories/pdf/Alienation\\_of\\_church\\_property\\_-\\_2018.pdf](http://www.cccb.ca/site/images/stories/pdf/Alienation_of_church_property_-_2018.pdf) (July 15, 2018).

- Explanation of the reasons for the transaction (canon 1293 § 1).
- At least two written evaluations of the property (canon 1293 § 1)
- Required consent of any intermediate bodies (depending on internal policies) (1292 § 1)
- Audited financial statements covering the property and related transactions.
- Statements regarding divisible goods if the property were to be sold by parcels (canon 1293 §3)
- Offer to purchase (if possible, or at least a certified transaction summary) (canon 1294 § 1)
- Explanation of what is to be done with the money received (canon 1294 § 2)
- Sometimes, a statement regarding the observance of secular law formalities, such as zoning regulations, classified historical property (see canon 1296)
- Opinion letter from the diocesan bishop of the place where the property to be sold is situated. Note that this is an “opinion” letter and not necessarily a “consent” to the transfer.<sup>209</sup>

When the permission is obtained from the Holy See, the concerned juridic person holds all responsibilities about the alienation and its consequences. “The permission to proceed with an act of alienation is an administrative act by the apostolic see intending to guarantee the good use of ecclesiastical goods belonging to public juridic persons. The Roman Pontiff is not bound to respond to the consequences of acts of economic administration placed by the immediate administrators.”<sup>210</sup>

### 2.4.3 – Special Requirements for Religious Institutes

In addition to the general norms covering alienation, as described in the previous section, the CICALSAL *Guidelines* provide a number of other factors to be taken into consideration when alienating the property of religious institutes.<sup>211</sup> We can number these factors to provide for easier reference:

1. The sale of real estate should be done in a manner consistent with the charismatic plan of the institute.

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<sup>209</sup> P.A. MARTIN and F.G. MORRISEY, *Temporal Goods at the Service of the Mission*, 73. For insight as to how the charism of a religious institute can be expressed in the way its temporal goods are alienated, see J.W. TOBIN, “The Charism and Goods of an Institute and Their Relationship to the Local Church,” in *Sequela Christi*, 40 (2014), 114-125, especially 120-122 on the intervention of the diocesan bishop.

<sup>210</sup> J.A. RENKEN, *Church Property*, 265.

<sup>211</sup> See CICALSAL, *Economy*, no. 80.

2. Procedures that seek, where possible, the collection of multiple offers should be encouraged.
3. It is recommended that priority be given, especially where the conditions of the institute allow it, to the possibility of transferring the asset to other ecclesial bodies.
4. Avoid alienations that would put in jeopardy the common good of the Church.
5. Before starting negotiations, one should seek prior knowledge of the market value of the real estate being sold.
6. Determine whether the asset is completely free and available, whether there exist any restrictions.
7. See to the existence of necessary documentation from an independent and competent source that clearly states the deed of ownership and the conformity of ownership with the current planning regulations. The tax implications should be considered.
8. In the selection of the purchaser one should consider his/her reputation and – in the instance where payments will be made in installments – whether adequate guarantees have been provided, preferably from a banking or insurance entity.
9. One should specify in writing ... any condition under which the operation must be subjected.
10. Ecclesiastical goods must not be sold or leased to employees of the institute or their relatives, up to the fourth degree of consanguinity or affinity, without a special authorization given in writing by the competent superior.

### *Conclusion`*

The Church and its entities, including the Society of Jesus, have the right to own temporal goods. They are thus able to acquire, administer, and alienate these goods. The canons, laws, and guidelines discussed and analyzed in this chapter show how the Church and any other public juridic persons maintain their existence and sustain themselves in order to fulfil their mission and to attain the purpose for which they were established.

In the first part, the focus was on the methods of acquiring goods and maintaining their existence. A recognized society, which is a group of human beings, has the right to acquire and to retain properties to be able to live. The Church, in addition to being a society, is also a moral person. It enjoys the right to acquire, retain, administer, and alienate temporal goods independent of any civil power. No human power can eliminate this right because it is innate: it always exists even if the civil power does not recognize it

in some circumstances. The Church also has the innate right to require support from its members to be able to fulfil its mission and to attain its purposes.

The two recent CICLSAL documents, although addressed specifically to religious institutes, gave new lights and understanding on the acquisition, retention, administration, and alienation of the goods of the Church.

The requirements of the Church become the obligation of the Christian faithful, and they have several methods to fulfill this obligation. They are to support the Church through offerings, collections, fundraising, donations, and paying fees and/or taxes.

The second section, which is the central part of this chapter, focuses on how the Church administers its goods. The Church and its entities have to manage correctly their temporal goods so that they may not be lost. Administrators handle the ordinary administration of goods (to supervise, to carry out acts of routine maintenance, to perform various transactions, etc.)

The last section of this chapter deals with acts of alienation of the goods of the Church. Since acts of alienation are distinct from acts of administration, the concept of alienation was not broadly developed in this thesis. It is, however, worth understanding due to its major impact on the life of the Church and any public juridic person. After clarifying the term “alienation,” a distinction between those transactions that are subject to the canonical norms of alienation and those which are not, was elucidated. The process and requirements of valid acts of alienation were explained.

After analyzing the administration of temporal goods in general, the focus of the next chapter will be on acquisition and the administration of goods of the Society of Jesus in particular, and on the proper law of the Society which governs such transactions.

**CHAPTER THREE**

**FINANCIAL ADMINISTRATION WITHIN THE SOCIETY OF JESUS**

**AS AN EXPRESSION OF JESUIT POVERTY**

*Introduction*

While Chapter II dealt with the universal law relating to the acquisition and administration of temporal goods in religious institutes, this one will focus more particularly on financial administration in the Society of Jesus as an expression of Jesuit poverty.

Poverty has been a way of life of the Society since its beginning. Ignatius and his companions chose to live in total poverty to be free to preach the Gospel without the constraints of this world and its wealth. While not a mendicant order, the first Jesuits gained their daily bread through begging and alms. When the Society grew in numbers and spread into many countries, the way of living poverty had to be adapted to the new realities. Instead of keeping the same visible way of living poverty, the Society now insisted more on the spirit of poverty. This spirit, reaffirmed by the Thirty First General Congregation, is

the spirit of Christ, who though he was rich, became poor for your sake, to make you rich out of his poverty. Imbued with this spirit, the companions of Jesus in a true consecration more closely follow and more clearly show the Savior's self-emptying by embracing poverty with the free choice of God's Son. At the same time, they manifest the wealth of the Kingdom of God, in that they give up earthly goods and practice charity for the needy,

knowing that our Lord Jesus Christ will provide the necessities of life and dress for His servants who are seeking solely the kingdom of God.<sup>212</sup>

Father P.H. Kolvenbach, during his mandate as superior general of the Society of Jesus, reviewed the understanding of poverty for Jesuits. He recognized that word “poverty” may bother some of the members because of its various meanings that differ from one continent to another. “The word especially irritates those of us in consecrated life when, even with the best of intentions, we do not arrive at being as poor as the many genuinely poor people around us.”<sup>213</sup> It is to be kept, however, because its observance is at the heart of the Jesuits’ mission.

Jesuit poverty is evangelical poverty, it is a “spiritual poverty – living the mystery of the poor Lord – that ought to give form to, inspire and motivate our actual poverty.”<sup>214</sup> It is to be lived under the discernment of spirit, according to the *Spiritual Exercises*, presenting an “Ignatius who does not want to decide himself how to be poor, but who asks that the Lord give him the concrete form of his actual poverty.”<sup>215</sup> That poverty has to be seen in the Society’s life and mission by its solidarity with and preference for the poor.

Protecting this spirit of poverty is the intention behind the norms governing the financial administration in the Society of Jesus. It defines and guides the acquisition, administration, and alienation of its goods. Actual poverty will be visible in the life of the

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<sup>212</sup> *General Congregation 31*, d. 18. no. 3 in J. W. PADBERG (ed.), *Jesuit Life and Mission Today: The Decrees of the 31<sup>st</sup> – 35<sup>th</sup> General Congregations of the Society of Jesus*, Saint Louis, MO, The Institute of Jesuit Sources, 2009, 123-124.

<sup>213</sup> P.H. KOLVENBACH, *On Poverty*, Rome, March 25, 2003, [http://www.sjweb.info/documents/sjs/docs/2003poverty\\_en.htm](http://www.sjweb.info/documents/sjs/docs/2003poverty_en.htm) (= P.H. KOLVENBACH, *On Poverty*).

<sup>214</sup> *Ibid.*

<sup>215</sup> *Ibid.*

Society from small and larger communities to the provinces and throughout the Society as a whole. The Thirty First General Congregation states:

Our community poverty includes two aspects: that “common life” which St. Ignatius derived from a centuries-old tradition and current Church law still sanctions as an essential element for all religious families; and that mode of living which, in the following of Christ as He preached with the apostles, bears the mark of the special calling that ought to characterize the Society’s efforts as it works among men for the redemption of the world. Moreover, it is of the utmost importance that an apostle, always following the poor Christ, somehow accommodate himself to the manner of life of those whom he helps, becoming all things to all men. Therefore our every use of material things should be such that by the sharing of these goods in common we not only express and strengthen the unity of heart and mind of all members of the Society, but also, by the tenor of our life, signify to the world our will, both common and personal, to give a witness of evangelical poverty.<sup>216</sup>

This chapter will be divided into two parts. The first part will analyze evangelical poverty as an expression of the charism of the Society of Jesus, in which the letter of P.H. Kolvenbach will be pivotal. The second part will focus more on an analysis of the proper law of the Society on the acquisition, retention, administration, and alienation of temporal goods, as well as the various financial officers within the Society and their responsibilities for its life.

### ***3.1 – The Society of Jesus and the Evangelical Counsel of Poverty***

As is the case with all religious institutes, Saint Ignatius had adopted the life of the evangelical counsels. The vow of obedience may be mentioned few times in this chapter, but since we are mainly dealing with temporal goods, the primary focus for us will be on living the vow of poverty in the Society.

#### **3.1.1 – Embracing of the Vow of Poverty in the Society of Jesus**

After his conversion, Ignatius of Loyola, the founder of the Society of Jesus, decided to live in poverty, sustaining himself only through begging. His models at that

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<sup>216</sup> *General Congregation 31*, d. 18. no. 13.

time were Sts. Francis and Dominic. This choice was not because he liked to be poor, but rather because he chose to be poor since it was Christ's state, and so it is a state to be venerated.<sup>217</sup> He practiced it by stripping himself of everything, leaving his castle and his hometown, finding the Lord and discovering a new way of life. Arriving in Paris, France, he convinced a few friends to follow in his footsteps and to live a life like his. They embraced his example and joyfully followed him to live and preach the Gospel in the Holy Land, in poverty as Jesus did.<sup>218</sup> Their trip to the Holy Land was aborted due to war, however, so they offered themselves to the Roman Pontiff to be sent wherever he wanted them to go. In Rome, being educated themselves, they started to work as "scholar-apostles," who taught people while begging for what was necessary.

The first companions conquered that fear and wanted nothing so much as to preach in poverty in the Holy Land as Jesus had. Leaving Paris, they served at corporal and spiritual works of mercy around Venice, begging all the time. When their hope ended of getting to the Holy land, they moved to Rome to discover what the Church might need of them. Even there, begging to work as scholar-apostles, the "Masters of Paris" found begging astonishingly fruitful.<sup>219</sup>

Life in Rome had changed and people who had money, such as bankers and middlemen, and other rich people recognized the importance of education and began to invest money in it. This changed the life of the first Companions, since they now started to have a more or less regular income, compared to the money they received from begging. The life of poverty started to change from actual poverty to spiritual poverty. The life of the *Spiritual Exercises* was their tool in dealing with this new situation.

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<sup>217</sup> Cf. P. R. RIGAMEY, *Poverty: An Essential Element of Christian Life*, Rosemary SHEED (trans.), New York, Sheed and Ward, 1950, 27.

<sup>218</sup> Cf. *The Autobiography of St. Ignatius of Loyola with Related Documents*, J. C. OLIN (ed.), J. F. O'GALLAGHAN (trans.), New York, Harper and Row, 1974, 24.

<sup>219</sup> J.A. TETLOW, "The Transformation of Jesuit Poverty," in *Studies in the Spirituality of Jesuits*, 18 (November 1986), no. 5, 2.

Indifferent to all created things in all that is allowed to the choice of our free will is not prohibited to it; so that on our part, we want not health rather than sickness, riches rather than poverty, honour rather than dishonour, long rather than short life, and so in all the rest, desiring and choosing only what is most conducive for us to the end for which we are created.<sup>220</sup>

Avarice and selfishness were detrimental social diseases in Ignatius' era, especially amongst Church leaders. He saw them as the root of all evil, and by examining the "two standards," he found evangelical poverty as the best tool to fight them.<sup>221</sup>

### 3.1.2 – Introduction of the Notion of Evangelical Poverty in the Constitutions

While the Society of Jesus was still at its very beginning, and Saint Ignatius was trying to write the Constitutions, the issue of poverty was among the most complex topics he had to deal with. That complexity appeared in many forms throughout the Constitutions, especially when it came to ownership and endowments. While the Society of Jesus continued the practice of begging, a practice that was specific to mendicant orders, Ignatius allowed the Society to own lands and buildings (mendicant orders did not). He did not, however, allow endowments from them, or any form of fixed revenue.<sup>222</sup> In any case, the Jesuits in their missions were always ready to go preach the Gospel wherever they were sent, in a great spirit of detachment, with or without money, without any expectations and with total indifference, according to the *Spiritual Exercises*.

Ignatius of Loyola insisted on the importance of the spiritual implications of poverty while practicing an act of poverty. Not being a mendicant order, some Jesuits

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<sup>220</sup> E. MULLEN, *The Spiritual Exercises of Saint Ignatius of Loyola: Translated from the Autograph*, New York, P. J. Kennedy and Sons, 1914, 19.

<sup>221</sup> Cf. M.J. BUCKLEY, "On Becoming Poor" in *On Becoming Poor: A Symposium on Evangelical Poverty*, in *Studies in the Spirituality of Jesuits* VII, 2-3 (March and May 1976), 75-79.

<sup>222</sup> Cf. SOCIETY OF JESUS, *The Constitutions of the Society of Jesus and Their Complementary Norms. A Complete English Translation of the Official Latin Texts*, Louis, MO, The Institute of Jesuit Sources, 1996 (= *Constitutions*; = *Complementary Norms*) no. 555. This has been modified by the *Complementary Norms* no. 191 which make the distinction between houses dedicated to pastoral work and churches on the one hand, and apostolic institutions on the other.

might become accustomed to a life of comfort or even luxury and move away from the spirit of poverty and the reliance on God alone. Therefore, he stated clearly in the Constitutions that each Jesuit “is to spend another month in making pilgrimage without money, begging from door to door at times for the love of God our Lord, in order to grow accustomed to discomfort in food and lodging.”<sup>223</sup>

Later on, begging decreased among the brothers, due to the challenges it required and its effects on the preaching itself. Therefore, Ignatius retained only the “spirit of begging” and asked every Jesuit to be ready to beg whenever he was told to do so, and whenever necessity required it. Every Jesuit’s needs, however, were to be supported on their journey and, instead of begging, the superiors were to give them sufficient money.<sup>224</sup> From that time on, the practice of poverty became less on the community level and more on the individual level, although in either form it was practiced under the discretion of the superiors. Inevitably, the practice of poverty began to vary from individual to individual, from house to house, and from community to community. Much depended on the superior, the situation, and the context.<sup>225</sup>

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<sup>223</sup> *Constitutions*, no. 67.

<sup>224</sup> Cf. *Constitutions*, no. 559.

<sup>225</sup> Among the explanations that formators gave to Jesuits in formation was that comparison does not work in the practice of poverty because it depends on the context and the situation, and it is now left to the discretion of the superior. The practice of poverty at the noviciate would not be the same as in the house of scholastics; there would be differences as well between houses of formation and houses of apostolate. It could be different even among houses of apostolates, depending on their context and location. The spirit of poverty however is always the same everywhere for the Society of Jesus. This is clearly stated by the *Spiritual Exercises* in the “Principle and Foundation.” Cf. *Spiritual Exercises*, no. 23.

### 3.1.3 – Poverty in the Society of Jesus after the Second Vatican Council

Like for the Catholic Church in general, the Second Vatican Council (October 11, 1962 to December 8, 1965) has shaped the life of the Society. While the Church prepared itself for a new step in its life, the Society of Jesus had to proceed immediately to the thirty-first General Congregation because the General of the Society, Father John Baptist Janssens, passed away on October 5, 1964.<sup>226</sup> Father John Swain was appointed vicar general of the Society, and announced that a General Congregation would happen the next year, without giving any precise date. The thirty-first General Congregation began on May 6, 1965.<sup>227</sup>

The thirty-first General Congregation issued one of the most important documents of the Society of Jesus that addressed poverty in a clear and new way. It gave a renewed direction to the way Jesuits are to live their evangelical counsel of poverty: “Our poverty in the Society is apostolic: our Lord has sent us to preach in poverty. Therefore, our poverty is measured by our apostolic end, so that our entire apostolate is informed with the spirit of poverty.”<sup>228</sup> The spirit of poverty that an individual Jesuit lives has to become visible in his apostolic life.

Poverty has taken on a different form of existence since the thirty-first General Congregation. More than just a personal and community way of life, it has to have an impact on those to whom Jesuits minister. It became a visible sign of the working of the

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<sup>226</sup> Until the last two General Congregations (35<sup>a</sup> and 36<sup>a</sup>), General Congregation took place only when the general superior of the Society of Jesus had died.

<sup>227</sup> Cf. J. W. PADBERG, (ed.), *Jesuit Life and Mission Today: The Decrees of the 31<sup>st</sup> – 35<sup>th</sup> General Congregations of the Society of Jesus*, Saint Louis, MO, The Institute of Jesuit Sources, 2009, 7.

<sup>228</sup> *General Congregation 31*, d. 18. no. 4 in J. W. PADBERG (= *General Congregation*, followed by the number, the decree number, and the number in the decree).

kingdom of God and a sign of charity. “Our poverty, stated the decree of the General Congregation, should become a sign of our charity in that by our common lack we enrich others.”<sup>229</sup>

Community poverty also has been emphasized since it had become somewhat overshadowed by individual practice in the last century. The Jesuit way of living poverty, following the poor Christ, has to appear in their community life by sharing goods in common so that it becomes a “witness of evangelical poverty, humbly and fraternally serving all, especially the poor.”<sup>230</sup> Since then, preference towards the poor was one of the criteria for Jesuits to choose apostolates. All individual Jesuits and communities were reminded to renounce their own advantage and even become poorer so that they may serve the whole body of the Society, and beyond.

### **3.1.4 – Circular letter of Father Peter-Hans Kolvenbach on Poverty<sup>231</sup>**

In 1976, Father Pedro Arrupe, then superior general of the Jesuits, promulgated particular statutes on poverty in the Society. However, given the rapid evolution in world finances and the complications surrounding the various apostolic works, it became necessary to revise these statutes. Thus, after extensive consultations, new statutes were promulgated by Father P.H. Kolvenbach, superior general, on March 25, 2003 to replace the 1976 text.

On that occasion, Father P.H. Kolvenbach wrote a most important letter to the entire Society explaining the meaning of poverty today within the community. In order

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<sup>229</sup> Ibid., no. 9.

<sup>230</sup> Ibid., no. 13.

<sup>231</sup> P.H. KOLVENBACH, *On Poverty*.

to understand better the various provisions we intend to study later in this Chapter, it would be essential to establish a sound contemporary spiritual base from which to approach them. Otherwise, they risk becoming sterile rules, with little if any Gospel foundation.

The new statutes, then, rather than consisting simply in a number of detailed prescriptions, start from a different perspective, one that is much more demanding for each individual Jesuit: “a conversion of heart,” following the example of Saint Ignatius.

Father P.H. Kolvenbach outlines a number of aspects of such a conversion of heart. The first is a new understanding of what is meant by “evangelical poverty”, based on Saint Ignatius’ writings and example. It consists in being willing “to ask of the Lord the concrete form that He expects from each of us, chosen from among the many possible authentic forms of evangelical poverty.” And he continues:

It is spiritual poverty – living the mystery of the poor Lord – that ought to give form to, inspire and motivate our actual poverty “if the Divine Majesty would be served and if He would want to choose and receive me” (*Spiritual Exercises* 147).

