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EXCLAUSTRATION IN THE *CODE OF CANON LAW*

by
Paul D. THOMAS, O.S.B.

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

Ottawa, Canada
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1993



Paul D. Thomas, Ottawa, Canada, 1993



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ABBREVIATIONS

<u>AAS</u>	<u>Acta Apostolicae Sedis</u>
<u>ASS</u>	<u>Acta Sanctae Sedis</u>
<u>CA</u>	"Cum admotae"
<u>CD</u>	"Christus Dominus"
<u>CIC 1977</u>	<u>Codex iuris canonici ... (1917)</u>
<u>CIC 1983</u>	<u>Codes iuris canonici ... (1983)</u>
<u>CLD</u>	<u>The Canon Law Digest</u>
<u>CLDfR</u>	<u>The Canon Law Digest for Religious</u>
<u>CLSA</u>	Canon Law Society of America
<u>DDC</u>	<u>Dictionnaire de droit canonique</u>
<u>ES</u>	"Ecclesiae sanctae"
<u>ET</u>	"Evangelica testificatio"
<u>LG</u>	"Lumen gentium"
Mansi	<u>Sacrorum conciliorum nova et amplissima collectio</u>
<u>MR</u>	"Mutuae relationes"
<u>PC</u>	"Perfectae caritatis"
<u>PG</u>	J.P. MIGNE (ed.), <u>Patrologiae cursus completus</u> [series graeca]
<u>PL</u>	J.P. MIGNE (ed.), <u>Patrologiae cursus completus</u> [series latina]
<u>PQ</u>	"Presbyterorum ordinis"

<u>Schema 1977</u>	<u>Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum</u>
<u>Schema 1980</u>	<u>Codex iuris canonici: Schema Patribus Commissionis reservatum</u>
<u>Relatio</u>	<u>Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis Patribus Commissionis ad novissimum schema codicis iuris canonici exhibitarum, cum responsionibus a secretaria et consultoribus datis</u>
<u>RB</u>	<u>RB 1980: The Rule of St. Benedict in Latin and English with Notes</u>
<u>RL</u>	<u>"Religionum laicalium"</u>
<u>Roman Replies</u>	<u>Roman Replies and CLSA Advisory Opinions</u>

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INTRODUCTION

Religious life is a stable form of living by which some members of the Christian faithful, both clerical and lay, are called by God so that they can enjoy a special gift of grace in the life of the Church and contribute each in his or her own way to the saving mission of the Church.¹ By the profession of the evangelical counsels of chastity, poverty and obedience religious are consecrated to God through the ministry of the Church and are incorporated into an institute with rights and duties defined by law.² Among these rights and obligations, canon 607, §2, of the 1983 Code prescribes that religious are to "live a life in common as brothers or sisters" (vita fraterna in communi).

A religious institute is a society in which members, according to proper law, pronounce public vows either perpetual or temporary, which are to be renewed when they have lapsed, and live in common as brothers or sisters.³

¹See Vatican II, Dogmatic Constitution, "Lumen gentium", 21 November 1964, (hereafter cited as LG followed by page and paragraph number), in Acta Apostolicae Sedis (hereafter cited as AAS), 57(1965), pp. 49-50, no 43; also John Paul II, Codex iuris canonici, in AAS, 75(1983) c. 573, §1; trans. in Code of Canon Law, Latin-English edition, Washington, D.C., Canon Law Society of America, 1983, c. 573, §1 (hereafter cited as CIC 1983).

²LG, pp. 50-51, no. 44; also CIC 1983, cc. 573, §2, 654.

³CIC 1983, c. 607, §2.

Still further in canon 665, §1, the law imposes common life to be observed according to proper law, as a specific obligation for religious.

Observing a common life, religious are to live in their own religious house and not be absent from it without the permission of their superior [...].⁴

Two reasons seem to underlie the prescriptions of these canons. The first is the recognition of the fact that religious consecration establishes a particular communion between religious and Christ, as well as a communion among the members of the same institute.

For religious, communion in Christ is expressed in a stable and visible way through community life. So important is community living to religious consecration that every religious, whatever his or her apostolic work, is bound to it by the fact of profession and must normally live under the authority of a local superior in a community of the institute to which he or she belongs. Normally, too, community living entails a daily sharing of life according to specific structures and provisions established in the constitutions.⁵

⁴CIC 1983, c. 665, §1; see also Vatican II, Decree, "Perfectae caritatis", 28 October 1965, in AAS, 58(1966), pp. 709-710, no. 15.

⁵Sacred Congregation for Religious and Secular Institutes, Private letter, "To the Bishops of the United States on Norms for Religious Life", 31 May 1983, in J. O'Connor, The Canon Law Digest, vol. 10, Milwaukee, Bruce Publishing Co., 1986, p. 51, no. 19.

In this way, religious life can be said to be a life of communion rooted in and built on charity, an example of the universal reconciliation in Christ.⁶

The second reason is that common life fosters and strengthens the vocation of religious.

[...] spiritual bonds cannot be created, developed and perpetuated unless through daily and prolonged relations. This community life, in evangelical charity, is closely linked with the mystery of the Church which is a mystery of communion and participation, and gives proof of your consecration to Christ. Make very effort that this community life may be facilitated and loved, becoming in this way a precious means of mutual help and personal fulfillment.⁷

This being said, and in spite of serious efforts to overcome difficulties, many religious today still find their participation in the life and activities of the community counter-productive, a situation which often leads to a desire to be juridically separated from the institute at least for a time through exclaustation. Other situations can also lead to exclaustation, namely, family difficulties; undertaking a special apostolate or work of the Church, such as establishing or helping to establish a new institute; or because of behavioral traits and weaknesses in character

⁶See CIC 1983, c. 602.

⁷Pope John Paul II, Homily to the Fifth General Assembly of International Union of Women Superiors General in Rome, 14 November 1979, in Consecrated Life, 5(1981), p. 170.

which make a religious unsuitable for community life and lead the superior to seek the exclaustation of such a member.

This dissertation is divided into four chapters and examines the various modes in which the Church has striven to assist religious who, for one reason or another, are unable to live in community, while at the same time upholding the integrity of the vows and the general obligation of common life.

Chapter one examines the historical genesis of the institution of exclaustation as it existed prior to the promulgation of the 1917 Code of Canon Law. From the beginning of organized community life among ascetics, the Church assisted religious in persevering in their vows by legislating for community life. It also recognized that religious would need permission to be absent from community from time to time and for a variety of reasons. The rules for religious communities and the directives from the Church's hierarchy tried to respond to this phenomenon in ways that were sensitive both to the personal needs of individuals and to the institutional necessity for good order. There was, however, little call for canonical regulation governing the everyday absences from the religious house which were within the discretionary competency of the superior, but more had to be done in the case of persons publicly dedicated to the consecrated life who moved about more freely than their

religious superiors had authority to permit. It was not until the period beginning with the pontificate of Pius VII (1800), that the Apostolic See began to publish norms allowing religious to live outside the cloister and granted indulgences of temporary secularization, that is, exclaustation.

Chapter two considers the institution of exclaustation as found in the 1917 Code. Although exclaustation had not been clearly identifiable until the late eighteenth century, the 1917 Code presented in canons 638-639 a uniform discipline applicable to all exclaustated religious. Its principal features were that it could be granted only by hierarchical authority (the Holy See for pontifical institutes and the local Ordinary for diocesan ones); the obligations arising from the vows that were compatible with living outside of community remained in force; the wearing of the religious habit was forbidden; the religious lacked active and passive voice in the institute; the exclaustated became subject to the Ordinary of the place of residence by virtue of the vow of obedience. At the expiration of the indulgence the religious was bound to return to the community.

Chapter three considers the legislation of the 1983 Code. The commission for the revision of the Code strove to allow for more involvement on the part of the religious superior in the process of exclaustation. Ordinarily, the process is placed within the competence of the superior of

the institute for the first three years, and then in the hands of the hierarchy. The exclaustrated religious is permitted to wear the habit and "remains dependent on and subject to the care" of both religious superior and the local Ordinary.³

The 1983 legislation includes an explicit reference to imposed exclaustation, a practice instituted by the Holy See in the 1950s. Enforced exclaustation is reserved to the Holy See in the case of religious of pontifical right and to the diocesan bishop in the case of religious of diocesan right. The good of the community as well as the welfare of the religious is intended by this exceptional juridical procedure.

Chapter four addresses the juridical situation of exclaustrated religious by examining practical issues often faced by superiors and members. The canonical provisions studied in this chapter are primarily concerned with the well-being of the person and with good order in the Church, and reflect the ongoing tension between these two values while trying to meet the changing needs of consecrated men and women in the Church today. The first part considers the modalities of the application of the legislation on exclaustation, while the second examines the rights and obligations of exclaustrated religious to be recognized

³CIC 1983, c. 687.

generally in a contract or agreement. Finally, this section considers special issues applicable to members who are on imposed exclaustation.

The method employed in this dissertation consists in analyzing the historical data in order to trace the gradual development of the institute of exclaustation under its various forms.

An analysis of writings published before the 1983 Code of Canon Law went into effect bring to light a certain number of practical issues that had to be resolved on an ad hoc basis.

The 1983 Code attempted to codify some of these decisions, but in doing so opened the door to new questions. For this reason, contemporary studies are analyzed to determine how the Code of 1983 is being interpreted and applied.

Finally, proposals are brought forward for the possible resolution of situations that have not yet been fully addressed. In particular, reference is made to the obligations and responsibilities of the institute towards exclaustated religious. Elements that could be the object of an agreement between the institute and the member are considered.

A number of studies were done on the 1917 legislation regarding the status of exclaustated religious, in

particular, the work of N. Mansi and C. Pionteck. However, given the changes found in the 1983 Code, these studies have now become dated and are no longer fully applicable. A certain number of recent articles (such as those by J. Gallen, P.V. Pinto, M. O'Reilly) have touched on various aspects of the contemporary situation, but did not intend to examine the minute implications of the new law. Likewise, a number of difficult situations have been documented by the Congregation for Religious and the Apostolic Signatura. The decisions in these cases provide practical principles upon which to base solutions to new problems, solutions that would be equitable and charitable.

Several reasons influenced the choice of topic, none more clear than the awareness that if the highest law of the Church is the salvation of souls,⁹ then ecclesiastical superiors in assisting religious who are in turmoil or difficulty fulfill not only this fundamental principle of the law, but even more the gospel passage about the Good Shepherd who left the ninety-nine in search of the one.

While it is a truism to say that religious life is now in a period of transition, it is hoped that this study will assist superiors and those religious who are considering exclaustation.

⁹CIC 1983, c. 1752.

CHAPTER I

EXCLAUSTRATION BEFORE THE 1917 CODE OF CANON LAW

This chapter considers the historical genesis of the institution of exclausturation as it existed prior to the promulgation of the 1917 Code of Canon Law. From a historical point of view, exclausturation did not always exist in the same form; its elements, such as the reasons for obtaining the permission, the length of time, effects, procedure, etc., are not clearly identifiable until the eighteenth century. Until then the Church strove to preserve religious in their vows by canonizing the common life, inculcating stability, legislating for the legitimate egress of monks and nuns from their dwellings, and promoting various reform movements within monasticism. When permission was granted for religious to live outside their proper dwellings it was given on an individual basis and by one's own superior or bishop.

The era we are studying can be divided into five periods. From the beginning of the ascetical movement to the Council of Chalcedon (451), a life lived in common gradually became the norm in the development of monasticism; nevertheless, there existed a variety of reasons to grant concessions for monks and nuns to dwell outside the confines of the monastic enclosure.

From the Council of Chalcedon to Gregory the Great (590), the Rule of Benedict, which later became the basis of uniform governance for cenobitic living, placed great value on stability in community under a rule and an abbot. During this period, provincial and national councils, and sometimes secular authority as well, began to enact legislation regarding the egress of monks and nuns from their monasteries.

During the reign of Pope Gregory the Great to the IV Lateran Council (1215), the Church strove vigorously to overcome abuses in religious life and to instill stability of place. Conciliar legislation regarding the legitimate and illegitimate egress of monks and nuns became more extensive. The Apostolic See began to publish legislation to correct abuses and ensure the inculcation of the common life and stability. In 1179 the III Lateran Council prohibited monks from having a peculium or to live by themselves in parishes, while the IV Lateran Council prescribed annual general chapters, a regular system of visitation, and the approval of new rules.

In the period from the IV Lateran Council to the French Revolution, the principal elements of religious life began to be recognized as: life lived in common, under solemn vows, in an institute approved by the Apostolic See. The Council of Trent (1545-1563) decreed the reform of religious life,

empowering bishops to proceed against wandering monks. The Council likewise prescribed the cloister for all women pronouncing solemn vows and allowed no one to transfer to another institute unless it be to a more rigorous order.

From the time of Pius VII (1800) to the promulgation of the 1917 Code, the Apostolic See began to publish norms which allowed exceptions to permit religious to live outside the cloister and it granted indulgences of temporary secularization (exclausturation).¹ Indeed, in response to the suppressions of religious houses in the eighteenth and nineteenth centuries, the Apostolic See made every effort to come to the aid of dispersed religious. As a last resort, it granted bishops and superiors general the power to dispense religious not from the basic elements of the vows, but "to some degree for their security and peace of mind." It is to these different periods that we now wish to turn our attention.

¹Until the Code of 1917, the distinction between exclausturation and secularization remained undefined. Pre-Code legislation referred to exclausturation as a temporary secularization.

A. EXCLAURATION BEFORE THE COUNCIL OF CHALCEDON (451)

1. The beginnings of Christian monasticism
in the eastern Mediterranean

The institution of exclauration originated when the ascetical life² began to be life in a stable community with a written rule as its norm.³ Of particular importance for the ascetical life was the tradition of virginity and celibacy that was grounded in the example and teaching of Jesus (Matt. 19:12), as well as in the letters of St. Paul (1 Cor. 7:8, 25-35). The writings of various Church Fathers testify to the increasing importance of this aspect of asceticism in the life of the Church.⁴

²The term askesis has a pre-Christian usage, referring to practice or training, especially that of athletes. The term does not occur in the New Testament. It acquires a spiritual meaning in non-Christian writers such as Philo. In early Patristic usage it comes to mean: study, the practice of piety, spiritual exercise or training, an austere life, and eventually becomes a technical term for the eremitical and monastic life and its practice. See G. Lampe, A Greek Patristic Lexicon, vol. I, Oxford, The Clarendon Press, 1961, p. 244. For a discussion of ascetic tendencies in the New Testament, see H. von Campenhausen "Early Christian Asceticism", in Tradition and Life in the Church. Essays and Lectures in Church History, London, Collins Press, 1968, pp. 90-122.

³C. Pionteck, De indulto exclaurationis necnon saecularizationis, Washington, D.C., The Catholic University of America Press, 1925, p. 14 (Canon Law Studies, no. 29).

⁴A useful collection of ancient and Patristic texts on the subject may be found in H. Koch, Quellen zur Geschichte de Askese und des Mönchtums in der alten Kirche, Tübingen, J.C.B. Mohr, 1933, 196p.

What differentiates the monastic tradition from the earlier tradition of asceticism is the practice of withdrawal from society. The early ascetics led their lives in the midst of the Christian community and often with their families. The monastic movement, however, was characterized from the beginning by a certain withdrawal from the ordinary framework of society and the creation of a special culture, whether this was in a colony of hermits or in a cenobitic monastery.⁵

After the Peace of Constantine, the close association of the state with the Church infected the Church with the so-called values of secular society;⁶ monasticism provided a

⁵K. Heussi, Der Ursprung des Mönchtums, Tübingen, J.C.B. Mohr, 1936, p. 53. This distinction of Heussi's is not accepted by all; nonetheless it provides virtually the only way of distinguishing the monastic movement from the earlier period. It is not actually a modern distinction. Athanasius himself considered that Antony's innovation consisted in his withdrawal into the desert; see Athanasius: The Life of Antony and the Letter to Marcellinus, trans. R. Gregg, preface W. Clebsch, New York, Paulist Press, 1980, pp. 11, 39-40; original: St. Athan., Vita S. Antonii, in J. P. Migne, ed., Patrologiae cursus completus, series graeca, Paris, 1857, vol. XXVI, 59-862, 11. (hereafter cited as PG with volume and page number).

⁶T. Klauser, A Short History of Western Liturgy: An Account and Some Reflections, trans. from the German by J. Halliburton, London, Oxford University Press, 1969, p. 117; (originally published as: Kleine abendlandische Liturgiegeschichte, Bonn, P. Hanstein, 1965, 245p).

different sort of martyrdom for those who desired to respond fully to the teaching and example of Christ.⁷

2. St. Antony and the eremitical movement

Although St. Antony does not seem to have been the first hermit, there is no doubt that his example and fame gave great impetus to the eremitical movement. Soon after his death, Antony came to be regarded as the "Father of Christian monks",⁸ a founder not in the sense of Dominic or Ignatius, but rather an archetype or model of the orthodox hermit.

At times hermits joined into a common life, but they were not subject to a common rule; the guidance of the abbot was the sole norm for observing the evangelical counsels. Hermits were able to return temporarily or permanently to live in the world at their own choice, because they were not bound by any promise to persevere in the life that had been

⁷G. Ladner, The Idea of Reform: Its Impact on Christian Thought and Action in the Age of the Fathers, Cambridge, Harvard University Press, 1959, xiv-553p. The explanation of the rise of monasticism as a reform movement was given its classic expression by the German historian A. Harnack in: Monasticism: Its Ideals and History and the Confessions of St. Augustine, trans. E. Kellett and F. Marseille, Oxford, Williams and Norgate, 1901, 171p. (originally published as: Das Mönchtum: Seine Ideale und seine Geschichte, Giessen, J. Ricker, 1881, 56p). Harnack regarded monasticism favorably but felt, of course, that the right answer to the problem was only the constant reform of the whole Church.

⁸C. Butler, Benedictine Monachism: Studies in Benedictine Life and Rule, London, Longmans, Green, 1919, p. 12.

assumed. Each one freely organized and lived the eremetical life according to personal preference and ability.

St. Pachomius (286-346) was the promotor of a new movement with its own distinct inspiration and purpose. Individuals were drawn to Antony and other noted ascetics because they saw the Spirit in them and desired to imitate them.⁹ This was true in the case of Pachomius as well, but to a certain degree he attempted to focus attention away from himself and toward the community as the dwelling place of the Spirit. The Pachomian community was not just a grouping of individuals around a spiritual father, but a fellowship of brothers, a *koinonia*.¹⁰ Unlike the associations of hermits who merely lived a life similar to their masters, the Pachomian monks lived together under a common rule.

Besides writing a rule, Pachomius was also a great organizer. The Pachomian monastery was a fairly elaborate affair, surrounded by a wall.¹¹ Within each monastery were

⁹K. Heussi, *op. cit.*, pp. 164-186.

¹⁰A. Veilleux, *La liturgie dans le cénobitisme pachomien au quatrième siècle*, (Studia Anselmiana, fasc. 57), Romae, Herder, 1968, p. 176, The term *koinonia* refers to the union of monasteries that had grown under Pachomius' leadership. The concept of imitating the life of the earliest Christian community is thus a major theme in Pachomian literature.

¹¹D. Chitty, *The Desert, A City: An Introduction to the Study of Egyptian and Palestinian Monasticism under the Christian Empire*, Oxford, Basil Blackwell, 1966, p. 22. This seems the earliest example of the monastic enclosure. It has been suggested that the enclosure wall, as well as the layout of the monastery in general, derived from Pachomius'

numerous houses, each containing thirty or forty monks. Within the houses were parties of ten or so under a foreman. Each house was governed by a master, and each monastery by a father or abbot. In addition to the living quarters for the monks, there was also a gatehouse, a guesthouse, an infirmary, a kitchen, a refectory and an assembly hall used for common prayer.¹²

Pachomius wished to guard against the frequent wanderings of monks outside the enclosure. When someone's close relative died, he would not be allowed to attend the funeral unless the father of the monastery gave permission.¹³ No one was to go outside the walls for any purpose unless accompanied by a companion¹⁴ or without the housemaster's permission.¹⁵ Anyone who had left the koinonia of the brothers and came back could not return to

experience of a military camp.

¹²Pachomian Chronicles and Rules, trans. with introduction by A. Veilleux, Kalamazoo, Cistercian Publications, 1981, p. 285, (Cistercian Publications, Series 46); Regula Pachomii, in J. P. Migne ed., Patrologiae cursus completus, series latina, Paris, Migne, 1857, vol. XXIII, col. 61-86 (hereafter cited as PL with volume and column number).

¹³Ibid., p. 156, rule 55; Regula Pachomii, PL, XXIII, col. 71, rule 55.

¹⁴Ibid., p. 156, rule 56; Regula Pachomii, PL, XXII, col. 71, rule 56.

¹⁵Ibid., p. 160, rule 84; Regula Pachomii, PL, XXII, col. 74, rule 84.

his rank without the permission of the superior.¹⁶ In the same way, if a housemaster or a steward slept outside one night without the brothers, he could not take his rank without the superior's order.¹⁷

Though Pachomius set down in his rule many precepts and admonitions for his monks, there was no strict notion of stability or perseverance in the cenobitic life by virtue of monastic profession; nor was there any explicit emission of vows. The entrance into religious life consisted of receiving the tonsure, setting aside of secular clothes and donning the monastic habit, and admission in the sight of all the brethren.

As return of monks to the world was frequent, so also was living outside the enclosure; at times even Pachomius himself prescribed this for some days. Permission to leave one community and take up permanent residence in another was occasionally also granted. Thus when Theodore, the head of the Pachomian communities, learned that the monk Ammonius' parents were lamenting his decision to join the monastery, he

¹⁶Ibid., p. 165, rule 136; Regula Pachomii, PL, XXII, col. 78, rule 136.

¹⁷Ibid., p. 165, rule 137, Regula Pachomii, PL, XXIII, col. 78, rule 165.

gave Ammonius permission to transfer to a community near his parents in order that he could visit them."¹⁸

3. The Rule of Shenoute of Atripue

The development of cenobitism seems to have been taken a step farther by Shenoute, the head of the "White Monastery" in the Thebaid. Shenoute took part in the Council of Ephesus in 431.¹⁹ At the time of his death, it is reckoned that he was the father of 2,200 monks and some 1,800 nuns.²⁰ Although the Rule of Pachomius constituted the foundation of these monasteries of Shenoute, there were many elements that were distinct. For instance, it could be noted that, generally speaking, Shenoute's legislation was severe compared to that of Pachomius. Accordingly, a period of probation, an examination of the candidate, and a renunciation of everything owned was now required of an aspirant. Furthermore, an implicit profession binding in God's sight alone no longer sufficed. Now every aspirant had

¹⁸P. Ladeuze, Etude sur le cénobitisme pachomien pendant le IV^e siècle et la première moitié du Ve, Louvain, J. van Linghout, 1898, p. 285.

¹⁹V. Besa, The Life of Shenoute, Introduction, Tradition and Notes, trans. D. Bell, (Cistercian Studies, series 73), Kalamazoo, Mich., Cistercian Publications, 1983, pp. 2-3; a trans. of the Bohairic text as edited by J. Leipoldt and W. Crum, Sinuthii Archimandritae vita et opera omnia I, in Corpus scriptorum christianorum orientalium, vols. 41-42, Parisiis, e Typographeo republicae, 1906.

²⁰Ibid, p. 5.

to make a promise aloud before the altar and according to a formula. In this formula there was explicit mention of the verb "to vow".²¹ In addition, Schenoute demanded an oral promise of obedience.²²

His monks were forbidden to visit their female relatives, except one who was a nun in a nearby convent. Nor could a monk go to another monastery without permission of his own abbot. If for some reason monks had to journey outside the enclosure, the first among them had to keep the last one always in sight.

Quite often some monks, with the consent of Schenoute went forth from the monastery to lead a solitary life in the desert. It must also be noted that even those monks who had been given such permission to reside outside the community had to be present for general chapters which were held in the monastery four times a year. Only the sick were excused.²³

Perseverance in the monastic life was expected, since vows were implicitly recognized as perpetual. Schenoute considered a permanent departure from the monastic life as a

²¹Ibid., pp. 9-10.

²²J. Leipoldt, Schenoute von Atripe und die Entstehung des national ägyptischen Christentums: Texte und Untersuchungen zur altchristlichen Literatur, Bd. 25, Heft. 1, Leipzig, J.C. Hinrichs, 1903, pp. 108-109.

²³Ibid., pp. 104-105.

great infidelity towards God.²⁴ He prohibited the other monks from remembering one leaving in order that they would recognize the perpetuity of their own vows and thus be encouraged to persevere in the monastic life.²⁵

4. The Rule of St. Basil

Basil the Great (330-379) was a legislator for the monastic life in Asia Minor. For Basil, as for Pachomius, the monastic life was an imitation of the early Christian community.²⁶ He preferred the common life over the eremitical form in part because he had witnessed the extreme tendencies and aberrations of the monks of Egypt, Syria, Palestine and Mesopotamia during his travels to these parts. He concluded that one who lived the solitary life could not recognize his own defects and lacked the opportunity to practice charity.²⁷

Basil's legislation for the monastic life consists of 55 "Long Rules" and 313 "Short Rules". The form of life for

²⁴C. Pionteck, op. cit., p. 21.

²⁵Ibid., pp. 21-22.

²⁶D. Knowles, Christian Monasticism, London, Weidenfeld and Nicolson, 1969, pp. 20-21.

²⁷R. Deferrari et al., eds., Saint Basil: Ascetical Works, in Fathers of the Church, vol. 9, trans. M. Wagner, New York, Fathers of the Church Inc., 1950, pp. 247 - 252, long rule 7; Regulae fusius tractatae 7, PG, XXXI, col. 927-934.

which Basil legislated was entirely cenobitic and more developed than that handed down by Pachomius and Schenoute. Basil prescribed a common roof, a common table, work in common and daily prayers in common.²⁸

Though the Rule of Basil placed great emphasis on the stability of the common life, there did exist the possibility for monks to dwell outside the cloister with the permission of the superior. Indeed, with such permission, any monk was able to choose a solitary life outside the enclosure.²⁹ Yet Basil warns superiors not to permit those who have been permanently admitted to the community to dwell outside the monastery even for the purpose of visiting relatives.³⁰

The Rule of Basil required an explicit profession of vows according to a set formula and in the presence of the community.³¹ The taking of vows was obligatory;³² a monk who asked permission to withdraw from the monastic life was looked upon as "a sinner and a thief", because since he had

²⁸E. Morison, St. Basil and His Rules: A Study in Early Monasticism, London, Oxford University Press, 1912, pp. 39-46.

²⁹R. Deferrari, op. cit., pp. 245-246, long rule 6; Regulae fusius tractatae, 6, PG, XXXI, col. 926-927.

³⁰Ibid., pp. 295-296, long rule 32; Regulae fusius tractatae, 32, PG, XXXI, col. 994-998.

³¹Ibid., pp. 264-268, long rule 15; Regulae fusius tractatae, 15, PG, XXXI, col. 951-958.

³²W. Clarke, St. Basil the Great: A Study in Monasticism, Cambridge, University Press, 1913, pp. 107-109.

dedicated himself to God he now wished to take back that which he had given to God."³³

5. The beginnings of western monasticism

In the West, as in the East, the ascetic life originated with ascetics (virgins and widows) living their lives in society. While Eastern influence is often recognizable, to a degree the genesis of the monastic life in the West was a native growth, springing up in the major regions of the West: Italy, North Africa, Gaul, Spain, and the British Isles.