The second aspect is the important and indispensable role of discernment, when asking the Lord to give each Jesuit the concrete form of his actual poverty, rather than deciding for himself what is appropriate. Such discernment is required at all levels of the Society. It is done in common, if possible. It is prayerful, asking that “the Lord choose us for actual poverty, as long as this would be for the service and praise of His divine goodness.” This discernment is much more demanding, because it is never-ending, and calls for a revision of each person’s style of life.

Another aspect would consist in recognizing that the prophetic treatment of goods does not exclude their careful administration and management. He recommends that this

discernment take place “at the moment in which the annual budget is discussed and when the economic situation of the community or of a work is reviewed at the end of the year or during the visit of the Major Superior.”

Father P.H. Kolvenbach outlines three particular criteria to be observed when entering into this process:

(1) the mission that has been received:

We must ask ourselves – also with the help of our companions – to what extent we ought to improve or reduce our style of life, not according to our personal taste but in view of the mission that the Lord has confided to us.

(2) the commandment of the Lord to give freely what we have received freely from God:

It is a mission that should inevitably be accomplished with the heart of a poor person, with poor means in which there is no proportionality between the investment and the result, without looking for prestige or means of advantage.

(3) evangelical solidarity with the poor:

the gift of oneself can never be replaced by mere money – through our community and in a work [it] becomes an integral part of the mission “to preach in poverty.”

The conclusion of the letter refers to Constitution 553: “Poverty, as the strong wall of the religious institute, should be loved and preserved in its integrity as far as this is possible with God’s grace.”

It is in this evangelical perspective that we can now turn our attention to some of the pertinent provisions found in the various legislative documents of the Society in relation to the proper acquisition and administration of temporal goods within the community.

### ***3.2 – Acquisition and Administration of Temporal Goods in the Society of Jesus***

Having established the context wherein poverty is lived, it is now appropriate to examine some of the internal Jesuit legislation to see how these principles are applied in daily life.

### **3.2.1 – The Proper Law of the Society of Jesus on the Acquisition of Goods**

Being a Society in the full communion of the Catholic Church, most of the laws and regulations on temporal goods of the Church found in Books II and V of the Code of Canon Law govern the Society of Jesus. Also, being a public juridic person and institute of consecrated life of pontifical right, it has its proper law that governs the acquisition, retention, administration, and alienation of its goods. Our focus in this section will be the acquisition of goods for the Society of Jesus.

#### ***3.2.1.1 – The Right to Acquire Temporal Goods***

The Society of Jesus has the right to own properties. The practice of discernment, however, must be the guide for any acquisition, so that the Society will remain in the spirit of poverty. Saint Ignatius distinguished three criteria for the practice of discernment. First, an acquisition has to correspond to a mission received. There should be no acquisition if it is not required for an existing mission or a new one assigned to the Society. Second, even if the Society has invested in acquiring a property, the spirit of gratuity must drive its members while fulfilling their mission. In the Society's mission, there is no place for proportionality between the investment and the result. And finally, in any investment, evangelical solidarity with the poor must always be observed. The desire to live with the poor and work for their service should be the motivation for any choice of ministry.<sup>232</sup>

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<sup>232</sup> Cf. P.H. KOLVENBACH, *On Poverty*. Also, see the 32<sup>nd</sup> General Congregation (GC 32, no. 270), as the desire of that Congregation:

“This is the desire of the Congregation, this its prayer to God for the Society, a poverty profoundly renewed,

- Simple in community expression and joyous in the following of Christ;
- Happy to share with each other and with all;

To acquire goods, the Society can utilize as sources of revenue all forms that are not expressly prohibited by its law. Instituted by law as a juridic person, it has the capacity to acquire temporal goods.<sup>233</sup> Not only the Society of Jesus as a whole, but also all juridic persons within it enjoy the same right and capacity. Juridic persons in the Society of Jesus include assistancies, provinces, regions, and houses. Those rights and capacities, however, are to be within the realm of the legislative texts of the Society.<sup>234</sup> Therefore, “while maintaining the provisions of common law, all sources of revenues are permitted which are not expressly prohibited by Jesuit law.”<sup>235</sup> Also, living the vow of poverty, any signs that give the appearance of excess and wealth are to be avoided.

To be able to pursue its mission, therefore, the Society of Jesus and the juridic persons within it enjoy the right of acquiring temporal goods and they have the capacity of retaining them, within the limit of all the laws and regulations that bind them. Since the Society of Jesus exists in many countries, the appearance of excess and immoderate wealth may differ from one country to the other.<sup>236</sup>

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- Apostolic in its active indifference and readiness for any service; inspiring our selection of ministries and turning us to those most in need;
  - Spiritually effective, proclaiming Jesus Christ in our way of life and in all we do.

<sup>233</sup> Cf. *CIC*, c. 634.

<sup>234</sup> The legislative texts of the Society of Jesus include *The Constitutions of the Society of Jesus* (= *Constitutions*), the *Complementary Norms to the Constitutions of the Society of Jesus* (= *Complementary Norms*), the statutes and all the *Decrees of the General Congregations*, unless abrogated (= *General Congregation*, followed by the number of the General Congregation). These texts are promulgated by the Supreme Legislator of the Society of Jesus, and are binding as law.

<sup>235</sup> SOCIETY OF JESUS, *Statutes on Religious Poverty in the Society of Jesus*, Rome, General Curia of the Society of Jesus, 2005, Part III, 38 § 1 (= *Statutes on Poverty*).

<sup>236</sup> Having three cars in a house of six Jesuits might be considered normal in North American society; this could be seen as an excess and a sign of wealth in a sub-Saharan country. The decision of the limit of what a house, or a province could own is left to the wisdom and discernment of Major Superiors and sometimes the local superiors.

### **3.2.1.2 – Goods Acquired by Individual Income**

Life in a Jesuit community is such that everyone who can contribute to the living of the community has to bring their individual income into the community. In turn, it is the community that provides for all their needs and necessities. Individual income includes:

- *Remuneration from work*: Even if it is natural and normal to receive remuneration from the work one has finished, “with the exception of the special norms for parishes and the legitimate compensation for travel and other expenses, Jesuits may demand no stipend for their work in spiritual ministries; they may accept only what is freely offered.”<sup>237</sup> Fruits of personal talent and industry and remuneration attached to stable ministries may also be accepted.<sup>238</sup>

- *Mass stipends*: Gratuity is to be practiced outside and inside of the Society. It is, however, “legitimate in the Society to receive a stipend or an offering for the celebration of a mass.”<sup>239</sup> It is the duty of the major superior to establish a policy regarding stipends in his province, so that it follows the policy in effect in the region and it does not have the appearance of commerce.<sup>240</sup>

- *Pensions or compensation for old age*: Receiving money due to old age or sickness and disability is permitted, and is a source of income for a community.<sup>241</sup>

### **3.2.1.3 – Goods Received by Productive Activities**

Any form of business and commercial activities is unacceptable and should be avoided, even if it is for the benefit of the juridic persons and to finance their apostolic works, unless permissions are given due to special pastoral reasons. By doing so, the

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<sup>237</sup> SOCIETY OF JESUS, *Instruction on the Administration of Goods*, Rome, General Curia of the Society of Jesus, 2005, no. 341 (= *Instruction*).

<sup>238</sup> *Ibid.*, no. 342.

<sup>239</sup> *Ibid.*, no. 343.

<sup>240</sup> Cf. *ibid.*, no. 344.

<sup>241</sup> Cf. *ibid.*, no. 345.

juridic persons must follow the legal rules in effect in the region in which the activities take place.

Production and publication of books and any media activities are considered a source of income by productive activities. They are not, however, considered as commercial activities if they are used exclusively by students and the Jesuits, and the Jesuits are not the ones who are selling them.<sup>242</sup>

### ***3.2.1.4 – Goods Received by Donation***

In the beginning of the Society of Jesus, the first companions lived only through donations by begging, a practice which they found fruitful for their mission to preach in poverty. It was their way of conquering the fear of poverty that bound the Society at that time.

The Society had stopped practicing begging (the way the first companions had done it) but donations are still one of its major sources of income. Donors and benefactors are mostly lay people or organizations that recognize they have received what they need for their lives from the Society of Jesus. In return, they donate money to the Jesuits (sometimes significant sums) to support them in the accomplishment of their mission and to assure the continuity of their work in the region.

Some donations could be restricted, and the Society is bound to use them according to the will of the donors. These are donations that “have attached to them some obligation to undertake a required task or action.”<sup>243</sup> Some of the requirements could be a

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<sup>242</sup> Cf. *ibid.*, no. 350-354.

<sup>243</sup> *Ibid.*, no. 363.

long-term restriction and, as a general rule, they cannot be accepted without consulting the superior general.<sup>244</sup> They are to be declined if the requirements are not in conformity with the Society's rules and regulations and way of life.

Some donations are unrestricted and the Society, represented by the major superior, may use them as he determines. If donations are unrestricted and offered to communities, they can be accepted by the respective superiors of those communities. "Refusing unrestricted donations requires the permission of the Provincial."<sup>245</sup> The approval of the General is required if the donation exceeds the established limit of the provincial's authority.

Furthermore, some donations can be accompanied by legal requirements (formal letters, being available for public screening). In such a case, the approval of the provincial is required before they are accepted. Such a donation needs a knowledgeable person to understand the intention of the donors.

### ***3.2.1.5 – Goods Obtained by Purchase***

Purchasing is a very common way to acquire goods. When it comes to temporal goods, however, it may easily lead the juridic person into excess or a sign of wealth. Jesuits are reminded that "purchasing is a particularly important operation in the practice

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<sup>244</sup>Even though the term chosen here is "consultation", what is usually required is the consent of the superior general to accept the donation, or otherwise. In our Constitutions, Saint Ignatius insisted more on the fact that the Society was to exercise more ministries, help the neighbours and do good deeds and works for the glory of God, than on receiving benefits from its benefactors. Cf. *Constitutions*, 324, 235.

<sup>245</sup>*Instruction*, no. 358.

of our poverty and in the maintenance of an appropriate style of life” and “it can involve the handling of significant amounts of money.”<sup>246</sup>

To avoid the mishandling of that amount, asking the permission of a higher superior is required when the value exceeds the established limit. For a house, if the value of the property or the asset exceeds the limit set for a local superior, the permission of the major superior is required. For a province, if the value of the asset exceeds the established limit for the provincial, the permission of the superior general is required.<sup>247</sup> The established limit for the provincial “has come to be, for practical reasons, the limit established by the episcopal conference in each country.”<sup>248</sup>

### **3.2.2 – Proper Law of the Society of Jesus on the Administration of Goods**

Once goods have been legitimately acquired, they must be properly administered. The Society of Jesus acts within the limit of universal law in the administration of its goods. Administrators are urged “to invest any surplus money, or the proceeds of an alienation of goods for which there is no immediate need, for the benefit of the juridic person for whom they manage the funds.”<sup>249</sup> Since the Society is not allowed to invest to gain profit, because of its choice of evangelical poverty and its special option to care for the poor, all investments need discernment, as Father P.H. Kolvenbach, SJ stated in his letter to the whole Society on poverty:

The important and indispensable role of discernment is a second aspect of our poverty, which must be emphasized. [...] a prayerful discernment could lead to prophetic gestures

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<sup>246</sup> Ibid., no. 374.

<sup>247</sup> Ibid., no. 375.

<sup>248</sup> Ibid., no. 41.

<sup>249</sup> Ibid., no. 378.

in regard to poverty, in which not only the superfluous but also the essential is shared with the poor or with ministries that are little appreciated because they have not been as successful or prestigious.[...] This prophetic treatment of goods by no means excludes the careful administration and management of an organization that, in any event, presents itself as “non-profit,” but it does exclude any commercialization and any undue capitalization. This discernment in common should take place in all communities, at the level of provinces and regions, for all the works which depend on the Society, especially at the moment in which the annual budget is discussed and when the economic situation of the community or of a work is reviewed at the end of the year or during the visit of the major superior.<sup>250</sup>

Even if administrators are encouraged to invest, not all of the juridic persons within the Society of Jesus can freely make permanent investments. For their ends and needs, houses of formation and infirmaries, any apostolic works (except churches), regions and provinces, and the Society itself may have investments that could generate income for them. Apostolic communities, on the contrary, are not allowed to have permanent investments. They may have short-term investments only in order to be able to save for the purchase of items they lack.<sup>251</sup>

### ***3.2.2.1 – Investments in Fixed Assets and Securities***

For houses which can have permanent investments, financial officers/ treasurers are to be appointed and to have the “normal faculties to make the appropriate investments for the good management of the assets entrusted to them.”<sup>252</sup> They should be knowledgeable of the law, canonical and civil, and they should have competency in finances so as to be able to perform acts of ordinary administration, according to canon 1284 of the Code of Canon Law. They are to be aware of the following, *inter alia*:

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<sup>250</sup> P. H. KOLVENBACH, *On Poverty*.

<sup>251</sup> “All communities dedicated to pastoral or to any other apostolic functions are held to the practice of poverty that is indicated in the Constitutions for houses, and therefore these communities are forbidden to take fixed and stable rents coming from property, movable or immovable, which either belongs to the Society or is invested in foundations that the Society can claim for itself through legal action.” *Statutes on Poverty*, Part III, no. 54 §1.

<sup>252</sup> *Instruction*, no. 380 § 1.

- the security of the investment: the assets should not run risks greater than those inherent in sensible investment management;
- the return on investments: usually the greater the return, the higher the risk;
- the liquidity of the investment: the investments should be able to be converted to cash when necessary.<sup>253</sup>

They are to invest in types of investments that have a lesser risk of inflation, such as fixed assets/real estate, farmland, urban property.

Further, they are to be aware that permission of the immediate superior is required before investing in properties, and permission of the competent authorities is required before selling or exchanging properties. The competent authorities differ according to the value of the sale or the exchange. It could be the provincial, the General or even the Holy See.

### ***3.2.2.2 – Loans Within and Outside the Society and Rental of Property***

The vow of obedience must play a large role in the life and work of those in charge of the administration of the temporal goods of the Society, either designated or appointed persons (finance officers, bursars, ministers or accountants), or persons in charge (superiors, major superiors). The finance officers should take the decision of the superior as an enlightened decision for the betterment of their mission. Listening to the needs of the Society of Jesus and of the Church, with their eyes focused on its mission, they are to seek the best way for the proclamation of the Gospel.

*Loans within the Society.* Houses/communities are independent in their way of living as they are canonically erected houses. Houses can share goods according to their needs and with the permission of the competent authority. “Loans can [also] be made between provinces/regions, houses and apostolic works even as a form of investment,

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<sup>253</sup>*Instruction*, no. 382.

with the permission of the superior, and with secure guarantees that the money will be repaid.<sup>254</sup> This kind of loan is more practical between two separate provinces, or two larger apostolic works. Smaller houses could receive a loan from larger houses or apostolic works (for example, a scholasticate, which has about twelve members, could ask for a loan from a university which has about thirty people, most of whom are professors). A large community could also ask for a loan from an even larger entity (for example, the community of a university can ask for a loan from the Province). A fund can also be created at the province level for contributions from houses and apostolic works that are intended to stimulate solidarity and share economic benefits.<sup>255</sup>

*Loans to persons outside the Society.* As is the case with all investments, money belonging to the Society should not be loaned to outsiders without the permission of the competent authority. It is possible that the finance officers could be tempted to loan to family members or close friends or benefactors. It is here that the implementation and life of the vow of obedience has to be reinforced. Finance officers are to follow the normal administrative procedures of the Society, whether for a family member or not.

*Renting of Property.* One form of investment that is allowed in the Society of Jesus is renting of properties, according to *Instruction* 407. Even if it is a source of income, apostolic effectiveness and religious poverty should be its motives. It is not uncommon to rent part of the property to an apostolic work for decent fees/rent, or to rent part of a building to other communities to live in. Earning profit must not be the main purpose of renting.

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<sup>254</sup>*Instruction*, no. 405.

<sup>255</sup>*Ibid.*, no. 406.

Since renting could deal with entities other than the Society of Jesus, “no rental contract should be signed without the permission of the Provincial.”<sup>256</sup> Even if the finance officers are the ones handling the contracts and dealing with the renters, it is the local superior who takes the decision to rent or not. The higher authority from whom to request permission for the implementation of the decision, is the major superior, or the provincial.

### ***3.3 – Alienation of Goods in the Society of Jesus***

The Society of Jesus, a juridic person in the Church, is subject to the universal law, except for those instances when the approved legislative texts of the Society provide otherwise. Jesuit texts refer to two kinds of alienation: alienation in the strict or proper sense, and alienation in the broader sense.

Alienation in the proper sense is the sale of propriety. Through this act, the title, the right of ownership, and the control of the assets is transferred to another person. Once the transfer of ownership occurs, alienation has occurred.

Alienation in the broader sense (which in reality is not an act of alienation but is commonly called such) is any act of administration whereby the condition of the stable patrimony worsens, including one whereby the juridic person retains only a limited control over the assets. In this perspective, long-term rental could be an example of an alienation in the broader sense.

It is possible to have loans, rentals, or any other type of investment between two juridic persons within the Society. There is, however, no alienation within the Society of

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<sup>256</sup>*Instruction*, no. 411.

Jesus. The transfer of property within the Society, completed with the permission of the competent superior, is not considered alienation, because the ownership just moves from one entity to another under the ownership of the Society of Jesus, as a universal society. Before any alienation occurs lawfully, however, a few requirements or regulations must be considered.

### 3.3.1 – Juridical Regulations

Stable patrimony is not commonly to be alienated. Such assets are retained and held for the Society to fulfil its mission. There is, however, an exception to this regulation: they should not be alienated “except in those situations permitted by ecclesiastical law and in accord with the requirements of the law.”<sup>257</sup>

There are also inalienable goods in the Society, in virtue of a contract signed with proper permission: these are those fixed and movable assets that the General has required to be preserved. Excepting the General Congregation, the General is the highest personal authority within the Society of Jesus, and if the interdiction comes from him, no one within the Society can undo it, except himself. Indeed, he is the one who will give the permission to alienate assets that are above the maximum limit, keeping in mind that in some cases the intervention of the Holy See is also required.

The modality of an investment could be changed as long as the pertinent norms are observed.<sup>258</sup> In this case, instead of alienating the stable asset, it could be invested in

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<sup>257</sup> *Instruction*, no. 432.

<sup>258</sup> *Ibid.*, no. 433.

long term rental or leasing. The only condition is to follow the rules and regulations regarding leasing or renting properties.

### *Requirements for alienation*

There must be a just cause for the alienation.<sup>259</sup> Since alienation touches the very life of a juridic person, a valid reason for the alienation has to be stated. For example, if a portion of land of the farm that has not been used for years were to be sold to obtain additional funds for the building of a new infirmary.

There has to be a pious act, a religious work, or an act of Christian mercy as a reason for the alienation. Even if stable assets are to be alienated, the juridic persons must keep in mind that the alienation should help somehow foster the mission of the Society.

There must be an urgent need of the juridic person.<sup>260</sup> Alienation should not occur if the purpose is to have sufficient cash flow in case there is a natural disaster or any unforeseen incident. The need is to be imminent and alienating the stable assets is the only way possible.

“There is an appraised value of the property to be alienated.”<sup>261</sup> Alienation is the last solution to gain a sum of money for a higher or greater cause. If the value of the targeted property is “greater than the goal for which the money will be used, the alienation should not occur.”<sup>262</sup> This appraised value must be done by a group of appraisers, and “the

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<sup>259</sup> Cf. *Instruction*, no. 434.

<sup>260</sup> Cf. *ibid.*

<sup>261</sup> *Ibid.*

<sup>262</sup> *Ibid.*

money from the alienation should be for the benefit of the juridic person.”<sup>263</sup> The ultimate beneficiary of the alienation should be the juridic person that owned it previously.

“All the other precautions that the legitimate ecclesiastical authority believes should be taken.”<sup>264</sup> We notice how these provisions correspond to those mentioned in Chapter II when we referred to universal requirements.

*Formalities required for the validity of alienation*

The alienation of stable assets in the Society of Jesus could fall into three categories: those requiring permission from the Holy See, those requiring permission from the General, and those requiring permission from the provincial only.