The seeds of monastic life had been sown in Italy before Athanasius went to Rome as a refugee (c. 339) and brought with him the life of Antony and the rule of Pachomius. Jerome says that before this time the name monachus was held in scorn and contempt.³⁴ Therefore, monks must have been known in the vicinity. Ambrose was also a promoter of monastic life in Italy.³⁵ Augustine discovered functioning monasteries of both sexes when he came to Rome in 387.³⁶ It

³³R. Deferrari, op. cit., pp. 263-264, long rule 14; Regulae fusius tractate, 14 PG, XXXI, col. 950-951.

³⁴H. Wace et al., eds., The Principal Works of St. Jerome, in A Select History of Nicene and Post Nicene Fathers, vol. 5, Oxford, James Parker and Co., 1904, p. 256; S. Hieron, Ep. 127, 8, PL, XXII, col. 1092.

³⁵D. Knowles, Christian Monasticism, p. 25.

³⁶L. Dattrino, "Il cenobio eusebiano", in Benedictina, 31(1984), pp. 37-45.

has often been affirmed that the bishop of Vercelli, Eusebius (d. 371), was the first to introduce a monastic observance for his clergy.³⁷

Martin of Tours (c. 360-435) was the first propagator of monasticism in Gaul and the first of the great monastic bishops in the western Church. Martin began as a hermit but soon attracted disciples and eventually formed a semi-eremitical community where each of his monks had his own hut in which to work, eat, and sleep, and from which he came out only for worship in a common oratory.³⁸ Thus, what was formed was not a real coenobium, but a "laura", or loosely knit group of semi-anchorites. There was no rule to regulate the life other than Martin's example and counsel. These monks were not bound to a monastic enclosure.

Another monastic tradition in Gaul stemmed from the monastery of Lerins, founded by Honoratus (c. 350-429) between 400 and 410. It appears that the monastic life lived at Lerins was primarily cenobitic, though experienced monks lived in separate cells as hermits, under the authority of the abbot. They attended, at least on occasion, the common prayer and instructions by the abbot. There may have been

³⁷J. Lienhard, "Patristic Sermons of Eusebius of Vercelli and Their Relation to His Monasticism", in Revue bénédictine 87(1977), pp. 164-172.

³⁸C. Stancliffe, St. Martin and His Hagiographer: History and Miracle in Sulpicius Severus, Oxford, Clarendon Press, 1983, pp. 20-29.

some kind of a rule, but Honoratus' writings have not survived. Out of this foundation came many bishops and missionaries;³⁹ all of these by virtue of their duties lived in a de facto state of exclausturation.

The most influential of all the monastic founders of Gaul was John Cassian (360-435). As a youth he became a monk in Palestine. When he returned to Gaul he erected a monastery at Marseilles and introduced customs he had observed among the eastern monks regarding prayer, the recitation of the psalms, dress, food, obedience, poverty and discipline.

Cassian believed in the eremitical ideal, but he knew there were few who could withstand the rigors of that life without a long and arduous training.⁴⁰ He wrote two works on the monastic life: Institutes, a book for beginners in the monastic life; then the Conferences, a study of the Egyptian ideal of the monk. In his Conferences Cassian praised the cenobitic life.⁴¹ He also exposed the dangers for those who

³⁹K. Baus et al., eds., The Imperial Church from Constantine to the Early Middle Ages, in The History of the Church, H. Jedin et al., eds., vol. II, London, Burns and Oates, 1980, pp. 381-382.

⁴⁰O. Chadwick, John Cassian: A Study in Primitive Monasticism, Cambridge, The University Press, 1950, pp. 48-49.

⁴¹H. Wace et al., eds., The Works of John Cassian, in A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church, vol. XI, Oxford, James Parker and Co., 1904, Conference 19, chapter 9, 12, p. 493; Joannes

had been insufficiently trained in the cenobitic discipline and desired to dwell in solitude.⁴²

The first western monastic legislator in the strict sense of the term was Caesarius of Arles (470-542).⁴³ He wrote two rules stressing the common life: one for monks and one for nuns.⁴⁴ He prescribed for his monks perseverance in religious life: "First of all if anyone comes for conversion of life, he is to be received only on condition that he persevere unto death."⁴⁵ In the rule for virgins he required that no nun could go forth from the convent until death.⁴⁶ The rule of Caesarius of Arles makes no provision for monks to live outside the enclosure.

The Irish monks were intrepid travelers. Their journeys were motivated not only by restlessness and the desire to

Cassianus, Collationes patrum in eremo commorantium, PL, XLIX, Coll. XIX, caput IX, XII, col. 1141.

⁴²Ibid., Conference 25 - 26, pp. 541-542, 545; Joannes Cassianus, Collationes patrum in eremo commorantium, PL, XLIX, Coll. XXIV, caput XXVI, col. 1327.

⁴³C. Montalembert, The Monks of the West, from St. Benedict to St. Bernard, vol. II, Boston, P. Donahoe, 1872, pp. 277-278.

⁴⁴ K. Baus, op. cit., pp. 699-700.

⁴⁵S. Caesarii, Regula ad monachos, PL, LXVII, caput I, col. 1099.

⁴⁶S. Caesarii, Regula ad virgines, PL, LXVII, caput I, 1107; M. McCarthy, The Rule for Nuns of St. Caesarius of Arles: A Translation with a Critical Introduction, Studies in Medieval History, new ser., vol. 16, Washington, D.C., The Catholic University of America Press, 1960, p. 171.

bring the faith to pagan peoples, but also by the ascetical ideal of seeking exile away from home and family for the sake of Christ, peregrinatio pro Christo." Thus the wandering Irish monks eventually spread their brand of monasticism across much of Western Europe. Yet, notwithstanding this tendency, in chapter nine of his rule Columban (540-615) highly commended common life in a monastery: "Let the monk live in a monastery under the discipline of one father and in the company of many brethren."⁴⁸

In North Africa the development of monasticism was dominated by Augustine (354-430).⁴⁹ After his elevation to the episcopate (396) he lived a common life with the priests of the diocese of Hippo. Later he founded two other houses for clerics for whom the common life was demanded. In addition to these houses he also founded one for women.⁵⁰

⁴⁸D. Knowles, Christian Monasticism, p. 32.

⁴⁹G. Walker, Sancti Columbani opera, Dublin, Dublin Institute for Advanced Studies, 1957, p. 141; S. Columbani regula coenobialis, PL, LXXX, caput IX, De perfectione monachi, col. 216.

⁵⁰A. Zumkeller, Augustine's Ideal of the Religious Life, trans. from the German by E. Colledge, New York, Fordham University Press, 1986, p. 32. (originally published as: Das Mönchtum des heiligen Augustinus, Würzburg, Augustinus-Verlag, 1968, 488p).

⁵⁰Ibid., pp. 40-46.

6. Early conciliar legislation

The first canonical legislation concerning monks who illicitly left their monastery appears to be contained in the "Decrees and Constitutions for Monks and Anchorites" appended to the decrees of the Ecumenical Council of Nicaea held in 325.⁵¹ These decrees are certainly unauthentic and of a later date.⁵² The Fathers of the Council of Carthage in 397 prescribed that when virgins were placed under the guidance of the bishop in monasteries or commended to the care of prudent women, they should not be allowed to wander outside the monastery.⁵³ A repetition of this canon is found in the Council of Africa held in 424.⁵⁴

⁵¹J. D. Mansi, Sacrorum conciliorum nova et amplissima collectio, vol. II, Paris, Leipzig, Arnhem, H. Welter, 1910-1927, col. 1012.

⁵²K. Hefele, Histoire des conciles d'après les documents originaux, trans. from the German by H. Leclercq, Paris, Letouzey et Ané, 1907-1952, vol. I, pp. 517- 518; (originally published as: Conciliengeschichte, nach den quellen bearbeitet, Freiburg, Herder, 1869-1890, 9 vols). See also: W. Bright, The Canons of the First Four General Councils of Nicaea, Constantinople, Ephesus and Chalcedon, with Notes, 2nd ed., Oxford, Clarendon Press, 1892, p. 88.

⁵³J. D. Mansi, op. cit., III, Council of Carthage (397), col. 855, canon 33.

⁵⁴Ibid., IV, Council of Africa (424), col. 484, canon 22.

B. EXCLAUSTRATION FROM THE COUNCIL OF CHALCEDON
TO GREGORY THE GREAT (590)

The period from the Council of Chalcedon (451) to the time of Pope Gregory the Great (590) saw the break-up of the Roman Empire, the invasion of the barbarians, and the advent of St. Benedict. During this period, numerous local, provincial and national councils continued the effort to stop monks from wandering about except for reasons of necessary business and with the written permission of their superiors.

1. The Council of Chalcedon

Since it appeared impossible, by the precepts of individuals, to obtain a comprehensive legislation concerning the stability of monks, it was necessary for the Church to establish a strict and more universal discipline by means of Councils. This was the intent of the IV Ecumenical Council of Chalcedon (451) which reminded monks that their way of life was one of prayer, work and sacrifice within the monastery, and that they should remain there.

Those who lead a true and sincere monastic life ought to enjoy due honor. Since, however, there are some who, using the monastic state as a pretext, disturb the churches and the affairs of the state, roam about aimlessly in their cities, and even undertake to establish monasteries for themselves, it is decided that no one shall build or found a monastery or a house of prayer without the consent of the bishop of the city. It is decided furthermore, that all monks in every city

and country place shall be subject to the bishop, that they love silence and attend only to fasting and prayer, remaining in the places in which they renounced the world; that they shall not leave their monasteries and burden themselves either with ecclesiastical or worldly affairs or take part in them unless they are commissioned to do so for some necessary purpose by the bishop of the city; that no slave shall be received into the monasteries and become a monk without the consent of his master. Whosoever transgresses this decision of ours shall be excommunicated, in order that the name of God be not blasphemed. The bishop of the city, moreover, shall exercise a strict supervision over the monasteries.⁵⁵

The Council condemned all wandering monks, especially those who without permission of their superiors had become a disturbing element in the city of Constantinople.⁵⁶

2. The legislation of various particular councils

The legislation of the Council of Chalcedon concerning vagrant monks was reiterated by many particular councils in the West.

For instance, the II Council of Arles in 452 decreed that

those who after religious profession apostatize and return to the world, and afterwards seek not

⁵⁵Ibid., VII, Council of Chalcedon (451), col. 416, canon 4; trans. H. Schroeder, Disciplinary Decrees of the General Councils - Texts, Translation, and Commentary, St. Louis, Herder and Herder, 1937, p. 92.

⁵⁶ Ibid., VII, Council of Chalcedon (451), col. 367, canon 23; trans. H. Schroeder, Disciplinary Decrees of the General Councils, p. 121.

the remedy of penance, shall not be received into communion without penance; and we order as well that they may not be admitted to a clerical office. And after his penance he shall not take up the secular habit; if anyone takes it up, he shall be considered as outside the Church."⁵⁷

During this period there were many wandering clerics and monks. For this reason, the Council of Vannes in 465 complained about those who did not have testimonial letters from their superiors, denied them permission to travel and decreed that in "every place to which they have come without these letters, they are alien to our communion."⁵⁸ Canon 6 of the Council states: "If this correction by words does not effect their amendment, we decree that they be coerced by corporal punishment."⁵⁹ Canon 7 of the same Council decreed that it was not lawful for monks

to withdraw from the community to solitary cells, unless perchance for those proved after meritorious labors, or unless they are dispensed from a stricter rule by their abbot on account of infirmity. Let this action then take place in such a way that remaining within the same enclosure of the monastery they be permitted

⁵⁷Ibid., VII, II Council of Arles (452), col. 881, canon 25. (Unless stated otherwise, the translation of texts in foreign languages is by the author).

⁵⁸Ibid., VII, Council of Vannes (465), col. 953, canon 5.

⁵⁹Ibid., VII, Council of Vannes (465), col. 953-954, canon 6.

nevertheless to have a separate cell under the authority of the abbot.⁶⁰

Local legislation prohibited bishops from ordaining monks, vagabond or not, without permission of their abbots. Thus, the Council of Agde (506) decreed: "Let no vagabond monk be ordained to the office of cleric [...] unless his abbot has given him testimonial letters."⁶¹ The Council went on to say: "If it should be necessary to ordain a cleric from among the monks, the bishop may do so only with the consent and good will of his abbot."⁶² Abbots, too, were warned "not to presume to accept or to welcome a monk who was wandering about except with the permission and will of his own abbot."⁶³ The Council of Ilerda (524) reiterated this:

As regards monks it has pleased us to observe what the Synod of Adge and the Synod of Orleans is known to have decreed: this only must be added, that for the usefulness of the church, those whom a bishop has approved for duties of a cleric,

⁶⁰Ibid., VII, Council of Vannes (465), col. 954, canon 7.

⁶¹Ibid., VIII, Council of Agde (506), col. 329, canon 27.

⁶²Ibid., VIII, Council of Agde (506), col. 329, canon 27.

⁶³Ibid., VIII, Council of Agde (506), col. 329, canon 27.

ought to be ordained with the consent of their abbot.⁶⁴

Some monks even functioned in various civil or ecclesiastical capacities. Hence, the Council of Tarragona (516) under Pope Hormisdas decreed:

We forbid monks who wander outside their monastery to presume to take up any ecclesiastical ministry unless with the abbot's permission. Likewise, we forbid any monk to be the promoter or executor of external business, unless the good of the monastery requires it: but only by order of the abbot himself, and keeping in mind all that the canons of the Gallican Councils have set down.⁶⁵

The Church at times even made use of the State in an attempt to enforce such legislation.⁶⁶

3. Monastic legislation

In spite of the efforts described thus far there was lacking uniform legislation by the Church which would remove the many abuses prevalent in monastic life of the fifth century. In some cases, a monk could transfer from one monastery to another at his own discretion. Some individuals

⁶⁴Ibid., VIII, Council of Ilerda (524), col. 612-613, canon 3.

⁶⁵Ibid., VIII, Council of Tarragona (516), col. 543, canon 11.

⁶⁶Ibid., IX, II Council of Tours (567), col. 795-796, canon 15.

entered a particular monastery and then moved on to another one, as such a change frequently brought with it a more comfortable life style. Still others went to the desert to lead an eremetical life, often as a means of evading obedience to a rule and a superior. For these reasons, many monks were able to wander freely outside the enclosure of their monasteries without any fear of punishment. Among the various initiatives to stop such wanderings or return to the world was that of Benedict of Nursia (480-543).⁶⁷ Benedict's moderation and his emphasis upon a stable community life ensured that the Rule would become a powerful force in reforming western monasticism.

In the first chapter of the Rule, Benedict says that there are clearly four kinds of monks: the cenobites, the anchorites, the sarabaites, and the gyrovagues.⁶⁸ Regarding the gyrovagues and the sarabaites, Benedict admonishes that "it is better to keep silent than to speak of all these and their disgraceful way of life. Let us pass them by, then,

⁶⁷T. Fry et al., eds., RB 1980: The Rule of St. Benedict in Latin and English with Notes, Collegeville, Minnesota, The Liturgical Press, 1981, pp. 187; 267, 289; 275 (hereafter cited as RB with chapter and verses), RB 4, 78; 58, 9, 17; 60, 9; 61, 5.

⁶⁸Benedict described the sarabaites as detestable monks since they had no experience to guide them, or rule to try them. Their law was what they like to do. Gyrovagues, he regarded as even worse than the sarabaites since they drifted from region to region, staying as guests for three or four days in different monasteries. They were slaves to their own wills and appetites. RB 1, 6-9.

and with the help of the Lord, proceed to draw up a plan for the strong kind, the cenobites."⁶⁹ His Rule is intended for those monks only who desire to be led by a rule and by obedience under an abbot. Benedict described cenobites as those

who no longer live by their own judgment giving in to their own whims and appetites; rather they walk according to another's decisions and directions, choosing to live in monasteries and to have an abbot over them. Men of this resolve unquestionably conform to the saying of the Lord: "I have come not to do my own will, but the will of him who sent me (John 6:38)."⁷⁰

For his monks, Benedict prescribed the vow of stability of place:

When he is to be received, he comes before the whole community in the oratory and promises stability, fidelity to monastic life, and obedience. This is to be done in the presence of God and his saints to impress on the novice that if he ever acts otherwise, he will surely be condemned by the one he mocks. He states his promise in a document drawn up in the name of the saints whose relics are there, and of the abbot, who is present.⁷¹

In order to avoid the instability and wilfulness of the gyrovagues, Benedict required that his followers remain in the coenobium except for necessary journeys: Thus, "anyone

⁶⁹RE, 1, 12-13.

⁷⁰RE 5, 12-13.

⁷¹RE 58, 17-19.

who presumes to leave the enclosure of the monastery, or go anywhere, or do anything at all, however small, shall be subject to the punishment of the rule."⁷²

The notion of stability was not introduced into the monastic tradition by Benedict. Stability had been required by the Rule of the Master, a Latin monastic rule of unknown authorship,⁷³ and by other monastic rules of the sixth century, and was at least implicit in Egyptian monasticism.

For Benedict, stability did not consist simply in remaining physically in the coenobium throughout life, but in perseverance in the monastic life as lived in a particular community. Stability as prescribed by Benedict was not purely a juridical bond to a monastery, but also a life lived in a particular community observing the Rule and the teaching of the abbot.

Another means by which Benedict hoped to obviate wandering and instability was the provision not to accept into monastic life newcomers who did not exhibit signs of perseverance:

⁷²RB 67, 7.

⁷³The Rule of the Master, trans. by L. Eberle, Kalamazoo, Michigan, Cistercian Publications, Inc., 1977, RM, 82, 1. (From the critical Latin edition of A. de Vogue, published as La Règle du Maître, in Sources chrétiennes, Serie des Textes monastiques d'Occident, m. XIV, XV, Paris: Les Editions du Cerf, 1964, 245p., (Sources chrétiennes, n. 105, 106).

Do not grant newcomers to the monastic life an easy entry, but, as the Apostle says, "Test the spirits to see if they are from God (1 John 4:1)." Therefore, if some one comes and keeps knocking at the door, and if at the end of four or five days he has shown himself patient in bearing his harsh treatment and difficulty of entry, and has persisted in his request, then he shall be allowed to enter and stay in the guest quarters for a few days. After that, he should live in the novitiate, where the novices study, eat and sleep.⁷⁴

Benedict is the first monastic legislator to prescribe expressly that candidates spend a full year in probation so that they might be thoroughly instructed in the obligations of monastic life.

In his Rule, Benedict also considers reception of young boys into the monastery by oblation, that is, by being presented and offered by their parents. According to the ancient rules, children were admitted and cared for, not only for the purpose of education, but also in order to be trained in monastic discipline and eventually to become monks themselves.⁷⁵ The only difference between profession⁷⁶ and oblation⁷⁷ is that the written document is drawn up and signed by the parents in the case of oblation. Benedict seems to have admitted oblates even before their fourteenth

⁷⁴RB 58, 1-5.

⁷⁵RB 59.

⁷⁶RB 58.

⁷⁷RB 59.

year was completed; not until after the X Council of Toledo in 694 was the age of fourteen established as the minimum required by church law. In order that the boy might not be tempted in later years to leave the monastery by a ready-made livelihood waiting for him, Benedict recommended in his Rule that the parents of an oblate either swear on the Gospel that the son is disinherited or give the oblate's inheritance to the monastery or to the poor.⁷⁸

As regards monks who had left the monastery and who wished to be received back again, Benedict prescribed:

If a brother, following his own evil ways, leaves the monastery but wishes to return, he must first promise to make full amends for leaving. Let him be received back, but as a test of his humility he should be given the last place. If he leaves again, or even a third time, he should be readmitted under the same conditions. After this, however, he must understand that he will be denied all prospect of return.⁷⁹

In his Rule, Benedict also considered the reception of visiting monks.

A visiting monk from far away will perhaps present himself and wish to stay as a guest in the monastery. Provided that he is content with the life as he finds it, and does not make excessive demands that upset the monastery, but is simply content with what he finds, he should be received for as long a time as he wishes. [...]

⁷⁸RE 59, 1-6.

⁷⁹RE 29, 1-3.

If after a while he wishes to remain and bind himself to stability, he should not be refused this wish, especially as there was time enough, while he was a guest, to judge his character. But if during his stay he has been found excessive in his demands or full of faults, he should certainly not be admitted as a member of the community. Instead, he should be politely told to depart, lest his wretched ways contaminate others. [...]

The abbot must, however, take care never to receive into the community a monk from another monastery, unless the monk's abbot consents and sends a letter of recommendation, since it is written, "never do to another what you do not want done to yourself (Tob. 4:16)."⁸⁰

These regulations in the Rule had the effect of restricting entrance into Benedict's monasteries to those who wished to remain in the monastery forever. The Rule of Benedict became the foundation upon which future Church legislation was to be based.

4. Civil legislation regulating the right to leave the monastery

During this period the State was in close association with the Church. Various Roman Emperors began to enact laws regarding the scores of monks roaming from town to town, scandalizing the faithful by their casting aside of monastic discipline.⁸¹ The earliest civil prescriptions to prevent

⁸⁰RB 61, 1-3; 5-7; 13.

⁸¹C. Montalembert, op. cit., pp. 218-219.

this evil were enacted after the Council of Chalcedon (451). In 455 the Emperors Theodosius II and Valentinian III decreed that clergy and monks who came to the city of Constantinople even for religious purposes needed letters from the superiors to whom they were subject.²² The constitution of the Emperors Leo I and Anthemius addressed to Zeno in the year 471 had the same intent as canons 4 and 23 of the Council of Chalcedon: it prohibited monks from leaving their monasteries and from engaging in affairs in Antioch and in other cities.²³

Wishing to combine his own legislation with that of the Church, Justinian gave civil effect to canons 4 and 23 of the Council of Chalcedon.²⁴ Canon 4 legislated against monks leaving their monastery and involving themselves in ecclesiastical and secular affairs.²⁵ Canon 23 prescribed

²²P. Krueger et al., eds., Corpus iuris civilis: Codex iustinianus, vol. II, Berolini, Weidmannos, 1929, Lib. I, tit. 3, De episcopis et clericis [...], 22, p. 21.

²³Ibid., vol. II, Lib. I, tit. 3, 29, p. 22.

²⁴A. Riesner, Apostates and Fugitives from Religious Institutes: An Historical Conspectus and Commentary, Washington, D.C., The Catholic University of America Press, 1942, p. 14 (Canon Law Studies, no. 168).

²⁵"Qui vere et sincere monasticam vitam aggrediuntur, digni convenienti honore habeantur. Quoniam autem nonnulli monachio praetextu utentes, et Ecclesias, et negotia civilia perturbant, temere et citra ullam discriminis rationem, in urbibus circumcursantes, quinetiam monasteria sibi constituere studentes, visum est, nullum usquam aedificare nec construere posse monasterium, vel oratoriam domum praeter sententiam ipsius civitatis Episcopi: monachos autem, qui

that monks who were in the city of Constantinople without the permission of their superiors, or who were disturbing ecclesiastical affairs in the city, were to be ordered to return to their monasteries."⁶

Roman law contained other legislation concerning monks, the intent of which was maintenance of monastic discipline and perseverance in the monastic life. One such prescription decreed that monks should receive the monastic habit only after an extended period of time. It stated:

sunt in unaquaque regione et civitate Episcopis subjectos esse, et quietam amplecti et soli jejunio et orationi vacare, in quibus ordinati sunt locis fortiter perseverantes, nec Ecclesiasticis, nec secularibus negotiis se ingerere, vel communicare, propria relinquentes monasteria nisi quandoque a civitatis Episcopo eis permissum fuerit; nullum autem in monasteriis servum recipi, ad hoc ut sit monachus, praeter voluntatem sui domini. Eum autem qui hanc nostram definitionem transgreditur definimus esse excommunicatum, ne nomen Dei blasphemetur. Civitatis autem Episcopum oportet eam quam par est monasteriorum curam gerere." J. Mansi, op. cit., VII, Council of Chalcedon (451), col. 359, canon 4; trans. H. Schroeder, Disciplinary Decrees of the General Councils, p. 92.

"Pervenit ad aures sanctae Synodi, quod Clerici quidam et monachi, quibus nihil a proprio Episcopo mandatum est, et sunt etiam nonnunquam ab ipso a communione segregati, ad imperialem Constantinopolis urbem se conferunt, et in ea diu morantur, turbas excitantes, et statum Ecclesiasticum perturbantes, aliquorum domos subvertunt. Statuit ergo sancta Synodus, ut ii prius a sanctissimae Constantinopolitanae Ecclesiae defensore admoneantur, ut imperiali urbe excedant. Si autem in iisdem negotiis impudenter perseverent, ut per proprium (ipsum) defensorem ejiciantur, et in propria loca revertantur." Ibid., VII, Council of Chalcedon (451), col. 367, canon 23; trans. H. Schroeder, Disciplinary Decrees of the General Councils, p. 121.

We decree, therefore, following the sacred canons, that those who profess the monastic life, whether they be free men or slaves, should not be given the monastic habit rashly [...], but for a full three-year period must wait since they are not yet worthy of the habit. They are to wear the clothes of laity, and remain thus while learning the sacred writings.*7

Within the confines of his jurisdiction, Justinian restricted the monastic life to the cenobitical form alone, lest a monk lose the spirit of his vocation and leave the monastery.**

Roman law also restricted monks from transferring from one monastery to another. Anyone who had left the monastery of his profession to go to another was not to be received, as such action showed inconstancy. Bishops and archimandrites were to prohibit this and thus preserve the gravity of the monastic discipline according to the sacred canons.

If, however, a monk leaves the monastery in which he made his conversion, and attempts to enter another monastery let his property remain behind and be claimed by his former monastery, where he renounced it when making profession [...] for such a kind of monastic life is wrong, and is not to be tolerated, nor is it indicative of a constant and persevering mind, but it has the appearance of being flighty and seeking other things elsewhere. For this reason, let bishops and archimandrites who walk in the love of God

*R. Schöll et al., eds., Corpus iuris civilis: Novellae, vol. III, Berolini, Weidmannos, 1929, Novellae V: De monasteriis et monachis et praesulibus, cap. II, p. 29.

**Ibid., Novellae V, cap. III, p. 31.

prohibit this, and so keep a monk in a proper way of life according to the sacred monastic rules."

In the Novels, Justinian decreed that if a monk left the monastery for the secular life he was to be deprived by the bishop of the place of every honor he may have acquired after his departure. He was then to be put into a monastery by the governor of the province. If the fugitive monk had acquired property after his departure, the property belonged to the monastery in which he was placed.⁹⁰ Justinian also sanctioned the excommunication of canon 7 of the Council of Chalcedon against apostate monks who entered military and other secular service. As a result, this excommunication had civil effect.⁹¹ Such civil legislation, despite its coercive sanctions, did not produce the desired effect. What was also needed was for the Supreme Authority of the Church to make explicit legislation to inculcate in monks a stable life in community. This in fact was to be accomplished in the person of Gregory the Great.

⁹⁰Novellae V, cap VII, p. 33.

⁹⁰Novellae CXIII, cap. XLII, p. 623.

⁹¹Novellae V, cap. VIII, p. 33. Novellae CXXIII, cap. XLII, p. 623.

5. Legislation of Gregory the Great

Pope Gregory was the first monk to become pope (590).⁹² During his fourteen-year reign as Pope, he never ceased to be solicitous for the monastic life and did everything in his power to diffuse and propagate it. At the same time, while he labored for the diffusion of monasticism, he was careful to prevent its decline and decay. The disorder of the time was reflected in the cloister, and scandals were frequent. Monks wandered about without rule or ruler, migrating without permission to other monasteries, leaving theirs to work among the secular clergy, abandoning the religious life and habit altogether, appearing before lay tribunals, accumulating private property, living with women, and even marrying. Abbots and priors were no less degenerate than their subjects. In many cases, they were scandalously negligent in enforcing discipline. In some instances they were themselves guilty of grave immoralities.⁹³

Gregory set out to correct these abuses and to restate and strengthen by his authority all that the various particular councils and even civil legislation had not been able to effect. In one of his first letters as pope, he wrote to an old friend and fellow monk, Venantius, who had

⁹²F. Dudden, Gregory the Great, His Place in History and Thought, vol. II, London, Longmans, Green, 1905, p. 174.