(1) Permission from the Holy See. Three kinds of stable assets fall in this category. First, there are those assets to be alienated whose value is higher than “the maximum amount conceded by the Holy See to the General.”<sup>265</sup> For religious congregations of pontifical right, it is the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life that determines the maximum amount. Usually, this is the same maximum amount set by the conference of bishops of the countries where they minister.

Second, any goods that were donated to the juridic person as a result of a vow or are of historical or artistic significance.<sup>266</sup> These could be paintings of higher value, diaries

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<sup>263</sup> Ibid., no. 435.

<sup>264</sup> Ibid.

<sup>265</sup> Ibid., no. 438.

<sup>266</sup> Cf. *ibid.*, no. 436.1.2

or books, or works of art that are antique and marked the history or the existence of the Society or the juridic person.

Finally, any goods which are venerated by the people, and relics.<sup>267</sup> An example of this category could be the paintings in the Church of Gésu, Rome, or the relic of the hand of Saint Francis Xavier.

(2) Permission from the General is required when the value of the stable assets falls in between the maximum amount for which he can give permission, and the amount delegated to the provincials.

(3) Permission from the provincial is needed when the value of the stable assets does not exceed the maximum allowed.

These norms regarding permissions are to be observed, not only for alienation in the strict sense, but also for acts of alienation in the broad sense. When seeking permission, all the assets to be alienated must be presented to the competent authority, especially when they are divisible. If some part of the asset is hidden, the permission is invalid, and whatever is canonically invalid, could be sometimes civilly invalid also.

In case of invalid alienations, the invalidity remains until it is removed by the proper authority. The instruction on the Administration of Goods states: “If the alienation was canonically invalid, it must be repeated following the requirements for validity or the Holy See must remove the invalidity.”<sup>268</sup>

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<sup>267</sup> Cf. *ibid.*, no. 436.1.3.

<sup>268</sup> *Ibid.*, no. 441.

### 3.3.2 – Sales and Rental

*Sales.* It could happen that houses, communities, or apostolic works purchased items or assets that were useful at the time but are not so anymore. The regulations allow the juridic person to sell these assets and use their value in a more meaningful way.<sup>269</sup> In this case, the value of alienation could be lesser than the value of purchase, due to the usage of the assets and/or their usefulness. The focus is not on the monetary value, in this case, but rather on the usefulness of the asset for the juridic person.

*Leasing Property.* “Renting or leasing is a contractual arrangement in which one party is obliged to give to the other the enjoyment or use of something for a specified length of time and certain price.”<sup>270</sup> For the Jesuits, rental is considered alienation in a broad sense, in that the juridic person loses part of the control of the assets for a certain period of time. In terms of leasing ecclesiastical goods, the juridic person must refer to the norms and regulations established by the conference of bishops of the place where the rental occurs. If it involves juridic persons within the Society of Jesus, “the General should at least be informed.”<sup>271</sup>

To protect the interests of the Society, the prudent way of proceeding is to have the rental contract in writing and civilly validated. “Given the complexity of the matter, a written and civilly valid contract should be prepared after consulting with a lawyer versed in these matters.”<sup>272</sup>

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<sup>269</sup> Cf. *ibid.*, no. 442.

<sup>270</sup> *Ibid.*, no. 448.

<sup>271</sup> *Ibid.*, no. 450.

<sup>272</sup> *Ibid.*

### 3.3.3 – Donations

Donations and alms are ways for the Society of Jesus to be closer to the poor. It is not a way to create dependence, but a simple way to be with those who are suffering. Donations and alms are temporal goods, and considering that each Jesuit does not have the means to help those who are materially poor, regulations for almsgiving and donations at the level of the community or houses are needed.

*Donations outside the Society.* In general, houses, apostolic works, provinces, and regions cannot give gifts. Yet each community and house is encouraged to give alms to the poor.<sup>273</sup> This statement shows the spirit the Society of Jesus on how to make donations. Giving a gift, although seen by many as an act of generosity, love, and care, is less important than giving alms. That is due to the preferential option to the poor the Jesuits have adopted as their way of life.

Each house is to include in its annual budget the alms that it is planning to give that year. The amount to be given in alms would equate to one percent of the ordinary expenses of the community. There is a specific recommendation concerning donations outside the Society: “For donations given outside the Society of fixed, durable goods or resources that are part of financial assets or goods coming from the fixed assets, the regulations concerning alienation should be observed.”<sup>274</sup>

*Donations within the Society.* Sharing goods among houses and apostolic works could be considered as donations within the Society. It happens that some house or

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<sup>273</sup>Cf. *ibid.*, no. 470.

<sup>274</sup>*Ibid.*, no. 472.

apostolic work has more and uses less goods than the others. It must, however, follow the rules and the regulations for the benefit of those houses and works in greater need.

The first beneficiaries of the surplus of a house or apostolic work are the apostolic institutions attached to it, unless there is a specific provision from the provincial. This provision may be the result of the annual report of each house and apostolic work. It could be a response to special requests addressed directly to the provincial from other houses or works in greater need.

Sharing goods and helping other houses and apostolic works are not limited within the province. These acts can extend to other provinces and assistancies. A certain amount should be versed to a common fund called “Charitable and Apostolic Fund” of the Society. This fund is regulated by the General. Its distribution comes from the *Curia generalis* to provinces in need.

### ***3.4 – Financial Administration in the Society of Jesus at Various Levels***

#### **3.4.1 – Financial Administration at the Community Level**

To begin this section, the word “community” needs to be defined and clarified. “Community” in the Society of Jesus may have different meanings depending on the context in which it is used.

First, the community in the Society of Jesus is the entire Society itself. It takes its origin “from the will of the Father joining us into one; it is constituted by the active, personal, united, striving of all members to fulfill the divine will and is ordered to a life

that is apostolic in many ways.”<sup>275</sup> The Society’s founder, Ignatius of Loyola, wanted his followers to be sent in mission, to spread the Good News, but to remain friends in the Lord, wherever they were. They were within the one community, the Society of Jesus. Although they were spread throughout the world, they remain one large community. “Our community is the entire body of the Society itself, no matter how widely dispersed over the face of the earth.”<sup>276</sup> When the number of the Jesuits grew, they were gathered into smaller groups, or local communities, but they never ceased to be part of the larger community. The local community is “simply a concrete – if, here and now, a privileged – expression of this worldwide brotherhood.”<sup>277</sup>

Second, the “community” is “any group of Jesuits legitimately constituted under the authority of the same local superior.”<sup>278</sup> Even if all Jesuits belong to the universal community, every Jesuit also belongs to one local community under obedience to its superior. Because of their dispersion, there could be instances of a single Jesuit living

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<sup>275</sup> *Complementary Norms*, no. 314 § 1.

<sup>276</sup> *Complementary Norms*, no. 314 § 2.

<sup>277</sup> *Ibid.* it is interesting to note what the GC 36 stated about the local community:

“9. The Jesuit community is a concrete space in which we live as friends in the Lord. This life together is always at the service of mission, but because these fraternal bonds proclaim the Gospel, it is itself a mission.

10. In our Jesuit community life, we should leave room for encounter and sharing. This disposition helps the community become a space of truth, joy, creativity, pardon, and of seeking the will of God. Thus, community can become a place of discernment.

11. Communal discernment requires that each of us develop some basic characteristics and attitudes: availability, mobility, humility, freedom, the ability to accompany others, patience, and a willingness to listen respectfully so that we may speak the truth to each other.

12. An essential tool that can animate apostolic communal discernment is spiritual conversation. Spiritual conversation involves an exchange marked by active and receptive listening and a desire to speak of that which touches us most deeply. It tries to take account of spiritual movements, individual and communal, with the objective of choosing the path of consolation that fortifies our faith, hope and love. Spiritual conversation creates an atmosphere of trust and welcome for ourselves and others. We ought not to deprive ourselves of such conversation in the community and in all other occasions for decision-making in the Society.” *General Congregation 36*, d.1 no. 9-12.

<sup>278</sup> *Statutes of Poverty*, no. 46 § 1.

alone, away from all of his brothers, but still he belongs to a defined community, under a defined local superior.

### ***3.4.1.1 – Those Responsible for Financial Matters in a Local Community***

Every member is responsible for the daily routine of life in the community, but there are those who are in charge of the administration of its goods.

#### **3.4.1.1.1 – The Local Superior**

As the first person in charge of a community in all matters, the superior is also the administrator of the goods of the community. He is the first in charge of its finances. He decides on the expenditures and the management of the income. In a smaller community,<sup>279</sup> he administers its goods through a financial officer (treasurer) or a minister. In a larger one, he administers them through a financial officer assisted by a minister. In any case, as much as possible, the local superior should not act as the financial officer or treasurer.<sup>280</sup>

The universal law insisted that “insofar as possible, a finance officer distinct from the local superior is to be designated even in local communities.”<sup>281</sup> This is an expression of subsidiarity in the governance of the society, even on the local level.

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<sup>279</sup> It can be asked how many members there should be in a community for it to be considered a small community. It is obvious that a community of two or three Jesuits could be called a small one. When it comes to five or six members, it starts to become ambiguous, and when it comes to eight or nine members, then it is considered a larger community. The definition of smaller or larger community does not depend only on the number of the members in the community, it also depends on its location (physical and juridical). In provinces where communities normally have more than ten members (Africa or Asia), a community of six members could be considered a small community, while in Europe or North America, this could be a larger one.

<sup>280</sup> Cf. SOCIETY OF JESUS, *Manual of the Practical Law of the Society of Jesus*, Rome, 1997, no. 301 § 2 (= *Manual*).

<sup>281</sup> *CIC*, c. 636 § 1.

Since the local superior is ultimately responsible for the goods of the community, he is to be familiar with all the laws, universal and proper, governing temporal goods. Even if he does not assume direct management of finances and the routine acts of administration, he is to be knowledgeable about acts of ordinary administration and acts of extraordinary administration, these latter requiring approval of the superiors. Moreover, he needs some knowledge of civil law as well, or at least he is to be regularly in contact with a civil lawyer, or someone knowledgeable in that field to help him deal with civil requirements in administering temporal goods.

Being mindful of his relationship to his superiors in decision making, he is to hear his consultors when it comes to performing an act of administration that has long term effects for the life of the community. He “should not enter into any contract that could change the character of stability of the community or institution for which he is responsible.”<sup>282</sup> It is possible that the superior of a community is also in charge of an institution or apostolic work (linked to his community), such that he is the administrator of the goods of that institution which he manages through one or more financial officers. This happens frequently with Jesuit communities linked to educational institutions.

The local superior has the responsibility to submit an annual budget to the provincial for approval. This will be prepared by and with the treasurer or, if there is no appointed treasurer in the community, with the minister.<sup>283</sup>

Administering the goods of the community is a major responsibility of local superiors. It is not, however their only responsibility since they oversee the well-being of

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<sup>282</sup>*Instruction*, no. 128.

<sup>283</sup>Cf. *ibid.*, no. 130.

the entire community and its members. In all his responsibilities as superior, the founder of the Society asked the superior to be loving and caring for the men entrusted to him.

For Saint Ignatius, love for the members of the community was the distinguishing mark of the Jesuit superior.<sup>284</sup> From that starting point, the superior can encourage the mission of the apostolic men and ensure the quality of religious and community life that enables them to fulfil their mission.<sup>285</sup>

The other responsibilities of local superiors will not be detailed in this section, but their financial duties have been mentioned to emphasize of the importance of their role in administering goods. The person who is directly in charge of financial matters is the treasurer, and he is the subject of the next section.

#### **3.4.1.1.2 – The Financial Officer or Treasurer**

Having a financial officer is a requirement for any public juridic person, and he or she is to be distinct from the superior, who is the ultimate administrator of the goods of that juridic person. It is the responsibility of the financial officer or treasurer to handle the day-to-day financial matters of the local community, under the obligation of obedience and/or supervision towards the superior. It is his role “to assist the superior in the administration of the goods of the community.”<sup>286</sup> In this case, the financial officer does not make the decision, but fulfils what was decided by and with the Superior. The principal tasks of the financial officer of a local community include:

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<sup>284</sup>Cf. *Guidelines for Local Superiors*, 11, *Acta Romena Societatis Iesu*, 22 (1996-2002) no. 368 (= *Guidelines for Superiors*).

<sup>285</sup>Cf. *ibid.*, no. 373.

<sup>286</sup>*Instruction*, no. 141; *Manual*, no. 301 § 1.

- To prepare with the superior the annual budget: since the treasurer is the person who knows the ins and outs of the finances of the community, he is the most appropriate person to draft the budget for the year. He sees the income of the community and its expenditures and his knowledge will be the foundation for drafting the budget;
- To enter carefully and record all the financial information of the community, according to the norms. Therefore, he is to be cognizant of all the laws and regulations pertaining to the administration of goods of juridic persons (canon law) or corporations (civil law);
- To find the appropriate moment to make important purchases, such as supplies, construction materials. This is to avoid making extra expenses that could be avoided and to follow the standard of life of a “modest family” in incurring expenses;
- To oversee the bank account and the routine payments (daily, monthly, or yearly) such as bills, taxes;
- To be in touch regularly with the superior, to supply the minister, and especially to be in touch with the provincial treasurer for those expenses that go through the province treasurer, such as insurance and health care.<sup>287</sup>

In a word, the treasurer is the person to take care of the financial well-being of the community on behalf of the local superior. He is not to make decisions, but it is recommended that he take appropriate initiatives.

Preferably, the treasurer is a Jesuit, a priest or a coadjutor. “Normally, this person will be a Jesuit named by the Provincial.”<sup>288</sup> Since skills and knowledge of finances and applicable laws and regulations are highly recommended for a financial officer to fulfil his/her responsibilities, the laws (universal and proper) do not forbid to hire a person from outside the Society. If the treasurer is a Jesuit, the provincial appoints him. This appointment, however, can be delegated to the local superior.<sup>289</sup> Here, the principle of subsidiarity could be applied in naming the local financial officer, especially for smaller communities because it is the local superior who knows best the members of his community, their time, their tasks, their needs, and their talents and skills, and he is the one who arranges the daily life and routine of his community.

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<sup>287</sup> Cf. *Instruction*, no. 142 § 1 – 8.

<sup>288</sup> *Ibid.*, no. 140.

<sup>289</sup> Cf. *Manual*, no. 272.

Even if the law does not forbid appointing a lay person as financial officer of a community, it specifies a term of office.<sup>290</sup> This mandate (three years renewable) should be mentioned in the hiring contract if it is a person not a member of the Society. When leaving office, he prepares documentation for his successor. All the necessary information about the finances of the community will be included in that documentation, such as the assets of the community, the liabilities, cash on hand and bank accounts. It will be given in the presence of the superior and the minister to the next person to hold the office. This assures continuity and clarity about the financial status of the community.

#### **3.4.1.1.3 – The Minister and Sub-Minister**

Although the minister does not have the first responsibility for handling the finances, having a minister is a considerable help for the superior apart from the treasurer. “As necessity demands, the local superior should be helped by assistants. In addition to a treasurer, he should have a minister to help him in preserving the order of the community, to look after all needs, and to supervise offices that deal with material life.”<sup>291</sup>

The minister is to be in charge of the daily needs of a community, especially in material life. He is to be in close communication with the superior on the one hand, and with the treasurer on the other.

The minister will fulfil only the duty entrusted to him, and will regularly report to the superior about house matters. Like the treasurer, even if he is the one in charge of material things in the house, he does not decide but accomplishes only what the superior

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<sup>290</sup>Cf. *CIC*, c. 1279 § 2.

<sup>291</sup>*Complementary Norms*, no. 404 § 1.

orders him to do. Initiative is always recommended for the minister. He, however, “should accomplish all these tasks within the limits of the approved budget.”<sup>292</sup>

For a larger community, those tasks could be too much to handle by one person alone. In this case, a sub-minister or assistant to the minister should be appointed. The minister will sub-delegate some of the tasks that he received from the superior, with the approval of the superior.

The minister is to be a Jesuit.<sup>293</sup> The provincial, after consultation, appoints the minister of communities. For a larger community, the province consultors are to be consulted; for a smaller community, at least the provincial discusses the appointment with the local superior.<sup>294</sup>

### **3.4.2 – Financial Management of the Works of the Society and Their Canonical Connection to the Community<sup>295</sup>**

In the Society of Jesus, there are two kinds of works: those owned by the Society itself, and those entrusted to it. Among the works owned by the Society, there are

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<sup>292</sup> *Instruction*, no. 137.

<sup>293</sup> Although there is no written law preventing the hiring a person from outside of the Society to be a minister, the custom is that the person in charge of the office of minister was and is always a Jesuit. Another person from outside of the Society could be hired and do some of the work of the minister, but will not be called a minister.

<sup>294</sup> Cf. *Instruction*, no. 133.

<sup>295</sup> The 36<sup>th</sup> General Congregation (2016) has this to say about the various apostolic works: “All our ministries should seek to build bridges, to foster peace. To do this, we must enter into a deeper understanding of the mystery of evil in the world and the transforming power of the merciful gaze of God who labors to create of humanity one reconciled, peaceful family. With Christ, we are called to closeness with all of crucified humanity. With the poor, we can contribute to creating one human family through the struggle for justice. Those who have all the necessities of life and live far from poverty also need the message of hope and reconciliation, which frees them from fear of migrants and refugees, the excluded and those who are different, and that opens them to hospitality and to making peace with enemies.” *General Congregation 36*, d. 1, no. 31.

dependent works and independent ones. And for a work entrusted to the society, there are works that are entrusted to individual Jesuits and those that belong totally to others.

### ***3.4.2.1 – Works Owned by the Society***

*Dependent Works.* A dependant apostolic work is attached entirely or partially to a community for it to be able to function. A typical example of this kind of work is a school. For a dependent work, according to the *Instruction* (153), the provincial names its director after receiving the opinion of his consultors and the superior of the community. Consultation, but not consent, is needed for the provincial to name the director of a dependent work. Apart from the province consultors, the opinion of the local superior is one of the most valuable opinions the provincial should take into consideration for a more successful and fruitful mission. This is because in addition to his responsibility towards his community, this work will be under his oversight.

“If the director of the work is distinct from the superior, he is subject to him for both the direction and the administration of the work,”<sup>296</sup> because it is under the latter’s jurisdiction. If the director is a person from outside the Society, a good practice is to name a Jesuit as an assistant-consultor to keep visible the identity of the work as being part of the apostolate of the Society of Jesus. The collaboration of others in the works of the Society was spoken of in these terms by the 36<sup>th</sup> General Congregation:

GC 35 stated that “collaboration in mission... expresses our true identity as members of the Church, the complementarity of our diverse calls to holiness, our mutual responsibility for the mission of Christ, our desire to join people of good will in the service of the human family, and the coming of the Kingdom of God.” GC 34 had already asked that “all those engaged in the work should exercise co-responsibility and be engaged in discernment and participative decision making where it is appropriate.” GC 36 recognizes the decisive role of our partners in the vitality of the Society’s mission today and expresses its gratitude to all those who contribute

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<sup>296</sup>*Instruction*, no. 153.

to and play significant roles in Jesuit ministry. That mission is deepened and ministry is extended by collaboration among all with whom we work, especially those inspired by the Ignatian call.<sup>297</sup>

The director will not make any significant decision without first discussing it with the superior. Neither the director nor the superior can take a decision that may change the stability of the work. The responsibility of the superior towards the work attached to his community is similar to his role towards his community. Even if the director is the person directly in charge of the work, the superior is the person ultimately responsible for it. Therefore, the director will prepare the annual budget with and through the financial officer, then present it to the local superior so that he can examine and approve it before bringing it to the provincial for final approval.<sup>298</sup>

*Independent Works.* An independent work is an apostolic work of the Society of Jesus which is not linked or attached to a specific Jesuit community, even if there is a Jesuit community within its vicinity. The typical example of this type or apostolic work is a farm or a dispensary. In this case, the Jesuits who are involved in this ministry are all considered as employees even if, in a certain sense, they are the owners because they belong to the Society that owns it.

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<sup>297</sup> *General Congregation 36*, d. 2, no. 6.

<sup>298</sup> “GC 36 calls on Conferences to review implementation of the Guidelines for the Relationship between the Superior and the Director of Work. They should take into account the increasing number of lay directors of Jesuit works and adapt the Guidelines as needed for the realities of their Conferences. They should further assess the implementation of Decree 6 of GC 35 in regard to collaboration with others, and develop and evaluate strategies to promote such collaboration in the Conference. The reduced number of Jesuits, the proliferation of apostolic initiatives of the Society, the increasingly active and welcome participation of partners, and the growing role of lay participation in the Church require further reflection and action in the area of collaboration. Father General should be informed of the strategies and should approve updated Guidelines.” *General Congregation 36*, d. 2, no. 21.

The provincial, after hearing the province consultors, will name the director of this work. The provincial is not bound to consult the local superior, since he has no jurisdiction over the work. The director is not subject to the local superior but directly subject to the provincial. The director, assisted by the financial officer, presents the annual budget to the provincial for approval.<sup>299</sup>

### ***3.4.2.2 – Works Entrusted to the Society through the Community***

*Administration entrusted to individual Jesuits.* There are instances where a Jesuit can be in charge of administration of a particular apostolic work which is entrusted to the Society. The typical case is a retreat centre belonging to the diocese but entrusted to the Jesuits, and a Jesuit is appointed to be in charge of the entire apostolate. He may be helped by other Jesuits in the community in accomplishing the work (such as giving retreats), but the administration of the work is his responsibility.

This kind of work manifests the collaboration of the Society with other entities that have the same mission or that aim at similar purposes. Before accepting the work, the superior considers the availability of his men and consults the financial officer of the community, so that the work will achieve its purpose without changing the stability of the community itself.

Like any administrator, he prepares an annual budget “as well as financial statements, supplementary documents, and explanatory notes”<sup>300</sup> shown to his superior, which is then to be brought to the provincial for approval. The superior takes all these

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<sup>299</sup>Cf. *Instruction*, no. 161.

<sup>300</sup>*Ibid.*, no. 175.

precautions for the well-being of the community to which the Jesuit belongs. If he is unable to provide the aforementioned documents, the superior may not allow that particular Jesuit to be in charge of the administration of the work.

*Administration of goods belonging to others.* The custom of the Society is to refrain from accepting a request to administer an institution or apostolic work belonging to others (non Jesuits). In this case, to be able to accept it, the approval of the superior general is required.

Since it is not a custom of the Jesuits to administer such works, it is rare that the General gives permission. Nevertheless, there are cases that he may accept. In those instances, the *Instruction* states clearly that the following documentation will be prepared:

- There will be a signed contract, approved by the provincial, in which is laid out exactly the length of the permission, the obligations and responsibilities (including civil ones) assumed, and the power received from this administrative work.
- This written agreement will clearly stipulate that the Society assumes no moral or civil responsibility over the goods entrusted to the administration of an individual Jesuit or any liability to a third party.
- The Jesuit who has the permission, in addition to the obligation to report his administration of goods belonging to others to the responsible persons, should see to it that he regularly provides complete information about it to his immediate superior and, at least once a year, to the provincial.<sup>301</sup>

### **3.4.3 – Financial Administration at the Province Level**

This section is divided into two parts. The first will discuss those who are responsible for financial matters in the province, and the second will focus on the activities of financial administration within the province itself.

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<sup>301</sup>Ibid., no. 178 – 179.

### ***3.4.3.1 – Those Responsible for Financial Matters in the Province***

Canon 621 states that a province is “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.”<sup>302</sup> The proper law of the Society of Jesus completes this definition by stating that “a province should not be established if it does not have at least fifty ascribed members and unless there is hope that its territory can exist independently of some other one and carry on apostolic activities proper to the Society.”<sup>303</sup>

The members, the houses, the foreseeable continuity/expansion could be the founding elements of a province. The erection by the competent authority gives its legal existence. For the Society of Jesus, the competent authority to establish a province is the superior general.

Although the geographic situation has a large role in the erection of a province, provinces are not bound by the civil limitation of countries or nations. There are, for example, provinces which contain many countries in them, such as the Jesuit Province of West Africa (more than ten countries gathered) or East African Province (five countries). There are also many provinces in one country such as the United States (five provinces) or Belgium (two provinces). There are also provinces comprising one country, such as Madagascar and Canada.

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<sup>302</sup> *CIC*, c. 621.

<sup>303</sup> *Complementary Norms*, no. 388 § 2.

### 3.4.3.1.1 – The Provincial Superior

The major superior (the provincial) is responsible for the administration of the goods of the province. He also has responsibility for the “direction and supervision of financial administration of the assets of the Society’s houses and apostolic works and those entrusted to the house.”<sup>304</sup> Like the local superior, the provincial is in charge of the well-being of all the members of the province. Because of the geographical size and the number of members of a province, a provincial needs help in administering the province.

Acts of ordinary administration of the province are his responsibility. This administration is performed routinely to maintain and preserve the assets of the Society. He has the necessary faculties for the administration of assets. What is important to detail here are the roles and faculties a provincial has to administer the goods of the Society of Jesus:

- He is to approve the annual budgets of the houses, communities and apostolic works of the province.
- He determines the contribution of each community and apostolic work for the operation of the province.
- He is responsible to distribute and determine the destination of any surplus from communities and apostolic works that received more than what they needed for that specific year.
- He determines the amount of money and surplus a community or apostolic work can retain for unforeseen expenses, keeping an eye on the apostolic character of the Society and its evangelical poverty.<sup>305</sup>
- He is to be a witness of the life of poverty the Society has chosen to follow.<sup>306</sup> In that, he supervises (or monitors) the various activities the Jesuits are undertaking within the province and outside it.<sup>307</sup>

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<sup>304</sup> *Instruction*, no. 191.

<sup>305</sup> Cf. *Ibid.*, no. 195.

<sup>306</sup> Cf. *Ibid.*, no. 196 § 2.

<sup>307</sup> Cf. *Constitutions*, 820.

In a word, the major superior has the faculties to perform acts of ordinary administration for goods of the Society. He is also to oversee the practice of poverty in his province, by admonishing the members to live a simple life according to their choice of evangelical poverty and special preference for the poor and marginalized.

#### **3.4.3.1.2 – The Treasurer of the Province**

The treasurer assists the provincial dealing directly with the financial administration of the goods of the province. He is appointed by the provincial and approved by the superior general. His office is required by law, and he is to be distinct from the major superior.<sup>308</sup> The universal law does not determine if he must be a member of the institute. If it was allowed to have persons from outside of the Society to be the treasurers of the local community, the proper law of the Society of Jesus states that “the province Treasurer must always be a Jesuit named by the provincial and approved by the General.”<sup>309</sup> For the validity of the appointment of a province treasurer, the approval of the General is required.

Once appointed, he receives all the faculties necessary to fulfil his duty as a financial officer of the province. The province treasurer should be very skilled in (or, at least cognizant in) finances and any pertinent laws and regulations, civil or canonical. It is the responsibility of the provincial to prepare someone to hold that office.

The hired person will assure the correctness of the accounting, budgeting and investing while the province treasurer will retain the Jesuit aspects of the work:

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<sup>308</sup>Cf. *CIC*, c. 636 § 1.

<sup>309</sup>Cf. *Complementary Norms*, no. 358 § 1; *Manual*, no. 272. 3.

- He must keep in mind the “proper end of the Society” and that purpose will inspire him in all his activities.<sup>310</sup>
- He must have a close relationship with the provincial, his immediate superior, keeping him informed at all times of the financial situation of the province, income and expenditures, the status of the assets and investments. Even if he carries out acts of ordinary administration of goods, he must inform the provincial.
- He maintains a close relationship with the directors of works and the local superiors, who give him the yearly budgets of their community. His principal appointment is to assist the provincial in everything related to finances. The annual budgets are one of these matters.
- He is not “to initiate any business of major importance without the approval or request of the provincial.”<sup>311</sup>
- He cares for each member of the province by making certain that there is adequate health care for them and reasonable support for old age. He is to care for the wellbeing of the members by making certain that his brothers will not be in a situation of need at any time.
- He makes sure that all the documentation concerning the preservation of the goods of the province, such as contracts, insurance, is up to date and secure. A way to show his responsibility towards the Society is the awareness of the possible changes in laws and regulations, civil and ecclesiastical, so that the provincial, and the entire province, will not be taken by surprise with the loss of properties, by prescription for example.<sup>312</sup>
- Considered as knowledgeable in matters of finance, either through his own skills and expertise or through a hired person helping him to do so, he is to help the local superiors and directors of works when needed, according to his availability.

One of his major responsibilities is to help the provincial to prepare the province’s annual report to the General. He is to provide all the needed data, from his own accounting, and also from the reports from communities. He is to make sure that there are written records of every act of administration performed in the province, including the annual reports.

To summarize the responsibility of the province treasurer, he is the closest official assisting the provincial in dealing with the routine financial matters of the province, with the faculties he receives by appointment. He assists the provincial as well with acts

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<sup>310</sup>*Instruction*, no. 203. 1.

<sup>311</sup>*Ibid.*, no. 203. 9.

<sup>312</sup>*Cf. ibid.*, no. 203. 16.

of extraordinary administration, according to the special faculties given to him by the appropriate superior. Even if he has all the faculties needed to perform acts of ordinary administration and acts of extraordinary administration, he is not to decide on his own and act without the permission and approval of the provincial and/or the General. Apart from assisting the provincial, he also has to help other officials in charge of temporal goods of the Society at the local level.

#### **3.4.3.1.3 – The Revisor of the Financial Administration of the Province**

The revisor of the financial administration of the province is “the internal auditor of the financial administration of the fund/arcae of the province.”<sup>313</sup> Even if this office does not exist in the universal law, it is one of the key forms of assistance to the provincial in administering the goods of the province, alongside the province treasurer and the provincial finance committee.

Like the province treasurer, the revisor has to be a Jesuit, appointed by the provincial and approved by the General. Because of the lack of capable Jesuits, however, the General can give special permission to hire a competent lay person who is knowledgeable of the law of the Church and the norms of procedure in the Church.

As an internal auditor, his role is to review the financial administration of the Society at the level of the province.

The revisor keeps track of the correctness of the accountancy of the province. At the end of the work, the revisor is to give a written report to the provincial. Unlike the treasurer, the revisor makes a written report to the General.

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<sup>313</sup>Ibid., no. 211.

The work of the revisor could be extended to local communities and/or apostolic works of the Society. An appointment from the provincial is required. He is to be a Jesuit unless special permission from the General is received. Usually, the province treasurer is appointed to be the revisor of communities.

Although the work of the revisor of the province and the communities and of apostolic works is similar (meaning keeping track of the correctness of the administration of goods), the focus is much narrower, depending on the community or the apostolic work in question. The revisor is to review:

- Whether the community lives a life according to evangelical poverty, preparing its annual budgets and returning surplus funds, if any;
- Whether justice and fairness towards employees are respected, such as the payment of sufficient salaries and on time.
- Whether the community or work makes well-balanced expenses and does not waste, whether it keeps the necessary documents in view of the annual report and the yearly record of the community.
- If they take the necessary measures for the safety of their members, employees and anyone using their facilities.

### **3.4.4 – Activities of Financial Administration in the Province**

The activities of financial administration in the province can be divided into two sections, internal activities and activities in relation with other provinces. The activities in those two sections are not of the same weight, since the internal acts of financial administration of the province occur much more frequently than external acts.

#### ***3.4.4.1 – The Internal Financial Matters of the Province***

*The Organization of Funds.* The organization of funds begins with appropriate planning. The principal form of planning by the treasurer of the province is budgeting. The budget defines the probable expenses for the next fiscal year, based on those of the previous years and on the year-to-date financial statements.

With these numbers, it is easier to envision the probable expenses for the coming year, as well as the income. Determination of the income and expenses of the province could be based on the activities of all the communities and works and on the calculation of the daily cost for each person or *per diem*.

*Coordination and Reporting.* The province treasurer coordinates the administration of the communities and apostolic works of the province with the administration of the goods of the province. It is his responsibility to give good example not only in his works but also in his words. “All the local financial administrators should follow the lead of the Provincial Financial Administration.”<sup>314</sup>

Considered cognizant of financial matters, he is to call frequent meetings to share experience and knowledge for the benefit of the entire province. His expertise and knowledge should even be shared with the provinces within the assistancy, so that the Society in general will profit from the knowledge of each province treasurer.

Financial reporting is one of his remaining internal financial activities. He is to prepare a report of all the financial activities reported to him from communities and apostolic works at the level of the province. This report is presented to the provincial.

#### ***3.4.4.2 – The External Financial Matters of the Province***

External financial activities of the province consist in interprovincial collaboration and participation of lay persons.

*Interprovincial collaboration.* This involves sharing the expertise of financial officers, exchange of materials, and even inter-provincial collaboration.

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<sup>314</sup>Ibid., no. 68.

*Participation of Lay Persons.* It is the responsibility of the province to take care of the relationship between the Society and its collaborators. They not only work with the Jesuits but also work for the Society by their participation in fund raising and donations for the accomplishment of the mission of the Society. Collaboration with lay people is not only encouraged but recommended for each province for more effectiveness of the Jesuits' mission, Jesuits who are "men for others."

### **3.4.5 – Financial Administration at the General Level**

This part analyzes the responsibilities of those in charge of financial matters in the Society of Jesus, as one universal community. The 36<sup>th</sup> General Congregation, when addressing the issue of temporal goods, called for research "for ways in which financial resources may be more equitably deployed for solidarity in service of international mission."<sup>315</sup>

GC 36 affirms that, keeping in mind our commitment to poverty, various financial strategies, opportunities and implications must be considered in apostolic planning and decision-making at all levels of Society governance. The Treasurer and other skilled and knowledgeable persons should assist in these processes. In this context, GC 36 requests that Father General implement revisions of the Statutes on Religious Poverty in the Society of Jesus and the Instruction on the Administration of Goods, with particular attention to the use of contemporary financial instruments and to the norms on sources and uses of the Common Fund.

19. GC 36 calls on Father General to continue the steps taken by Father Nicolás to promote greater solidarity of human, institutional and financial resources throughout the Society in order to achieve greater apostolic effectiveness. Specifically, the Congregation asks that he:

- a. Continue and bring to fulfillment the Solidarity in Formation process;
- b. Review the goals and operation of FACSÍ to promote more effectively the universal mission of the Society at the service of those in greater need.<sup>316</sup>

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<sup>315</sup>*General Congregation 36*, d. 2, no. 10.

<sup>316</sup>*Ibid.*, d. 2, nn. 18-19.

### ***3.4.5.1 – Those Responsible for Financial Matters, and their Faculties***

There are four distinct persons or groups responsible for the financial matters of the Society of Jesus at the level of the Society as a whole: the superior general, the general treasurer, the revisor of the financial administration of the entire Society, and the financial committee.

#### **3.4.5.1.1 – The Superior General**

The superior general, “as the person responsible for the universal Society,”<sup>317</sup> administers the temporal goods of the Society. He receives all reports of financial administration from local communities, apostolic works, and provinces. Having the faculties needed to govern the entire Society and its goods, he supervises the financial administration of the entities of the entire Society. This is done through the reports and the budgets he receives each year.

According to proper law, he can establish or suppress communities or apostolic works. He can distribute the goods of the suppressed houses.<sup>318</sup> Being aware of the well-being of every province, house, and apostolic work, he is well placed to decide on the distribution of goods.

He decides how to handle receiving or refusing gifts or donations with restrictions. He also decides on accepting or renouncing a gift in favour of the Society.

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<sup>317</sup>Cf. *Constitutions*, nn. 66; 719; 740; also cf. *Complementary Norms*, no. 354 § 4.

<sup>318</sup>Cf. *Instruction*, no. 316 § 3.

“As a general rule, donations with long term restrictions cannot be accepted without consulting the General.”<sup>319</sup>

He has authority to delegate his responsibilities as he considers appropriate. Usually, he delegates his faculties of administrating the goods of the Society to the general treasurer. In terms of acts of extraordinary administration of temporal goods in various entities, he authorizes the expenses which exceed the limit accepted for provincials.

Concerning the alienation of temporal goods whose value exceeds the limit determined in the place where the contract occurs, he has the faculty to authorize the sale of property, either personally or through a representative unless the intervention of the Holy See is required. Usually, it is the local provincial who becomes his representative for the alienation.

#### **3.4.5.1.2 – The General Treasurer**

As mentioned earlier, it is the general treasurer who represents the supreme moderator in all financial matters at the universal level, except for matters that the General retains for himself. His primary responsibility is to assist the General in all matters concerning temporal goods.<sup>320</sup> He assists the General in the supervision of the goods of the Society of Jesus in general, and of all its public juridic persons. Because of the faculties delegated to him, he is able to make decisions within his competence. Even if he exercises supervision over provinces and houses and works, he does not administer

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<sup>319</sup>*Instruction*, no. 366; also cf. *Constitutions*, nn. 324, 235, 442, 762.

<sup>320</sup>Cf. *Instruction*, nn. 318-319.

the goods belonging to these entities. The principle of subsidiarity is applied and respected.

He receives the reports and budgets of provinces, communities, and apostolic works, and he approves them on behalf of the General.

Similar to the functioning of the communities and works of the province, each province has the responsibility to support the *Curia Generalis* in its work and mission. It is the role of the general treasurer to determine the contribution of the provinces. He is not capable to approve this, unless this has been delegated to him. Rather, he brings these proposals to the General who approves them. The contributions are determined by the number of the Jesuits in each province, but also by their capacity to contribute. For example, in 2013, the Jesuits in the United States alone contributed 33 percent of the charitable and apostolic fund of the Society while the Jesuits in the entire continent of Africa contributed one percent.<sup>321</sup>

Since he is the one who receives the reports from the provinces, “he informs the General about them, especially about those activities that fall within his area of responsibility.”<sup>322</sup>

With the accord of the supreme moderator, the general treasurer may delegate some of the faculties he received to the assistant treasurer: this is primarily the routine financial activities of the *Curia Generalis*.

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<sup>321</sup>Cf. *Acta Romana Societatis Iesu*, 25 (2014), 1031.

<sup>322</sup>*Instruction*, no. 320.

As part of the collaboration among provinces, the assistant treasurer could be sent to provinces to help them in any matter related to financial administration. It is commendable that he comes during the meetings of the financial officers of each province, work, and community, to share his expertise so that the entire Society may benefit from his knowledge through sharing and teaching.

#### **3.4.5.1.3 – The Revisor of the Financial Administration<sup>323</sup>**

As it was at the level of the province and the local community, the revisor of the financial administration of the Society is to keep an eye on the correctness of the financial activities of the Society in general, mostly to review the aforementioned work and activities of the general treasurer.

#### **3.4.5.1.4 – The Financial Committee**

The financial committee at the level of the Society in general consists of the supreme moderator, the general treasurer, the vice-general treasurer, his assistants, and the revisor of the general financial administration.<sup>324</sup>

The General convokes the financial committee to study important economic matters concerning the Society in general. According to his faculties, the general treasurer can also convoke a meeting. Likewise, the General may convoke other persons judged necessary for the discussion, especially those who may be concerned directly, such as provincials and directors of entities related to the Society in general (for example, the JRS, the Jesuit Refugee Services).

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<sup>323</sup>Cf. *Ibid.*, no. 326.

<sup>324</sup>*Ibid.*, no. 328.

The financial committee functions with a consultative nature. Thus, it cannot make any binding decision, unless determined otherwise by the General himself.

### *Conclusion*

The proper law of the Society of Jesus cannot be separated from the understanding of its special form of poverty when it comes to financial administration and proper law relating to temporal goods. Thus, there are two parts of this chapter: life of poverty and the proper law of the Society including the responsibilities of financial officers.

A life of poverty has been the way of life of the Society since its beginning. Throughout its history, the expression of poverty has evolved according to the reality that the Society was facing (growth in numbers, expansion in many countries, etc.) The spirit of poverty, however, remains the same.

Poverty has been one of the principal focuses of some General Congregations, due to the change of life in the Church itself. For instance, the Second Vatican Council marked the life of the Church and had a profound impact on the life of the Christian faithful, including religious institutes such as the Society of Jesus. The thirty-first General Congregation was a response of the Society to the changes occurring in the life of the Church, and poverty was one of its primary focuses.

In his letter to the Society, Father Kolvenbach reminded the members of those aspects of Jesuit poverty that created some hesitation within the Society because of its many meanings. He affirmed that Jesuit poverty is evangelical and to be visible in the Jesuit way of life and missions. It is not imposed on the Jesuits but lived with

discernment, according to the *Spiritual Exercises*. And, finally, it is to be expressed in the choice of the Society to be in solidarity with the poor.