⁹³Ibid., pp. 174-175.

put aside the monastic life to marry. He warned him not to follow the example of Ananias and admonished him to return to his monastery."⁴ In another letter written to Felix, bishop of Messina and to the deacon Paul, he ordered that all monks in Sicily who had fled their monasteries because of various invasions and who were now freely wandering about were to take up residence in the monastery of St. Theodore in the city of Messina."⁵ In a letter to the subdeacon Anthemius entitled, "On Monks Wandering About", Pope Gregory commanded that monks not be permitted to go from one monastery to another; if they had done so, they were to return to the monastery in which they had renounced the world. He also ordered Anthemius to search after monks who had married and to admonish them to return to the monastery."⁶ This same command about apostate monks he gave in another letter to Romanus, the exarch of Ravenna."⁷ In a letter to Dominicus, the archbishop of Carthage, he commanded him to recall and teach obedience to those monks who had left the monastery

⁴J. D. Mansi, op. cit., IX, col. 1053, Lib. I, Ep. I. 33 ad Venantium.

⁵Ibid., IX, col. 1058, Lib. I, Ep. I. 39 ad Petrum diaconum.

⁶Ibid., IX, col. 1058, Lib. I, Ep. XL ad Anthemium subdiaconum.

⁷Ibid., IX, col. 1197, Lib. IV, Ep. XVIII ad Romanum exarcham.

because their abbot, Cumquodeus, had tried to enforce the regular discipline."

Gregory foresaw that for his endeavors at monastic reform to be effective, the appointment of abbots must be supervised. For instance, he did not confirm the election of Constantius to be abbot of the monastery of Saints John and Stephen in Classis because Constantius had made a journey from one monastery to another alone. From this Gregory concluded that "from his action we know him because he who goes around without a witness does not live rightly."

Pope Gregory also considered the behavior of some bishops toward monasteries a detriment to monastic life. Thus, he reprimanded Bishop Fortunatus of Naples, because he was not solicitous towards the monasteries under his care, and also because some of the monks had left the monastery on account of him. He ordered Fortunatus not to tonsure anyone before two years had elapsed after his entry into monastic life.¹⁰⁰ In another letter to Bishop Lucidus of Leontini, Pope Gregory ordered the bishop to ordain to the priesthood

⁹⁹PL, LXXVII, col. 895, Lib. VII, Ep. XXXV ad Dominicum episcopum.

¹⁰⁰J. D. Mansi, op. cit., X, col. 321, Lib. X, Ep. 22 ad Joannem subdiaconum.

¹⁰⁰Ibid., X, col. 223, Lib. VII, Ep. XXIII ad Fortunatum episcopum Neapolitanum.

only one whom the abbot had chosen from his community.¹⁰¹ Gregory also watched over the freedom of monks in their right to elect their own abbot.¹⁰²

C. EXCLAUSTRATION DURING THE "BENEDICTINE CENTURIES"

In the period from Gregory the Great (540-604) to the IV Lateran Council in 1215, the Christianization of Europe was intimately associated with the flourishing of monasticism. For the most part monks were the missionaries and monasteries were the centers for evangelization. It is thus that the term the "monastic age" or "the Benedictine centuries" can loosely be applied to this epoch.¹⁰³

In these centuries, political instability, wars and the various invasions favored the wanderings of monks. The remedies which in time helped to overcome abuses and preserve stability were 1) the spread of the Rule of Benedict; 2) the decrees of particular councils; 3) various reform movements within monasticism; 4) legislation for the entire Church.

¹⁰¹Ibid., X, col. 339, Lib. X, Ep. LIV ad Lucidum episcopum Leontium.

¹⁰²PL, LXXVII, col. 902, Lib. VII, Ep. XLIII ad Marinianum episcopum.

¹⁰³C. Lawrence, Medieval Monasticism: Forms of Religious Life in Western Europe in the Middle Ages, London, Longmans, 1984, p. 57.

1. The spread of the Rule of Benedict

In spite of the growing influence of the Rule of Benedict which was propagated by Anglo-Saxon missionaries on the continent, Western monasticism was far from being totally Benedictine by the year 800. That it should become so, however, was part of the policy of the Carolingian reform movement.¹⁰⁴

Even before Charlemagne (768-814), the legislation of particular councils canonized the Rule of Benedict as the norm for living monastic stability. In 670 (or 677) a Council was held at Autun to regulate the monastic discipline. It decreed:

Concerning abbots or monks it is proper to note that whatever the Canonical Order or Rule of St. Benedict teaches ought to be fulfilled and observed in everything. For if all of this were to be legitimately preserved in abbacies or monasteries, both the number of monks by the grace of God will increase and all the world through their assiduous prayers will be rid of evil contagion.¹⁰⁵

A German Council of 742, with Boniface (c. 675-755) presiding, decreed: "Monks and nuns must introduce and

¹⁰⁴Ibid., pp. 64-68.

¹⁰⁵J. D. Mansi, op. cit., XI, Council of Autun (670 or 677), col. 124, canon 15.

observe the Rule of St. Benedict."¹⁰⁶ The Council of Liptines in 743 (or 745) determined: "Abbots, however, and monks have received the Rule of St. Benedict to restore monastic life."¹⁰⁷

In 802 an imperial assembly at Aix-la-Chapelle prescribed: "Monks must live according to the Rule of Benedict."¹⁰⁸ The Council of Mainz (813) enacted similar legislation.¹⁰⁹ During the year 813 other reforming councils were held at Arles, Rheims and Chalon-sur-Saône. These Councils not only legislated for the reformation of ecclesiastical discipline but also considered the stability of monastic life according to the Rule of Benedict.¹¹⁰ Thus the Council of Chalon-sur-Saône noted: "Almost all monasteries of this region have received the Rule of Benedict."¹¹¹

As various particular councils promoted the stability of monastic life according to the Rule of Benedict, other

¹⁰⁶K. Hefele, op. cit., vol. III, German Council (742), pp. 824-825, canon 7.

¹⁰⁷Ibid., III, Council of Liptines (743 or 745), p. 827, canon 1.

¹⁰⁸Ibid., III, Synod of Aix-la-Chapelle (802), p. 1121.

¹⁰⁹Ibid., III, Council of Mainz (813), p. 1140, canon 11.

¹¹⁰K. Hefele, op. cit., III, p. 1135.

¹¹¹"Fere omnia monasteria huius regionis receperunt regulam S. Benedicti." Ibid., III, Synod at Chalon-sur-Salône (813), p. 1144, canon 22.

councils determined penalties against wandering monks. For instance, the Council of Autun (670 or 677) decreed:

We determine and we also decree that no one without permission of his abbot shall presume to harbor a monk, but when he is found to be a wanderer he shall be recalled to his own cell, there to be punished according to his fault.¹¹²

Canon 15 of the same Council prescribed the penalties:

We decree that whoever would attempt to transgress these dictates for the regular living of monks, if he be an abbot let him be suspended for one year; if a prior two years; if a monk let him be beaten with rods or be suspended for three years from communion, Mass and charity.¹¹³

A similar prohibition concerning vagrant monks had been enacted by the Council of Hereford in 673,¹¹⁴ while the Council of Bursted in 696 decreed that vagrant monks could be received as guests only once. "If one who has been tonsured should wander about irregularly or contrary to the rule, let hospitality be given to him once."¹¹⁵

¹¹²"Statuimus atque decernimus, ut nullus monachum alterius, absque permissu sui abbatis praesumat retinere: sed cum inventus fuerit vagus, ad cellam propriam revocetur, ibi juxta culparum meritum coercendus." J. Mansi, *op. cit.*, XI, Council of Autun (670 or 677), col. 123-124, canon 10.

¹¹³*Ibid.*, XI, Council of Autun (670 or 677), col. 123-124, canon 15.

¹¹⁴*Ibid.*, XI, Council of Hereford (673), col. 130, canon 4.

¹¹⁵*Ibid.*, XII, Council of Bursted (696), col. 112, canon 8.

The XIII Council of Toledo (683) determined the penalty of excommunication for those who received, advised, sheltered, showed kindness to, or in any way assisted apostate and vagrant monks. If one said that he thought he had taken in a simple cleric and did not know he was a deserter, his innocence was to be proved when, within eight days as required by law, he presented the deserter to the judge, and within the time stated in law returned him to the monastery from which he had fled. If the one who transgressed this law and took in a deserter was a bishop, he, after having returned the monk and his property to the monastery, was excommunicated and removed from office for a time equal to the time he had harbored the deserter. If the one who transgressed this law was a priest, deacon or religious, he was under the censure of penance for one year under the abbot of the deserter.¹¹⁶ The Spanish canons directly apply a penalty against a monk who wanders about: "A monk who wanders about making his way among the people without consulting his abbot ought to be excommunicated."¹¹⁷

The Council of Trullo in 692 employed very strong language in decreeing that nuns could not leave the monastery. Once a woman had chosen the religious life she

¹¹⁶Ibid., XI, III Council of Toledo (683), col. 1073 - 1074, canon 11.

¹¹⁷Ibid., XII, Spanish Canons, col. 134, canon 11.

had to remain within the cloister and only an inexorable necessity was a sufficient reason for her to leave the monastery. The right of granting permission to exit the cloister was reserved to the abbess. Disregard for this law of the cloister brought punishment proportionate to the guilt.¹¹⁸

In this epoch of monasticism we find also the punishment of excommunication decreed for those individuals who dared to enter into marriage with any nun: "If anyone marries a nun [...] let him be anathema."¹¹⁹ Likewise, in the canonical instruction sent by Pope Zachary I (741-752) to Pepin in the year 747, the Pope spoke of the excommunication enacted in canon 7 of the Council of Chalcedon against monks who abandon the religious life:

Concerning those who have been counted among the clerics or monks, we decree that they neither enter military service nor any other secular office: those attempting to do so, and not doing penance in order to return to the life chosen from the very beginning on account of God, let them be anathema.¹²⁰

¹¹⁸Ibid., XI, Council of Trullo (692), col. 966, canon 46.

¹¹⁹Ibid., vol. XII, I Council of Rome (721), col. 263, canon 3.

¹²⁰Ibid., vol. XII, Zachariae Papae I, Epistula ad Pipinum Majorem Domus itemque ad Episcopos, Abbates, and Proceres Francorum, col. 330, canon 9.

In 755 the Council of Verneuil permitted the abess to visit the king once a year when he commanded this, but only after she had first obtained the consent of the local bishop. The abess was instructed to return to the monastery by means of the least populated route. To this law were attached penances to be imposed by the bishop for any violation of even its spirit.¹²¹

When Louis the Pious (788-875) succeeded Charlemagne as Emperor in 814, he continued to seek uniformity of observance of monastic life according to the Rule of Benedict among the monasteries in his empire. Benedict of Aniane (c. 750-821) was authorized to enforce a standard observance in the monasteries of France and Germany according to the Rule of Benedict.¹²² He drew up the "Capitulare monasticum", the first general code for all the monasteries in the area that followed or ascribed to the Rule of Benedict.¹²³ This code was promulgated at two synods of abbots held at Aix-la-Chapelle in 816 and 817. Louis supported the capitulary by

¹²¹Ibid., XII, Council of Verneuil (755), col. 580-581, canon 6.

¹²²D. Knowles, From Pachomius to Ignatius: A Study in the Constitutional History of Religious Orders, Oxford, Clarendon Press, 1966, p. 8.

¹²³Ibid., The Middle Ages, p. 122.

appointing royal missi as inspectors of monastic observance.¹²⁴

This reform was short-lived. Benedict died in 821, and the empire was soon torn apart by political instability. For the rest of the ninth century, the continent was inundated by waves of invaders, and many monasteries were unable to survive. Consequently, the great Carolingian project was never brought to completion. But when it became possible to build again, it was on Benedict's foundations that the structure was raised.

The first and most prominent of these reforms was the foundation of Cluny in southern Burgundy founded by William of Aquitaine in 910. Through two centuries Cluny was guided by eminent abbots: Berno (910-926), Odo (927-942), Majolus (948-994), Odilo (994-1049), and Hugh (1049-1109). These men worked at the task of spreading reform by striving to found other monasteries in which the monastic life would be strictly lived according of the Rule of Benedict, and also by absorbing already existing monasteries into the Cluniac Congregation.¹²⁵

There were a number of other leading centers of reform which, like Cluny, formed groupings of monasteries following the Rule of Benedict through the observance of the same

¹²⁴C. Lawrence, op. cit., pp. 68-71.

¹²⁵Ibid., pp. 76-87.

statutes. Some of these centers were Brogne in Belgium, founded by St. Gerard in 923; Gorze, reformed by John of Vandières in 933; Fleury, reformed by Odo of Cluny in 931 but remaining outside the Cluniac system; and St. Benignus of Dijon, reformed by William of Volpiano in 989. In the eleventh century there were added such centers as Verdun, reformed under Richard of St. Vanne in 1005; Bec in Normandy, founded by Herluin in 1035; Chaise-Dieu, founded in 1046 by Robert of Chaise-Dieu.¹²⁶

In the eleventh and twelfth centuries, while the Cluniac and various other reform monasteries were still prosperous and fervent, a widespread desire arose for a life that would be more simple, less institutional, less involved in the political and economic fabric of society.¹²⁷ Some of the new orders followed the Rule of St. Benedict; others followed the Rule of Augustine. These new forms of religious life were often promoted by leaders of the Gregorian Reform who also enforced celibacy among monks and clerics.¹²⁸

¹²⁶D. Knowles, The Middle Ages, pp. 126-128.

¹²⁷C. Lawrence, op. cit., p. 126.

¹²⁸K. Hefele, op. cit., V, IX Ecumenical Council, I Lateran Council (1123), p. 638, canon 21; trans. H. Schroeder, Disciplinary Decrees of the General Councils, p. 192; Ibid., V, X Ecumenical Council, X Lateran Council (1139), pp. 726-727, canon 7; trans. H. Schroeder, Disciplinary Decrees of the General Councils, pp. 200-201; D. XXVII, c. 8, in Corpus iuris canonici, ed. by A. Richter and A. Friedberg, vol. 1, 2nd ed., Lipsiae, ex Officina B. Tauchnitz, 1879, col. 100.

In 1179, canon 10 of the III Lateran Council legislated regarding monastic property:

No money is to be demanded from monks on their entrance into the monastery. They may not have private property. [...] Has a monk money beyond the amount permitted him by the abbot for the administration of the office of which he has charge, he shall be removed from the communion of the altar; and if in extremis money be found in his possession, let no offering be made for him nor let him be buried among the brethren. All this, we command, is to be observed also by other religious. [...] ¹²⁹

To eliminate the transgression of religious vows and the wanderings of monks in the world the Council also prohibited monks from being stationed individually in parishes. "They are not to [...] live separately in towns and villages or to be assigned to any parochial churches; but let them remain in the monastery and live with their brethren."¹³⁰

The IV Lateran Council in 1215 restated the sanctions that had been set down by the various particular and ecumenical councils as regards the monastic life. Canon 12 prescribed holding general chapters and a system of regular visitations.¹³¹ Canon 13 expressed concern that the

¹²⁹K. Hefele, op. cit., V, III Lateran Council (1179), pp. 1096-1097, canon 10; trans. H. Schroeder, Disciplinary Decrees of the General Councils, pp. 223-224.

¹³⁰Ibid.

¹³¹"In singulis regnis sive provinciis fiat de triennio in triennium, salvo jure dioecesanorum pontificum, commune capitulum abbatum atque priorum abbates proprios non

diversity of religious orders might again lead to a relaxation of the common life.¹³² Once received into the Decretals, they constituted the basis for the further evolution of the law for regulars all the way up to promulgation of the 1917 Code.

habentium, qui non consueverunt tale capitulum celebrare; ad quod universi convenient, praepeditionem canonicam non habentes, apud unum de monasteriis ad hoc aptum; hoc adhibito moderamine, ut nullus eorum plus quam sex evectiones et octo personas adducat. [...] Hujusmodi vero capitulum aliquot certis diebus continue juxta morem Cisterciensis ordinis celebrentur, in quo diligens habeatur tractatus de reformatione ordinis et observatione regulari [...]. Ordinentur etiam in eodem capitulo religiosae ac circumspectae personae, quae singulas abbatias ejusdem regni sive provinciae non solum monachorum sed etiam monialium secundum formam sibi praefixam, vice nostra, studeant visitare, corrigentes et reformantes quae correctionis et reformationis officio viderint indigere, ita quod si rectorem loci cognoverint ab administratione penitus amovendum, denuncient episcopo proprio, ut illum amovere procuret; quod si non fecerit, ipsi visitatores hoc referant ad apostolicae sedis examen. [...] Porro dioecesani episcopi monasteria sibi subjecta ita studeant reformare, ut cum ad ea praedicti visitatores accesserint, plus in illis inveniant quod commendatione quam quod correctione sit dignum; attentissime praecaventur ne per eos dicta monasteria indebitis oneribus aggraventur [...]." *Ibid.*, V, IV Lateran Council (1215), pp. 1342-1343, canon 12; trans. H. Schroeder, Disciplinary Decrees of the General Councils, pp. 253-254.

¹³²"Ne nimia religionum diversitas gravem in ecclesia Dei confusionem inducat, firmiter prohibemus, ne quis de cetero novam religionem inveniat, sed quicumque voluerit ad religionem converti, unam de approbatis assumat. Similiter qui voluerit religiosam domum fundare de novo, regulam et institutionem accipiat de religionibus approbatis. Illud etiam prohibemus, ne quis in diversis monasteriis locum monachi habere praesumat, nec unus abbas pluribus monasteriis praesidere." *Ibid.*, V, IV, Lateran Council (1215), p. 1344, canon 13; trans. H. Schroeder, Disciplinary Decrees of the General Councils, p. 255.

D. ECCLESIASTICAL DISCIPLINE OF EXCLAUSTRATION FROM THE IV LATERAN COUNCIL (1215) TO THE PROMULGATION OF THE 1917 CODE

The legislation of the IV Lateran Council was reaffirmed and put into effect sixty years later at the II Council of Lyons in 1274. Those orders which had been founded in contravention of the prohibition of the IV Lateran Council and had not received pontifical approval were abolished.¹³³ Members of abolished orders were permitted to enter any of the approved orders.¹³⁴

Prior to the sixteenth century there were comparatively

few instances where Community life was professed without solemn vows. But between the twelfth and the sixteenth centuries many new orders were authorized by the Holy See. Authors generally classify them as Friars, Canons Regular, Clerks Regular, and the so-called Second Orders of St. Francis, of St. Dominic, of the Carmelites, and the Augustinians. These, however, espoused the mode of life sanctioned by the Church for many centuries in the form of the strict orders with solemn vows.¹³⁵

¹³³Ibid., VI, II Lateran Council (1274), pp. 200-202, canon 23; trans. H. Schroeder, Disciplinary Decrees of the General Councils, pp. 351-352.

¹³⁴Ibid., VI, Council of Vienne (1311-1312), pp. 681-682, canon 5; trans. H. Schroeder, Disciplinary Decrees of the General Councils, pp. 388-389.

¹³⁵C. Freriks, Religious Congregations in Their External Relations, Washington, D.C., The Catholic University of America Press, 1916, p. 19 (Canon Law Studies, no. 1).

In the later Middle Ages discipline had become lax in many institutes. The Council of Trent inaugurated the reform of religious orders with these words:

Since the holy synod is not ignorant of how great a splendor and usefulness accrues to the Church of God from monasteries piously regulated and properly administered, it has, to the end that the old and regular discipline may be the more easily and promptly restored where it has collapsed, and may be more firmly maintained where it has been preserved, thought it necessary to command, as by this decree it does command, that all regulars, men as well as women, adjust and regulate their life in accordance with the requirements of the rule which they have professed, as the vows of obedience, poverty, and chastity, and any other vows and precepts peculiar to any rule and order and belonging to the essence thereof, as well as the common life, food and clothing.¹³⁶

In order to put an end to abuses, the Council of Trent gave bishops the power of proceeding against those who would not observe religious life:

Wherefore, monasteries held in commendam, also abbeys, priories and those called provostries, in which regular observance does not exist, [...] shall be visited annually by the bishops, also as delegates of the Apostolic See [...] the bishops shall by fatherly admonitions see to it that the superiors of those regulars

¹³⁶Concilium Tridentinum (1545-1563). Sacrosancti et oecumenici Concilii Tridentini, Paulo II. Julio III et Pio IV. Pontificibus Maximis, celebranti canones et decreta: pluribus annexis ad idem Concilium spectantibus, Parisiis, apud Gauthier, 1832, Sess. XXV, De regularibus et monialibus, canon 1, pp. 212-213; trans. H. Schroeder, Canons and Decrees of the Council of Trent, St. Louis, Herder Book Co., 1941, pp. 232-233.

observe and cause to be observed the manner of life required by the rules of their order.¹³⁷

The Council determined the penalty of ipso facto excommunication if a nun left the cloister without a legitimate cause approved by the bishop. It decreed:

No nun shall after her profession be permitted to go out of the monastery, even for a brief period under any pretext whatever, except for a lawful reason to be approved by the bishop, any indults and privileges notwithstanding.¹³⁸

The norms established by the Council of Trent were frequently renewed and inculcated by the Roman Pontiffs in their own constitutions whereby it was forbidden to leave the cloister either for a time or perpetually. Pius V in the Apostolic constitution "Circa pastoralis" made the cloister compulsory for all tertiaries living in a community:

Women called Tertiaries, or Penitents, who are living in the community of a religious order, are bound to the enclosure if they have pronounced solemn vows. [...] If they have not made solemn vows, their Ordinaries together with their own Superiors are to encourage and try to persuade them to pronounce solemn vows [...] if they refuse to do this, and some have been found to be living

¹³⁷Ibid., Sess. XXI, De reformatione, canon 8, pp. 141-142; trans. H. Schroeder, Canons and Decrees of the Council of Trent, p. 141.

¹³⁸Ibid., Sess. XXV, De regularibus et monialibus, canon 5, pp. 214-215; trans. H. Schroeder, Canons and Decrees of the Council of Trent, p. 221.

in a scandalous manner, they are to be punished severely.¹³⁹

The decree of Clement VIII "Nullus omnino" decreed regular and perfect common life for all religious.¹⁴⁰ From these decrees it can be concluded that exclausturation was not to be easily granted; more importantly, stability of religious life, along with the strict observance of common life, was to be inculcated in every way.

The Council of Trent also determined that "no regular shall by virtue of any authority whatever be transferred to an order less rigorous."¹⁴¹

Since regulars, transferred from one order to another, usually obtaining permission easily from their superior to remain outside the monastery, whereby occasion is given to wandering about and apostatizing, no prelate or superior of any order shall by virtue of any authority whatsoever, admit anyone to the habit and to profession, unless he remain in the order to which he transferred and perpetually in the cloister under obedience to his superior, and one so transferred, even though he

¹³⁹Pius V, Apostolic Constitution, "Circa pastoralis", 29 May 1566, n. 112, 3, in P. Gasparri, ed., Codicis iuris canonici fontes, vol. I, Romae, Typis polyglottis Vaticanis, 1926-1939, p. 202.

¹⁴⁰Clement VIII, Decree, "Nullus omnino", 25 July 1599, n. 187, 3, in P. Gasparri, ed., Codicis iuris canonici fontes, vol. I, pp. 354-357.

¹⁴¹Concilium Tridentinum, op. cit., Sess., XXV, De regularibus et monialibus, canon 19, p. 222; trans. H. Schroeder, Canons and Decrees of the Council of Trent, p. 229.

be a canon regular, shall be wholly disqualified to hold secular benefices.¹⁴²

From the Council of Trent until the time of Pius VII (1800) the policy of the Holy See was not to concede an indult of exclausturation (temporary secularization) to religious, even when it was a case of necessity or assistance to parents. Rather, the Holy See wished that a religious remain in the cloister and that assistance to parents be made by means of Mass stipends or from revenue derived from preaching. When, however, this indult was granted, it was conceded in such a way that the obligations of all the vows remained binding.¹⁴³

From the time of Pius VII the ecclesiastical discipline permitting religious to live legitimately outside the cloister was greatly changed. One principal reason for this was the suppression of religious institutes and houses throughout Europe during the eighteenth and nineteenth centuries.¹⁴⁴ Civil legislation was frequently enacted to

¹⁴²Ibid., Sess. XIV, De reformatione, canon 11, pp. 110-111; trans. H. Schroeder, Canons and Decrees of the Council of Trent, p. 113.

¹⁴³V. Palmé et al., eds., Analecta iuris pontificii. Dissertations sur différents sujets de droit canonique, de liturgie, de théologie, vol. XIV, Brussels, A. Vromant, 1875, col. 184, n. 1083.

¹⁴⁴M. Giraldo, "Excursus historicus de egressus e religione", in Commentarium pro religiosis, 23(1942), pp. 200-201.

subject the Church to the State, since the State was considered to be the coordinator and manifestation of all reason.¹⁴⁵ Clerics, religious forms of worship, seminaries, demarcation of dioceses, and the jurisdiction of matrimonial affairs were treated entirely as State affairs. Even allegiance to the Holy See was suspect and viewed as a lessening of the authority of the State. In addition, princes and governments saw profit for themselves in the suppression of religious foundations.¹⁴⁶ In Germany the peril of monasteries was aggravated by the fact that most of the abbeys were small ecclesiastical principalities, the suppression of which meant a considerable increase of power for the secular sovereigns.¹⁴⁷

Joseph II of Austria, who reigned from 1780-1790 inaugurated the ecclesiastical system called "Josephinism", whose main objective was to abolish all connections with the Holy See in order to establish an empire in which all public

¹⁴⁵J. Lortz, The History of the Church, adapted from the 5th and 6th German edition by E. Kaiser, Milwaukee, Bruce Publishing Co., 1918-1939, p. 452. (originally published as: Geschichte der Kirche in ideengeschichtlicher Betrachtung; eine geschichtliche Sinndeutung der Christlichen Vergangenheit in Grundzugen dargestellt, Münster in Westfalen, Aschendorffsche, 1939, 449p).

¹⁴⁶Ibid., p. 452.

¹⁴⁷S. Hilpisch, Benedictinism through the Changing Centuries, trans. L. Doyle, Collegeville, St. John's Press, 1958, pp. 118-121. (originally published as: Das Benediktinertum im Wandel der Zeiten, St. Ottilien, Eos Verlag der Erzabtei, 1950, 203p).

affairs, political and ecclesiastical, were treated as a whole.¹⁴⁸

With regard to religious, all juridical ties between the national monasteries and their superiors general residing abroad were severed. In 1783 all contemplative orders were suppressed in Austria, since the contemplative life was thought of as useless to the State and to society. Legislation was also enacted decreeing that all members of monasteries could be employed to alleviate any pastoral need. Also, all military service exemptions were abrogated. These measures resulted in the suppression of no fewer than 783 monastic foundations in the Empire.¹⁴⁹

These same policies were followed in Tuscany by the Grand Duke Leopold II, brother to Joseph II. Leopold's intent was to control religious affairs in his domain in order to found a national church.¹⁵⁰ At a condemned synod held in Pistoia in 1786, eight articles on the reformation of religious orders were set down. Article six of the synod

¹⁴⁸J. Besse, "Monasteries, Suppression of", in The Catholic Encyclopedia, ed., G. Herbermann, vol. 10, New York, 1911, pp. 453-454.

¹⁴⁹Ibid.