The proper law of the Society, following the universal law of the Church, states that the Society has the right to acquire, retain, administer, and alienate temporal goods. With every right comes responsibility, and the functions of those who are responsible for financial administration at every level of the Society were the object of a significant part of this chapter.

At the level of local communities, the ultimate administrator of their goods is the local superior. He makes the decisions dealing with acts of ordinary administration of goods. He does not, however, handle financial matters directly. Rather, he is assisted by the treasurer of the community who receives instruction and orders from the local superior and acts on his behalf. This does not limit initiatives, but whatever he suggests is to be discussed with the local superior. The superior is also assisted by the minister in some cases. This latter is in charge of the daily life of the local community, and acts only within the capacity given to him by the local superior. He, too, is to work closely with the superior and the treasurer in taking care of the well-being of the local community. Helped by his treasurer, it is the local superior who brings the annual budgets to the provincial for approval.

At the province level, the first administrator of its goods is the provincial. He takes decisions in all financial matters within his authority and according to his faculties. The province treasurer handles the acts of routine financial administration entrusted to him. His appointment is required by law. The provincial names him but the General approves the appointment. He is to be a Jesuit but can be assisted by a person cognizant

of financial matters. This latter, however, does not make decisions but assists with his skills and expertise. When the acts of financial administration exceed the limit established by the proper law and the norms of the Code of Canon Law, the provincial needs the permission of the General to be able to perform these acts of extraordinary administration.

One important person in the province is the revisor. He is the vigilant eye to bring all accountancy in the province to correctness. He reviews the works of the province Treasurer, as well as the reports of the local communities and works. After reviewing everything, he makes a written report to the General.

The provinces are also encouraged to work together among themselves to share their experiences, their skills, and their expertise. They are expected to collaborate, to work together, and to open their works to lay people.

The highest level of administration of goods in the Society of Jesus is implemented by the Society as a whole. The General Superior is the administrator of the temporal goods at this level. He has the authority necessary to accept gifts, to refuse gifts, to establish houses, to suppress houses, and to distribute the goods of a suppressed house. He acts personally or through a representative.

At the level of the entire Society, the general treasurer represents the General Superior and assists in all financial matters. He makes decisions within the limits of his office. He has a financial committee to help him and the supreme moderator with more challenging economic matters.

At every level of the Society, the spirit of poverty is set as a guide and beacon of the administration of temporal goods in the Society.

The issues raised in this Chapter can assist Jesuits who are in charge of temporal goods at every level of the Society. They can be an initial means for the Society of Jesus in the Province of Madagascar to see the preservation of its goods, according to the form of the evangelical poverty which the Society has chosen as its way of life to serve the Lord and all people.

## CHAPTER FOUR

### THE APPLICATION OF THE LAWS ON TEMPORAL GOODS IN THE CONTEXT OF MALAGASY SOCIETY

#### *Introduction*

This final chapter seeks to discover how the Society of Jesus in Madagascar can best preserve its temporal goods in face of threats from a corrupt system, where there is a deep social gap between the poor and the rich.

Chapter Three presented the life of poverty of the Society of Jesus. This life of consecrated poverty will be seen through the lens of Malagasy society throughout its historical and political development. This spirit will be considered as a tool to be used for the Society of Jesus in the Province of Madagascar to protect its temporal goods.

#### *4.1 – The Actual Situation of the Society of Jesus in Madagascar Concerning Land Ownership*

A considerable effort has been made by the Society of Jesus in the last few decades to regularise its property ownership in Madagascar. This is because of the high rise of land litigation in the country. Lack of good governance due to political instability reigns. Such a situation creates a high rate of corruption in many administrative offices, including the Ministry of Justice and Ministry of Land Ownership. According to the report from the “*Bureau Indépendant anti-Corruption*” (BIANCO) in 2016, Madagascar changed rank from 96<sup>th</sup> to 145<sup>th</sup>, being considered the most corrupt country in the

world.<sup>325</sup> This high level of corruption created access by unauthorized people to legal documents, and results in so many illegal documents that look authentic because of the real seal of the Ministry in charge and/or a signature of high ranked officers or clerks.

#### **4.1.1 – The Effects of Corruption on the Society of Jesus**

The Society of Jesus has been a victim of this scourge that makes the island sink into a deep deterioration, not only economically but also in all the other aspects of the Malagasy people’s lives. It has become a habit to the appointed Jesuits to “go-up-and-down”<sup>326</sup> to the courthouse. Not only is this time consuming for the individual Jesuits who have to go to court frequently, but it is also detrimental for the life and the mission of the Society itself. Most of the time, the people against which the Society has lawsuits are from parishes owned by, operated by, or entrusted to the Jesuits. The dispute is often strongly mediatized since it is a dispute between the Church and its “children.”

One of the many mediatized cases in land dispute was between the Society of Jesus in the Province of Madagascar against a whole village in a region west of the capital. This illustrative case would show an usual land ownership dispute. It will present

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<sup>325</sup>Cf. BUREAU INDÉPENDENT ANTI-CORRUPTION, *Rapport annuel 2016*, Antananarivo, BIANCO MADAGASCAR, 2017, 59.

<sup>326</sup>To “go-up-and-down”, “*miaka-midina*” is a Malagasy expression indicating one’s trip back and forth to the tribunal to solve lawsuits. It is typical because even the smallest dispute could last months and months, even years and years. The court system, being so corrupted, drags every lawsuit to gain more money from the parties who have cases to be judged. People may be asked to pay more money if they want their cases be dealt with sooner, and by doing that, they have to pay “under the table” almost everyone involved, from the lowest clerks, the assistant secretary, to the judge, and even higher. Not everyone has the means to pay more, nor wants to feed the corruption that is already killing the country, so they keep on waiting for their cases to be judged, and go back and forth to the courthouse asking about the possible dates of the judgement of their cases. There is always a reason to postpone the case, just to make people impatient, and start to pay.

the version of both the villagers and the Society of Jesus. Finally, it will illustrate how customary and canon law could come to the rescue of the Society of Jesus.

#### ***4.1.1.1 – The Situation***

Around the year 2010, the Society of Jesus in Madagascar felt the need to increase its agricultural products for better self-sustenance, due to the increase of vocations not only in the Society but within the entire Catholic Church in Madagascar. There was also the need of building schools in the regions surrounding the capital. After finishing elementary school, the children living far from the capital city always faced the challenge of continuing their studies due to insufficiency of schools and teachers. They have to either go to the capital for a better school or stay in the village with little to no quality of education. Most of those who stayed in the village quit the school in the following years. The Society of Jesus, owning about a hundred and fifty (150) acres of land in the area of Ambohitraivo Mahitsy, a western village not far from the capital city, decided to use its land for farming and schooling. The only problem was that there were one hundred and sixty-six (166) families living on the land. Unable to resolve the dispute amicably, both the villagers and the Society of Jesus brought the case to the civil tribunal. The case was opened in 2010 and appeared in the newspapers in 2011.<sup>327</sup> The article cited that, on one hand, a representative of the Church (the Society of Jesus) had insisted that the Society of Jesus has the land title, and on the other hand, the villagers replied that they received the land from their ancestors in 1960.<sup>328</sup>

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<sup>327</sup> A. RANAIVO, “Litige Foncier à Mahitsy: 1600 Paysans dans l’Angoisse,” in *L’Hebdo de Madagascar*, Antananarivo (4-10 Février, 2011) no. 0312.

<sup>328</sup> The title and subtitles of the long articles read: “Litige Foncier à Mahitsy: un terrain the 61 HA oppose l’Eglise Catholique Romaine (ECAR) aux 166 foyers d’Ambohitraivo. Le Représentant de l’ECAR insiste

#### ***4.1.1.2 – The Version of the Society of Jesus***

The version of the Jesuits about this litigation is that this portion of land is part of the stable patrimony of the Society. It has been one of the lands the Society had owned during the period of colonization (1896 – 1960). The Jesuits missionaries had started to toil that land and tried to stabilize the ownership of it by having Malagasy men join the Society of Jesus.<sup>329</sup> Some of those pieces of land, however, were not legally registered, because the missionaries were incapable of owning property. From 1960 onwards, while the missionaries were still around to give their testimonies, the Society of Jesus started to work on the legalization of all its property, under the name of “the Society of Jesus in Madagascar.” The portion of land in Ambohitraivo Mahitsy was one of the lands that were legally registered earlier. The Society of Jesus has also continued to operate both the primary school and the church, which had been built by the missionaries in that place.

The social activities and apostolate of the Jesuits in Mahitsy did not employ the entire property, so the villagers were allowed to use the land “until the Society needs it.”<sup>330</sup> The priority of the Society has changed and the work of the Jesuits focused more on the main cities of Madagascar for education and social apostolate, and then on the very remote areas of the country for first evangelization. The last Jesuit to stay in Ambohitraivo Mahitsy was a missionary. The indigenous Jesuits were sent into different

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que c’est l’Eglise qui possède le titre foncier. La population rétorque que leurs ancêtres ont acquis ce terrain en 1960.”

<sup>329</sup> As we have seen earlier, foreigners have no right to own property, but they could enjoy all the benefits from that land as long as they continue to exist. Once the first Malagasy provincial was named, the Society of Jesus became truly indigenous, and thus can own property.

<sup>330</sup> This brief quote is a vital part of the contract between the Society of Jesus and the villagers. Apart from the oral agreement, it figured in the written contract between them. This contract was signed on one hand by the Jesuit in charge at that time (who was a missionary) to represent the Society of Jesus, and a few “Ray aman-dreny” (elders) from the villagers. This contract or agreement was not legalized but remained a written agreement based on trust between “ray aman-dreny sy zanaka” (parents and children).

locations. Since the relationship between the Society, through the missionaries who worked in this area, and the villagers of Ambohitraivo was based on trust and parents – children relationship, a lay person was hired by the Society to run the place, as teacher and catechist. The Jesuits from time to time went down to inspect the area for necessary repairs and/or renovation. Only the church building, the school, and a few acres of land were used by the Society and the larger portion of it was under the villagers' use.

When the need for the larger part of the land arose, the Jesuits hired a bailiff to ease the taking back of the land. The population did not receive him well and the lawsuit started.

#### ***4.1.1.3 – The Villagers' Version***

The population of Ambohiraivo Mahitsy affirmed that their ancestors owned the land, and gave it to the Jesuit missionaries for them to build a church, a rectory, and a school. The Jesuits continue to use the land, even when the missionaries were becoming fewer and the Malagasy Jesuits grew in number. The population recognized that this portion of the land was given to them. Recognizing the good relationship existing between the Society of Jesus and the population of Ambohitraivo, this latter continues to use the portion of the land. They wanted to have the land they have cultivated for years. To make it more legal, they created a union which gathered all the families living on the land and, through that union, they bought the portion they have used from the Jesuits. Since they did not have the total amount upfront, they financed it for period of three years. All the transactions were made with the Jesuit school in the capital city that is affiliated to the parish and school in Ambohitraivo. The villagers, having the proof of payment, continued to enjoy the land and its products, without bothering themselves to

register it under their name. Also, because many of those villagers were not academically advanced, administrative business was one of their least worries. They allowed the Jesuits to be in charge of legalizing the sales and eventually giving them all the mutation documents, which did not happen.

When the lawsuit started, the “Ray aman-dreny” (elders) of the village with the mayor of the region gathered all the proofs of payment to support their claim of ownership. A few witnesses also gave their testimonies on how their parents obtained the money to buy the land from the Jesuits.<sup>331</sup>

#### **4.1.2 – The Law Pertaining to Land Ownership and the Situation of the Jesuits in Madagascar**

Since Madagascar was a French colony, its law is mostly based on the Napoleonic Code, and written in two languages: French and Malagasy. The Malagasy people can have access to the code of civil law through the “Journal Officiel” (Official Newspaper)

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<sup>331</sup> Most of the transactions happened between 1961 to 1964 when the population paid the Jesuits. There are receipts for those payments. They also wrote down the bill of sale, and I had a chance to obtain the copy of many of those documents. Most of them were, however, done without any legal stumps or seals, but they are apparently signed by the rector of the Jesuit school at that time, and some elders from the village. There are very few eye-witnesses left from the villagers, and if they are still alive, they must have been very young during the time of transaction. One of them is H. Razanajao, who was a teenager when her parents bought the land from the Jesuits. She recalled the misery she and her family had lived and especially her father’s pain when he was forced to sell his cattle to get the money. “*Je me souviens encore de la misère que j’ai vécue avec ma famille et plus particulièrement de la douleur de mon père quand il est obligé de vendre deux zébus qui valaient 2.800 Ariary et une de nos vaches laitières. C’était dur mais on a quand même pu payer ce qu’on devait pour l’acquisition du terrain à temps. Aussitôt nos dettes payées, je suis allée voir les prêtres jésuites à Analamahitsy et à Amparibe chaque semaine dans le but d’avoir un titre foncier des terrains achetés. Cela a duré deux ans et les prêtres avaient toujours une bonne excuse soit parce que les responsables sont à l’étranger ou en réunion quelque part loin d’Antananarivo.*” Extract from her testimony in *l’Hebdo de Madagascar* and I had a chance to meet her in person as well where she told the exact same story. It is also worth mentioning that the Benedictines, who wanted to build their monastery in that area, bought another portion of the land from the Jesuits around the same period. After the transaction, they immediately worked on the document of mutation of property and received the land title.

where every law, decree, and any other act of administration in the Republic of Madagascar is published.

#### ***4.1.2.1 – Owning Property***

One of the most consulted parts of the *Code Civil* pertains to land title and land ownership. One can own a piece of land in Madagascar in different ways, such as the mutation of title for free or at a symbolic price, amicably or with legal and registered transactions. One may also acquire ownership of a piece of property through prescription.<sup>332</sup>

The Society of Jesus in Madagascar acquired its land mostly through legal transactions. Even those lands that are claimed to have been “given” to the Jesuits as gifts had been bought by the Society, although perhaps at a lower price. The only land that the Society received as pure gift was during the reign of King Radama II which later was taken away. It took a while for the Society, however, to regularize them and gather all the land titles, especially for property acquired before 1960, because they needed more proof of ownership, such as legal agreements or contracts, or receipts of transactions, or proof of the use of the property for more than thirty years, or any other written documents that give the Society the right to own a property, or testimonies of witnesses.

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<sup>332</sup>The Malagasy civil law states in code no. 60 - 004 of February 12, 1960:

“art. 3: “Le domaine privé est acquis: 1) en vertu du droit de souveraineté; 2) en vertu de transmission à titre gratuit (don ou legs), ou à titre onéreux (acquisitions amiables ou expropriations); 3) par suite de la transformation des dépendances du domaine public.

Art. 4: Les biens de la première catégorie (1 de l’article 3) sont acquis au domaine ou par la prescription du droit du propriétaire. “Madagascar: Code foncier,” In *Journal Officiel de la République de Madagascar*, Antananarivo, Imprimerie Officielle, no. 88 (27 février 1960), 411.

#### ***4.1.2.2 – Registering Property***

All properties (purchased, offered, or inherited) have to be registered to become a secure asset for the Society. Living in a long oral tradition, the Malagasy people did not consider paperwork as one of their priorities. The Society in particular, however, has attempted to register the land that it owned throughout the period of royalty and colonization.

When the Malagasy people received their independence in 1960, the government encouraged people to verify and renew the registration of their land. Seeing the vast properties they owned, not many people were interested in all the trouble to register their land. They were content with the other proofs of ownership they had in hand, mostly a living will, a court judgement and/or act of purchase. In 1974, the government issued decrees to urge people to register their land and, since that time, more and more land disputes have come to court.

#### **4.1.3 – Challenge and Solution for the Society of Jesus**

The main issue that the Society of Jesus in Madagascar faces, however, is no longer about owning properties. It is about preserving them so that the Jesuits can accomplish their mission. The Society of Jesus in Madagascar has inherited properties from the Jesuit missionaries who worked there since the 1800s. They have purchased more properties later according to the needs for their missions. In both situations, preserving the land by obtaining “authentic” and legal land title is a challenge.

In the case of Ambohitraivo Mahitsy and other Jesuit properties in Madagascar, the Jesuits may have lost the land for two reasons: lack of knowledge and awareness on the part of the Jesuit administration and a corrupt juridical system.

#### ***4.1.3.1 – Lack of knowledge***

There are a few laws that those in charge of the Jesuit properties had ignored or about whose sanctions they had been unaware.

Every land owner has to make fruitful, to take care of, and to use the land in his or her possession. If the land owner acts in non-conformity with that obligation, whether that portion of land is in the city or in the suburbs, there is abuse of the right of ownership [and the land will be seized by the government].<sup>333</sup> If a piece of land has not been exploited within five years from the moment of notification, it becomes the State's property<sup>334</sup> and anyone can ask for it from the State.

For a very long period, the Jesuits exploited only a small portion of their property in Ambohitraivo Mahitsy. The larger portion had been left unused and then villagers started using it. At that moment, according to this law, the Jesuits had already lost their right of ownership of that land, and the villagers had the right to claim it from the State since they had been exploiting it for more than twenty years.

Many properties owned by the Society of Jesus in Madagascar had been lost the same way after the regaining of independence in 1960. Only small portions of them had been used and the rest of the properties were left unexploited for years (more than five

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<sup>333</sup> Cf. "Hitsivolana no. 74-021 tamin'ny 20 Jona 1974," in *Journal Officiel de la Republique de Madagascar*, Antananarivo, Imprimerie Officielle, no. 996, (22 Jona 1974), 1682.

<sup>334</sup> Cf. *ibid.*, art. 3.

years). Another example of this is the piece of land in Androhibe on which the Society of Jesus had built the infirmary, the noviciate, and a spiritual centre. The infirmary was built first, during the time of the missionaries, in the midst of this vast property. The building was used as a house of formation for candidates, and a residence for the Jesuit missionaries while they held meetings and conferences in the capital. But the property was so vast that only the space around the building was taken care of. The property was not even fenced. Seeing this vacant and unexploited land, people started to squat on the North side, away from the Jesuit residence. At the same time, they proceeded to request the land they had taken. By the time the Society of Jesus reacted by claiming the properties, it was too late. The Society started to fence the rest of the property and built two additional residences on it: the noviciate and the spiritual centre.<sup>335</sup>

Lack of knowledge of the law and unawareness from the Jesuits in charge of their properties caused the loss of these properties.

#### ***4.1.3.2 – Corruption of the Administrative and Juridical System***

Madagascar is one of the most corrupt countries in the world, and this situation is not improving. During the process of registration of a portion of land that one owns, each agent in the administrative system could ask for some amount of money to help them “hasten” the process. For those who inherit properties from their parents and have to receive a land title, because their parents and grandparents failed to get one, the process will be long. “The procedure of registration is long, about fifteen years, and complex,

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<sup>335</sup> This information has not been recorded anywhere. It is the fruit of a conversation with Jacques Tiersonnier, S.J., a writer and author of a few books on the history of Christianity in Madagascar. He affirmed, however, that issues about our properties were not allowed to be published during a long period when the Catholic Church was under the suspicion that it trained intellectuals to overturn the socialist regime.

twenty-four different steps and many agents from multiple institutions; the cost of registration remains expensive for people who do not have a higher standard of life.”<sup>336</sup>

The duration of obtaining land title takes about one hundred and forty-seven days from the deposition of the request to the moment of receiving the signed document. That period could even be longer and those who request the title may not have it after waiting for such a long period, just because they “do not know someone.” The amount of “side-money” (or bribe) requested by different agents during the process could represent eleven (11) percent of the amount paid for the actual fees. The bribe could be so expensive that those who request the documentation stop the process, because the higher the value of the property, the higher the amount of money they demand.<sup>337</sup>

When the Jesuits wanted to get their property back, another land title had been issued for it. Nothing other than a corrupt administrative system can explain this situation. A group of people had put a higher price on the land owned (and registered but unexploited) by the Jesuits knowing that they would win the case if it would go to court. If they could pay for getting a “legal” land title, they were ready to spend money on the court case, legal fees and any other possible extra costs. Many of the properties were lost because people actually won the case in court against the Jesuits.