¹⁵⁰L. Pastor et al., The History of the Popes from the Close of the Middle Ages, trans. E. Pecler, vol. 39, London, Routledge and K. Paul, 1952, pp. 127-129. (originally published as: Geschichte der Papste seit dem Ausgang des Mittelalters, Freiburg, Herder, 1955-1961, 16 t. 22 vols).

decreed that no one should be allowed to make perpetual vows, nor should there be stability of the rule:

The vow of perpetual stability should never be allowed; the older monks did not know it, who, nevertheless, were a consolation of the Church and the ornament to Christianity; the vows of chastity, poverty, and obedience shall not be admitted as the common and stable rule. If anyone shall wish to make these vows, all or anyone, he will ask the advice and the permission from the bishop who, nevertheless, will never permit them to be perpetual, nor to exceed the limits of a year; the opportunity merely will be given of renewing them under the same conditions.¹⁵¹

In response, the Apostolic constitution "Auctorem fidei" of Pius VI on August 28, 1794 stated:

This system is subversive to the discipline now flourishing and already approved and accepted in ancient times, dangerous, opposed and injurious to the Apostolic Constitutions and to the sanctions of many Councils, even general ones, and especially to the Council of Trent; favorable to the vicious calumnies of heretics against monastic vows and the regular institutes devoted to the more stable profession of the evangelical counsels.¹⁵²

Political upheavals in France in the eighteenth century were also a cause of persecution and instability. As early

¹⁵¹Pius VI, Apostolic Constitution, "Auctorem fidei", 28 August 1794, prop. Synodi Pistorien, damn., n. LXXXIV, Art. 6, Codicis iuris canonici fontes, vol. II, Romae, n. 475, p. 711; H. Denzinger, The Sources of Catholic Dogma, trans. R. Deferrari, St. Louis, Herder, 1957, p. 395. (originally published as: Definitionum et declarationum de rebus fidei et morum, Friburgi Brisgoviae, Herder, 1932, 71p).

¹⁵²Ibid., art. 8, vol. II, p. 711; trans. p. 396.

as 1763 the Jesuits were suppressed. In 1766 Louis XV established a Commission of Regulars composed of laymen and clerics. Though the Commission had been instituted to reform the orders, it worked either to destroy or to bring under episcopal and royal control the religious life of France. By 1781, nine religious orders had disappeared and there was a dramatic decline in most. The nationalization of ecclesiastical property followed in 1789 with the French Revolution. In 1790 religious vows were forbidden in the name of the inalienable liberty of the individual, while in 1792 all religious were prohibited from wearing the religious habit; in 1795 monastic life itself was abolished.¹⁵³ Congregations not devoted to nursing or teaching were suppressed. Religious houses with few members were united. Religious men and women were authorized to leave their convents. These measures resulted in the desertion of the houses of religious, which were then confiscated by the State.¹⁵⁴ Due to these adverse circumstances, many religious became apostates and even sided with the political revolution.¹⁵⁵

¹⁵³J. Hayden, "France [1515-1789]", in The New Catholic Encyclopedia, ed., W. McDonald, vol. 6, New York, McGraw-Hill Book Co., 1967, p. 15.

¹⁵⁴A. Latreille, "French Revolution", in The New Catholic Encyclopedia, vol. 6, pp. 187-188.

¹⁵⁵F. Mourret, A History of the Catholic Church, trans. N. Thompson, vol. 7, St. Louis, Herder Book Co., 1947, p.

Between 1802-1803, the same ordinances were passed by civil authorities against all religious institutes in Germany under the Napoleonic Regime. As a result monasteries were suppressed. The same anti-clerical and anti-religious sentiments soon spread throughout the rest of Europe.¹⁰⁸ Seizure of church property, the ejection of religious from their dwellings, and the enactment of legislation which proclaimed the extinction of religion was again reiterated in 1861 in Italy with Italian unification, in 1872 with the Kulturkampf in the German Empire, between 1901 and 1903 as a result of the anticlerical masonic government in France, and in 1903 with the masonic government in Mexico.

The Apostolic See also made every effort to come to the aid of religious who had been dispersed, using dispensations which respected the dispersed religious's situation but at the same time left their vows intact. Pius VI reproved a bishop:

[...] It is our judgment that you have acted too hastily with your Declaration that decreed the Carthusian monks, in your diocese, to be dispensed from their own proper laws and statutes, so that they might assume the condition and state of secular priests forthwith. [...] Care must be taken first of all that all these persons remain true to their vocation, and therefore they must betake themselves to monasteries of their own

108. (originally published as: Histoire générale de l'Eglise, Paris, Bloud et Gay, 1919-1929, 9 vols).

¹⁰⁸J. Lortz, op. cit., p. 462.

Order or of another Institute, where they can rightly and properly observe the solemn vows by which they consecrated their lives to God. [...] Using our words, tell these things to those to whom it concerns and strengthen them if they are hesitant to take this step. If it should happen, however, that an individual cannot find anyone who will receive him, only in this unfortunate situation do we allow him to remain in the state of a secular priest for as long as he is forced by necessity to do so. Such an individual, however, must live in the world ever mindful of his vocation, and hold on to the discipline and the Regular life to which he formerly belonged. [...] It would be a sacrilege if anything were admitted that would be against the obligation of chastity. As regards the practice of poverty, it is to be observed in so far as this is compatible with their new state of life. All these are to show a joyful disposition and are to be free from any desire for earthly possessions. Let them likewise show obedience to their bishop, and let them wear under their outer clothing some sign of their religious profession lest they may seem to have actually left that state.¹⁵⁷

During the French Revolution the Apostolic See authorized the bishops of France

to grant the faculty to religious of any Order or Congregation to transfer to another institute, even though the rule in force in the latter might be less austere than in that wherein they made profession.¹⁵⁸

¹⁵⁷Pius VI, *Litterae ad Episcopum Brunensem*, 12 April 1782, in A. Vermeersch, *De religiosis institutis et personis*, 4 ed., vol. 2, Romae, Brugis, C. Beyaert, 1910, p. 291.

¹⁵⁸ Pius VI, *Facultates annexae litt.*, "In gravissimis", 19 March 1792, n. 8, in A. Vermeersch, *op. cit.*, p. 295 (author's translation). (As has been noted, the Council of Trent determined that no one was allowed to transfer to an order that was less austere. See note 141).

Likewise, they were given the faculty

of granting permission to Regulars of any and all Orders and Institutes, who have been forced to live outside the enclosure and to lay aside the religious habit, to wear secular clothing [...] and to remain in this manner under obedience to the Ordinary; this in so far as Regular Superiors are not present, or they cannot exercise any jurisdiction over their subjects, but with the obligation of solemn vows remaining intact.¹⁵⁹

According to circumstances, the Apostolic See also granted to bishops the power to dispense nuns, "[...] not indeed from the vow of chastity nor as regards the basic substance of the other vows, but to some degree, honestly and prudently, for their security and their peace of mind."¹⁶⁰ Concerning other religious who were unable to return to their enclosures, ecclesiastical law determined:

[...] if they are clerics, let them remain in the dress of the secular clergy. If they are laity, they are to wear decent and modest clothing as long as they are forced by necessity to remain in this state.¹⁶¹

¹⁵⁹Ibid., n. 9, in A. Vermeersch, op. cit., p. 295.

¹⁶⁰Pius VII, Litterae in forma brevi ad Episcopum Tornacensem, 24 June 1810, in A. Vermeersch, ibid., p. 292.

¹⁶¹ Sacra Congregatio Episcoporum et Regularium, Decree, "Ubi primum", 22 August 1814, n. IX, in Collectanea in usum Secretariae Sacrae Congregationis Episcoporum et Regularium, ed., A. Bizzari, Romae, Typographia polyglotta, Sacra Congregatio de Propaganda Fide, 1885, p. 44.

Thus, it is clear that the Apostolic See did not wish to dispense from the substance of the vows even under the most dire circumstances during the eighteenth and nineteenth centuries.

These canonical principles were also followed in other suppressions of religious houses during the nineteenth century.

Every possible effort should be made to ensure that religious that have been expelled from their proper dwellings should be placed in and accepted by other communities. But insofar as the expelled religious cannot be placed elsewhere due to a lack of religious houses, and if there are other serious and just reasons present, concerning which the Superior General is gravely bound in conscience, then the Superior himself, by Apostolic Authority, is empowered to grant such religious permission to remain outside the enclosure under obedience to the local ordinary as though temporarily secularized at the pleasure of the Holy See and of the Superior himself. They may wear the religious habit, and even, if the need arises, in the garb of the secular clergy, insofar as they are priests. If it is a question of laity, or conversi, these should be garbed in lay clothing of a subdued color. But they are to keep some sign of their religious habit even though this is concealed. Let them as far as possible keep the essentials of their vows and mitigate those regulations that are not compatible with their new living conditions.¹⁶²

¹⁶²"Curandum esse pro viribus, ut regulares expulsi a propriis conventibus in alios conventus collocentur ac recipiantur. Quatenus vero regulares expulsi, praesertim ob defectum domorum, alibi collocari nequeant, concurrentibus gravibus iustisque causis, super quibus conscientia Superioris Generalis graviter onerata remaneat, ipse Superior Generalis Apostolica Auctoritate iisdem indulgere poterit, ut manere valeant extra claustra sub oboedientia Ordinarii loci tamquam saecularizati ad tempus et ad nutum S. Sedis ac

As regards nuns who were in similar circumstances, the Apostolic See decreed:

If [displaced] nuns, for reasons that have been examined by the Ordinary, cannot betake themselves to a monastery or house at a new location, the Ordinary is able to grant to these nuns permission to remain outside the enclosure, modestly clothed, wearing, even concealed, some sign of the religious habit, living either with relatives or matrons of good repute, and persevering in their vow of chastity and keeping the basic elements of the other vows, the vow of poverty besides, in so far as this can be done in their present state. They are also to perform daily works of piety and pious prayers, even the recitation of the canonical hours as shall be discreetly prescribed by the Ordinary in whose diocese they are now dwelling, and all under obedience to the Ordinary in whose diocese they are staying. There they may remain and live by the authority of the Holy See.¹⁶³

ipsius Superioris, et in habitu Religioso, ac etiam, quatenus ita ferat necessitas, in habitu Presbyteri saecularis quoad Sacerdotes et in habitu laicali modesti coloris quoad Laicos, seu Conversos, retento tamen interius aliquo signo habitus Religiosi, servatis quantum fieri potest substantialibus votorum, ac relaxatis regulis quae cum novo eorum statu minime fuerint compatibles." Sacrae Poenitentiariae Instructiones, 28 June 1866, in A. Vermeersch, op. cit., p. 310.

¹⁶³"Si vero aliquae ex dictis [dispersis] Monialibus, iustis de causis per Ordinarium examinandis, in monasterium seu domum novae collocationis se recipere nequeant, Ordinarius iisdem Monialibus indulgere poterit, ut extra sui Monasterii claustra, in habitu decenti, retento tamen interius aliquo signo religiosi habitus, apud suos consanguineos vel honestas Matronas, firmo voto castitatis, et servatis substantialibus aliorum votorum quantum respective ad votum paupertatis et similia in eo statu commode fieri potest, adimpletisque cotidie aliquibus pietatis operibus et piis precibus etiam loco recitationis Horarum Canonicarum ab eodem Ordinario discrete praescribendis, sub oboedientia Ordinarii in cuius Dioecesi commorabuntur, ad beneplacitum S. Sedis vivere ac remanere

Since dispersed religious were frequently without superiors who could exercise vigilance over them and strengthen them in remaining faithful to their vows in their adverse circumstances, the Holy See in 1872 provided special superiors, "territorial provincials," for such dispersed religious.

The Sacred Congregation for the Discipline of Regulars has decreed that all religious of the world, of whatever Order, Congregation, Society, Institute, professed of whatever grade or condition, as long as today's circumstances, as we have noted, force them to live outside the boundaries of their regular province, if it has come about that they are now staying at home [with relatives] or elsewhere, are hereby subject to the inspection and jurisdiction of a territorial provincial. The territorial provincial shall give to the proper superior of the displaced religious a report annually or whenever requested, concerning their conduct and way of life, and he shall guide them with the delegated and full authority of his office.¹⁶⁴

It was further determined that a religious who had been violently ejected from the proper dwellings had to establish a stable location within six months with the permission of the local ordinary. If this prescription was not complied

licite valeant." Ibid, p. 311.

¹⁶⁴"Sacra Congregatio super Disciplina Regulari, Decree, "Ad aerumnas", 5 Aug. 1872, in Acta Sanctae Sedis (hereafter cited as ASS), 7 (1892-93), p. 407.

with, the transgressor was, in the case of a cleric, subject to suspension by the Apostolic See.¹⁶⁵

In 1881 when laws in France were promulgated declaring the suppression of religious orders, the Apostolic See again reiterated that every effort had to be taken to ensure that those who had been expelled from their own communities could be received in other religious houses. If this could not be done, then the superior general was empowered to grant such religious the faculty to remain outside the enclosure and under obedience to the local ordinary.¹⁶⁶

In the instructions and faculties sent by the Sacred Congregation of Bishops and Regulars to the Superiors of Religious Congregations in France in 1903, the Apostolic See followed the norms set down in similar cases in granting temporary secularization (exclaustration) to religious; such indults were valid for only one year.¹⁶⁷ Concerning the expulsion of religious in France two years earlier (in 1901), A. Vermeersch notes:

¹⁶⁵Sacra Congregatio super Disciplina Regulari, Decree, "Ad regularium ordinum", 5 August 1872, in ASS, 7, p. 410.

¹⁶⁶Sacra Congregatio Episcoporum et Regularium, Decree, "Cum regulares", 30 July 1881, A. Vermeersch, op. cit., p. 297.

¹⁶⁷Sacra Congregatio Episcoporum et Regularium, Instructiones et facultates, "Attentis peculiaribus", 24 March 1903, in A. Vermeersch, op. cit., pp. 300-301.

Concerning this vexation, it will be sufficient to note that a large number of religious were granted letters of [temporary] secularization either by the Sacred Congregation of Bishops and Regulars, or by the Superior General of one's own Order by virtue of the Instruction of July 30, 1881 [...] or by special indult.¹⁶⁸

Conclusion

It can be concluded from this survey that very early in history a religious who had made vows by a profession either explicit or implicit was deemed to have promised perseverance until death in the chosen way of life. Until the IV Lateran Council (1215) religious orders were established by their respective founders with the Church's tacit approval. Consequently, up to then no explicit law of the Church, stable and universal, is found by virtue of which an indult is given to remain temporarily outside the cloister. Those indults which were granted according to necessity were conceded to religious by the consent of the superior only. Local, conciliar and papal legislation, on the other hand, sought to enforce the stability of religious in their calling. When later ecclesiastical legislation allowed transfer to another religious institute, it was with the proviso that it be to a stricter institute. Even when it was a case of assistance to parents, the policy of the Apostolic

¹⁶⁸Ibid., p. 289, note 1.

See was not to grant such an indult, but to recommend that parents be assisted by means of Mass stipends and revenue from preaching.

The ecclesiastical discipline regarding the temporary secularization of religious was greatly changed in the eighteenth and nineteenth centuries due to the suppression of religious institutes and houses by civil legislation. The Apostolic See assisted those religious who had been dispersed from their proper dwellings by means of dispensations which respected the situation, but at the same time left the vows intact. Accordingly, the Apostolic See granted bishops and superiors general the power to dispense religious not from the basic elements of the vows, but "to some degree for their peace of mind and their own security." As a result, religious a) were given permission to remain outside the cloister; b) were under obedience to the local ordinary; c) could wear the religious habit or modest lay clothing, but keep some sign of the religious habit. In the case of priests, the garb of the secular clergy was worn. d) The essentials of the vows were to be maintained as far as possible, but those regulations which were not compatible with their living conditions were mitigated. e) Nuns were encouraged to perform daily works of piety and pious prayers, even recitation of the canonical hours, if possible.

This remedy of temporary secularization, however, was seen as a last resort. The Apostolic See preferred if at all possible that such religious take up residence in other religious houses even if not of the same congregation or order and even if the rule in the latter might be less austere than that wherein profession was made. Another example of the Apostolic See's concern for displaced religious was the creation of territorial superiors, whose task it was to guide and strengthen all dispersed religious within their jurisdiction.

Finally, during the pontificate of Pius X (1903-1914) when all laws then in effect in canon law were being unified, abbreviated, and reformed according to the circumstances of the times, it was seen that a clear distinction had to be made between exclausturation and secularization in the proper sense. Thus, the supreme legislator of the Church in canon 638 of the 1917 Code decreed:

The indult for remaining outside the cloister, either temporarily, that is the indult of exclausturation, or perpetually, that is the indult of secularization, can be granted for Institutes approved by the Holy See by the Apostolic See alone, while the Ordinary can grant it for diocesan Institutes.¹⁶⁹

¹⁶⁹Codex iuris canonici: Canonical Legislation Concerning Religious, Authorized English Translation, Città del Vaticano, Libreria Editrice Vaticana, 1917, c. 638.

These changes made in ecclesiastical law as well as in the canonical discipline which was enforced in the 1917 Code concerning exclaustation of religious will be considered in Chapter II of this dissertation.

CHAPTER II

LEGISLATION OF EXCLAUSTRATION IN THE 1917 CODE

This chapter examines the institution of exclausturation as found in the 1917 Code which presented a new, uniform discipline applicable to all exclaustrated religious. Indeed, canon 638 resolved the previously unresolved issue of the competent authority to grant the indult, while canon 639 specified the effects of the indult and the obligations and rights of exclaustrated religious. The praxis of the Apostolic See determined the sufficient reasons for its concession.

The indult of exclausturation authorized a religious to remain temporarily outside the community for a determined period of time or for the duration of the cause for which it was granted.

The effects of voluntary exclausturation were the same for religious of pontifical right as for those of diocesan right. An exclaustrated religious remained a member of the institute; the obligations of the vows of poverty and obedience continued, but were mitigated to meet the new circumstances; the observance of chastity remained the same. Instead of being subject to the superior of the institute, the exclaustrated religious now became subject to the ordinary of the place of residence.

The 1917 legislation demonstrated that the Church acknowledged changing circumstances and situations which legitimately prohibited certain religious from living common life and fulfilling the obligations of the common law. The canons on exclaustation juridically addressed this situation and attempted to provide norms for those who were exclausted that, notwithstanding their new situation, enabled them to persevere in their religious commitment and obligations. The juridic situation of an exclausted religious was also clarified as regards the religious institute. It is to these various concerns that we now turn our attention.

A. THE NATURE OF EXCLAUSTRATION ACCORDING TO THE 1917 CODE

The 1917 Code legislated for a number of circumstances that could, in one way or another, affect a member's situation in the religious institute. In particular, three concepts need to be studied: exclaustation, permission of absence, and secularization. We shall now examine the notions of secularization and permission of absence in relation to exclaustation.

1. The distinction between voluntary
exclaustration and secularization

In the 1917 Code, voluntary exclaustration¹ was defined as a juridical provision whereby a religious could, for a serious reason, live temporarily outside the religious institute. Common life² and obedience to superiors were two of the essential elements of religious life.³ Thus, members

¹There were other forms of exclaustration not anticipated by the 1917 Code but introduced by the praxis of the Holy See, i.e., exclaustratio ad nutum Sanctae Sedis and exclaustratio qualificata. Exclaustratio ad nutum Sanctae Sedis was usually granted at the request of superiors. It was differentiated from voluntary exclaustration in that it imposed a precept requiring a religious to live apart from common life. This form of exclaustration will be considered in chapter III of this dissertation.

Exclaustratio qualificata was a special favor granted to a religious priest. It will be discussed later in this chapter.

²According to the 1917 Code, common life in the broad sense meant observance of a common rule under the authority of a superior in community life. Thus canon 487 of the 1917 Code described the religious state as "a stable manner of living in common." A. Ellis, "Common Life and the Spirit of Poverty", in Review for Religious, 2(1943), pp. 4-5.

³Religious life was described in canon 487 of the 1917 Code as a permanent way of life which included the obligation enforced by the vows to seek the perfection of Christian charity by the habitual observance of the evangelical counsels of poverty, chastity and obedience. It also included the obligation of life in a community. The observance of the counsels was essential to the religious state, and the vows accepted by the Church were necessary to give stability to such an undertaking. The obligation to live in a community was not of the essence of religious life since in the past the eremitical life was an approved way of seeking perfection and religious who were elevated to the episcopal dignity remained religious though they were usually

of societies of common life⁴ were not covered by the prescriptions of the common law on exclausturation since the relevant canons applied only to religious; such societies were regulated according to their proper constitutions.⁵ Furthermore, neither the 1917 Code, subsequent documents of the Holy See, nor declarations of the Pontifical Commission for the Authentic Interpretation of the Code applied the canonical provisions on exclausturation to members of secular

obligated to live apart from the community. The will of the Church, however, made community life necessary to the concept of the religious state and no one under the 1917 Code could be said to enter the religious state without also accepting the obligation of community life. (J. Comyns, "The Juridical Status of Religious Living Outside Their Religious Houses", in The Jurist, 12(1952), pp. 330-352; see T. Bouscaren, A. Ellis, F. Korth, Canon Law, A Text and Commentary, 4th rev. ed., Milwaukee, Bruce Publishing Co., 1966, pp. 233-234; F. Wernz, Jus decretalium ad usum praelectionum in scholis. Textus canonici sive iuris decretalium, vol. 3, Romae, Ex Typographia polyglotta, Sacra Congregatio de Propaganda Fide, 1908, pars 2, nn. 588-590, pp. 247-253).

⁴Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, Romae, Typis polyglottis Vaticanis, 1917, canon 673 (hereafter cited as CIC 1917) described a society as one whose members imitated the manner of life of religious by living in community under the government of superiors according to approved constitutions, without being bound by the usual three vows. Thus the members were not properly religious nor the societies religious institutes.

⁵CIC 1917, c. 681.

institutes,⁶ since they were consecrated to a life of perfection in saeculo.

Voluntary exclauration, then, was intended to help religious who, because of circumstances, did not wish to petition for secularization which involved a complete dispensation from vows and a permanent separation from the religious institute, but who nevertheless needed to distance themselves somewhat from the community.

The 1917 legislation introduced a distinction between the terms "exclaustratio" and "saecularizatio".⁷ "Exclaustratio" (Latin: extra clausuram) came to mean a temporary absence from the religious community, a permission to leave for a time while maintaining the basic bond with the institute. "Saecularizatio", on the other hand, meant a legitimate permanent departure from the institute, granted through an indult by legitimate authority, which brought

⁶Pope Pius XII, in the Apostolic Constitution, "Provida Mater Ecclesia", 2 February 1947, defined a secular institute as a society, clerical or lay, whose members, in order to attain Christian perfection and to exercise a full apostolate, professed the evangelical counsels in the world. Members of such institutes were not, however, admitted to the three public vows of religious nor were they obliged to live the common life. Thus they were not properly called religious nor members of societies of common life. See Acta Apostolicae Sedis, 39(1947), art. I, II, p. 120 (hereafter cited as AAS), trans. in T. Bouscaren, J. O'Connor, The Canon Law Digest, vol. 3, Milwaukee, Bruce Publishing Co., 1954, pp. 141-142 (hereafter cited as CLD).

⁷J. Fernández, "Esclaustrazione", in G. Pelliccia and G. Rocca, eds., Dizionario degli istituti di perfezione, vol. 3, Roma, Edizioni Paoline, 1976, col. 1275-1277.

about a complete and permanent severance of the bond that bound the member to the institute.* Once secularized, a religious was free from all the obligations arising from religious profession.*

Canons 638¹⁰ and 639¹¹ of the 1917 Code legislated on this subject for both pontifical and diocesan institutes. The difference is that while the Apostolic See alone granted the indult¹² of exclausturation for pontifical right

*J. Creusen, Religious Men and Women, ed. and rev. by Adam Ellis, 4th English ed., Milwaukee, Bruce, 1940, pp. 255-256.

⁹CIC 1917, c. 640. See S. Woywod, A Practical Commentary on the Code of Canon Law, vol. 1, New York, F. Wagner, 1948, n. 555, pp. 318-319.

¹⁰CIC 1917, c. 638: "Indultum manendi extra claustra, sive temporarium, idest indultum exclausturationis, sive perpetuum, idest indultum saecularizationis, sola Sedes Apostolica in religionibus iuris pontificii dare potest; in religionibus iuris dioecesani etiam loci Ordinarius."

¹¹CIC 1917, c. 639: "Qui indultum exclausturationis ab Apostolica Sede impetravit, votis ceterisque suae professionis obligationibus, quae cum suo statu componi possunt, manet obstrictus; exteriorem tamen debet habitus religiosi formam deponere; perdurante tempore indulti caret voce activa et passiva, sed gaudet privilegiis mere spiritualibus suae religionis, et Ordinario territorii ubi commoratur, loco Superiorum propriae religionis, subditur etiam ratione voti obedientiae."

¹²The word "indult" means that which is granted by way of indulgence. It specifies the act by which a favor is granted. The favor can be a faculty, a permission, a dispensation, either outside the law or contrary to it. An indult generally indicates a favor given for a time. See X. Ochoa, ed., Index verborum ac locutionum Codicis iuris canonici, 2a ed., Città del Vaticano, Libreria editrice Lateranense, 1984, p. 233; A. Cicognani, Canon Law, 2nd rev. ed., Philadelphia, Dolphin Press, 1935, p. 477; H. Ayrinhac,

institutes, local Ordinaries (and not necessarily the diocesan bishop) could do so for diocesan congregations.

Thus, in light of canon 638, the indult of exclausturation came to mean a permission granted by the competent authority allowing a religious to live temporarily outside the institute. The temporary character of the indult distinguished it from the definitive break effected by secularization. The period of exclausturation was determined generally for two or three years as was specified in the indult. When this period expired the religious was to return to the community.¹³

Those who obtained an indult of exclausturation remained bound by the vows and other obligations of their profession which could be retained outside of the community. On the other hand, they became subject to the Ordinary of the diocese in which they took residence rather than remaining under their religious superiors. This suspension of obedience to religious superiors was one of the elements that differentiated exclausturation from permission of absence, which we shall now consider.

concession of certain powers or exemption from law by the Holy See."

¹³M. Nwagu, Autonomy and Dependence of Religious Institutes of Diocesan Law on the Local Ordinary: A Comparative Analysis of the Legislation Concerning Them in the Code of Canon Law of 1917 and 1983, Ser. 23, vol. 279, Frankfurt am Main, Verlag Peter Lang, 1987, p. 180.

2. The distinction between permission
of absence and voluntary exclausturation

Community life had not always been obligatory for religious and even when it became an integral part of the life, superiors could permit subjects to absent themselves from the cloister for extended periods of time.¹⁴ Pope Clement VIII (1592-1605), however, limited the power of superiors to permit extended absences of religious, and required that an apostolic indult be sought every time an absence was prompted for some serious reason.¹⁵ This legislation was incorporated with some mitigation into the 1917 Code. Thus canon 606, §2 states:

It is not lawful for superiors to permit their subjects [. . .] to remain outside the house of their own institute, except for a just and grave cause and for as brief a period as possible according to the constitutions; but for an absence of more than six months, unless for motives of study, the permission of the Apostolic See is always required.¹⁶

¹⁴C. VI, III, 24, 2.

¹⁵Clement VIII, Decree, "Nullus omnino", 25 July 1599, n. 187, 3, in P. Gasparri, ed., Codicis iuris canonici fontes, vol. 1, Romae, Typis polyglottis Vaticanis, 1926-1939, pp. 354-357.

¹⁶CIC 1917, c. 606, §2: "Superioribus fas non est, salvo praescriptis in can. 621-624, permittere ut subditi extra domum propriae religionis degant, nisi gravi et iusta de causa atque ad tempus quo fieri potest brevius secundum constitutiones; pro absentia vero quae sex menses excedat, nisi causa studiorum intercedat, semper Apostolicae Sedis venia requiritur."

The Papal representative possessed the faculty to grant nuns such permission:

To allow nuns in case of sickness or for other just and grave reasons to live outside the religious house for a time to be fixed at his prudent discretion, on condition, however, that they shall always have the association and assistance of their relatives by blood or marriage or of some other respectable woman, that they shall live at home and elsewhere a religious life free from the society of men, as becomes virgins consecrated to God, and without prejudice to the prescription of canon 639.¹⁷

Absence from the cloister had long been distinguished from unlawful departure from it.¹⁸ The latter was governed

¹⁷"Faculties of Apostolic Delegates" as reported in CLD, vol. 1, ch. v., n. 49, p. 184; see also J. Creusen, "Mélanges, recours non nécessaires à Rome", in Revue des communautés religieuses, 3(1927), pp. 134-135; P. Bastien, Directoire canonique, 4e éd., Bruges, C. Beyaert, 1933, n. 713, pp. 508-510; G. Barry, Violation of the Cloister, Washington, D.C., The Catholic University of America Press, 1942, pp. 222-223 (Canon Law Studies, no. 148); A. Vermeersch, "Dissertationes et quaesita varia - Facultatum quae, post Codicem, Legatis Apostolicis concedi consueverunt breve commentarium", in Periodica, 12(1924), ch. v, n. 88, pp. (125)-(159). These faculties were extended to bishops: L. Buijs, Facultates et privilegia episcoporum, Romae, apud Aedes Universitatis Gregoriana, 1964, n. 34, pp. 104-105. Therefore, after 1963, either the Papal representative or the proper bishop could permit a nun to reside outside the papal cloister when other means had proved to be of little or no efficacy and such a stay was judged necessary or useful for overcoming the difficulty.

¹⁸Departure from the cloister for a brief period of time was unlawful when it was in violation of disciplinary rules established by the superior, custom, statute, or the constitutions. See A. Riesner, Apostates and Fugitives from Religious Institutes: An Historical Conspectus and Commentary, Washington, D.C., The Catholic University of America Press, 1942, pp. 76-77 (Canon Law Studies, no. 168).

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by canon 606, §1, which directed superiors to promote the careful observance of all regulations pertaining to departure from the cloister.¹⁹ On the other hand, the absence referred to in canon 606, §2, was an absence longer in duration and could be authorized by the superior.

The 1917 Code granted superiors²⁰ the power to allow their subjects to remain outside the house of their own

¹⁹CIC 1917, c. 606, §1: "Curent Superiores religiosi ut accurate observentur quae sive circa egressum subditorum e claustris, sive circa excipiendos vel adeundos extraneos, in propriis constitutionibus praescripta sunt."

²⁰The 1917 Code did not specify the superior competent to grant such a permission. C. Pionteck, De indulto exclaustationis necnon saecularizationis, Washington, D.C., The Catholic University of America Press, 1925, p. 206 (Canon Law Studies, no. 29), limits this competency to the major superior. He based this conclusion on the rules of the Friars Minor. However, this did not seem to be the case for other institutes unless the constitutions mentioned such a limitation. If they did not, then the local superior was competent. J. O'Connor noted in an article entitled "Leave of Absence", in Review for Religious 30(1971), pp. 634-646, that any restriction on the competency of superiors, including local superiors as well as provincials, had to come from the community's constitutions since the canon stated that the competent superior was determined "according to the constitutions." As a consequence, if, in the constitutions there was no restriction on superiors, then even a local superior could authorize relaxation of the general obligation to live in a house of the community by granting the subject permission of absence. In practice, however, many constitutions provided that the local superior could not grant such permission beyond one night; some did not even allow the local superior to grant that much. The approval of the provincial or of the superior general was necessary in such cases (p. 635).

institute for a just and grave cause²¹ and for the shortest time foreseen by their constitutions. This prescription did not apply to religious who were away from the community for academic reasons²² or involved in a work within the

²¹A "just" cause was one recognized by the law or accepted by the practice of the legislator. A "grave" cause was any serious reason, whether the gravity be absolute or only relative. Only one example was given in the canon, namely, "motives of study." Any reason equal to or greater than that was considered both just and grave and sufficed for the concession of permission of absence, unless the constitutions required a more serious reason. Therefore, the health of the religious making the request, the need for a religious to care for an ailing relative were also among just reasons for such permission. See also A. Vermeersch, "Dissertationes et quaesita - De commoratione extra propriam religionis domum", in Periodica, 10(1922), pp. (36)-(37); A. Vermeersch, "Quaesita varia - De religiosorum absentia secundum canon 606, §2", in Periodica, 20(1931), pp. 144*-145*; A. Toso, Ad Codicem iuris canonici commentaria minora, tome 4, Romae, Jus Pontificium, 1927, lib. II, pars, II, p. 185.

²²Besides studies, permission of absence beyond six continuous months, for whatever reason, required an indult from the Holy See. The only absence from the cloister permitted by canon 606, §2 was for studies. In all other instances an indult had to be obtained. The law was clear. However, A. Vermeersch noted that the literal observance of canon 606, §2 would have introduced a severe obligation which was not in keeping with the works of many communities. He concluded that the constant recourse of superiors to the Holy See for permission to fulfill works proper to their religious institute was not required by the Code. See A. Vermeersch, "De commoratione extra propriam religionis domum", pp. (36)-(37). Thus absences from the cloister for works compatible with the end and purpose of the institute were permitted according to the prudent judgment of the proper superior. Reputable authors held this view. See U. Beste, Introductio in Codicem, ed. alt., Neapoli, D'Auria, 1966, pp. 450-451. If a work was not in keeping with the purpose and end of the institute, it was not to be undertaken by a religious without permission of the proper authority. (G. Barry, op. cit., pp. 173-74).

particular scope of the institute."²³ For an absence other than these which exceeded six months,²⁴ permission of the Holy See was required even for diocesan right religious.

The term "permission of absence" was not found in Canon 606, §2 but the reality was envisaged there. Permission of absence was a kind of absence from community life different from the exclausturation provided by canons 638-639. The

As regards permission of absence for the purpose of vacation, R. O'Brien pointed out that if the proper superior judged that a just cause for a vacation existed in a particular case, it was reasonable for the superior to allow such under canon 606, §2, taking into account any other restrictions that particular law may posit (R. O'Brien, "Absence and Departure from the Cloister", in The Jurist, 15(1955), pp. 362-363).

²³R. O'Brien, loc. cit., pp. 364-365.

²⁴This period of six months was understood as continuous. Thus it was lawful if a religious returned to the religious house before six months were up, remained there for a considerable period, say, at least a month, and then, with the permission of the superior, again left for a serious and licit circumstance, but not beyond six additional months. The interruption by one month obviated the necessity of petitioning the Holy See. O'Brien notes that the need for an indult permitting an absence beyond six months was hardly avoided through the periodic return of the religious to the cloister for a day or two at stated intervals (See R. O'Brien, loc. cit., pp. 366-367). A. Vermeersch and H. Jone believed that a month broke the time consumed in absences less than six months in duration. They based their opinion on an analogous application of the principle in canon 556, namely, that an absence of one month was sufficient to break the continuity of the novitiate. Thus, if one began an absence which was foreseen to exceed six months in duration, an indult was to be sought rather than making recourse to subterfuge (See A. Vermeersch, "De religiosorum absentia secundum canon 606, §2", pp. 144*-145*; H. Jone, Commentarium in Codicem iuris canonici, Paderborn, F. Schöningh, 1955, vol. 1, p. 534).

juridic distinction between exclausturation and permission of absence lay particularly in the fact that in exclausturation obedience to one's religious superior was transferred to the Ordinary of the place where the religious was residing, while in permission of absence the religious remained subject in obedience to the superior. This was true even in the case where permission of absence was obtained from the Holy See. Secondly, during the period of "permission of absence" the religious remained bound by the prescriptions of the constitutions of the institute, but a certain relaxation in the application of the vow of poverty was sometimes allowed because of the manner of living necessitated by the absence.²⁵ Thirdly, the religious retained the right of active and passive voice in community affairs, whereas the exclaustrated did not; the exclaustrated could not take an active role in community affairs though technically they were still members of the institute. Fourthly, the religious on permission of absence could be called back to the community in case of necessity.²⁶ This was generally not the case for the exclaustrated religious unless the indult so determined.

²⁵D. Hynous, "Leave of Absence and Vocational Crisis", in Angelicum, 49(1972), pp. 454-455; see also C. Pointeck, op. cit., pp. 160-162.

²⁶Ibid., p. 455.

Fifthly, permission of absence was a permission,²⁷ exclausturation was a privilege.²⁸ Sixthly, permission of absence could be effected either orally or through a rescript; exclausturation normally was to be obtained through a rescript for proof in the external forum and for liceity.

A seventh difference was that a religious could request the indult even against the will of the religious superior and use it if granted. Whereas, in the case of permission of absence the superior had to consent whether it was for

²⁷A permission was defined as an authorization to do what was permitted by the law. It allowed one to act in accordance with the law. A legitimate permission was valid, when it was within the power of the superior to grant it; licit, when it was given for sufficient reasons.

The permission to leave one's religious house also had to be legitimate; that is, granted by a competent superior according to the law and the constitutions of the institute. The power of a superior to grant permission to leave the house was restricted by law. See X. Ochoa, op. cit., s.v. licentia superioris, p. 263; T. Schaefer, De religiosis, 4 ed., Rome, Typis polyglottis Vaticanis, 1947, n. 1118, pp. 661-663; S. Turner, The Vow of Poverty, Washington, D.C., The Catholic University of America Press, 1929, pp. 102-104 (Canon Law Studies, no. 54).

²⁸A privilege was defined as a specific right which arose from the gratuitous concession of the legislator or of one who had the necessary executive power. It was always a favor. Even if requested by the recipient, it was not the result of a contractual transaction. Etymologically, a privilege was a private law granted to an individual or to a juridic person, which created an individual or a personal right. It was an administrative act granted through a rescript. E. Roelker, Principles of Privilege According to the Code of Canon Law, Washington, D.C., The Catholic University of America Press, 1926, pp. 1-16 (Canon Law Studies, no. 35); see also X. Ochoa, op. cit., s.v. privilegium, p. 375.

studies or for other reasons, even usually in those cases for which a rescript from the Holy See was required. Finally, permission of absence was given for a "just and grave cause", while exclausturation required a "grave or serious cause" which was somewhat more compelling.

In certain instances permission of absence and exclausturation had similarities in so far as the reasons for granting them were similar; in many cases, though, the motivations were different. One person could ask for permission of absence remaining under obedience to the superior, while another under similar circumstances could choose to petition for exclausturation with the mitigation of the vows of obedience and poverty. Because of the relaxation implied in exclausturation, the reason required was more grave than for permission of absence.²⁹

3. Sufficient reasons for exclausturation

Common life and obedience to superiors were regarded as basic elements of the religious life, thus grave and serious reasons were required for the granting of the indult of exclausturation. In general, they were for the good of the religious or that of the community. Although canons 638 and 639 did not spell out the reasons which justified

²⁹M. Nwagun, op. cit., p. 181.

exclausturation, these had to be of a serious nature,³⁰ since "just and grave reasons" were required even for a permission of absence from the community. Specific reasons commonly given for exclausturation were to care for aged parents; incapacity of living peacefully in community; perceived unjust treatment of the religious; political conditions forcing the religious community to disperse; personal health; resolution of doubts concerning one's vocation. For these reasons and others³¹ of similar gravity, and with the hope

³⁰T. Schaefer, *op. cit.*, n. 1530, p. 911; see also C. Pionteck, *op. cit.*, p. 11; A. Vermeersch, "Quaesita varia - Exclaustratio et saecularizatio religiosorum", in *Periodica*, 17(1928), pp. 50*-51*.

³¹In the 1911 decree "Inter reliquas" provision was made for religious who were conscripted into military service. See Sacra Congregatio de Religiosis, Decree, "Inter reliquas", 1 January 1911, in *AAS*, 3(1911), pp. 37-39. This decree remained in effect even after the promulgation of the 1917 Code. See Sacra Congregatio de Religiosis, Decree, "Cum in Codice", 15 July 1919, in *AAS*, 11(1919), pp. 321-323. In a private response to the Friars Minor in 1939, the Congregation for Religious gave major superiors the right to grant indulgences of exclausturation in accord with the prescriptions of canon 639 to religious in perpetual vows conscripted into military service. See the private response of Sacra Congregatio de Religiosis, 14 April 1939, in *Acta Ordinis Fratrum Minorum*, 58(1939), p. 158, trans. in T. Bouscaren, J. O'Connor, eds., *The Canon Law Digest for Religious*, vol. 1, Milwaukee, Bruce Publishing Co., 1964, pp. 414-415 (hereafter cited as *CLDR*), p. 308. In other instances the Congregation for Religious considered such religious as on permission of absence from their proper institute rather than as exclaustrated. See "Consultationes - conditio professorum a votis perpetuis in militiam vocatorum", in *Commentarium pro religiosis*, 22(1941), pp. 208-209. On February 2, 1955, the Congregation for Religious issued an instruction, "De cappellanis militum religiosis", which clarified the juridical position of religious priests serving as chaplains in the armed forces. According to this

that they were of a temporary nature, indults of exclausturation could be obtained. In addition, the Holy See also conceded an indult of exclausturation for the necessary time period to a religious priest who had decided to leave the religious life but had not yet been incardinated into a diocese, even though the bishop was willing to allow him to exercise ministry in the diocese under his vigilance."

4. The petition

In the case of voluntary exclausturation the religious petitioned personally for the indult through the religious superior, usually the superior general. Canon law did not require the consent of the superior, but it was the custom of the Holy See not to concede the indult of exclausturation

instruction, an indult of exclausturation was not required since such clerics were considered as legitimately absent from their religious house due to priestly ministry. Such religious required the permission of their competent superior; further permission from the Holy See for an absence beyond six months was not necessary. Such permission, however, needed to be renewed every two years by the superior and a maximum limit of such service was set at five years. Even so, religious were encouraged to undertake the office of military chaplain only when necessity dictated. Religious chaplains were bound by the obligations of the religious state with the exception of common life. The Military Ordinariate had jurisdiction with regard to the priestly ministration for those in the Armed Forces (*Sacra Congregatio de Religiosis*, Instruction, "De cappellanis militum religiosorum", 2 February 1955, in *AAS*, 47(1955), art. IV, nos. 1, 2, 3; art III, n. 2; art. I, n. 1. pp. 93-97, trans. in *CLDFR*, vol. 1, pp. 74-77).

"A. Vermeersch, "Exclaustratio et saecularizatio religiosorum", pp. 50*-51*.

without first having considered the opinion of the superior and generally only after having received that superior's consent."³³ It was difficult to obtain an indult of exclausturation from the Holy See when the superior was opposed; nevertheless, the Holy See reserved to itself the right to determine whether the opposition of the superior was unreasonable or unjust."³⁴ The petition therefore was accompanied by the votum of the superior general which indicated whether the indult should be conceded or not. It would seem that a similar practice was followed by local Ordinaries in granting indults to members of diocesan congregations."³⁵

³³S. Goyeneche, "Consultationes", in Commentarium pro religiosis, 17(1936), pp. 254-256.

³⁴S. Goyeneche, Quaestiones canonicae de iure religiosorum, vol. II, Neapoli, M. D' Auria, 1935, pp. 125.

³⁵J. Gallen, "Exclausturation and Secularization", in Review for Religious, 15(1956), p. 226. In practice, the superior's dissent often led to recourse to the Holy See even for diocesan institutes because the local Ordinary would hesitate to concede the indult without the consent of the superior. The apparent rationale behind this was to safeguard a religious from defrauding the institute and then leaving without making retribution. It was considered by some canonists that the Congregation for Religious was alone competent to resolve such a situation and, in cases of conflict, it would not confirm indults granted by the local Ordinary without the superior's votum. At times it was opportune to petition the Holy See directly, for it could always grant the indult even though the religious superior disapproved. This solution was possible when a member of a diocesan congregation desired exclausturation but foresaw a conflict with his own superiors. See C. Pionteck, op. cit., p. 82.

Authors commonly maintained that the Holy See would not grant an indult of exclausturation to priests unless the petition was accompanied by the attestation of a local Ordinary that he would allow the priest to reside in his diocese during the exclausturation and at least to celebrate Mass.³⁶

A religious who had requested and received an indult of voluntary exclausturation was not obliged to use it even after the superior general had issued a decree authorizing its execution. However, if the superior had grave reasons to proceed in spite of such a refusal, the matter was to be brought to the attention of the Holy See.

5. Competent authority

Before codification, local Ordinaries had the faculty to grant dispensations from the vows of poverty and obedience for religious of diocesan congregations. They exercised this faculty whenever the occasion arose, but generally as a delegated power since the primary source of all concessions and dispensations was the Holy See.³⁷

The Constitution, Conditae a Christo, no. 8, however, implicitly confirmed the authority of diocesan bishops to grant indults of exclausturation to members of diocesan

³⁶T. Schaefer, op. cit., n. 1536, pp. 915.

³⁷M. Nwagun, op. cit., p. 181.

congregations."³⁸ Conditae a Christo actually speaks of the power of the diocesan bishop to dismiss religious of diocesan congregations and dispense them from the vows of poverty and obedience, though, not on their own authority, from the vow of perpetual chastity. Number 8 was interpreted as also authorizing the diocesan bishop to grant indulgences of exclaustation in virtue of the maxim: Plus semper in se continet quod est minus.³⁹

The 1917 Code maintained in canon 638 the praxis and confirmed the authority of local Ordinaries to grant the indulgences, thus making ordinary what previously was delegated power. Still, a diocesan religious who desired to petition the Holy See for exclaustation was free to do so. Indeed, at times direct recourse to the Holy See was more advantageous,⁴⁰ as, for instance, when superiors of diocesan congregations foresaw that the local Ordinary's opposition to such a concession was unreasonable or a religious believed opposition of the superior was unjust.

³⁸"Episcopo alumnas sodalitatum diocesanarum professas dimittendi potestas est, votis perpetuis aequae ac temporariis remissis, uno dempto (ex auctoritate saltem propria) colendae perpetuo castitatis. Cavendum tamen ne istiusmodi remissione ius alienum laedatur; laedetur autem, si insciis moderatoribus, id fiat iusteque dissentientibus." Leo XIII, Apostolic Constitution, "Conditae a Christo", 8 December 1900, in Acta Sanctae Sedis, 33(1900-1901), ch. 1, n. VIII, p. 343 (hereafter cited as ASS).

³⁹Reg. 35, R.J. in VI°

⁴⁰M. Nwagwu, op. cit., p. 182.

6. Limits and extensions

Even though local Ordinaries now had the power to grant the indult of exclaustation to religious of diocesan right, they did not seem to be able to grant a permission of absence. Only the religious superior could do so.

Thus in the matter of absence from the religious community the local Ordinary's power was restricted.⁴¹ Exclaustation and permission of absence were considered distinct provisions.⁴² One reason for this was to protect

⁴¹The anomaly in the common interpretation of canon 606, §2 was that the local Ordinary could not give permission for a simple absence to a diocesan religious, even though he was competent to concede to such religious an indult of exclaustation or even secularization (CIC 1917, c. 638) and to dismiss them from the religious institute (CIC 1917, cc. 647, §1; 650, §2, 1; 652, §1). It was a general principle of law that the lesser power was contained in the greater ("Qui plus potest, potest etiam minus"), and no distinctive reason had been found for excluding the local Ordinary from competency with regard to simple absence. N. Mansi, Legittima assenza ed exclaustazione, Excerpta ex dissertationes ad lauream in Facultate juris canonici Pontificiae Universitatis Gregoriana, Parma, Tipografia A. Ghidini, 1959, p. 44, held that the local Ordinary was competent to grant permission of absence to religious of diocesan right. A. Larraona, "Ius canonicum", in Commentarium pro religiosis, 7 (1926), p. 362, acknowledged that such an opinion was probable, and so did E. Jombart, "Consultations - Séjour prolongé hors du couvent", in Revue des communautés religieuses, 15(1939), p. 90 and J. Creusen, "Consultations - Séjour hors du couvent", in Revue des communautés religieuses, 19(1947), pp. 42-43, and H. Jone, op. cit., p. 534. Therefore, notwithstanding the wording of the canon, it was probable that the local Ordinary indeed could permit a simple absence of more than six months to religious of diocesan congregations.

⁴²C. Pionteck, op. cit., p. 90.

the superior's duty of supervision since the religious on permission of absence remained subject immediately to the competent superiors of the institute."³

B. THE SITUATION OF THE EXCLAUSTRATED RELIGIOUS

1. The obligation of vows for the exclaustrated

According to the 1917 Code, an exclaustrated religious remained a member of the religious community. Prior to the Code, however, the obligations of those exclaustrated by the Holy See could be ascertained only by the indult itself. The 1917 Code applied common norms to all cases regardless of whether the religious in question belonged to a pontifical right institute or of one of diocesan right. Generally, the obligations of an exclaustrated religious according to the 1917 Code concerned a) those arising from the vows; b) other obligations of the particular religious institute as specified by the rule and constitutions, such as spiritual exercises. Exclaustrated religious were deprived of both active and passive voice and of the right to wear the habit. Though remaining members of the institute, they generally had to support themselves financially. Finally, unless the exclausturation was imposed by the Holy See, they retained the right to return to the institute.

³J. Comyns, loc. cit., p. 337.

a) The vow of poverty

As regards the vow of poverty, the new condition in life and the change in circumstances had an influence on the accidental and external quality of the vow, but not on its substance. It was generally maintained by canonists that the obligations did not need to be sustained beyond the reasonable possibility of fulfillment in the new condition, since the fulfillment of certain obligations was often not morally or physically possible while the religious remained outside the institute.⁴⁴

The object of the vow of poverty was not the same in all religious institutes. Each religious was held, then, to observe the vow as it was expressed in the proper law of the community. An exclaustrated religious was thus required to know the obligations inherent in the vow of poverty professed in the institute.⁴⁵

For instance, the 1917 Code made a distinction between the vows religious professed; they were said to be either solemn or simple.⁴⁶ Solemn vows were professed in monastic

⁴⁴G. O'Leary, Religious Dismissed from Perpetual Profession, Washington, D.C., The Catholic University of America Press, 1943, p. 56 (Canon Law Studies, no. 184).

⁴⁵S. Turner, op. cit., pp. 91, 97-98.

⁴⁶The 1917 Code noted that religious vows were solemn if they were so recognized by the Church, see CIC 1917, c. 1308, §2.

families and religious orders, and in the Society of Jesus according to special norms, while the simple vows were characteristic of religious congregations.⁴⁷ Solemn vows were always public and perpetual; while simple vows were public or private, perpetual or temporary.

Canonically the solemn and the simple vows of poverty were distinguished by the different effects they juridically produced.⁴⁸ Both vows restricted the individual's right to

⁴⁷CIC 1917, c. 488: "In canonibus qui sequuntur, veniunt nomine: [...]"

n. 2: Ordinis, religio in qua vota sollemnia nuncupantur; Congregationis monasticae, plurium monasteriorum sui iuris inter se coniunctio sub eodem Superiore; religionis exemptae, religio sive votorum sollemnium sive simplicium, a iurisdictione Ordinarii loci subducta; Congregationis religiosae vel Congregationis simpliciter, religio in qua vota dumtaxat simplicia sive perpetua sive temporaria emittuntur."

⁴⁸Whether or not solemn vows were intrinsically distinct from simple vows was disputed by canonists and theologians. Various opinions and theories were advanced to solve this question. (These various opinions may be summarized as: 1) that the essential solemnity of the vow consisted in, and was derived from, an external consecration; 2) that it consisted in the surrender of self; 3) that it consisted in an extrinsic quality established by the Church. W. Frey, The Act of Religious Profession, Washington, D.C., The Catholic University of America Press, 1931, p. 120 (Canon Law Studies, no. 63)). Those who were of the opinion that there was an intrinsic distinction argued that by a simple vow one offered to God only the use of the thing which was the object of a vow; by a solemn vow one gave up not only use but also the thing itself. Since there was an intrinsic distinction between giving up the use of a thing and the thing itself, solemn and simple vows were said to be intrinsically distinct. St. Thomas and most Thomists defended this viewpoint. Followers of Francisco Suarez and Duns Scotus found the difference to be purely extrinsic to the vow and to depend solely upon the recognition and acceptance of the

own, use and administer temporal goods. Simple profession, whether temporary or perpetual, rendered acts contrary to the vows illicit, but not invalid unless it was expressly stated otherwise; while solemn vows rendered such acts also invalid.⁴⁹

Religious who pronounced simple vows, whether temporary or perpetual, were permitted to retain the title to personal property and were capable of acquiring more unless the constitutions determined otherwise.⁵⁰ Such goods, however, were to be added to one's patrimony since the simple vow of poverty did not allow for the free use and administration of temporal goods. Furthermore, whatever a religious, whether in simple or solemn vows, acquired by personal industry or in respect to the institute, belonged to the institute.⁵¹ Thus

Church. L.G. Fanfani and K. O'Rourke, Canon Law for Women Religious, Dubuque, The Priory Press, 1961, p. 188; See also R. McGrath, The Distinction Between Solemn and Simple Vows, Washington, D.C., The Catholic University of America Press, 1953, 60 p. (Canon Law Studies, 351).

⁴⁹CIC 1917, c. 579: "Simplex professio, temporaria sit vel perpetua, actus votis contrarios reddit illicitos, sed non invalidos, nisi aliud expresse cautum fuerit: professio autem sollemnis, si sint irritabiles, etiam invalidos."

⁵⁰CIC 1917, c. 580, §1: "Quilibet professus a votis simplicibus, sive perpetuis sive temporariis, nisi aliud in constitutionibus cautum sit, conservat proprietatem bonorum suorum et capacitatem alia bona acquirendi, salvis quae in can. 569 praescripta sunt."

⁵¹CIC 1917, c. 580, §2: "Quidquid autem industria sua vel intuitu religionis acquirit, religioni acquirit."

salary, royalties, proceeds from artistic works, offerings received on the occasion of apostolic work, stole fees and Mass stipends belonged to the institute.

Before profession of simple vows a novice had to cede the administration of any temporal goods actually possessed -- money, bonds, stocks, real estate, etc. -- to another moral or physical person.⁵² A novice in a religious congregation before professing simple vows was also admonished to make a last will in case of death in order to dispose of property actually possessed or which might be subsequently acquired.⁵³ This prescription did not apply to novices in orders who eventually professed solemn vows.

Simply professed religious prior to solemn profession were required to make a renunciation of temporal goods actually possessed, unless an indult was obtained from the Holy See. The beneficiary of such a renunciation was any

CIC 1917, c. 594, §2: "Quidquid a religiosis, etiam a Superioribus, acquiritur ad normam can. 580, §2, et can. 582, n. 1, bonis domus, provinciae vel religionis admisceatur, et pecunia quaelibet omnesque tituli in capsula communi deponantur."

⁵²CIC 1917, c. 569, §1: "Ante professionem votorum simplicium sive temporariorum sive perpetuorum novitius debet, ad totum tempus quo simplicibus votis adstringetur, bonorum suorum administrationem cedere cui maluerit et, nisi constitutiones aliud ferant, de eorundem usu et usufructu libere disponere."

⁵³CIC 1917, c. 569, §3: "Novitius in Congregatione religiosa ante professionem votorum temporariorum testamentum de bonis praesentibus vel forte obventuris libere condat."

person capable of possessing, including the religious institute.⁵⁴

Solemnly professed religious then surrendered the natural right of possession so that they no longer retained a patrimony, or the right and capacity to acquire temporal goods.