This is not new in the justice system in Madagascar. In fact, it is the second most corrupt system in the country after the gendarmerie, two entities that are supposed to be

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<sup>336</sup> “La procédure d’immatriculation est longue, près de 15 ans, et complexe, 24 étapes différentes et plusieurs intervenants issus de multiples institutions ; le coût d’une immatriculation reste élevé pour des populations n’ayant pas un niveau de vie élevé.” P. KARPE, M. RANDRIANARISON, S. RAMBININTSAOTRA, S. AUBERT, “La pratique judiciaire dans le domaine foncier à Madagascar,” in *Droit et cultures: Revues semestrielles d’anthropologie et d’histoire*, Paris, l’Harmattan, 54 (2007), 224.

<sup>337</sup> Cf. F. LESNE, J. RAKOTOMAMONJY, *Corruption dans les Services Publics d’Antananarivo: Résultats des enquêtes d’entreprise*, Antananarivo, OVER Madagascar Edition, 2016, 13.

the most trustful. According to the *Bureau Indépendant Anti-Corruption*, known as BIANCO, in the year 2012-2013, two hundred and forty-seven cases of corruption were reported against the justice system in Madagascar, and fifty-three of them considered as “very relevant.”<sup>338</sup> It becomes almost normal to give money to every agent in the justice system if one has a case to treat or even to get simple administrative papers, such as criminal records or birth or death certificates.

Choosing not to feed this vicious practice, the Jesuits and the Catholic Church in Madagascar have to find different ways to protect their temporal goods: recourse to customary laws and recourse to canon law.

#### ***4.1.3.3 – A Solution: Customary law***

Madagascar is one of those countries where customary law is still in full strength despite the existence of modern law or civil law. Since the legal system in the country is so frail and corrupted, people reconsider customary law as their trustworthy way of dealing with land ownership. In fact, the Malagasy people never abandoned their customs, their traditions, and their ancestral beliefs, even if the European civilization seemed to take over in their daily lives, and so returning to the elders to resolve their land ownership and disputes is expected.

The summit of customary law dealing with dispute in land ownership is the bringing of the case in front of the “Raiamandreny”<sup>339</sup> or “Ampanjaka.”<sup>340</sup> They are the

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<sup>338</sup> Ibid., 16.

<sup>339</sup> Literally, “father-and-mother:” these are the most knowledgeable people in a village, most of the time, the eldest as well. They are considered the keepers of the ancestral wisdom and treasures, and they only transmit that wisdom to the ones they find worth to carry it. They are considered to have the moral qualities of a father and a mother in terms of caring for their children. They represent the fullness of personality. Cf.,

references, and they have the last words in any issue, especially in land ownership disputes. They are, however, an entity that is not looking to punish or to impose sanctions, but to find solutions to the disputes or problems brought to them. Sanctions and punishments are their last recourse.

To be able to maintain the remainder of their properties, apart from having a legal land title from the Ministry in charge (*Ministère de l'Aménagement du Territoire*), the Society of Jesus in Madagascar has the duty to approach the “raiamandreny” and the “ampanjaka,” according to the location of the properties.

*Meeting the “Raiamandreny.”* Meeting the “Raiamandreny” is an efficacious solution for land ownership disputes. As wisdom holders, they are keys for success – first for smoother conversation and, second, for gaining trust and respect. Those are keys for any missionaries, Jesuits included, to be fruitful in their mission and at the same time to have an assurance of the ownership of their land.

Approaching the “Raiamandreny” shows the villagers that the missionaries respect the local and traditional hierarchy. This is a first step to show an openness to a friendly discussion and less threatening approach. For the Malagasy people, touching

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P. LUPO, *Dieu dans la tradition malgache: approches comparés avec les religions africaines et le christianisme*, Fianarantsoa, Editions Ambozontany et Karthala, 2006, 185.

<sup>340</sup> This term, sometimes translated as “king”, mostly points to a person or a group of people who are considered wisdom keepers and leaders. They are not part of the common people but from a distinguished rank of ancestry, they are at the top of the social hierarchy in the village. They are destined to reign and to lead their people. They are also the voice of the people when there are issues to deal with the legal system or the government. Cf. F. RAISON-JOURDE, *Les souverains de Madagascar: l'histoire royale et ses resurgences contemporaines*, Paris, Editions Karthala, 1983, 155-156.

their land is touching their integrity, because the land is a “property of the ancestors.”<sup>341</sup> Gaining the trust of the “Raiamandreny” is a necessity for a good relationship, collaboration, and partnership with people in the village. Once the missionaries have a trust based relationship with the “Raiamandreny,” the latter will become their advocate in any issues and problems they may encounter in their mission, including buying new properties or protecting the ones that already belong to them, but within the territories of the villagers. Even if the entire village is hesitant to deal with the missionaries (not allowing them to work in their territories and not giving them a portion of properties to buy), they will gain their trust with the help of the “Raiamandreny.”

This approach is a “win-win” situation. The villagers will have the missionaries with them and will benefit from the fruit of their work, and the missionaries will have the easiness and freedom to fulfil their mission. Not only have they secured the ownership of their properties, but also they have the freedom to proclaim the Good News to the people in the area and surroundings. Well known for their great accomplishment in terms of education in Madagascar and their zeal in first evangelization, on the one hand, the Jesuits – living the “*Magis*” or the “more universal good” – will be capable to bring their best wherever they are to be sent. The villagers, on the other hand, will benefit from their presence in their midst, even if they are far from the capital or the main cities, where education is easier to access.

Going back to the situation of the properties in Ambohitraivo Mahitsy, the Society of Jesus in Madagascar either did not know of this possibility or ignored it.

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<sup>341</sup> If anyone inherits a portion of land from their parents, that land is literally called “tanindrazana” or the land of the ancestors. Therefore, it is taboo even to think of selling it. It is their highest responsibility as well to protect it if any “danger” (such as missionaries or foreigners planning to buy) threatens it.

Acting in good faith, I believe the Jesuits had no knowledge of this approach as a way to solve the dispute they have with the villagers of Ambohitraivo Mahitsy. Being influenced by the trend of modern society, which brings any dispute to court, the Society of Jesus in Madagascar chose to approach the case literally “*manu militari*,” with court decisions in their hands and lawyers on their side.<sup>342</sup> The result of this approach was twofold.

First, instead of using the resources they have for something more fruitful and having a positive impact into their mission, the Jesuits had to spend much of their monetary and human resources to win the case and to keep their properties. The case, however, is not yet classified and the problem not yet resolved, because the villagers did not let the supposed land of their ancestors go easily. They have appealed the case and it went into the appeal court and may even end up in the supreme court. In the meantime, both sides – the Society of Jesus and the villagers – continue to spend their money in court fees and other unnecessary expenses, including many hours of working time and transportation.

Second, the reputation of the Society of Jesus in that area has been stained. Instead of bringing people to the Lord, the Jesuits have lost their trust and become a source of anger, even disgust towards missionaries and the Catholic Church. Since this case had been mediatized, the integrity of the Jesuits in general will be questioned. Instead of carriers of peace and reconciliation, they had been the center of trouble and division. There are some Jesuits originally from that area who are now torn from inside

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<sup>342</sup>Cf. A. RANAIVO, “Litige Foncier à Mahitsy: 1600 Paysans dans l’Angoisse,” in *L’Hebdo de Madagascar*, Antananarivo (4-10 Février 2011) no. 0312.

and out, when they receive the complaints or even the cry of their parents and their fellow villagers. Even if Jesuits win this case in court, being the true owner of that property, they fail hard in their identity of carriers of the Good News. They may have to bear for the rest of their existence the sorrows and tears of these villagers.

*Meeting the “Ampanjaka.”* Even if the “Ampanjaka” have the role of a “Raiamandreny,” they have more power in their hand in addition of their authority towards the people. The “Ampanjaka” mostly have their territories in the coastal part of Madagascar. The missions of the Jesuits in Madagascar are divided into two principal territories: the highlands (including the capital city and its surroundings which cover a vast area, more than six hundred kilometers long and three hundred kilometers wide) and the coasts (mainly the South Eastern and the North-western coasts of Madagascar). In those coastal areas, the “Ampanjaka” still have a powerful influence over the population, and in certain circumstances, can defy and challenge the central power of the Malagasy government.

The coast of Madagascar is a newer territory for the Jesuits, so they do not own as many properties in that area. Nevertheless, since the Society of Jesus is expanding its field of mission, and now going more and more into the coast, they have to use a new approach in fulfilling their mission so that the mistakes of the past will not be repeated. At this very moment (2018), a Jesuit mission is being established in various parts of the coast. To sustain their existence in that part of the country and fulfil their mission, they have to start acquiring some stable patrimony.

Meeting the “Ampanjaka” is one of the most important approaches the Jesuits and any other missionaries have to take before becoming established in their territories. Being

traditional and spiritual leaders, the “Ampanjaka” have the power and authority to allow or to prevent any strangers in their village.<sup>343</sup> Not only they are the leaders but also they are theoretically the owners of that territory, which also means, the land. Approaching them shows respect and readiness to cooperate and to work together for the betterment of their people. It is through that approach that the Society of Jesus can safely start acquiring and possessing any land. It is only after meeting the “Ampanjaka” that they may go to the land registration local office to see and choose the property to purchase. It is possible that many of the properties in those areas are not legally registered, and so there may be no legal owners. All the villagers, however, know the “owner” of every part of the land, and if the missionaries settle for only what they have discovered in the local office, they will be misled.

Being in good continuous relationship with the “Ampanjaka” is a condition of the success of the Society of Jesus in the coastal areas of Madagascar. It assures their safety, stability, and freedom to pursue the proclamation of the Gospel. Compared to the highland, where the Jesuits have long been established, the coasts are less populated and, thus, there are many empty lands. Instead of a purchase, the “Ampanjaka” may even offer portions of land as gifts for the missionaries who are going to work for their people. They know that missionaries bring new infrastructures with them. Secluded from the central

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<sup>343</sup> Although an island, Madagascar is considered one of the largest islands in the world. In terms of administrative divisions, there are 6 main provinces, 22 main regions and many sub regions and districts. One of the particularities of Madagascar, compared to any African country of its size, is that the Malagasy people speak only one native languages: Malagasy. Typically, in Africa or elsewhere where tribal belongings are still considered, one tribe speaks at least one native language. So, if there are forty tribes in a country, there could be forty or more native languages or dialects. Even if the Malagasy people speak only one language, they belong to many tribes (there are at least twenty-two major tribes in Madagascar) according to their territories. Therefore, even if they understand themselves across the country, one person belonging to a particular tribe is always a stranger when he/she enters another tribe’s territory. In that case, without the approval of the local “Raiamandreny” or “Ampanjaka,” he/she will remain a stranger even if he/she has the legal papers to live in that area.

power of the Malagasy Government, they are less fortunate to enjoy any benefit from it. The missionaries are their main resource of schools, dispensaries, good education, and health system.

Nevertheless, it is a responsibility of the Society of Jesus to secure the newly acquired properties, whether they were purchased or offered as gifts. It is not an easy task to get those lands registered, because of their location and the lack of service and competent authority in the area. It is, however, less expensive and no inconvenience to take the pain of registering them than fighting for them in court later, like the case of Ambohitraivo Mahitsy. The process of legalization of the land title has to be done in accord with the knowledge and decision of “Ampanjaka.” The Society of Jesus must avoid any attempt at legal procedures without his explicit permission, oral or written.<sup>344</sup>

Meeting the “Raiamandreny” or the “Ampanjaka” is, therefore, one of the best approaches the Jesuits could adopt if they want to preserve the remainder of their temporal goods for the accomplishment of their mission. This approach, however, is less effective (or not effective at all) in larger cities because of the strong presence of civil authority and law. To secure their acquisition of temporal goods, especially land, the Society of Jesus needs to follow diligently all the requirements of civil law *and* to provide additional documents procured by written positive laws which are the Church laws (the Code of Canon Law and the proper law of the Society of Jesus).

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<sup>344</sup>Oral tradition is still strong in the Malagasy society. Apart from the main cities, the literacy rate is very low in Madagascar in general, due to lack of schools or lack of means to go to school. The majority of contracts in rural areas therefore are done orally. There might be written documents to be signed and sealed, but what has been said orally is more valuable for them than what is written in the documents, documents which have less meaning for them since they are unable to understand what is written therein.

## ***4.2 – Administration of Temporal Goods of the Society of Jesus and the Requirements of Civil Law in Madagascar***

In dealing with temporal goods and especially their administration, the Society of Jesus in Madagascar needs to be aware of the requirements of the civil law of the country. In this section, we intend to analyze the role of those who are in charge of the financial administration of the Society of Jesus at the province level, and their obligations when making contracts and purchasing properties.

### **4.2.1 – The Provincial and his Representative(s)**

The major superior (the provincial) “has the ultimate responsibility of Province assets.”<sup>345</sup> He is “to take care of temporal administration, seeking always in all things the greater service of Christ’s Church.”<sup>346</sup> By reason of his office, the provincial is responsible for the well-being (spiritual, material, intellectual) of all members of the Society of Jesus in his province. This is an immense responsibility, especially in a large province such as Madagascar, with eighteen (18) communities and twenty-five (25) houses across the country and two hundred seventy seven (277) Jesuits, including those who are working/studying abroad.<sup>347</sup> Taking care of the temporal goods of the province is one among his many tasks. He is responsible for the supervision of the financial administration of the houses and apostolic works. He has the necessary faculties for ordinary administration of the assets of the province.

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<sup>345</sup> *Instruction*, no. 191.

<sup>346</sup> *Complementary Norms*, no. 391 § 1.

<sup>347</sup> Cf. COMPAGNIE DE JESUS, *Catalogue de la Province de Madagascar 2018*, Antananarivo, Edition Ambozontany, 2017, 64, 100.

#### 4.2.1.1 – *The Required Qualities*

The following qualities of the provincial's representative are not arranged according to their importance because since all of them are needed.

*Intellectual skills.* Knowledge in communication and accounting are key in dealing with contracts. Although this person will not sign and seal the final agreement between the Society of Jesus and another, he is to have a good understanding of accounting since he is always dealing with important contracts. Buying properties implies setting aside a considerable amount of money, and little to no error is to be committed. Any error in accounting may be costly for the Society and it may endanger its missions and even its self-sustenance.

*Communication skills.* Skill in communication is also indispensable in the role of the provincial's representative, because he is speaking in the name of the provincial and, thus, also in the name of the entire Society (or at least the Society of Jesus in that province). Being clear and persuasive could be a key for the effectiveness of a purchase or a contract. He needs to understand the ins and outs of the property to be purchased and be able to assess if it coincides with the needs of the province.

*Sense of poverty.* The Decrees of the General Congregation insists that the Society's poverty is prophetic:

Our poverty is also prophetic. In recent decades, the cry of the poor has become more piercing, while the gap between rich and poor has been reinforced and even widened. Unbridled capitalism produces disproportionate growth for some economic sectors, and exclusion and marginalization for many others. Contemporary society is infected by consumerism, hedonism and lack of responsibility. The values considered important today are personal fulfillment, competition, efficiency and success at any cost. In this world of contrast, our personal and community poverty becomes a sign and message of different logic, that of evangelical solidarity.<sup>348</sup>

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<sup>348</sup> *General Congregation 34*, d.9, no. 5.

A Jesuit representing the provincial in civil matters should follow the instruction from the General Congregation, keeping the spirit of poverty in all his mission. He keeps his attention towards the poor, not to “appreciate misery” but to lessen the gap between the rich and the poor at the same time living a simple way of life like the “modest family” of the area.

*Ignatian skills.* Being in charge of managing the assets of the Society of Jesus, this person needs to know and understand the spirit which drives every Jesuit in his everyday life: the Ignatian spirituality based on the *Spiritual Exercises*. One may think that spirituality has nothing to do with dealing with money; that is not the case in managing the Society of Jesus’ property. Every Jesuit’s action is to be driven by his spirituality and the Jesuit’s way of proceeding. By buying a portion of land, he needs to have in mind the meaning of the evangelical counsel of poverty towards material things. He needs to understand and know the purpose for which these pieces of properties have been (or are going to be) purchased. In managing these properties on a daily basis, he needs to understand the evangelical counsel of obedience so that he will be at ease to report his actions to the provincial. He also needs to have spiritual depth to be able to live with the Society in motion and in mission. If the person does not have these Ignatian skills, he would fail in his task of managing the properties of the Society of Jesus.

It is mostly because of the requirement of this second type of skills that the preference would be for a Jesuit to fulfil this work. It is easier for a Jesuit who had been growing in the Society since his noviciate to embrace the qualities required for this job, than for a qualified person from outside and has little understanding of the Jesuit way of life. That preference, however, does not rule out the fact that this task of representing the

provincial in civil matters could be assumed by anyone with the required skills. This is the case in many provinces where the number of Jesuits is shrinking and partnerships with the lay people are becoming stronger.

*Reporting skills.* Being able to report is an essential quality. He reports not only to the provincial, but also to the entire province so that no Jesuit is excluded from knowing what is happening in the province in terms of its assets. Of course, the two reports are not the same, but at least the public one gives an overview and a knowledge of the life of the province in financial matters. This practice is not required by law, not even written in the job description. All financial officers at every level (communities, apostolic house, etc.) are encouraged to follow this model.

#### ***4.2.1.2 – What Is Lacking***

Nonetheless, what is noticeably missing in those who manage the financial administration of the Society of Jesus in Madagascar, is a certain lack of theoretical skills. Being a good Jesuit does not make one become capable in financial matters and accounting. Some communities and houses in general may suffer from this lack and sometimes enter into deficit, not due to bad faith but just through pure lack of knowledge.

The province of Madagascar, as mentioned above, has actually more than two hundred and fifty members. Very few of them (less than five) have had appropriate training to become certified accountants. The other communities are run by superiors who have had little if any previous experience in financial administration.

There are at least two solutions for the province to remedy this situation, one is short-term and the other is long-term.

*A short-term solution.* It is necessary to have skilled people to handle the financial administration of the society. Since we do not have enough qualified persons to take charge of this function, we need to hire from outside the Society. This move will save the Society from losing assets and money without even seeing them going. It is necessary to spend some money to save the entire province from falling into a financial crisis. In the past few decades, superiors invested in properties without foreseeing the impact of these transactions. Having little experience and skill in management, the results of those decisions were a disaster for the province as a whole. Apart from those properties taken away by squatters, there were key properties that the Society had alienated, and the regrets last forever. Quick thinking major superiors hired professional accountants to stop the “financial bleeding” but not soon enough to think of long lasting solutions.

*A long-term solution.* Training Jesuits to be financial experts might be the ideal, but it still remains an ideal. Sending Jesuits to have enough knowledge to handle the financial matters of the province, communities, houses, and apostolic works for appropriate preparation would be a long term and feasible solution. It is not right to blame the Province of Madagascar for not sending Jesuits to be trained as financial experts. There are a few Jesuits who have been trained in accountancy or economics. Facing the vastness of the province, however, they are quite overwhelmed and overworked. They cannot dedicate themselves entirely to the financial administration of the province, but have some other ministries and occupations, due to the insufficiency of personnel in the field. If the Jesuit Province of Madagascar wishes to have long-term financial stability to keep its temporal goods at the service of the mission, it is recommended that more Jesuits be given the opportunity to serve the Society and the

Church in financial administration. At that time, not only will the Society have its own personnel who are capable of addressing the matter, but also it will reduce the cost of hiring professionals from outside.

Mastering the skills of communication will make the work of the financial officer of the province easier, and will give him access to many people and/or organizations. Sensitivity and awareness of people, situations, customs, traditions, etc. come with the capacity of communicating. Being unaware of those factors that set the context of a purchase (acquisition of goods) may make the process fail.

The irony here is that the Jesuits in Madagascar have a school of communication, with university level degrees, yet few are the Jesuits who show interest in the art of communication. It will be smoother for the one in charge of financial administration if he has the required skills to communicate with a third party, or with the provincial to whom he must report.

And a final additional requirement for this person is to have a notion of laws, civil and church law (canon law and proper law of the Jesuits). Hiring a lawyer from outside can help the Jesuits win what could appear to be a lost case; but having a lawyer at home helps to understand the language and the logic of the law.