After profession of solemn vows, without prejudice to special indults from the Holy See, all temporal goods -- property, revenues, salaries, pensions, bequests, legacies, and wills -- that accrued to the solemnly professed belonged to the order, if the order was capable of ownership.⁵⁵

⁵⁴CIC 1917, c. 581, §1: "Professus a votis simplicibus antea nequit valide, sed intra sexaginta dies ante professionem sollemnem, salvis peculiaribus indultis a Sancta Sede concessis, debet omnibus bonis quae actu habet, cui maluerit, sub conditione secuturae professionis, renunciare."

A. Vermeersch notes that such indults referred to in c. 581, § 1 were conceded to religious for extraordinary cases, especially for the avoidance of civil difficulties. Thus solemnly professed in Belgium and Holland were allowed to retain temporal goods owned before profession and to acquire property after profession. They were also capable of administering their property and disposing of the dominion over it. (Epitome iuris canonici, 8th ed., vol. 1, Parisiis-Brugis, Desclée de Brouwer, 1967, n. 737, pp. 592-593).

⁵⁵CIC 1917, c. 582: "Post sollemnem professionem, salvis pariter peculiaribus Apostolicae Sedis indultis, omnia bona quae quovis modo obveniunt regulari:

n. 1: In Ordine capaci possidendi, cedunt Ordini vel provinciae vel domui secundum constitutiones."

Canon 582 distinguished between orders whose primitive rule forbade ownership in common, not only in the individual members. Such were the brown Franciscans, the Capuchins, the Carmelites. If an order was incapable of ownership, the Holy

A religious, whether in solemn or simple vows, who obtained an indult of exclaustation automatically received permission to look after personal and ordinary financial needs in a spirit of poverty while away from the institute. This included permission to acquire, administer, and use temporal goods in so far as these were necessary for sustenance and the purpose of the indult, e.g., the support of parents.

Even so, the obligations of the vow of poverty, whether simple or solemn, for an exclaustated religious were not entirely suspended.

J. Comyns summarized the position of an exclaustated religious as regards the vow of poverty by saying that temporal goods which an exclaustated religious acquired ex industria sua over and above reasonable needs were acquired for the institute to which the exclaustated religious belonged.⁵⁶ E. Bergh was more definite. He stated that if a religious earned anything it belonged to the institute which in turn could use it to provide for the needs of the exclaustated member.⁵⁷

See became the owner of such property according to no. 2 of the canon.

⁵⁶J. Comyns, loc. cit., p. 343.

⁵⁷E. Bergh, "Religieux hors de communauté", in Revue des communautés religieuses, 30(1957), p. 153.

A. Krimmel held that the disposition taken by a religious before first profession, concerning the administration of patrimony and the disposition of revenues, was suspended for the duration of an indult of exclausturation.⁵⁸ However, E. Bergh stated that the congregation did not have to cede to an exclaustreated religious the administration of patrimonial goods if the congregation was their administrator.⁵⁹ If the religious had disposed of revenues in favor of the congregation, the congregation could give to the exclaustreated religious some part of them, leaving intact its role as administrator. This was not incompatible with the exclaustreated member's new situation. Indeed, in some instances institutes contributed to the support of an exclaustreated woman by giving her the income from her dowry.⁶⁰

During the period of exclausturation, religious were not allowed arbitrarily to change the state of their patrimonial goods or to receive others without the required

⁵⁸A. Krimmel, Die Rechtsstellung der ausserhalb ihres Verbandes lebenden Ordensleute, Paterborn, Schöningh, 1957, p. 94; see CIC 1917, c. 569.

⁵⁹E. Bergh, "Religieux hors de communauté", p. 152; see also M. Dortel-Claudot, Les religieuses hors-communauté, Paris, Comité permanent des religieux de France, Comité canonique, 1971, p. 20.

⁶⁰T. Kealy, Dowry of Women Religious, Washington, D.C., The Catholic University of America Press, 1941, p. 111 (Canon Law Studies, no. 134); see also A. Larraona, "Commentarium codicis", in Commentarium pro religiosis, 21(1940), p. 147.

authorization.⁶¹ If they did act in this fashion such acts were generally illicit, but not invalid.⁶² If according to the constitutions a religious in simple vows was allowed to add personal patrimony but within certain limitations, an exclaustrated religious had to observe those limitations, unless the indult made other provisions.⁶³ In the case of nuns, consent of the local Ordinary was necessary; if, however, the monastery was under the direction of regulars, the permission of the regular superior was also needed.⁶⁴

If an essential condition was attached to a gift given to an exclaustrated religious -- such as that it was not to

⁶¹CIC 1917, c. 580, §3: "Cessionem vel dispositionem de qua in can. 569, §2, professus mutare potest non quidem proprio arbitrio, nisi constitutiones id sinant, sed de supremi Moderatoris licentia, aut, si de monialibus agatur, de licentia Ordinarii loci et, si monasterium regularibus obnoxium sit, Superioris regularis, dummodo mutatio, saltem de notabili bonorum parte, non fiat in favorem religionis; per discessum autem a religione eiusmodi cessio ac dispositio habere vim desinit."

c. 583: "Professis a votis simplicibus in Congregationibus religiosus non licet:

§1: Per actum inter vivos dominium bonorum suorum titulo gratioso abdicare;

§2: Testamentum conditum ad normam can. 569, §3, mutare sine licentia Sanctae Sedis, vel, si res urgeat nec tempus suppetat ad eam recurrendi, sine licentia Superioris maioris aut, si nec ille adiri possit, localis."

⁶²CIC 1917, c. 579.

⁶³J. Comyns, loc. cit., p. 343.

⁶⁴CIC 1917, c. 580, §3.

be added to one's patrimony for the beneficiaries of one's will, nor go to the community, but only for the religious to be used personally -- the religious had to refuse it.⁶⁵ The reason was primarily that it was contrary to the common life of canon 594. It was either to go to one's patrimony or to the community. Gifts were not to be accepted without permission when a religious was aware that the superior would be unwilling to give permission, when the constitutions or customs prohibited it, or when the gift was onerous.

The exclaustrated was not to buy things which were not in keeping with religious life or were not necessary. Prudence in dress, in behavior and in life style were prescribed.

A general permission, for ordinary things -- food, clothing, lodging -- was contained in the indult.⁶⁶ For extraordinary items, however, such as the acceptance of an inheritance or the freedom to purchase an automobile, special permission was needed. E. Bergh maintained that this

⁶⁵A. Mayr, Peculium and Simple Vows, Rome, Pontificium Athenaeum Angelicum, Typis Pontificiae Universitatis Gregorianae, 1961, p. 86.

⁶⁶"Ce Religieux, bien qu'astreint au voeu de pauvreté, pourra néanmoins prélever sur ce qu'il gagnerait pour pourvoir a ses besoins, et cela de facon à vivre honnêtement selon son rang", E. Jombart, "Exclaustration", in Dictionnaire de droit canonique, R. Naz, ed., vol. 5, Paris, Letouzey et Ané, 1953, col. 611 (hereafter cited as DDC).

permission was to be granted by the religious superior,⁶⁷ while E. Jombart believed that it was the Ordinary who was competent to grant it.⁶⁸ This seems to be so since canon 639 prescribed that the religious was subject to the Ordinary "even by virtue of the vow of obedience."⁶⁹ When dealing with the use of goods of a religious institute the competent person to give such permission was the superior, although as far as the practical use of goods by an exclaustated religious was concerned, the competent person was the local Ordinary.

b) The vow of obedience

Regarding the vow of obedience⁷⁰ for religious who had

⁶⁷E. Bergh, "Exclaustation", in Revue des communautés religieuses, 15(1939), p. 52.

⁶⁸E. Jombart, "Exclaustation", in DDC, vol. 15, col. 611.

⁶⁹CIC 1917, c. 639.

⁷⁰Canonists have long made a distinction between religious obedience and canonical obedience. Religious obedience is the submission of one's will to a legitimate superior acting in the place of God according to the rule and constitutions of a particular institute. Religious obedience is more extensive than canonical obedience in that it embraces all phases of the subject's life. Canonical obedience is restricted to those matters prescribed by canon law. The object and extent of canonical obedience is determined by one's state and office in the Church. The bishop is entitled to enjoin or enforce the common law which governs the clerical state and office in general. The obedience of the clergy extends to whatever concerns their state and their office. See C. A. Bachofen, A Commentary on the New Code of Canon Law, vol. 2, St. Louis, B. Herder,

obtained an indult of exclaustation from the Apostolic See, the 1917 Code legislated that such religious were henceforth subject to the Ordinary of the place where they resided instead of to their proper religious superiors.⁷¹ Thus the vow of obedience remained intact. Exclaustated religious owed to the local Ordinary not only canonical obedience like each cleric or member of the faithful, but also the religious obedience promised at profession. Thus, he exercised not only jurisdiction, but also dominative power⁷² over such religious persons.

1936, pp. 72-73.

⁷¹CIC 1917, c. 638.

⁷²Dominative power consisted in that power of commanding others which arose from religious profession, in virtue of which the person who embraced religious life became subject to the government of the superiors of the institute. Even though it was founded on religious profession, dominative power did not necessarily presuppose this profession. Novices and postulants, for example, even though they had not pronounced vows, were still bound in conscience to obey their rightful superiors by virtue of their free entrance into religious life. By reason of dominative power, superiors had the following authority: 1) to give commands, issue precepts and make regulations in accordance with the constitutions proper to their institute; 2) to impose penances on those who were guilty of faults. For example, they could impose fasting or certain pious practices. They could not, however, unless they were Ordinaries, inflict true canonical penalties such as excommunication or interdict. 3) They could dispense from the observance of the constitutions, not at will, but within the limits determined by the constitutions. They could not dispense from the laws of the Church (L. Fanfani and K. O'Rourke, op. cit., pp. 58-59).

c) The vow of chastity

The indult of exclausturation did not alter or affect a religious' vow of chastity.⁷³ Exclaustrated religious were to live in such a way as to observe this vow completely. Furthermore, they were to avoid all that was adverse to their consecration to God by religious profession. Those who attempted marriage were ipso facto dismissed from the institute.⁷⁴ In the case of a cleric in major orders or of a religious in solemn vows the marriage was invalid⁷⁵ and a latae sententiae excommunication reserved to the Apostolic See was incurred.⁷⁶ If a religious in simple perpetual vows attempted marriage, it was unlawful but not ipso facto

⁷³The vow of chastity was considered the consecration of a human person to God in an integrity of mind and body which excludes any use of the sexual faculties. Chastity was a virtue which disposed one to the observance of God's laws in all matters concerning sexual life. See L. Örsy, "Chastity in Religious Life", in Review for Religious, 26(1967), pp. 604-605.

⁷⁴CIC 1917, c. 646, §1: "Ipso facto habendi sunt tanquam legitime dimissi religiosi:

n.3: Attendantes au contrahentes matrimonium aut etiam vinculum, ut aiunt, civile."

⁷⁵CIC 1917, c. 1087.

⁷⁶CIC 1917, c. 2388, §1.

invalid," and an excommunication latae sententiae reserved to the Ordinary was incurred in this case.⁷⁸

2. Other considerations

a) Loss of active and passive voice

Among the prerogatives of community members was the right to vote and be voted for. The 1917 Code protected this right to ensure the common good of the institute.⁷⁹ Exclaustrated members, whether they voluntarily sought the indult of exclaustation or not, were for the interim deprived of this right. "Whoever has obtained from the Apostolic See the indult of exclaustation shall be without active and passive voice during the period expressed in the indult [...]."⁸⁰ Religious who had been granted an indult of exclaustation from the local Ordinary were also deprived of active and passive voice as stipulated in canon 639.⁸¹ The right of active and passive voice was more directly

⁷⁸CIC 1917, c. 1088.

⁷⁹CIC 1917, c. 2388, §2.

⁸⁰Active voice was the right to vote while passive voice was the capacity to be voted for.

⁸¹CIC 1917, c. 639.

⁸²Pontificia Commissio ad Codicis Canones Authentice Interpretandos, Reply, 12 November 1922, n. III, in AAS, 14(1922), p. 662; trans. in CLD, vol. 1, pp. 326-327.

linked to the religious community whose burdens the exclaustrated did not carry. Thus, all exclaustrated members were deprived of the right to vote and were ineligible to hold office. If an exclaustrated religious voted in an election, according to the 1917 Code, the vote was null, but not the election itself.⁸²

C. Pionteck held that by the acceptance of the indult, ipso facto, exclaustrated religious lost any office which they held in the institute.⁸³ Although this did not seem to be a necessary consequence, no doubt a religious superior would have taken care to see that the exclaustrated resigned beforehand or have declared the office vacant and appointed someone else instead.⁸⁴

If the religious returned to the community at the termination of the period of exclaustation or before the indult expired, nothing prevented active and passive voice from being restored. Constitutions could define more precisely the state of the exclaustrated who had returned to religious life.⁸⁵

⁸²CIC 1917, c. 167, §5.

⁸³C. Pionteck, op. cit., p. 112.

⁸⁴J. Comyns, loc. cit., p. 345.

⁸⁵C. Pionteck noted that the constitutions of the Friars Minor of 1922, n. 132, prescribed that upon the return of an exclaustrated member to community life, he was deprived of active and passive voice for one year. C. Pionteck, op. cit., p. 114.

b) Deprived of the right to wear the religious habit

The 1917 Code determined that those who received an indult of exclausturation from the Apostolic See were not to wear the religious habit during the time of exclausturation. "Whoever has obtained from the Apostolic See the indult of exclausturation [...] must put off the religious habit."⁶⁶ Before the 1917 Code this was not a universal practice but was determined only by the indult itself. Indeed, prior to the 1917 legislation, the Congregation for Religious occasionally allowed exclaustrated religious to wear the habit if the superiors favored such a request, and there was no scandal. The 1917 Code established a uniform practice to emphasize the dignity of the religious state and habit so that if any abuse was committed by the exclaustrated religious, the respective institute would not be accountable for it. An exclaustrated cleric was to wear the attire prescribed by the local Ordinary in accord with legitimate custom.⁶⁷ Religious who were not clerics in religious life were obliged to wear secular clothing suitable to their condition.

⁶⁶CIC 1917, c. 639.

⁶⁷ T. Schaefer, op. cit., n. 1535, p. 914-915, also: CIC 1917, c. 136, §1: "Omnes clerici decentem habitum ecclesiasticum, secundum legitimas locorum consuetudines et Ordinarii loci praescripta, deferant, tonsuram seu coronam clericalem, nisi recepti populorum mores aliter ferant, gestent, et capillorum simplicem cultum adhibeant."

In particular cases and for special reasons the local Ordinary could determine whether religious of diocesan right could retain the religious habit while exclaustrated."⁸⁸ Generally, the local Ordinary did not give such permission. In fact, if the indult had been obtained from the Holy See, the local Ordinary could not give such permission, since the law dealing with the laying aside of the religious garb, by force of canon 639, was common law. Ordinaries below the Roman Pontiff could not dispense from common laws of the Church, not even in particular cases, unless this faculty had been granted to them explicitly or implicitly."⁸⁹

The law focused more directly on the good of the religious state, and reserved the religious habit to those who lived in community. This legislation looked to the greater common good even if consequently an exclaustate might have been deprived of a personal good."⁹⁰

⁸⁸Pontificia Commissio ad Codicis Canones Authentice Interpretandos, Reply, 12 November 1922, in AAS 14(1922), n. III, p. 662; trans. in CLD vol. 1, pp. 326-327.

⁸⁹CIC 1917, c. 81.

⁹⁰See C. Sartori, Jurisprudentiae ecclesiasticae elementa, 3 ed., Romae, Pontificum Athenaeum Antonianum, 1955, n. xviii, p. 55-56; C. Dello Iacono, De habitu ecclesiastico dissertatio historico critica, Romae, Pontificum Athenaeum Antonianum, Carpentieri, 1953, pp. 87-88 (Facultas juris canonici, no. 30).

c) The Divine Office and other spiritual exercises

By virtue of their constitutions most religious orders of men and women and also some religious congregations were obliged to public recitation of the divine office in common.⁹¹ The 1917 Code further prescribed that "[...] the solemnly professed who have been absent from choir must, the lay brothers excepted, recite the divine office."⁹² These same religious who were conceded an indult of exclausturation were held to the private recitation of the divine office under grave obligation. "Whoever has obtained from the Apostolic See the indult of exclausturation remains bound by his vows and other obligations of his profession compatible to his state."⁹³

⁹¹CIC 1917, c. 610, §1: "In religionibus sive virorum sive mulierum, quibus est chori obligatio, in singulis domibus ubi quatuor saltem sint religiosi choro obligati et actu legitime non impediti, et etiam pauciores, si ita ferant constitutiones, debet ad normam constitutionum quotidie divinum officium communiter persolvere."

c. 578, §2: "Eadem obligatione tenentur observandi regulas et constitutiones, sed, ubi viget chori obligatio, divini officii privatim recitandi lege non obstringuntur, nisi sint in sacris constituti aut aliud constitutiones expresse praescribant."

⁹²CIC 1917, c. 610, §3: "In eisdem religionibus sive virorum sive mulierum, sollemniter professi qui a choro abfuerunt, debent, exceptis conversis, horas canonicas privatim recitare."

⁹³CIC 1917, c. 639.

Though not all exclaustrated religious were obligated to recite the canonical hours, it was usually held that they were bound to perform the spiritual exercises specified by the constitutions of their religious institute in so far as was reasonably possible, e.g., fast and abstinence, mental prayer, private recitation of daily prayers, attending Mass, frequent reception of the sacrament of penance, recitation of the rosary, examination of conscience."⁴

Exclaustrated religious bound to the canonical hours were to follow the breviary and calendar of their institute."⁵ As to the celebration of Mass, exclaustrated priests were to use the diocesan calendar, unless the Mass was celebrated in a private oratory, in which case they could celebrate according to their own proper calendar."⁶

d) Financial support from the institute

Prior to the 1917 Code, a religious cleric at times was not granted an indult of exclaustation unless a bishop was

⁴T. Schaefer, op. cit., n. 1534, p. 914.

⁵L. Fanfani, De iure religiosorum, 3 ed., Romae, Marietti, 1949, n. 482, p. 654.

⁶Additiones et variationes in rubricis Missalis ad normam bullae "Divino afflatu", Missale romanum, ex decreto sacrosancti concilii tridentini restitutum, S. Pii V, ed. al. pontificum cura recognitum a Pio X reformatum et Benedicti XV auctoritate vulgatum, Turonibus sumptibus et typis Mame, 1952, IV, no. 6, p. xxxii.

willing to accept him and he could prove that he had sufficient support."⁷ If a religious cleric lacked such support, he was to provide for it personally through the sacred ministry, otherwise by other employment or by returning to the institute. Lay religious were to support themselves by working."⁸ In this way the institute was free from the burden of charitable subsidy for those who had voluntarily obtained an indult of exclauration. Superiors who executed indults of exclauration were to be observant of the conditions by which they were granted to the recipient in order to avoid any unjust presumptions by the exclaured regarding a charitable subsidy. If in the rescript a charitable subsidy was stipulated, or if it was a question of a religious living outside the cloister for reasons of mental or physical illness, the institute was bound to give such support. If there was any doubt about giving subsidy, it was customary for the superior to contact the Holy See to clarify the situation.

⁷Sacra Congregatio de Episcoporum et Regularium, Response, 11 September 1833, in Analecta ecclesiastica: Revue Romaine théorique et pratique de théologie, droit canonique, jurisprudence, liturgie, 2(1894), p. 415.

⁸Sacra Congregatio de Episcoporum et Regularium, Response, 3 April 1855, in Analecta ecclesiastica, 2(1894), p. 416.

The 1917 Code did not explicitly determine whether or not the institute was to provide financial assistance to an exclaustrated religious. Canonists had only brief comments to make on this subject; they based their argumentation for such assistance on either justice or charity.

Generally it was held that religious had a right to financial support in justice only when, because of necessity and through no fault of their own, they were exclaustrated with the permission of superiors.⁹⁹ This was deduced from the fact that through religious profession an institute contracted the obligation to care for the needs of a religious, as long as the religious had not voluntarily left religious life or had not been dismissed for a just and reasonable cause.

If the exclaustrated religious did not return to the institute when the indult of exclausturation expired, the title of justice ceased because the religious remained outside the community against the will of the superior, who had the right to discern whether or not a reasonable case for exclausturation existed.¹⁰⁰ Assistance in this case was thought to be harmful to the exclaustrated religious since it delayed the return to the institute.

⁹⁹Sacra Congregatio de Episcoporum et Regularium, 20 March 1868, Reply, in ASS 3(1868), pp. 533-535.

¹⁰⁰C. Pionteck, op. cit., p. 50.

If a religious sought the indult for merely personal reasons not compatible with profession and against the will of the superior, according to C. Pionteck there was no obligation in justice or charity to furnish financial assistance.¹⁰¹

T. Schaefer¹⁰² in general denied the obligation of the institute to supply such financial aid, unless the religious was reduced to dire need. Yet, if an exclaustated religious did not have sufficient means available for support, both J. Comyns¹⁰³ and J. Gallen¹⁰⁴ believed that it was prudent for the religious institute in charity to offer some financial help so that the religious would not be embittered and would, perhaps, be more inclined to return to the institute after the period of exclaustation had expired.

¹⁰¹Ibid., p. 163.

¹⁰²T. Schaefer, op. cit., n. 1535, p. 315.

¹⁰³J. Comyns, loc. cit., p. 347.

¹⁰⁴J. Gallen, "Exclaustation and Secularization", p. 228.

C. THE RIGHT AND PRIVILEGES OF THE EXCLAUSTRATED

1. Membership in the institute

Though exclaustrated religious were deprived of certain rights,¹⁰⁵ they enjoyed the privileges granted to religious by common law.¹⁰⁶ They also were able to make use of the spiritual privileges granted to their respective institutes, such as indulgences.

¹⁰⁵These included right to the common life; to vote and be voted for; to wear the religious habit; and, in the case of certain clerical religious of pontifical right, to enjoy exemption because of the provision of common law that one was subject to the obedience of the local Ordinary.

¹⁰⁶These privileges included the privileges of the canon, of forum, immunity, and competence (CIC 1917), cc. 119-122, c. 614. The 1917 Code under the title privilegium canonis affirmed that clerics and religious were safeguarded by law and that one committed a sacrilege if bodily injury was done to a cleric or religious. The title privilegium fori provided that clerics and religious were exempt from the civil and criminal forum and should be judged by an ecclesiastical tribunal, unless lawful provision to the contrary was made. Privilegium immunitatis consisted in immunity from military service and from civil offices which were foreign to the clerical or religious state. Privilegium competentiae allowed clerics and religious a certain immunity from debt in that they could not be forced to give up that part of their salary, pension or other income that was necessary for personal support. This privilege did not extinguish debts incurred by an exclaustrated religious but only temporarily suspended the obligation of paying them. See T. Bouscaren, A. Ellis, F. Korth, op. cit., pp. 105-107; C. A. Bachofen, op. cit., pp. 56-68.

2. The right to spiritual privileges in the institute

"One who has obtained an indult of exclausturation from the Holy See [...] enjoys the merely spiritual privileges of his institute [...]." Exclausturated religious continued, then, to share in the spiritual fruits and good works of the institute as did the members and the benefactors of the institute.¹⁰⁷ Finally, those who died had the right to the same suffrages as other religious because they were still bound by religious profession and a spiritual bond existed between the institute and them.¹⁰⁸

3. The right to return to the institute

The right of a voluntarily exclausturated religious to return definitively to the institute always remained open, unless grave reasons militated against this. This right to return was accorded to religious both of pontifical and of diocesan right. It was based on two juridic principles: a) the exclausturated remained incorporated into their proper religious institute since their vows were still in force,¹⁰⁹

¹⁰⁷CIC 1917, c. 639.

¹⁰⁸J. Creusen, Religious Men and Women, p. 255.

¹⁰⁹Religious profession involved a giving of oneself to an approved institute and an acceptance of the same by a legitimate authority on behalf of the institute. It was both a quasi-contract between the religious and God, legally recognized by the Church, and a bilateral contract between the religious and the institute. This agreement created a

and b) the indult of voluntary exclausturation was a personal privilege which could be renounced at any time.¹¹⁰ This, however, did not imply that the superior could not forbid an exclaustrated person from making casual visits or social calls to the community during the period of exclausturation.

When the time of the indult of exclausturation had expired the religious was to return to the common life. If the same cause for which the indult was granted continued or another arose, an extension had to be obtained from the competent ecclesiastical authority.

The right of the exclaustrated to return to their community imposed upon the religious institute a reciprocal obligation to receive them back to the common life. If a reason warranted, the religious, with proper consent and according to the constitutions, could transfer to another house, province or institute;¹¹¹ for grave reasons, however,

complex of reciprocal rights and obligations between the institute and the religious. See J. Abbo and J.D. Hannan, The Sacred Canons, A Concise Presentation of the Current Disciplinary Norms of the Church, vol. 1, St. Louis, Mo, Herder, 1957, p. 589; also J. Creusen, Religious Men and Women, p. 171.

¹¹⁰CIC 1917, c. 72, §2: "Privilegio in sui tantum favorem constituto quaevis persona privata renunciare potest."

¹¹¹CIC 1917, c. 632.

the institute could dismiss the religious according to the norms of law.¹¹²

An exclaustrated religious who returned to the institute was entitled to the restitution of those privileges which had been suspended during the period of exclaustation unless the constitutions provided otherwise.

An exclaustrated religious could be called back by the legitimate superior before the indult expired, if this was explicitly stated in the text.¹¹³ If it was not determined, the religious could continue to use the indult, whether for a definite time or as long as the cause lasted. The reason for this was that the indult was granted by a higher authority.¹¹⁴

A superior who considered the cause for exclaustation to be insufficient could not, nevertheless, impede the religious from using the privilege granted. Rather, it belonged to the Holy See to make such a determination.

Finally, if an exclaustrated religious was denied the right to return, recourse could be had to the Apostolic See in support of the right to be readmitted to the institute.

¹¹²The 1917 Code gave different reasons and conditions for dismissal. See canons 646-672.

¹¹³T. Schaefer, op. cit., pp. 911-912.

¹¹⁴CIC 1917, c. 204, §2: "Attamen rei ad Superiorem delatae ne se immisceat inferior, nisi ex gravi urgentique causa; et hoc in casu statim Superiorem de re moneat."

D. A RELIGIOUS CLERIC ON VOLUNTARY EXCLAUSTRATION

1. A religious cleric in major orders

Prior to the 1917 Code the Holy See did not grant a religious in major orders an indult of secularization unless a legitimate patrimony was secured and a bishop willing to accept such a cleric was found. In the event that these conditions could not be met, the cleric was suspended.

The 1917 Code established a new discipline in that all who sought an indult of exclaustation were equal before the law. A bishop was assigned to all exclaustated religious: "[The religious] is subject to the Ordinary of the territory where he lives by reason of the vow of obedience, instead of to the superiors of his own institute."¹¹⁵ Thus all religious, whether clerical or lay, who sought exclaustation were governed by canons 638 and 639 of the 1917 Code.

The Ordinary to receive a voluntarily exclaustate² religious priest was the Ordinary of the place where he established residence. Though the priest was still ascribed in his religious institute by means of perpetual profession, he became subject to the jurisdiction and dominative power of the Ordinary of the place of his residence. This Ordinary could permit the religious priest to exercise the ministry and determine the extent of its exercise.

¹¹⁵CIC 1917, c. 639.

Since the priest remained incardinated in his own institute, the Ordinary was not obliged to give him faculties simply because he had been received into the diocese or admitted to exercise the ministry. If the priest could not find a bishop willing to let him exercise ministry, his superior could give him permission to remain outside the cloister for six months to seek one. As soon as an Ordinary was willing to let him exercise the ministry, the priest could then make use of the indult of exclausturation and became subject to that Ordinary.

2. Qualified exclausturation

Exclausturatio qualificata was not mentioned in the 1917 Code, but was introduced into the praxis of the Holy See around 1953.¹¹⁶ It was a favor¹¹⁷ granted to a priest who

¹¹⁶Sacra Congregatio de Religiosis, 1955, Private response, "Qualified exclausturation: Practice of the Sacred Congregation", in CLD, vol. 4, p. 244. (The formula for this form of exclausturation can be found in Leges Ecclesiae, ed. X. Ochoa, Roma, Commentarium pro Religiosis, vol. 2, 1969, n. 2380, col. 3213-3214 and dated simply October, 1953. A translation is given in CLD, vol. 4, pp. 240-242, dated simply 1954. An explanation dated simply "1955" is found in the same volume, pp. 242-244. See also A. Gutiérrez, "Ex iurisprudencia et praxi Sacra Congregatio de Religiosis - De exclausturatione qualificata", in Commentarium pro religiosis, 34(1955), pp. 374-379.

¹¹⁷It was not a pure favor since it had consequences which were independent of the will of the subject or of the executor of the rescript. Some of these were in the nature of privations which changed the religious priest's canonical status for a period as stated in the indult. The indult was

wished to be temporarily dispensed from priestly ministry, or in response to a petition from his superior but eo consentiente, and after a thorough investigation of the case. Once the indult was conceded neither the superior nor the priest could alter its stipulations; competency to change was restricted to the Holy See. This kind of exclausturation was "qualified" since it was an indult sui generis, an indult of its own kind.¹¹⁸

Qualified exclausturation was a true exclausturation and had much in common with the ordinary exclausturation described in canon 639; however, it differed in several ways. 1) Although the exclausturated priest remained a member of his institute, his religious vows were actually suspended to meet the new circumstances; nevertheless, the law of celibacy remained binding. 2) As regards poverty, he was at liberty to acquire goods and dispose of them freely. Some type of gainful employment was expected, but was not to be adverse to the priestly state. The exclausturated priest was also cautioned not to enter into any transactions that would prove financially detrimental to the institute, such as contracting debts for which it eventually would be liable. 3) Since the vow of obedience was suspended, the exclausturated priest was

considered iuri odiosa. "Qualified exclausturation", in CLD, vol. 4, p. 243.

¹¹⁸A. Gutiérrez, loc. cit., p. 375.

not subject to the local Ordinary in virtue of the vow, but remained under the authority and assistance of his institute, so that he could be appropriately helped and charitably led to overcome his crisis. Nevertheless, during the period of exclausturation, he was under the jurisdiction of the Ordinary of the place where he happened to live, as any lay person was. 4) He was bound, not merely permitted, to lay aside clerical attire. 5) He was deprived of the rights and privileges of clerics. 6) Likewise, he was deprived of all obligations and privileges of religious, including those arising from the rule and constitutions. 7) He lacked active and passive voice as those under ordinary exclausturation. 8) The common life could not be freely resumed as in voluntary exclausturation. He was in this respect somewhat in the same position as one who was exclaustured ad nutum Sanctae Sedis, except that his superiors could permit him to return to the institute, still subject to the privations which the indult imposed.¹¹⁹

As regards priestly ministry, the exclaustured priest was instructed not to exercise any ministry proper to his state, and even lost the right to do so. He was not to preach, celebrate Mass or administer the sacraments, except

¹¹⁹See "Qualified exclausturation", in CLD, vol. 4, p. 243; see also A. Gutiérrez, loc. cit., p. 375.

in grave need.¹²⁰ During the time of exclausturation he could participate in the sacraments as a lay man.¹²¹

This extraordinary remedy was intended to help him through a critical phase, perhaps transient, in his personal life. The causes or reasons for granting it were various: grave crisis of faith; serious doubts about the mysteries of faith; extreme nervous strain and weariness rendering him incapable of living the religious and priestly life; ill-health, etc. At times its aim was also the good of the Church; namely, to forestall public scandal or apostasy, attempt at suicide, notable bad example through obstinate abstinence from Mass and other sacraments, repugnance for priestly ministry.¹²²

The community was not financially responsible in justice, but it had to provide some allowance in charity in case of necessity.¹²³ When leaving the community, the priest was to give to the superior a written declaration that

¹²⁰CIC 1917, c. 882 legislated that in danger of death any priest could validly and licitly absolve any penitent from any sin and censure.

¹²¹See "Qualified exclausturation", in CLD, vol. 4, p. 243.

¹²²Ibid., p. 242.

¹²³A. Gutiérrez, loc. cit., p. 375.

he would provide for himself in the world, without placing any burden upon the institute.¹²⁴

It was expected that the superior would do what he could to effect the return of the priest to his regular religious and priestly life. The hope was that after a year or so the priest, experiencing life on the "outside", would perceive the need to resume entirely a devoted rededication to the priestly and religious state. It was a kind of calculated risk that the Church was prepared to take in order to attain regularization of the individual's life within the community. Sometimes the favor succeeded in avoiding complete laicization, or at least prevented it for a time with the hope that things would turn out for the better. In a word, it was probably the lesser of two evils.¹²⁵

Dangers in this kind of exclaustration were that it introduced an element of instability by taking the person away from his normal religious life; furthermore, superiors at times were inclined to use it in order to free themselves from burdensome problems and responsibilities.¹²⁶

Exclaustration of this kind ceased in several ways. When the time specified in the rescript had elapsed, the

¹²⁴J. Fernández, op. cit., col. 1280.

¹²⁵A. Carr, "Exclaustration of Religious Priest", in Homiletic and Pastoral Review, 64(1963), p. 264.

¹²⁶Ibid.

religious was to return to the institute; but until further provision was made he was subject to the privations which the indult imposed. Before the expiration of the time, the indult could be revoked by the Holy See either at the request of the subject or ex officio. Superiors had no power to revoke it. The favor could also be terminated by a definitive indult of laicization from the Holy See. Finally, the priest, could, at the end of the period, decide to petition for an indult of secularization after having found a bishop willing to take him into the diocese.¹²⁷

Conclusion

From this study it can be concluded that the 1917 Code assigned two sources capable of granting exclausturation: the Holy See in cases of religious of pontifical right, and the local Ordinary for those of diocesan right. The ability of local Ordinaries to concede the indult of exclausturation thus became an ordinary power; heretofore it had been delegated.

Previous to the 1917 legislation, the effects of exclausturation were determined by each individual indult. The 1917 Code set down general norms applicable to all religious. According to these norms, the indult of exclausturation was considered a favor, although it suspended

¹²⁷See "Qualified exclausturation", in CLD, vol. 4, p. 244.

the religious' right a) to participate in the common life; b) to enjoy active and passive voice; c) to wear the religious habit; d) to benefit from privileges except those that were merely spiritual.

Although canons 638 and 639 did not mention the reasons for granting this favor, it is clear from the praxis of the Holy See that they had to be of a serious nature, since it was contrary to the obligations which religious undertook by profession. The indult withdrew the person from obedience to the superior, making the exclaustrated religious dependent on the local Ordinary.

The religious had the right and obligation to return to the institute upon expiration of the indult or of the cause for which it had been granted, because religious profession created a spiritual and juridic bond between the religious and the institute.

Although the 1917 Code did not specify that the community was financially responsible for an exclaustrated religious, the jurisprudence at the time maintained that such assistance was to be given when needed, for the sake of charity.

Besides the exclaustation described in canons 638 and 639 of the 1917 Code, there also existed two other types: exclaustatio ad nutum Sanctae Sedis, which will be treated in chapter III, and exclaustatio qualificata. These two

species of exclausturation were introduced by the praxis of the Holy See for specific reasons and situations. Exclaustratio qualificata was granted to a religious priest and was foreseen as a remedy which temporarily dispensed him from priestly ministry in order to help him overcome some crisis in his life.

The 1917 Code clarified the situation of religious who sought a lawful and temporary departure from their institutes. Nevertheless, in spite of the positive qualities of the new legislation regarding exclausturation, there were elements in the law which made it difficult to be effectively applied. For instance, by reserving to the Holy See the concession of exclausturation for religious of pontifical right or to the local Ordinary for religious of diocesan right, superiors needed to have recourse to external authority. This imposed a burden on the government of the institute. Also, the ability of the superior to assist an exclaustrated religious was sometimes jeopardized. By transferring the exclaustrated religious's obedience to the local Ordinary, more often than not there was no one to assist the religious in practical ways or to give needed spiritual guidance and encouragement. Local Ordinaries often did not have adequate understanding of the implications of religious profession or of the obligations of the vows and the rule whose spirit the religious was to maintain while

away from the institute. Furthermore, though the 1917 Code on exclaustation presented a uniform discipline applicable to all religious, unresolved was the question whether temporarily professed religious could petition for this concession. These were concerns which the legislation of the 1983 Code would address, as we shall in the next chapter.

CHAPTER III

THE 1983 LEGISLATION ON EXCLAUSTRATION

This chapter studies exclausturation as legislated in the 1983 Code. Examined specifically are: a) the post-conciliar documents laying the foundation for the revised legislation; b) preparation of the revised canons 686 and 687; c) the content of the canons relating to the competent authority to concede both voluntary and imposed exclausturation; d) the reasons for doing so; e) the present differences between permission of absence (canon 665, §1) and exclausturation.

The revision of the section De religiosis of the 1917 Code was guided by conciliar and post-conciliar directives. Among these was the principle of subsidiarity, giving religious superiors the specific faculties to govern their institutes more expeditiously.

Canon 77 of the 1977 Schema proposed to give to supreme moderators the authority to permit definitively incorporated members to live outside the religious institute for three years. Successive drafts of the legislation on exclausturation consistently allowed supreme moderators of both pontifical and diocesan right institutes, with the consent of their councils, to concede the indult of voluntary exclausturation to their own subjects. Prior legislation, as was pointed out in the previous chapter, reserved the concession of exclausturation to the Holy See in the case of

religious of pontifical right and to the local Ordinary for religious of diocesan right.

As common life and obedience to superiors are considered important elements of the religious life, the legislation on exclausturation in the 1983 Code provides the means and outlines the necessary conditions for the resolution of a particular situation or of a particular difficulty a religious may be experiencing. Religious do not have a right to an indult of voluntary exclausturation; but, because the possibility exists in the law, they have the right to request such a concession.

The 1983 Code includes in the canons on exclausturation explicit reference to imposed exclausturation. This procedure was not noted in the 1917 Code, but had become a practice of the Holy See in the 1950's. Enforced exclausturation is reserved to the Holy See in the case of a religious of pontifical right and to the diocesan bishop in the case of religious of diocesan institutes. Grave reasons necessitate this form of exclausturation. The good of the community as well as the welfare of the religious is intended by this juridical procedure.

Not to be confused with exclausturation is permission to remain outside common living; that is, the permission of absence spoken of in canon 665, §1. The canons on exclausturation in the 1983 Code are placed under the title

"Departure from the Institute". Permission of absence is considered under the title "The Obligations and Rights of Institutes and Their Members", since religious have the obligation to observe common life.

These points shall now be considered in detail in this chapter.

A. POST-CONCILIAR DOCUMENTS LAYING THE FOUNDATION
FOR THE REVISED LEGISLATION

The Second Vatican Council recognized the value of a certain healthy distribution of decision-making authority within the Church. This in turn led to the recognition of certain rights and capacities of persons and communities beneath the supreme authority, and of the value of having responsible decisions made at appropriate levels.

The principle of subsidiarity began to be applied during and after the Second Vatican Council in various areas of the Church's life and governance, and thus found expression in the revision of the 1983 Code. Implementation of this principle was particularly evident in the powers assigned to bishops and religious superiors, powers which previously were delegated to them only by faculty or special indult.

The new faculties necessitated fewer recourses to the Holy See for the governance of dioceses and religious institutes, and had as their purpose to promote better

governance since they permitted a more exact knowledge of persons and situations. Religious were given faculties which allowed them to treat matters at the local level without the usual reference to the Holy See. To provide a proper check and balance, the consent of the superior's council was often needed to permit the valid use of several of these new faculties which were quite influential on the content of canons 686 and 687 on exclauration, and of canon 665, §1 on permission of leave of absence in the 1983 Code.

1. "Cum admotae"

The Rescript, Cum admotae,¹ was issued in 1964. It granted certain powers to superiors general of clerical religious institutes of pontifical law and to abbot presidents of monastic congregations.² The rescript was a response to requests made to the Holy See asking for

¹Secretaria Status, Rescript, "Cum admotae", 6 November 1964, in Acta Apostolicae Sedis (hereafter cited as AAS), 59(1967), pp. 374-378 (hereafter cited as CA, followed by page number and paragraph number); trans. in T. Rouscaren, J. O'Connor, The Canon Law Digest, vol. 6, Milwaukee, Bruce Publishing Co., 1969, pp. 147-153 (hereafter cited as CLD).

²These faculties were also granted to superiors general of clerical societies of pontifical right living in common without public vows. Faculties nos. 9-14 were also granted to superiors general of secular institutes of pontifical right, but could be applied only to clerical subjects who were not incardinated into some diocese. See CA, p. 378, no. 2. See also A. Larraona, "Commentarium in rescriptum pontificium 'Cum admotae'", in Commentarium pro religiosis, 44(1965), pp. 307-312.

faculties whereby superiors could exercise their functions more expeditiously. Pope Paul VI issued the decree so that the internal government of religious institutes might be less burdensome as well as to show his good will towards religious institutes themselves.³

While these faculties were given to superiors general and the abbot presidents, many of them required the intervention of the council before they could be validly exercised. Among these faculties, superiors general and abbot presidents could

with the consent of their council [...] permit their own subjects, for a just cause, to be absent from the religious house but not beyond a year. If this permission is granted because of ill health, it can be granted for as long as the need perdures. If, however, it is granted for the sake of engaging in works of the apostolate, it can be granted, for a just cause, even beyond a year, provided that the apostolic works engaged in are conjoined to the purposes of the religious institute and that the norms of both common law and particular law are observed.⁴

This faculty could be subdelegated by the superior general with the consent of the council to other major superiors who could use it only with their council's consent.⁵

³CA, p. 147, introductory paragraph. See also A. Gutiérrez, "Commentarium in rescriptum pontificium 'Cum admotae'", in Commentarium pro religiosis 44(1965), pp. 11-26.

⁴CA, p. 150, no. 15; trans. in CLD, vol. 6, p. 150.

⁵Ibid.

2. "Religionum laicalium"

"Religionum laicalium"⁶ was issued in 1966 after members of lay religious institutes of both men and women petitioned the Holy See to make use of faculties that had already been granted to superiors general of clerical institutes in order to facilitate the internal government of their institutes. The decree conceded such faculties "insofar as these are not connected with the clerical character."⁷ Most of the faculties granted to superiors general under these circumstances could be used only with the prior consent of the council.

Of note for this study is faculty no. 4 which stipulated that with the consent of their councils, superiors general of lay religious institutes could give permission for absences from their religious houses for one year.⁸ With the council's consent, the superior general could subdelegate

⁶Sacra Congregatio de Religiosi, Decree, "Religionum laicalium", 31 May 1966, in AAS, 59(1967), pp. 362-364 (hereafter cited as RL followed by page number and paragraph); trans. in CLD, vol. 6, pp. 153-156. This decree did not apply to institutes which were under the direction of Propaganda Fide. Propaganda granted the same faculties to Pontifical institutes of women in mission countries on 7 September 1967. Sacra Congregatio de Prop. Fide, faculties, 7 September 1967, in CLD, vol. 7, pp. 72-74.

⁷RL, p. 362, no. 4; trans. in CLD, vol. 6, p. 153.

⁸Ibid. The conditions for granting this faculty were the same as those found in faculty no. 15 of the rescript "Cum admotae".

this faculty to major superiors of the institute who could not use it without the consent of their own councils.*

B. PREPARATION OF THE REVISED CANONS (CC. 686-687)

On March 28, 1963, Pope John XXIII established the Pontifical Commission for the Revision of the Code of Canon Law and appointed some forty cardinals to it.¹⁰ Pope Paul VI on April 17, 1964, named seventy consultors to assist the Commission.¹¹ This task was not formally begun until November 20, 1965, a few days prior to the conclusion of the Council.¹²

On January 15, 1966, conferences of bishops throughout the world were asked to propose additional consultors and to offer suggestions to the Commission.¹³ In June of that same year the consultors were organized into ten study groups (coetus studiorum) and to each of them a section of the Code was entrusted to study and make proposals to the Commission.

The Pontifical Commission for the Revision of the Code drew up a series of ten principles which were to be applied

*Ibid.

¹⁰Pontificia Commissio Codici Iuris Canonici Recognoscendo, Communicationes, Romae, Typis polyglottis Vaticanis, 1(1969), p. 35.

¹¹Ibid., p. 35.

¹²Ibid., p. 38.

¹³Ibid., p. 42-43.

in the revision of the Church's legislation.¹⁴ The Synod of Bishops approved them in 1967.

In 1970 the first general outline of "De institutis perfectionis" was published,¹⁵ and by 1974 a preliminary schema of 126 canons had been prepared.¹⁶ The Commission, after examining and reworking the schema,¹⁷ published an official draft in 1977.¹⁸ The general divisions of the former law were not retained.

Between November 1966 and May 1974, the coetus studying the revision of "De institutis perfectionis" met on some

¹⁴The ten guiding principles for the revision of the Code of Canon Law may be found in Communicationes, 1(1969), pp. 77-85; see also R. Cunningham, "The Principles Guiding the Revision of the Code of Canon Law", in The Jurist, 30(1970), pp. 447-455; J. Beyer, "De institutorum vitae consecratae novo jure", in Periodica, 63(1974), pp. 153-162.

¹⁵Communicationes, 2(1970), p. 175-176.

¹⁶See Communicationes, 6(1974), pp. 48-50; see also M. Said, "The Present State of the Reform of the Code Concerning the Section 'De institutis perfectionis'", in Studia canonica 8(1974), pp. 215, 225-227.

¹⁷See M. Said, loc. cit., pp. 221-222 for an explanation of how the coetus proceeded in its deliberations.

¹⁸See Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum, Romae, Typis polyglottis Vaticanis, 1977, p. x (hereafter cited as Schema canonum), trans. in Pontifical Commission for the Revision of the Code of Canon Law, Schema of Canons on Institutes of Life Consecrated by Profession of Evangelical Councils: Draft, Washington, D.C., Publications Office, U.S. Catholic Conference, 1977, p. xix (hereafter cited as Schema 1977).

fifteen occasions.¹⁹ The challenge the coetus faced was to incorporate the directives of Vatican II and at the same time respect the traditions and diversity of religious institutes.²⁰ The work of the coetus, which began where the decree Perfectae caritatis²¹ and the Motu proprio, Ecclesiae sanctae,²² left off, was guided by the general

¹⁹J. Beyer, "De institutorum vitae consecratae novo jure", p. 146; see also M. Said, loc. cit., pp. 220-221; J. Beyer, "Institutes of Perfection in the New Law of the Church", in The Way-Supplement, 13(1971), pp. 87-91.

²⁰In the beginning the coetus was known as the study group on the law for "religious". The name then changed to "institutes of perfection" in order to include those institutes which were not known as "religious", such as secular institutes, and others. It was then changed to "Institutes of Consecrated Life". See F. Morrissey, "The Spirit of the Proposed New Law for Institutes of Consecrated Life", in Studia canonica, 9(1975), p. 79.

²¹Principles for the renewal of religious life were given in the decree, especially in no. 2. These were: a) the gospel should be the supreme law of all institutes; b) each institute should preserve the spirit and aims of the founder; c) all institutes should share in the life and work of the Church; d) members of institutes should be aware of the contemporary needs of society and the needs and works of the Church; e) renewal must be animated by spiritual renewal. Vatican II, Decree, "Perfectae caritatis", 28 October 1965, in AAS, 58(1966), p. 703, no. 2; trans. in A. Flannery, ed., The Documents of Vatican II, New York, American Press, 1975, pp. 612-613.

²²The norms and spirit according to which this renewal and adaptation were to be effected were not found solely in the decree, "Perfectae caritatis", but also in other conciliar documents, especially in chapters five and six of the dogmatic constitution, "Lumen gentium"; also in Paul VI, Motu proprio, "Ecclesiae sanctae" II, 6 August 1966, in AAS, 58(1966), p. 777, no. 15; trans. in A. Flannery, Vatican Council II. The Conciliar and Post-Conciliar Documents, Collegeville, Liturgical Press, 1980, p. 627, no. 15. The Motu proprio contained norms for the implementation of the

principles for the revision of the whole law. After some initial meetings, the coetus, with M. Said as relator, designated four additional principles which were further to guide the revision of religious law.²³

decree, "Perfectae caritatis".

²³The first principle stated that the juridic norms were to foster the growth of the divine vocation given by God as a gift. The canons were to combine theological and juridical elements, and pastoral elements were not to be neglected.

The second was that the norms were to promote the knowledge of and maintain the spirit of the founder, and encourage fidelity to the spiritual heritage and proper law. Common law was to be limited to fundamental principles applicable to all institutes. Proper law was to express more clearly the special charisms of each institute.

The third required the law to be flexible, thus applying the principle of subsidiarity. The proper law would determine what the common law did not.

The fourth prescribed that the common law was to be formulated to encourage greater participation of members of the institute in government and decision-making. Communicationes, 2(1970), pp. 170-171. See also K. O'Rourke, "The New Law for Religious: Principles, Context, Evaluation", in Review for Religious, 34(1975), pp. 24-26; J. Beyer, "Institutes of Perfection", p. 92; F. Morrissey, loc. cit., pp. 81-82.

There were other principles set out in the report of the coetus which it took into account as it proceeded with its work. They were these: 1) general norms were to concern only matters appropriate to all; 2) discrimination between the institutes of men and women was to be avoided; 3) there was to be a just application of the principle of subsidiarity; 4) harmony was to exist between common and proper law; and, 5) the greatest respect was to be accorded to the dignity of persons, their rights, and mature development. See J. Beyer, "Institutes of Perfection", p. 92; see also: F. Morrissey, loc. cit., pp. 82-83.

The coetus drafting the section on religious law contributed to four major revisions (1977, 1980, 1981, 1982) before the actual promulgation of the 1983 Code. This study will now focus on these four schemas and the final results in the 1983 Code of Canon Law as regards the canons on exclauration.

1. The 1977 Schema

Canon 77 of the 1977 Schema referred to the juridic device of exclauration and the obligations incumbent upon the exclaured religious.

The supreme moderator of an institute, after having heard his council, can for a grave reason allow a definitively incorporated member to live outside the institute, but not beyond a period of three years; in such cases his sacred bonds remain, but he is free from the obligations which are not compatible with the condition of his new life. A member in this state remains under the care of his moderators, but has neither active nor passive voice.²⁴

Canon 77 concerned a form of departure from a religious institute. It was designed to replace canon 639 on exclauration of the 1917 Code. However, canon 77 did not

²⁴"Supremus Instituti Moderator, audito consilio, gravi de causa, sodali definitive cooptato concedere potest, non tamen ultra triennium, ut ipse, firmis sacris ligaminibus, vitam agat extra Institutum exoneratus ab obligationibus quae cum sua nova vitae conditione componi non possunt. Sodalis huiusmodi sub cura suorum Moderatorum manet; caret tamen voce activa et passiva", Schema canonum, 1977; trans. in Schema 1977, p. 45.

refer to the kinds of absences spoken of in canon 606, §2 of the former legislation. In fact, the 1977 draft made no reference to these kinds of absences. It left to particular directories, custom and moderators to regulate "ordinary absences",²⁵ in any degree, and for any length of time.

Canon 77 was restricted to those "definitively incorporated into the institute", a clarification of the former law. In comparison with the 1917 Code, however, canon 77 recognized the power of the supreme moderator to grant, but not to impose exclauration. Though canon 77 was the first in successive drafts of the canons on exclauration, it expressed elements which would appear in the 1983 legislation.

According to canon 77, the supreme moderator could concede the indult for a grave reason after having sought the advice of the council. This could be granted for a period of three years. Canonists were of the opinion that the supreme

²⁵Canonists have noted causes of ordinary absences: health, study, apostolic work within the scope of the institute, serious illness or death of parents or close relatives, settling important business, serious trouble or dispute in one's family, meetings and conventions, special celebrations: ordinations, professions, and weddings of close relatives or friends. J. Gallen, "The Proposed Canons on the Consecrated Life Explained: IV", in Review for Religious, 38(1979), p. 886.

moderator was able to delegate this faculty. The lower superior was also to seek the advice of the council.²⁶

The exclausted member remained obligated to the vows or sacred bonds, and other obligations of the institute which were consonant with the circumstances of the new situation. The indult implicitly gave the exclausted religious permission to acquire, administer, and use temporal goods in so far as these were necessary for sustenance and for the purpose of the indult, for example, the support of parents. The exclausted member remained under the authority of the superior. During exclauration, the exclausted religious lacked both active and passive voice.

The Canon Law Society of America Task Force for the Revision of the Code of Canon Law proposed two changes in canon 77. First, that the words supremus moderator be replaced by competens moderator to allow the proper law to determine this matter. Second, that the words definitive cooptato be omitted from the canon because this was thought too restrictive.²⁷

The Canon Law Society of Great Britain and Ireland proposed several changes in the canon. These were a) that a deliberative vote be required rather than a consultative one;

²⁶Ibid., p. 887.

²⁷Canon Law Society of America, Task Force for the Revision of the Code of Canon Law, Washington, D.C., Catholic University of America, 1978, p. 108.

b) that permission to work away from the institute be given in writing; c) that the local ordinary of the anticipated place of residence of the religious be notified; d) that the religious maintain some link with the institute; and finally e) that the care to be exercised by the moderator be outlined in the constitutions.²⁸

2. Schema of 1980

In the 1980 revision of canon 77,²⁹ the Commission considered whether or not to retain the term exclaustratio. One consultor suggested that the term exoneratio or the phrase absentia ab instituto be used instead of exclaustratio, "because in most institutes there is no such thing as a cloistered life."³⁰ The majority of the consultors, however, agreed to retain the word exclaustratio in order to distinguish between the two institutions, exclaustratio and absentia a domo.³¹

Even at this stage in the drafting of the canons on exclaustration there was not complete unanimity among the

²⁸Canon Law Society of Great Britain and Ireland, Report on the Schema canonum de institutis vitae consecratae per professionem consiliorum evangelicorum, London, Canon Law Society of Great Britain and Ireland, p. 9.

²⁹This canon is listed as number 69 when discussed in Communicationes, 13(1981), pp. 329-330.

³⁰Ibid., p. 329.

³¹Ibid., p. 330.

members of the Commission regarding the competent authority to concede the indult. The secretary, then Archbishop R.J. Castillo Lara, questioned the wisdom of allowing superiors general such authority because "the power in question would lend itself to abuse and has no foundation in law."³² There was consensus, however, that the faculty to concede indults of exclauration not be exclusively reserved to the Holy See, but granted to supreme moderators.³³ The consultors were in favor of reserving exclauration beyond three years to the Holy See or to the diocesan bishop.³⁴ Two consultors suggested that in the case of a priest seeking exclauration, the prior consent of the local Ordinary of the place of residence be obtained.³⁵ Finally, one consultor questioned whether or not the law should be extended regarding the intervention of the local Ordinary to include all clerics and not only priests.³⁶ Though this proposal was not incorporated in the 1980 draft, it would find its place in the 1983 legislation.

After the Commission studied the various elements of voluntary exclauration, consideration was given to a

³²Ibid.

³³Ibid.

³⁴Ibid., pp. 329-330.

³⁵Ibid., p. 329.