Since the country has regained its independence (1960), the Society of Jesus has been losing its properties because they were not protected. It was just recently that the Jesuits started to engage a lawyer to fight for their case. In Madagascar, coming to meet someone in the presence of a lawyer is considered as an act of intimidation. Sometimes, Jesuits had used lawyers in the past to force the other party not to bring the case to court. If the lawyer, however, is a Jesuit himself, the image the Society of Jesus shows is that of

seeking understanding and a friendly solution. Canon lawyers are even scarce in the Society of Jesus. Until now, for the two hundred and seventy-seven Jesuits, there is only one who dedicated himself to this field. Requests had been made to the province to send more Jesuits in the field of canon law, but it does not seem to be the priority of the Society of Jesus in Madagascar to have more canon lawyers.

#### ***4.2.1.3 – Sharing knowledge***

The Jesuit province of Madagascar began to be self-sustained through the hard work and generosity (self-giving) of its members. Those are expressions of Jesuit poverty, “poverty seen in labor.”<sup>349</sup> It is, however, so demanding to ask the province to have Jesuits fully skilled and qualified. Jesuits are asked to work only within the limits of their ability. Not having all the required qualities should not be an obstacle for those who are appointed to work with success. What could be an obstacle, however, is Jesuits refusing to work in collaboration with each another, thus not sharing their knowledge.

A temptation for Jesuits is to work on their own. This is due to the nature of their work itself. A Jesuit who is laboring in a farm, for instance, would not associate with a Jesuit teaching at the university. The nature of their work obviously separates them. Nevertheless, there is always a way to help one another since Jesuits always belong to a community (even if they live alone, separated physically from the rest of the community).

The provincial knows the members of his province. It is his responsibility to call those who have the required qualities to work together with the financial officer he has appointed. There are qualified Jesuits in different fields in the province of Madagascar. If

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<sup>349</sup>Cf. *Statutes on Poverty*, no. 8.

the financial officer lacks the ability to communicate, the one who was trained in communication could give him a hand; and if he struggles in his accounting, those who are qualified accountants could assist.

Sharing of knowledge and capacity among Jesuits could form a very qualified team, or financial committee, to care for the temporal goods of the Society, to preserve them for the purpose of our mission and our existence. Living the evangelical counsel of obedience and the spirit of charity will make this team work together. Among the knowledge to be shared, knowledge of laws, especially laws concerning contracts, is necessary for a financial officer of the province, and this is the focus of the next section.

#### ***4.2.1.4 – Lawful Contracts***

What is important for this person in his work as a representative of the provincial in financial matters, is to make all contracts legal. Because of the high rate of corruption in the country, it is very possible that two people have both legal land registrations from the same ministry. In this case, both parties have to provide additional proof to support their ownership. And here, lawful contracts take privilege.

The Society of Jesus in Madagascar may have the advantage of using both laws (civil law and canon law) to support the lawfulness of its land title. Usually, the party who has the false “legal” land title and claims ownership of it, has never met the former owner of the property. He only fabricates his legal title with the help of corrupt agents in the department of land registration in the “*Ministère de l’Aménagement des Territoires.*”

The Malagasy civil law recognizes the use of a representative<sup>350</sup> of a society when contracting a sale of property. The representative, at the same time, acts on behalf of the society he represents and acts as a legal and legitimate witness of the contract of purchase. According to the civil law, he could even sign the contract of purchase and seal the bill of sale later. For the Society of Jesus, the representative at the conclusion of the contract, acts as a legal witness, since he has no authority to sign. Only the provincial is the legal representative of the province.

The role of a witness could be important in the absence of written contracts, according to the civil law.<sup>351</sup> When concluding the contract of purchase, the presence of a witness gives more weight to the lawfulness of the bill of sale, with which the Society of Jesus can register the land and claim the land title. This part of the document would be missing in a fake “legal” land title.

Moreover, canon law emphasizes the importance of having witnesses in any contract, because “often the single most important source of evidence is the testimony of witnesses.”<sup>352</sup> The law of the Church permits the use of witnesses to present proofs.<sup>353</sup> The insistence of the Church to use witnesses as source of proof, the canonization of

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<sup>350</sup> “A commercial representative is someone who has the authority to act or intends to act, habitually or professionally on behalf of another person, the Representee, to conclude with a third party a contract of sale.” (Translation is mine) “L’intermédiaire de commerce est celui qui a le pouvoir d’agir, ou entend agir, habituellement et professionnellement pour le compte d’une autre personne, le représenté, pour conclure avec un tiers un contrat de vente.” in *Journal Officiel de la République de Madagascar*, Antananarivo, Imprimerie Officielle, no. 3081, (09 Desambra 2006), art. 1, 3725.

<sup>351</sup> Cf. *ibid.*, art. 7.

<sup>352</sup> J.P. BEAL, CLSAComm2, 1678.

<sup>353</sup> Cf. *CIC*, c. 1547.

certain civil laws,<sup>354</sup> and the importance given by civil law to the presence of witnesses, will give the Society of Jesus more evidence of its ownership of the property. The “Raiamandreny,” and especially the “Ampanjaka,” could be very powerful witnesses that the Jesuits in Madagascar could bring to protect their properties not to be robbed by rich and corrupt people and entities. Usually, the villagers support and stand behind the “Raiamandreny” and the “Ampanjaka” during any dispute, but especially land disputes. Seeing the abundance of support, the system usually backs off and gives the title to the legitimate owners.

#### **4.2.2 – Application of the Law on Temporal Goods and the Spirit of Poverty in the Context of the Malagasy Society**

The Code of Canon Law allows the Society of Jesus in Madagascar to acquire, possess, administer, and alienate temporal goods.<sup>355</sup> Yet, acquiring and possessing temporal goods sounds contrary to the spirit of poverty, especially in the context of a poor country like Madagascar. This section will seek to clarify those seemingly contradictory statements.

##### ***4.2.2.1 – Administration of Goods and Material Poverty***

Is living in poverty a kind of life that the Malagasy people, including the Jesuits in Madagascar, aspire to live? The Malagasy want to get out of poverty. Every time there is an election, whether presidential or communal, one of the biggest promises candidates bring to gain popularity is to eradicate poverty. Moreover, the poverty of the Jesuits could not be seen in reality because they are trying to preserve their properties. Therefore, the

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<sup>354</sup>Cf. *CIC*, c. 1290.

<sup>355</sup>Cf., *CIC*, c. 634 §1.

word “poverty,” must be clarified and understood properly in a poor country like Madagascar.

Jesuit poverty is evangelical poverty. It calls for an imitation of Christ, who “though he was rich, became poor for us.”<sup>356</sup> That poverty shows a way of living not depending on earthly riches. It is a way of life based on an intense love of God and of neighbour, following Christ who was humble and poor. In a word, “the principle and foundation of our religious poverty is found in love of the Word of God, made flesh and crucified.”<sup>357</sup>

Another character of Jesuit poverty is apostolic. Saint Ignatius of Loyola asked all his companions to go out and preach in poverty; to be free from all earthly attachment and dedicated entirely to the mission, like the apostles; to preach the Beatitudes, “manifesting to all believers the presence of heavenly goods already possessed here below.”<sup>358</sup>

With those characteristics of Jesuit poverty, we could conclude that the Jesuits are not preaching a poverty that entails deprivation of the basic necessities of life; rather it is a spirit that moves the Jesuit from inside not to be dependent on material things, but to put the love of Christ and neighbour as a priority in their mission. Jesuits, however, need those material things to sustain their lives while they are fulfilling their mission, and these needs to be properly administered.

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<sup>356</sup> 2 Cor 8:9.

<sup>357</sup> *Statutes on Poverty*, no. 1.

<sup>358</sup> *General Congregation* no. 32, d. 12, no. 9.

By law (canon and civil), the Society of Jesus in the Province of Madagascar is able to acquire goods. To do so, it must follow all the required laws so that the acquisition will be legal. It needs to be moderate as well so that it will not appear against our way of life and the spirit of poverty. Together as a province, the Jesuits, in their acquisition of goods, “are to avoid any appearance of excess, immoderate wealth, and accumulation of goods.”<sup>359</sup>

Purchasing new properties should be only for the purpose of first evangelization, that is, such purchase should happen only when the province embraces a new mission, being called to start evangelizing in an area where it has not been involved before. Purchasing a piece of property for an extension of an existing apostolic work appears to be an accumulation of goods in Madagascar. As a matter of fact, this is the way rich people amass and then monopolize the wealth of the country. This is one of the main causes of the increasing gap between the poor and the rich in the Madagascar. Seeing what the Jesuit province has as property at this moment, there would appear to be no need to purchase the surrounding lands of our missions for any further expansion. This does not mean that the Jesuits should not increase and improve their mission and their involvement in the area. Improvement does not necessitate a new acquisition of properties. Of course, there can be times when a community has to move elsewhere (because of natural disaster or expropriation, etc.).

Once the goods are acquired, they must be administered in a proper way so that they will not be lost. The example of the case of Ambohitraivo Mahitsy shows a lack of due vigilance from the Society of Jesus in Madagascar. If those who were in charge of

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<sup>359</sup> *CIC*, c. 634 §2.

the administration of goods were regularly on top of the financial matters of the province, including its properties, this situation would not have occurred. Canon 1284 insists on the vigilance of the administrators so that the goods of the juridic person (here the Jesuit Province of Madagascar) would not be lost. The following duties of administrators are worth mentioning here because they relate to past mistakes of the province and could be used as a reminder for the future.

Administrators must “exercise vigilance so that the goods entrusted to their care are in no way lost or damaged, taking out insurance policies for this purpose insofar as necessary.”<sup>360</sup> Having properties unexploited for years shows carelessness on behalf of the administrator and those involved in the administration of the temporal goods of the province.

Administrators must “take care that the ownership of ecclesiastical goods is protected by civilly valid methods.”<sup>361</sup> Being aware of the corruption paralyzing the civil administrative system in Madagascar, the administrator of the province must increase his vigilance to protect the goods of the Society. The original documents of all purchases should be kept in the safest place in the province. Copies need to be kept safely in other locations, including the provincial’s office, the treasurer’s office, and the provincial archives. This is to facilitate access to those documents when they are needed. The authenticity of the records and documents gives assurance of the protection of the goods. In the case of Ambohitraivo Mahitsy, for instance, there are records that were question-

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<sup>360</sup> *CIC*, c. 1284 §2, 1°.

<sup>361</sup> *Ibid.*, no. 2.

able because their authenticity seems inaccurate. To avoid this situation, all documents concerning purchases and sales must be signed and sealed.

Administrators must “draw up a report of the administration at the end of the year.”<sup>362</sup> This report is necessary to keep track on what has been invested or done on the existing properties of the province. If nothing has been done and a piece of property remains unexploited for a year, a plan for investment has to be made for that property so that it may not pass the five years of vacancy, and people will just take it over.

It may be profitable for the province to change on a regular basis (or terms) the appointed financial officer. This is to avoid the feeling of routine in the office which can cause unawareness and carelessness. It is not, however, recommended to change him at the same time the term of the provincial ends. He should stay on for another year at least to assure the continuity of administration. Once that time period is passed, the new provincial may freely appoint a new one.

Canon 1283 states that “before administrators begin their function: they [...] are to prepare and sign an accurate and clear inventory of immovable property, movable objects, whether precious or of some cultural value, or other goods, with their description and appraisal.”<sup>363</sup> A clear inventory of the properties owned by the province is important for two reasons: first, it helps the new administrators (the provincial and the appointed financial officer) to have knowledge of what the province owns and what has been lost or sold; and second, it helps them to see what has been done to those properties, at least in the past two years, and to avoid an unexpected loss or possible lawsuit.

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<sup>362</sup> *Ibid.*, no. 8.

<sup>363</sup> *CIC*, c. 1283, 2°.

The provincial and the financial officer, as well as the province treasurer and the financial committee must follow the requirements of the law to prevent loss of properties and to preserve the ecclesiastical goods owned by the province. The care for the goods of the Society of Jesus, however, is not confined only to the administrators and those who are involved in the financial aspect of the province. It pertains to all Jesuits and even is extended to our collaborators and partners – those who are working with the Jesuits in their institutions.

#### ***4.2.2.2 – The Care for Temporal Goods: An Expression of Poverty***

The Society of Jesus needs to take care of its belongings so that they may continuously sustain its members, help them to fulfil the mission of the Society, and to take care of others, sharing in love and charity. The totality of the Jesuits in Madagascar brings the Jesuit province into existence. It is, therefore, the responsibility of every Jesuit to care for its goods. Each Jesuit is called to lead a life of simplicity and humility. Our care for the goods of the Society is a way to express our simplicity of life. In fact, since Jesuits are not permitted personally to take care of and to rely on other goods outside of the Society,<sup>364</sup> they have to spare no efforts to care for and to place their entire sustenance on the goods offered by the Society for them.

One way to care for the goods of the Society is the reasonable use of what is offered to us. All that we have should be used for the purpose of the mission and not for personal use. Because a Jesuit is not allowed to use the goods of the community for his personal use, temptations may come to acquire personal goods for that purpose.

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<sup>364</sup> “Jesuits are not allowed to accept any responsibility for administering the goods of nonmembers of the Society, even of relatives. [...] Neither may Jesuits ask others from outside the Society to loan money to another person.” *Statutes on Poverty*, no. 26 § 1 and §3.

It is worth reminding ourselves that Jesuits are not allowed to acquire goods for themselves, except those who did not pronounce their final vows (with restriction).<sup>365</sup> When a Jesuit is aware that his well-being depends on the community, that awareness is to be the starting point of caring for the good of the community because it is a sign of living in poverty.

The spirit of poverty fills the daily life of Jesuits, and it should spread to those who they are working with. In fact, while working together, Jesuits and collaborators and partners live as an extended family, and could be called an Ignatian family.<sup>366</sup> Our collaborators/partners are invited to care for the goods they use while they are within our institutions. Most of the time, that spirit of caring for what they use for their work comes naturally. Nevertheless, it happens from time to time that they need to be reminded not to take for granted what they use but to respect it.

In Madagascar, and maybe in any other countries devastated by poverty and lack of means, there is a mentality whereby people take full advantage and abuse what they use when these means are not their personal belongings. Our collaborators are invited to have the sense of belonging when they are within our institutions. That is the reason they

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<sup>365</sup> “After their first vows, Jesuits retain ownership of their goods and the capacity to acquire other goods for themselves but only those that constitute their patrimony or capital or pertain to it either by their very nature or by the will of the donors or for some other special reasons. Other goods they acquire for the Society.” *Complementary Norms*, no. 164 §1.

“After final vows, all Jesuits are unable to possess goods and to acquire them for themselves, specifically under the title of hereditary succession; and all acts contrary to the vow of poverty, if annulable, are invalid.” *Statutes of Poverty*, no. 19 §1.

<sup>366</sup> The Ignatian family, in a strict sense, includes those who adopt the Ignatian spirituality as the foundation of their spirituality. In the context of caring for the goods of the Society, Ignatian family is everyone who works together with the Jesuits to fulfil their mission: for the salvation of souls and for the glory of God. This may include teachers, professors, workers, and any other non-Jesuit present in their institutions on a regular basis.

are called collaborators and partners, not just workers. It is easy to take care of things when they belong to oneself.

In a word, Jesuits and collaborators together are stewards of the temporal goods. The Society acquired them so that both Jesuits and collaborators/partners may have the freedom to go out for the mission, without any dependency or reliance on material things that may retain them from moving forward to achieve the ultimate goal.

#### **4.2.2.3 – *Moving Forward***

Learning from the past, living the present, and facing the future, the Jesuits in Madagascar may adopt a renewed way of administering their temporal goods and living their evangelical counsel of poverty in the context of the reality of their country.

*Learning from the past.* The Society of Jesus in Madagascar had its ups and downs in administering its own goods. One of the hard experiences was the loss of properties due to lack of knowledge and unawareness. The discipline on prescription must be kept in mind:

- “The Church recognizes prescription as a means of acquiring temporal goods and freeing oneself from them, according to the norm of canon 197 – 199.”<sup>367</sup>
- “The Church receives prescription as it is in civil legislation of the nation in question, without prejudice to the exceptions which are established in the canons of this Code; prescription is a means of acquiring or losing a subjective right as well as freeing oneself from obligations.”<sup>368</sup>
- Prescription, either acquisitive or extinctive cannot be applied except under the following conditions: [...] the occupation of a property for at least twenty years for Malagasy citizen or thirty years for foreigners. [...] It begins only on the day of publication.<sup>369</sup>

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<sup>367</sup> CIC, c. 1268.

<sup>368</sup> CIC, c. 197.

<sup>369</sup> Cf. Ordonnance no. 60-146 du 3 octobre 1960 relative au régime foncier de l'immatriculation, in *Journal Officiel de la République de Madagascar*, Antananarivo, Imprimerie Officielle, no. 129, (22 octobre 1960),

From the two examples chosen to illustrate this chapter (Ambohitraivo Mahitsy and Androhibe) it appears that the administrators did not check the implementation of this civil law (recognized by the Church law). They had left the properties unexploited for years. They noticed it only when the people who have occupied the properties for more than twenty years came forward to claim their title.

Bringing disputes to court is, at the same time, a waste of money, time, and energy and causes loss of trust and a bad reputation. In the case of Ambohitraivo Mahitsy, the case is not yet resolved, meaning the bleeding continues and the Jesuits would not consider this a victory even if the Society gets its lost properties back. For the case of Androhibe, the property surrounding the infirmary was a total loss, and the Society will never get it back.

Even if every Jesuit is assigned to a proper mission, they all belong to the same Society, and therefore, it is their common responsibility to watch over and to care for their belongings.

An important step has been ignored to save the properties in Ambohitraivo Mahitsy: the consultation and agreement with the “Raiamandreny.” Realizing that the villagers had already taken away the properties, a hasty decision has been taken: bringing all the proof of ownership to remove the “squatters” off the land, which means lawyers, bailiffs, and soldiers. Instead of entering a peaceful and less expensive agreement, the Society opted to bring the case to court. It does not mean the Jesuits did not approach the

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2205; modifié dernièrement par la loi no. 99-024 du 19 août 1999 in *Journal Officiel de la République de Madagascar*, Antananarivo, Imprimerie Officielle, no. 2595, (30 August 1999), 2001-2005.

villagers first. They actually did, but only with the purpose of removing them from the land. Therefore, right from the beginning, the communication has been cut off.

Recognition and acknowledgement of local and traditional authority is an important key in administering the Jesuits' temporal goods. Their properties are not isolated on a deserted island, but mingled with other people's property. A good relationship with those key people (Raiamandreny and Ampanjaka) will make the task of administration easier. It is always profitable for the Society to be on good terms with its neighbours. As a matter of fact, the Jesuits' ultimate mission is to preach God's love and the love of neighbour, but with a drilling court case with the neighbour, the Jesuits are not walking their talk.

*Living the present.* After the mistakes of the past, the Jesuits are left in an uncomfortable situation in many aspects: financially, spiritually, morally, and even personally.

Because of this unending lawsuit, and maybe others not mentioned in this research, the Society of Jesus in Madagascar continues to lose money by hiring lawyers and paying other expenses related to litigation. In reality, it is known that the Malagasy justice system is very slow particularly in dealing with land disputes. By entering onto this route, the financial officer of the Society knew what he was about to go through, yet he proceeded. When everything is finished, we can evaluate the totality of our financial cost, whether we win or lose the case.

This case of Ambohitraivo Mahitsy left the Society of Jesus in a bad position. When I went to do my research in that area, people doubted the trustworthiness of the Jesuits, and the value of the message we have preached has long since gone. The Society

of Jesus and the villagers in Ambohitraivo had had a long and wonderful relationship and peaceful living together. The testimonies of the Benedictine monks living in the area confirm that the Jesuits and the villagers were like parents and children. Almost all the villagers were baptised and confirmed in the Jesuit parish church on the property. Many of the villagers do not know any other religious congregation apart from the Jesuits, with whom they have established a long-term relationship. And all of that is now jeopardized because the Jesuits claimed their land back and requested the villagers to leave the property.

One of the most painful comments we have heard from the villagers is the question about our life of poverty. Those comments bring the Jesuits to reflect on their way of proceeding and their way of administering their goods. They are also triggers for the Society to return to the foundation of their mission: love of God and love of neighbour. Jesuits are reminded:

Our profession of poverty should be genuine, so that our manner of life corresponds to this profession. St. Ignatius wanted us to take as criteria for our life of poverty our apostolic end as well as evangelical principles, for we are apostles of the Gospel. But since we are apostles of this age, we must pay special attention to the social circumstances of time and place.<sup>370</sup>

Some of our past experiences are not showing that Jesuits are apostles of the Gospel. The image that they had projected did not coincide with our profession of poverty. We may claim that we are poor and moved by the spirit of poverty, but what people see from outside expresses the opposite. We are once again urged to take into consideration the situation of time and places. Bringing an entire village to court shadowed our reputation of good discernment.

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<sup>370</sup>*Statutes on Poverty*, no. 7; see also *General Congregation*, no. 31, d. 18, no. 7.

Learning the culture of the place, recognizing the traditions, and respecting the locals are ways for us to make our life of poverty genuine again. Learning, recognizing, and respecting shows our readiness to be humble, and brings us into the depth of our spirituality: the three degrees of humility.<sup>371</sup> The veracity of our life of poverty, destroyed by the image of chasing the poor out of their habitation, could be restored by acknowledging our mistakes and our readiness to learn from them, and our willingness to recognize and to respect the locals.

*Facing the future.* The future of the mission of the Jesuits in Madagascar depends mostly on their plan of today. Like all Jesuit provinces, the Province of Madagascar has its plan for the future called “*Projets Apostoliques de la Province*” which describes the priority of the Society of Jesus in Madagascar for the next ten to fifteen years. The project has been underway for some time and readjustments are being introduced along the way. In all of our projects, however, it is always necessary to look back to the source and align with what is fundamental. Our spirit of poverty is fundamental for our moving forward. It is not the only thing, but it is the spirit that drives all our missions and future projects which should be an expression of God’s love and the love of neighbour. Therefore:

Our poverty should become a sign of our charity in that we give up what we have in order to enrich others. Nothing should be our own, so that all things may become common in Christ. [...] The bond of charity should not be restricted only to Jesuits for the Mystical Body of Christ embraces the entire human race. Charity should always crown the obligations of justice which bind us especially with the poorest and to the common good.<sup>372</sup>

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<sup>371</sup> Cf. MULLEN, *The Spiritual Exercises of Saint Ignatius of Loyola*, 47.

<sup>372</sup> *Statutes of Poverty*, no. 9; see also *General Congregation*, 31, d. 18, no. 9; we refer to *CIC*, c. 640 as well. This quote from the Decrees of the Thirty-first General Congregation seems to contradict what was

Being reminded of yet another expression of poverty, all Jesuits (but especially those who are in charge of the financial administration of the Society of Jesus in Madagascar) are to rethink and renew our way of approaching those who are surrounding us, especially the non-Jesuits. With this understanding of our poverty, our approach towards others, especially those we have wounded before, should be with love and charity. This approach would wipe off our image of being cruel and heartless. This approach will remind us the sense of justice that we are to carry always as a centrepiece of our action towards others. This will renew our relationship with them: instead of an encounter of hate and disgust, it will become a new bond of trust and love.

Therefore, there are more works awaiting the Jesuits in Madagascar which focus on renewing relationships, reconciling, and then moving forward. This needs action to show that the Jesuits are learning from history and the past, and are ready to move forward with a new approach not only toward others, but also towards our way of dealing with the financial aspect of the life of the Society. Some suggestions for the future follow.

Actions for improvement: Following the risen Lord, the Church is a living Church, and so is the Society of Jesus, universally and specifically in Madagascar. A call for action to make this life visible is needed. If the Society of Jesus in Madagascar continues to administer its temporal goods as it had done in the past, the Society will become inert, stagnant, and even go backwards. The Jesuits have to prove not only to

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insisted in the previous chapter (protecting the belongings). In reality, what is quoted here is the spirit that should drive every Jesuit in his way of living poverty. Bringing cases to court appears contradictory to this spirit, and to be avoided as much as possible. Chapter III shows the way to prevent this situation to occur so that the Society could continue its mission on a clear path.

others, but also and mostly to themselves, that they are faithful to their call, genuine in their way of living evangelical poverty, open to change, and willing to be reconciled.

Regular change of the financial officer of the province: As we have said earlier, routineness decreases the quality of work one may achieve. That lack of excitement could be due to the fact that an administrator has been holding that office for so long. Also, a new person brings a new approach, thus the urge of having qualified Jesuits to hold this office. The major superior has to take into consideration of the possibility of changing the one in charge of financial administration of the province on a regular basis. If this is difficult due to lack of qualified personnel, at least the person who oversees our properties has to be replaced regularly. He himself should be regularly accountable during his mandate so that all properties, especially the ones that are far from the city, are being exploited appropriately.

A remark, if not a complaint, often comes from major superiors that it is difficult to change a person because it is hard to find someone to replace him. In smaller provinces, with a small number of Jesuits, this could be the cause of a person remaining in the same office for decades. In the context of the Jesuits in Madagascar, that reason may not be applicable. Despite the smallness of number of Jesuits compared to the population of Madagascar (270 Jesuits for 22,000,000 people), the Jesuits are among the largest religious congregations in the country. Among the provinces in Africa, Madagascar is the province with the second greatest number of Jesuits, after the Democratic Republic of Congo. Therefore, if it is hard to change the financial officer on a regular basis, it is not because we do not have people (we even send a few people to be

missionaries abroad), it is because we do not have qualified Jesuits. That reason leads us to the next action for improvement.

Willingness to train Jesuits: It had been a pattern in the Province of Madagascar that every Jesuit had to have additional training after his ordination. That custom had been cut short for a period of time, because it has been said there were not enough Jesuits working in the field. So there was a period when many Jesuits went straight to work in a mission after being ordained. Realizing the quality of work was going downwards, the Society has renewed the practice of sending people for proper training. Training Jesuits, as a matter of fact, should never end, whether they are in formation or are “fully formed.” There is what we call “ongoing formation.” “Especially in our times a truly contemporary apostolate demands of us a process of permanent and continuing formation. Thus formation is never ended, and our ‘first’ formation must be seen as the beginning of this continuing process.”<sup>373</sup>

Formation of Jesuits should always be continuous and major superiors are to take this into consideration, not just for the sake of having a group of intellectual Jesuits, but to have capable and qualified men to be sent to any mission, anywhere, anytime. The responsibility to send Jesuits for training, however, is not to be on the hands of major superiors alone. The willingness to go and receive the training has to come also from individual Jesuits. The needs of the province and the desires of the individual Jesuit should “walk hand in hand,” so that both parties benefit from the formation. This is why “manifestation of conscience” is so important so that Jesuits could share their lives and their desire in mission, and the provincial comes to know his Jesuits in depth.

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<sup>373</sup>*Complementary Norms*, no. 240; see also *General Congregation*, no. 32, d. 6, no. 18.

Sending Jesuits for formation and training requires a lot of money and a large investment. That is why it is important for all Jesuits to be mindful when dealing with material things that belong to the Society.

Material poverty: Acquiring material goods and living in poverty seem contradictory. It could, however, express the same reality if the Jesuits live it in the spirit of poverty. All material things that a Jesuit “owns” are to be used towards our mission, our love of God and love of neighbour including the smallest things we “have.” Material poverty is the indifference towards things Jesuits use for a purpose. And when the purpose is achieved, the material means which one uses are to be given to others who may need it more. Insufficiency of material means could be a challenge but should never be an obstacle or a stumbling block for Jesuits to accomplish their mission.

Apart from our personal attitude toward material goods, our material poverty should be seen in our daily lives as well. An example of that expression of the Jesuit material poverty is the appearance of our houses.

Our buildings should be suitable for our ministries and appropriate for our living in them, in such a way that it will be clear that we are conscious of our poverty; they are not to be luxurious or elaborate. In them, especially in the part reserved for our living quarters, and in any of our works, we are to avoid too costly materials, installations and equipment and whatever may look extravagant, always keeping in mind both the purpose of our institutions and our religious poverty.<sup>374</sup>

In the course of our existence, material poverty was not always practiced, and there were times when our actions appeared the opposite. Our testimonies were tarnished and people were disappointed. An act of forgiveness is required, and this is the next and final action for improvement.

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<sup>374</sup>*Statutes of Poverty*, no. 34 §1; see also *Complementary Norms*, no. 179 §1.

*Asking for forgiveness:* One may wonder what forgiveness has to do with the law concerning administration of temporal goods. Our Society caused damage to people, and they are not just any people, they are our people, the people to whom we were sent to bring Christ's love, the law written in the hearts of everyone. That action or mistake requires forgiveness.

For forgiveness to be effective, it must come first from the individual's conviction, and then from the initiative of the entire Society. At the moment, when villagers from Ambohitraivo Mahitsy see a Jesuit, what they see is an enemy, a hater, a stealer, someone who has no heart and is able to rob from the poor. Even the Jesuits native of that area had been treated differently since the beginning of the dispute between their parents and the Society of Jesus. This situation needs to be repaired.

Being humble, recognizing mistakes is a sign of poverty of spirit. Our successive major superiors, their financial officers and all those involved in financial matters, and all Jesuits need to be convinced of the wrong the Society has done. It is up to the superiors to find the way to proceed to make a direct apology.

Asking for forgiveness will not make us experts in financial administration, but with all the actions for improvement for the administration of temporal goods of the Society, it will restore our identity, our identity as disciples of love, called for the salvation of souls and for the greater glory of God.

### ***Conclusion***

From its beginning when Saint Ignatius of Loyola adopted the evangelical counsel of poverty, the Society of Jesus did not stop adapting its way of living that poverty. From

begging (stripping oneself of everything and living out of total providence and pity from others) to the spirit of poverty (that may appear covered with material goods but is not dependent on their existence), the Jesuits gradually deepened their understanding of poverty, and introduced it not only in the book of their hearts, but in the book of their law as well.

When the Society of Jesus grew in numbers, it started to need temporal goods to sustain it in its missions, so that the members would not have that burden when sent to spread the Good News, the love of God, the love of neighbour, and salvation for all. Not only did the Society grow in numbers, it spread all over the world and reached even the most unknown places on earth in that time, such as Madagascar.

For a better management of their goods and properties throughout the country, the major superior needs to appoint a financial officer to help him oversee the status of the Society's belongings. Administering finances and assets of an entire organization needs knowledge. It does not come naturally to people. These are acquired skills.

The situations studied here caused huge losses for the Society of Jesus, not only financial loss, but many other things more important than financial: it lost its identity as a messenger of God's love. That situation also obliged the Jesuits to evaluate their way of life and mission. It invites them to return to the source of their call. From that point, the Jesuits realize that their way of life has to be yet again adapted to the context of today's world. Apart from their habitual skills they used to acquire in the course of their religious and priestly formation, the reality of today's world requires from them a broadened understanding, an open eye, a collaborative mind, and especially an open heart. The Jesuits are to review their way of applying the *MAGIS* in their daily lives, in their

mission, but also in the administration of their financial assets. In a simple word, Jesuits need to be trained more and differently from the traditional way to be able to deal with today's world.

Apart from giving knowledge to the mind, intellectual skills, the Jesuits need to be rooted in their spiritual principles and foundation. With that return to the source, they will have a clearer understanding of its spirit of poverty, and will be able to administer the financial assets and the properties of the Society of Jesus in a better and just way. The major superior, the finance personnel, and every Jesuit will work for the greater Glory of God, by bringing again Christ's message of love to their neighbour, but treating them justly, and by recognizing that we have committed mistakes in our way of approaching them. For that, we need to ask forgiveness and move forward together, working for the coming of the Kingdom of God.

## GENERAL CONCLUSION

The analysis of the canons on temporal goods of religious institutes, focusing on the Society of Jesus in the province of Madagascar, allowed us not only to understand on a deeper level the laws and regulations concerning temporal goods, but brought us to a new awareness of the life of the Society of Jesus, its mission, and purpose. These understandings are not limited to the Society, but could become tools for other religious institutes that are facing the challenges the Jesuits have encountered in their mission in Madagascar.

One thing that can be taken from this study is the fact that no one can understand an organization, an entity, an institute, or a congregation today without learning and understanding its history. This applies to a moral person such as the Church, or to a juridic person like the Jesuit province of Madagascar. This is also applicable to physical persons: no one could claim to know a person without knowing and understanding the person's history.

Knowledge of the history of the settlement of the missionaries in Madagascar, including the Jesuits, allows us to deepen our understanding of the history of Christianity in the country and the challenges it has faced throughout the centuries. The Jesuits had fought for their rights so many times and for so long, before they could start their mission and continue it: to preach God's love to the Malagasy people. Once they were allowed to do so, the number of Christians grew rapidly, not because of the ability of the missionaries but because of the realisation of the people that there were not so many differences between the faith preached by the Jesuits and the faith that the Malagasy

people had lived for centuries, long before the coming of the missionaries. This facility and understanding between the Jesuits and the Malagasy people created a strong bond between them to the extent that the Malagasy considered the Jesuits as their brothers, and so they were able to receive part of the inheritance left by the ancestors: the land. Although not all the Malagasy people were in favour of the Jesuits owning properties, the Society was at least able to start becoming established with the little it had acquired.

Whenever anything new comes into their possession, they must learn how to use it properly. The Jesuits, once established in the country, began to own more and more properties. They had to learn how to manage them so that these possessions would continue to sustain them to fulfil their mission.

Their tasks were not easy, because they had at least three things to master, in addition to their daily ministry of teaching, preaching, feeding the poor, or caring for the sick. First, they needed to understand the laws of the country where they had been established. None of the Jesuits were lawyers by profession, so they had to learn the law of the country through experience, in parallel with the law they were somewhat familiar with, the law of the Church and the law of their own Society. Second, the Jesuits had to become more diligent in their ways of managing their temporal goods, those already acquired and those they were about to possess. Third, they learned the limits of their capacities, the details of transactions and the laws that regulate them. They even started to learn how and when the Jesuits would be able to alienate their properties according to applicable civil legislation.

The primary purpose of this study was to focus on appropriate means of preserving the temporal goods of the Society in Madagascar, so as to avoid in the future some of the unfortunate situations they had to face.

When the Jesuits grew in number, the tasks of caring for their goods were divided among the members. To avoid confusion, the key was to know who was responsible for what. That was not so difficult for the Jesuits since, by the nature of their Society, those tasks were spelled out quite clearly at every level of their life. They began to become more familiar with their proper law written in their constitutions, complementary norms, decrees from the General Congregations, and various official letters. This study has shown that, even if there are those who were officially appointed to hold those offices, all Jesuits are somehow stewards of the temporal goods of the Society. All have the responsibility to care for temporal goods, to help those who are in charge when required, and to offer themselves and their skills and talents when necessary. They are all brothers, bound by one blood, the blood of Christ, living in one large family, the Church and the Society, being fed from one common source: their community. That situation brings them to a deeper understanding of their vow of poverty which is rooted in the imitation of Christ who was poor, and who did not depend on material things, but on God alone.

The Jesuits could commit mistakes. They were not perfect. As a matter of fact, they define themselves as sinners but called to be missioned to the people, to save their souls for the greater glory of God.<sup>375</sup> They may commit errors that, sometimes, are hard to remedy. But going back to their sources, they would learn from their mistakes and move forward.

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<sup>375</sup>Cf. *General Congregation 32*, d. 2, nn.1-3.

Six particular conclusions can be reached from this study.

1. Temporal goods are a means to help the Society to fulfill its mission and their administration is an expression of authentic Jesuit poverty which has its source in Christ himself who, though rich, became poor. It is rooted in the person of Christ who is represented in the persons of the little ones, the vulnerable, and the marginalized. They are the new frontiers where the Society has to go to preach the Gospel. The spirit of poverty has to be the beacon of the Society's way of life, the Society's choice of mission and work, and prayerful discernment should be its guide in fulfilling its mission.

2. Conversion of heart is an essential quality that every Jesuit should acquire. Living in poverty could become a burden if there is no openness of heart to accept it as a way of life. Having no choice but living in poverty (such as the ninety percent of the Malagasy population who do so) does little good to the proclamation of the Good News; choosing poverty following the poor Lord is already the Gospel manifested in the person of the Jesuit himself.

3. Developing intellectual skills (especially financial and accountancy ones) is necessary to administer temporal goods. These are acquired skills and the Society could well begin investing more to avoid repeating the mistakes of the past. No untrained persons should hold financial responsibilities.

4. Acknowledging the value of culture and tradition is a way of making the mission fruitful. Ignoring the wisdom and teaching of the elders is a barrier to successful communication with the people. Learning from them opens the way to understand their needs and to reach their hearts.

5. Recognising and accepting one's mistakes is a virtue to acquire. After falling into the trap of searching for victory following the path of worldly pride, Jesuits must admit their wrongdoing and return to the right path. This requires a certain “degree of humility” and Ignatius had insisted in the *Spiritual Exercises* that Jesuits are invited to live in humility, so as to be able to follow Christ who is meek and humble of heart.

6. Finally, it is necessary to understand the applicable legislation both canonical and civil. These are tools to help administer properly the goods of the Society, which do not belong to the members but to God. They were given to help the Jesuits fulfil their mission and achieve their ultimate goal. Moreover, it is indispensable to learn and understand those laws that are not written in any books, but written in daily life, in society, in cultures and traditions. The ultimate law that governs everyone is the law written in their hearts, the law of love, that God has asked all Christ's followers, Jesuits included, to spread, so that His kingdom may come and His will be done.

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## ABSTRACT

A long oral tradition in Malagasy society and the introduction of the written European civilization created a problem for property ownership and supporting documentation in Madagascar. Land titles have become one of the principal source of court cases in the country today. On the one hand, many people have lost their land due to lack of documentation. Portions of land had been inherited from generation to generation, but unknown individuals claim to be the owners with a proof of ownership. On the other hand, there are people who profited from the newly-introduced system and obtained land titles for unregistered properties. Not only did this situation impoverish the majority of the population, but it enhanced corruption at many levels of property administration. The Society of Jesus in Madagascar was not spared from this situation: some of its properties were taken by individuals or groups of people who asserted to own the land. For the last few years, the Society has had to spend valuable time and resources in court to reclaim its goods. Unfortunately, the Society has a low expectation of winning its cases due to the unreliable judicial system in the country.

This study intends to contribute to the understanding of the legislation relating to temporal goods of religious institutes, and to assist the Society of Jesus in Madagascar to preserve its goods, in order for it to be able to accomplish its missions without hindrance. To achieve this objective, this thesis begins with an overview of the settlement of the Jesuit missionaries in the country to proclaim the Good News, which did not go without obstacles from other religious leaders and the local officials, especially when it came to owning properties (Chapter One). This historical background leads to the necessity of a deeper understanding of the applicable canonical legislation concerning acquisition, retention, administration and alienation of temporal goods, so that the mistakes of the past will not be repeated. For that purpose, special attention was given to recent Vatican documents to show that the church legislation is alive and evolves according to the reality of our times (Chapter Two). A focused study on the proper law of the Society of Jesus relating to temporal goods follows. This part aims at developing the understanding of the Society's documents concerning financial administration as an expression of Jesuit poverty. A circular letter on poverty from Father P.H. Kolvenbach, superior general at the time, highlights the Society's charism as a renewed way for every Jesuit to live poverty (Chapter Three). The final Chapter (Chapter Four) brings together the understanding of the legislations (of the Catholic Church in general and the Society of Jesus in particular) relating to temporal goods with the current situation of the Jesuits in Madagascar. The understanding of the roles and responsibilities of financial officers is guideline for the Society to reshape its current way of administering its properties. Some provisions are suggested to close this study in order to assist the Society of Jesus in Madagascar to use its temporal goods as a means for the proclamation of the Gospel. The thrust of this study is that, through the proper administration of its property, the Society of Jesus, would become the true face of Christ "who became poor to make us rich" and reflect His light in a world still living in misery and injustice.

## **BIOGRAPHY**

Hasiniaina Rakotoarisoa, S.J., was born in Antananarivo, Madagascar on June 22, 1975. After completing his secondary education, he went to the University of Antananarivo to study philosophy. He entered the Society of Jesus in Madagascar on October 01, 1996. He went to Hekima College, The Jesuit School of Theology in Nairobi, Kenya in 2005, and received his Bachelor of Theology Degree in 2008. His pastoral studies in Ethiopia and pastoral fieldwork in South Africa rooted him in his eagerness to serve the marginalized. He was ordained a priest in July 25, 2009 and undertook his Study of Canon Law at Saint Paul University in Ottawa. While studying, he ministered to the Indigenous People of Canada, with Kateri Native Ministry of Ottawa which has a mission of healing and reconciliation.