³⁶Ibid., p. 330.

specific canon imposing exclaustation for serious reasons. Some hesitation was expressed regarding the phrase ob graves causas, since it was thought this could "foster arbitrariness on the part of superiors."³⁷ The majority of the consultors, however, concurred that a canon on exclaustation imposed by the Holy See or the diocesan bishop be included in the new legislation.³⁸

With these considerations in mind, canon 77 of the 1977 schema was redrafted to form two separate canons, 612 and 613.³⁹ Canon 612 referred to voluntary exclaustation and consisted of three paragraphs. Paragraph one read:

The supreme moderator with the consent of his/her council can, for a grave cause, grant an indult of exclaustation to a perpetually professed member, but not beyond three years and, if it concerns a priest, he must have the previous consent of the Ordinary of the place in which he is to live. It is reserved to the Holy See or, if it concerns an institute of diocesan right, to the diocesan bishop, to extend the indult or to grant one for more than three years.⁴⁰

³⁷Ibid.

³⁸Ibid.

³⁹Codex iuris canonici: Schema Patribus Commissionis reservatum, Civitate Vaticana, Libreria editrice Vaticana, 1980, p. 149 (hereafter cited as Schema 1980); trans. in The 1980 Schema of Canons on Institutes of Consecrated Life, prepared by E. McDonough, Columbus, Springs Press, 1983.

⁴⁰"Supremus Moderator, de consensu sui consilii, sodali a votis perpetuis professo, gravi de causa concedere potest indultum exclaustationis, non tamen ultra triennium, praevis consensu Ordinarii loci in quo commorari debet si agitur de sacerdote. Indultum prorogare vel illud ultra triennium

This paragraph gave supreme moderators competence to concede the indult of exclauration. From a reading of the text it can be noted that while the 1977 draft required the supreme moderator to hear the council, the new canon required that the consent of the council be obtained.

The reasons for conceding the indult remained the same - - for a grave reason -- and for a period not beyond three years, to those in perpetual profession. New was the prescription that in the case of an exclaured priest, prior consent of the Ordinary of the place in which he was to live was required. New also was the articulation of the possibility of extending the indult, in which case the Holy See (for religious of pontifical right), and the diocesan bishop (for those of diocesan right) were alone competent.

Not found in the 1977 draft was any specific mention of the exclauration of nuns (moniales). Paragraph two of canon 612 prescribed:

It belongs to the Apostolic See alone to grant an indult of exclauration for nuns.⁴¹

concedere Sanctae Sedi vel, si de Institutis iuris dioecese agitur, Episcopo dioecese reservatur", Schema 1980, c. 612, §1.

⁴¹ "Pro monialibus indultum exclaurationis concedere unius Apostolicae Sedis est", Schema 1980, c. 612, §2.

Paragraph three of canon 612 considered the state and obligations of exclaustated religious:

A member so exclaustated is free from the obligations which are not appropriate to the new condition of his/her life; he/she remains under the dependence and care of the superiors and also of the Ordinary of the place if it concerns a priest. He/she loses active and passive voice.⁴²

Accordingly, exclaustated members were free from any obligations not appropriate to their new condition, and remained under the dependence and care of superiors. In the case of a priest, he also was under the dependence and care of the Ordinary of the place of residence.

New to the 1980 draft was a canon specifically concerned with imposed exclauration. The practice, however, was not a new form of exclauration, but grew out of the jurisprudence of the Church. In this form, exclauration is imposed by the Holy See for religious of pontifical right and the diocesan bishop for those of diocesan right at the request of the supreme moderator, for a grave cause. The canon called to mind that particularly in such cases equity and charity were to be observed:

⁴²"Sodalis ita exclaustratus exoneratus habetur ab obligationibus quae cum suae vitae nova conditione componi nequeunt, sub dependentia et cura manet suorum Superiorum et etiam Ordinarii loci si de sacerdote agitur. Voce tamen activa et passiva caret", Schema 1980, c. 612, §3.

At the request of the supreme moderator with the consent of his/her council, exclauration can be imposed by the Holy See on a member of an institute of pontifical right or by the diocesan bishop for a member of an institute of diocesan right, for grave cause and with equity and charity being observed."

Though the canons on exclauration in the 1980 schema contained elements which were new, there were common elements in both drafts. Canon 77 of the 1977 draft and canon 612 of the 1980 draft were both placed under the title of "De separatione sodalium ab instituto". The supreme moderator was named in both canons, as was the requirement of a grave cause. The indult was given upon the petition of a perpetually professed member (the 1977 draft spoke of definitive cooptato), for a period of up to three years. A religious so exclausted was free from the obligations which were inappropriate to the new condition of life. In both drafts the exclausted member remained under the care of superiors, but canon 612 also mentioned dependence on superiors. Likewise, both drafts spoke of the loss of active and passive voice.

"Petente Supremo Moderatore de consensu sui consilii exclaustatio imponi potest a Sancta Sede pro sodali Instituti iuris pontificii vel ab Episcopo dioecetano pro sodali Instituti iuris dioecetani, ob graves causas, servata aequitate et caritate", Schema 1980, c. 613.

As regards differences between the two texts, canon 77 did not use the term exclaustratio; rather it spoke of vita extra Institutum. Canon 612 employed the traditional term exclaustratio. Canon 77 prescribed that the indult could be conceded only after the supreme moderator had heard the council. The 1980 draft specified that the consent of the council was required. The part of the 1977 draft concerning obligations spoke of sacred bonds remaining in effect, whereas the 1980 draft presumed but did not contain any direct mention of either sacred bonds or vows remaining in effect. Finally, in the 1977 schema no mention of either diocesan or pontifical right institutes was made. This distinction was introduced into the 1980 Schema.

3. The 1981 Relatio

The 1981 Relatio was a compilation of the observations of the Commission Fathers on the 1980 Schema." Included with these observations were responses from the Secretary of the Commission and the consultants.

The then Archbishop J. Bernardin stressed that exclauration was not a complete separation from the institute, but a licentia to live outside the community,

"Pontificia Commissio Codici Iuris Canonici Recognoscendo, Relatio complectens synthesim animadversionum [...], Civitate Vaticana, Typis polyglottis Vaticanis, 1981, 385p. (hereafter cited as Relatio).

entailing a suspension of the obligations of religious life."⁴⁵ For this reason he argued that canons 612 and 613 should be placed in chapter IX of the Schema, "Obligations and rights of religious". In this way, he suggested, a clear distinction would be made between exclausturation and separation from a religious institute, with which the Schema deals in chapter VI.⁴⁶ This proposal, however, was not accepted by the Commission because "exclausturation is in fact a form of separation from a religious institute."⁴⁷

Cardinal P. Philippe noted the need to specify in paragraph three of canon 612 that exclaustrated priests are "particularly" subject to the local ordinary; thus he suggested the words specialiter si de should be added to the canon, "because all persons who are exclaustrated, not only priests, are subject to their Superiors and the Ordinarius loci." This proposal was accepted so that the canon would read Ordinarius loci praesertim si de sacerdote agitur.⁴⁸

Concerning canon 613 on imposed exclausturation, Cardinal Philippe pointed out the importance of stating clearly to whom a religious exclaustrated by the Holy See was subject: "it seems he is subject to the Ordinary of the place where he

⁴⁵Ibid., p. 153.

⁴⁶Ibid.

⁴⁷Ibid.

⁴⁸Ibid.

is living."⁴⁹ This remark led the Commission to decide that the text of canon 613 on imposed exclauration should become paragraph three of canon 612, while paragraph three of canon 612 on the juridic status of exclausted religious should become canon 613 "so that the law could embrace all forms of exclauration."⁵⁰

Some consideration was given to adding a clause forbidding the exclausted from wearing the habit because of the possibility of abuse. It was not, however, deemed necessary as this question could be dealt with in the decree of exclauration.⁵¹

Finally, Cardinal F. Marty noted that it did not seem that the rights of the religious were sufficiently protected in the process of imposed exclauration. "No process is established, so that the religious remains without the possibility of recursus."⁵² However, it was pointed out that there was such a process in canon 612 and the possibility of having recourse to the Supreme Tribunal of the Apostolic Signatura always remains open.⁵³

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹Ibid., p. 154.

⁵²Ibid.

⁵³Ibid.

4. The 1982 Schema

A final Schema was prepared in 1982 for presentation to the legislator for his approval.⁵⁴ Canons 612 and 613 of the former schema became canons 686 and 687. There were no major changes, however, although the language was somewhat refined. The Schema now awaited official promulgation.

5. The 1983 promulgated canons

The final Schema was sent to Pope John Paul II on April 22, 1982. The Pope reviewed the draft with the help of experts. On January 25, 1983, the new Code of Canon Law was promulgated by the Apostolic Constitution, Sacrae disciplinae leges.⁵⁵

The law for religious is found in Part III of Book Two on the People of God under the title "Institutes of Consecrated Life and Societies of Apostolic Life."⁵⁶ Canons

⁵⁴Pontificia Commissio Codici Iuris Canonici Recognoscendo, Codex iuris canonici: schema novissimum iuxta placita Patrum Commissionis emendatum atque Summo Pontifici praesentatum, Civitate Vaticana, Typis polyglottis Vaticanis, 1982, 308p.

⁵⁵John Paul II, Apostolic Constitution, "Sacrae disciplinae leges", 25 January 1983, in AAS, 75(1983), II, pp. vii-xiv. English trans. in Code of Canon Law, Latin-English edition, Washington, D.C., Canon Law Society of America, 1983, pp. xi-xvi.

⁵⁶John Paul II, Codex iuris canonici, in AAS, 75(1983), II, pp. 126-127 (hereafter cited as CIC, 1983); trans. in Code of Canon Law. The 164 canons on religious law (cc. 573-746) of the 1983 Code are fewer in number than the 197 (cc.

686 and 687 on exclaustation concern us more directly.

Canon 686, paragraph one reads:

With the consent of the council the supreme moderator for a grave reason can grant an indult of exclaustation to a member professed of perpetual vows, but not for more than three years, and with the prior consent of the local ordinary where he must remain, if this concerns a cleric. Extending the indult or granting it for more than three years is reserved to the Holy See or, if there is question of institutes of diocesan right, to the diocesan bishop.⁵⁷

Paragraph two concerns the exclaustation of nuns (moniales):

It belongs to the Apostolic See alone to grant an indult of exclaustation for nuns.⁵⁸

Paragraph three speaks of involuntary or imposed exclaustation:

487-681) found in the former legislation. The particular canons on exclaustation are two in number as in the 1917 Code, with one additional canon, no. 665, dealing with ordinary absences as in the prior legislation.

⁵⁷"Supremus Moderator, de consensu sui consilii, sodali a votis perpetuis professo, gravi de causa concedere potest indultum exclaustationis, non tamen ultra triennium, praevio consensu Ordinarii loci in quo commorari debet, si agitur de clerico. Indultum prorogare vel illud ultra triennium concedere Sanctae Sedi vel, si de institutis iuris dioecessani agitur, Episcopo dioecessano reservatur", CIC 1983, c. 686.

⁵⁸"Pro monialibus indultum exclaustationis concedere unius Apostolicae Sedis est", CIC 1983, c. 686, §2.

If a supreme moderator with the consent of the council petitions, exclauration can be imposed by the Holy See on a member of an institute of pontifical right or by a diocesan bishop on a member of an institute of diocesan right for grave reasons, with equity and charity being observed.⁵⁹

Canon 687 determines the juridical status of those on exclauration, whether requested or imposed:

Exclausted members are free from obligations which are incompatible with their new condition of life and at the same time remain dependent on and subject to the care of their superiors and also the local ordinary, especially if the member is a cleric. The members may wear the habit of the institute unless it is determined otherwise in the indult. However, they lack active and passive voice.⁶⁰

Changes in the promulgated version of these two canons were minor. Both canons 686, §1 and 687 substituted the word clerico for sacerdote of the 1982 draft. In this way not only priests but also transitional and permanent deacons were included in the law requiring the prior consent of the

⁵⁹"Petente supremo Moderatore de consensu sui consilii, exclaustatio imponi potest a Sancta Sede pro sodale instituti iuris pontificii vel ab Episcopo dioecesano pro sodale instituti iuris dioecesani, ob graves causas, servata aequitate et caritate", CIC 1980, c. 686, §3.

⁶⁰"Sodalis exclaustatus exoneratus habetur ab obligationibus, quae cum nova suae vitae condicione componi nequeunt, itemque sub dependentia et cura manet suorum Superiorum et etiam Ordinarii loci, praesertim si de clerico agitur. Habitum instituti deferre potest, nisi aliud in indulto statuatur. Voce tamen activa et passiva caret", CIC 1983, c. 687.

local ordinary for those being exclausted. In canon 687 a phrase was included pertaining to exclausted religious wearing the religious habit.⁶¹

C. CONTENT OF THE LEGISLATION

1. Voluntary exclauration

a) Competent authority to concede

Canon 686, §1 determines that the competent authority to concede an indult of exclauration petitioned voluntarily by a religious professed of perpetual vows is the supreme moderator whether clerical or non-clerical.⁶² Some discussion is necessary regarding this point.

⁶¹Ibid.

⁶²CIC 1983, cc. 657, 658. Exclauration is restricted to perpetually professed religious because such a concession is "neither appropriate or necessary" for temporarily professed religious. McDonough accurately comments: "Those who have made temporary profession are in the process of formation leading to perpetual vows, permitting a partial separation from the institute by exclauration would not be in keeping with their primary purpose. In addition, those in temporary vows are free to leave the institute when their vows expire (c. 657, §1), and during the time of temporary profession they can obtain a total separation from the institute through an indult of departure issued by the supreme moderator in accordance with canon 688, §2." E. McDonough, "Exclauration: Canonical Categories and Current Practice", in The Jurist, 49(1989), pp. 578-579. F. Testera is in agreement with McDonough's opinion. He also notes that canon 665, §1 sufficiently provides for a temporary absence for those in temporary vows, when there is just reason for it. F. Testera, ed., Religious Men and Women in the New Code of Canon Law, Manila, University of Santo Tomas, 1984, p. 81.

Canon 596, §1 says that superiors "enjoy power (potestas) over members, which is defined in universal law and the constitutions."⁶³ This power is conferred by the Church so that superiors may govern within the limits defined by the common or proper law.

There is some discussion regarding the nature of this power. Canonists like E. Gambari,⁶⁴ V. De Paolis⁶⁵ and M. O'Reilly⁶⁶ interpret this power as ecclesiastical power,

⁶³CIC 1983, c. 596 §1.

⁶⁴E. Gambari does not go into a serious analysis. But he points out certain characteristics of the power in canon 596, §§ 1, 3 and thinks it could be called "ecclesiastical" on the basis of canon 145, §1, but it is not to be confused with the power of governance. Its character would depend on the nature of the Institute. E. Gambari, I Religiosi nel nuovo Codice, commento ai singoli canoni, Milano, Editrice Ancora, 1986, pp. 77-78.

⁶⁵V. De Paolis holds there is a power of governance proper to the hierarchy and another type that is ecclesiastical and public. This second type of power is associated with the charismatic dimension of the Church, and with all Institutes of consecrated life, which do not belong to the hierarchical structure of the Church but to its life and holiness. V. De Paolis, "La potestà di governo nella chiesa. Gli uffici ecclesiastici (libro I, cann. 129-196)", in I Religiosi e il nuovo Codice di diritto canonico. Atti della XXIII assemblea CISM, Collevalenza (PG) (8-11 November 1983), Roma, p. 54.

⁶⁶M. O'Reilly argues that this unnamed power was spoken of in the 1917 legislation as dominative and was likened to imperfect ecclesiastical jurisdiction. (See A. Larraona, "Commentarium in partem secundam libri II Codicis, quae est: De religiosis", in Commentarium pro religiosis, 1(1920), p. 212; "Quaestio canonica", in Commentarium pro religiosis, 4(1923), p. 113, and "Commentarium codicis", in Commentarium pro religiosis, 79(1926), p. 31; "De potestate dominativa publica in iure canonico", in Acta Congressus iuridici 1934, Roma, Apud custodiam librariam Pont. Instituti utriusque

though not hierarchical. They hold that supreme moderators enjoy ecclesiastical power (potestas) according to canon 596, §1, but this power is not to be confused with power of governance (potestas regiminis).

According to this opinion by virtue of canon 596, §1 superiors are able to concede indulgences of exclaustation even though not enjoying the additional ecclesiastical power of governance (potestas regiminis) that supreme moderators of

iuris, 1937, vol. 4, pp. 147-180). A decision of the Pontifical Commission for the Interpretation of the Code applied certain norms of jurisdiction to this power enjoyed by superiors and chapters in religious institutes and societies of men and women living in community (Pontificia Commissio ad Codicis Canones Authentice Interpretandos, Reply, 26 March 1952, in AAS 44(1952), p. 497, trans. in CLD, vol. 3, p. 73). This decision, however, did not recognize dominative power as ecclesiastical jurisdiction. Though the 1983 Code dropped the title "dominative power", the clear distinction between the "public power" of superiors and ecclesiastical jurisdiction is maintained, since in 1981, the Code Commission stated that "the power mentioned in lines 1-2 of canon 523 [now canon 596] is not 'potestas regiminis' in the sense of canon 126 [now canon 129], even if it is a certain ecclesiastical power." For this reason canon 523 was divided into three paragraphs as is found in the present canon 596.

CIC 1983, c. 596, §1: "Superiors and chapters enjoy that power over members which is defined in universal law and the constitutions.

§2 Moreover, in clerical religious institutes of pontifical right they also possess ecclesiastical power of governance for both the external and internal forum.

§3 The prescriptions of cann. 131, 133 and 137-144 are applicable to the power referred to in §1." M. O'Reilly, Norms on Consecrated Life: (cc. 572-633; 641-746), [unpublished classnotes], Ottawa, Saint Paul University, 1991-1992, p. 273-275.

clerical institutes of pontifical right enjoy.⁶⁷ For these canonists, an indult of exclauration is an individual administrative act, the concession of which does not necessarily require the grantor to enjoy ecclesiastical power of governance (potestas regiminis).

A. Gutiérrez,⁶⁸ G. Ghirlanda,⁶⁹ and E. McDonough,⁷⁰ on the other hand, view the power mentioned in c. 596, §1 as a concession de iure to the non-ordained by the Supreme Authority and a share in the executive form of potestas regiminis.⁷¹ E. McDonough notes that this concession is

similar to the affirmation of can. 1421, §2 regarding lay judges in ecclesiastical tribunals, [and] is an example of the cooperari possunt in exercise of potestas regiminis ... ad normam iuris that is acknowledged by canon 129, §2. One grant

⁶⁷CIC 1983, c. 596, §2.

⁶⁸A. Gutiérrez, "I canoni riguardanti gli Istituti di vita consacrata e le Società di vita apostolica collocati fuori della parte ad essi riservata", in Vita consacrata, 1(1984), p. 76.

⁶⁹G. Ghirlanda, "Relazioni tra istituti religiosi e Vescovi diocesani", in Informationes 14(1988), p. 67.

⁷⁰E. McDonough, "The Potestas of Canon 596", in Antonianum, 63(1988), pp. 551-606.

⁷¹These canonists concentrate on the evolving understanding of potestas dominativa as a form of partial jurisdiction, and stress that in the Church there is no other power given by Christ, except the power of jurisdiction. This jurisdiction is not perfect in all its functions and this power is but executive in nature. It is a limited jurisdiction in regard to its exercise, according to the norm of and within the limits of universal law, since to it are applicable only canons 131, 133, 137-144.

-- canon 596, §1 -- involves delegation of potestas regiminis iudicialis.⁷²

For these canonists an indult of exclauration is an individual administrative act, and as such requires executive power of governance.⁷³ Canon 596, §2 says that superiors and chapters of clerical pontifical religious institutes possess ecclesiastical power of governance. Canon 668, §1 then is an exception to c. 596, §2 and an extension of the power attributed to all religious superiors in c. 596, §1.

Supreme moderators are those whose authority extends over the whole institute.⁷⁴ Major superiors are those who have authority over a whole institute or a portion of it, i.e., a province, an autonomous house.⁷⁵ According to law, only supreme moderators can concede an indult of exclauration; however, another major superior can compile the necessary documentation for presentation to the supreme moderator. Likewise, this power might possibly be delegated to other major superiors and their councils.

Canon 686, §1 makes it clear that the supreme moderator must receive the consent of the council in order to concede

⁷²E. McDonough, "The Potestas of Canon 596", p. 606.

⁷³CIC 1983, c. 35.

⁷⁴CIC 1983, c. 622.

⁷⁵CIC 1983, c. 620.

the indult. This consent is necessary for validity.⁷⁶ Even though the supreme moderator obtains such consent, the superior does not have to take action, unless particular law determines otherwise.⁷⁷

It would seem that the superior does not cast a vote with the council and cannot break a tie when consent is required.⁷⁸

Formalities to be observed in order to obtain consent include these: members of the council must be actually

⁷⁶CIC 1983, c. 127, §2, n. 1.

⁷⁷CIC 1983, c. 127, §2, n. 2.

⁷⁸In 1985 the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law, with Pope John Paul II's approval, responded negatively to the question: "When the law requires that the superior must have consent of the council or of a body of persons in order to act, in keeping with canon 127, §1, does the superior have the right of voting with the others, at least to break a tie?", Pontificia Commissio ad Codicis Canones Authentice Interpretandos, Response, 5 July 1985, in *AAS*, 77(1985), p. 771; trans. in Canon Law Society of America, Roman Replies and CLSA Advisory Opinions 1986, W. Schumacher, ed., Washington, D.C., Canon Law Society of America, 1986, p. 31 (hereafter cited as Roman Replies). A. Gutiérrez explains that the expression in the interpretation, "when the law determines", includes proper law despite concessions of the past. See A. Gutiérrez, "Commentarium: De superiore eiusque consilio", in Commentarium pro religiosis, 66(1985), p. 327. It would seem that the Congregation for Religious and Secular Institutes believes that the interpretation does not apply necessarily to religious superiors and councils whose relationship has been defined by proper law. Congregation for Religious and Secular Institutes, private letter, prot. no. SpR 686/87, 5 May 1987, p. 1 as quoted by G. Neville, The Religious Superior's Council in the 1983 Code of Canon Law, J.C.D. diss., Ottawa, Saint Paul University, 1989, pp. 152-153.

present,"⁹ be given the necessary facts so that an informed decision can be made, and approve the request by an absolute majority.¹⁰

The supreme moderator can grant the indult of exclauration for a period of three years according to canon 686, §1. The canon further states that conceding an indult beyond three years or renewing it beyond this three-year period is reserved to the Holy See for religious of pontifical right and to the diocesan bishop for religious of diocesan right.

Canonists differ on whether an indult of exclauration granted for less than three years can be extended by the supreme moderator for a total duration of three years before recourse is made to the Holy See.¹¹ E. McDonough seems correct in saying that "three years in any combination of consecutive and continuous time segments is the limit intended by canon 686, §1 and within the competence of the

⁹A private reply from the Congregation for Religious and Secular Institutes in 1985 reaffirmed the norm of law which requires, for validity, that council members be present together in order to discuss and vote on matters requiring consent. Congregation for Religious and Secular Institutes, Private reply, prot. no. 64127/85, 6 July 1985; as quoted by G. Neville, op.cit., p. 146.

¹⁰CIC 1983, c. 127, §1.

¹¹E. McDonough, "Exclauration", pp. 582-584, see note 19.

supreme moderator."⁶² The phrase non tamen ultra triennium seems to have been incorporated in the canon to prohibit supreme moderators from conceding any indult, or extension or combination of successive indults beyond a total of three years.⁶³

In the case of a diocesan right religious seeking an extension of an indult of exclauration, the canon does not indicate whether the diocesan bishop of the principal house of the institute or the diocesan bishop of the house of assignment is competent. J. Beyer says the extension is reserved to the bishop of the diocese in which the religious has or had a domicile or an assigned house.⁶⁴ R. Hill on the other hand holds that the extension is granted by the bishop of the diocese in which the generalate is located.⁶⁵ The Pontifical Commission for the Interpretation of the Code in 1939 indicated that the expression "local Ordinary" in canon 638 meant either the Ordinary of the place where the religious was staying or the Ordinary of the place where the

⁶²Ibid., pp. 582-584.

⁶³Ibid.

⁶⁴J. Beyer, Le droit de la vie consacrée: commentaire des canons 607-746, Paris, Editions Tardy, 1988, p. 140.

⁶⁵R. Hill, "Exclauration: Voluntary and Involuntary Departure", in Review for Religious, 47(1988), p. 300.

principal house was situated; this can provide an analogy for interpreting the 1983 text."⁶

Paragraph one also considers the possibility of a religious cleric (deacon or priest) petitioning for an indult of exclaustation. In such a case, the consent of the Ordinary of the place where the cleric will live is required before the indult can be conceded. According to E. Gambari,⁷ E. McDonough,⁸ and J. Khoury,⁹ this consent is necessary for the concession to be valid. The consent is based on the responsibility and care the local Ordinary is to have for an exclaustated cleric.¹⁰ It is also a necessary license to exercise sacred ministry within the diocese, and to prevent the existence of clerici vagantes.¹¹ Clerics who have received an indult of exclaustation remain incardinated

⁶"Pontificia Commissio ad Codicis Canones Authentice Interpretandos, Reply, 24 July 1939, in AAS 31(1939), p. 321, trans. in CLD, vol. II, p. 173.

⁷E. Gambari, op. cit., p. 347.

⁸E. McDonough, "Exclaustation", p. 585.

⁹J. Khoury, Vie consacrée (essai de commentaire des canons 573-709), Rome, 1984, pp. 291-292.

¹⁰CIC 1983, c. 687. See E. Gambari, op. cit., p. 347.

¹¹G. Lobina, "La separazione dei religiosi dall'istituto", in Apollinaris, 56(1983), p. 118. An exclaustated cleric has to stay in the diocese for which the exclaustation was granted, unless another bishop accepts him. In this case an analogy can be drawn with canon 701, according to E. Gambari, op. cit., pp. 686-687.

in their respective religious institutes.” If an Ordinary cannot be found to accept a cleric petitioning for exclauration, the case is to be referred to the Holy See.”

According to canon 686, §1 there are then two competent authorities to concede the indult of voluntary exclauration. One is the internal superior, the supreme moderator, who has competence to grant the initial request for three years. The second is an external authority, the Holy See, for religious of pontifical right, and the diocesan bishop, for religious of diocesan right. Their competence lies in extending the initial indult beyond a period of three years or granting it for more than three years or even granting it in the first place in particular circumstances.

E. McDonough notes that the praxis of the Congregation of Religious and Secular Institutes indicates that voluntary exclauration can be subdivided into two types: one granted for a specific period of time and the other granted ad nutum Sanctae Sedis or ad nutum Episcopi dioecesiani. This voluntary exclauration ad nutum Sanctae Sedis (or, in the case of a diocesan religious, ad nutum Episcopi dioecesiani)

”According to law, perpetually professed members of a religious institute who have been ordained to the diaconate are incardinated as clerics in that same institute. CIC 1983, c. 266, §2.

”J. Khoury, op. cit., pp. 291-292.

began to be referred to as existing durante necessitate. From this point of view, any exclauration is in some sense ad nutum or "at the will" of the granting authority since any voluntary exclauration must be requested and exclauration is not a right, but a favor."⁴

Paragraph two of canon 686 gives special attention to nuns (moniales), religious women who live in a sui juris monastery dedicated totally to contemplative life observing papal cloister, according to norms given by the Apostolic See."⁵

Canon 686, §2 leaves intact the norms relating to egress of nuns from the monastery as treated both in the instruction, Venite seorsum, no. 7,"⁶ and in canon 667, §4, since these are not forms of exclauration.

R. Smith believes that the provision for external competence regarding the exclauration of nuns is sound "because it provides some distance and, consequently, the

⁴E. McDonough, "Exclauration", p. 587; see G. Lobina, "Juridico-Pastoral Observations on Disciplinary Measures in Regard to the Conduct of Religious", in Consecrated Life 1(1977), pp. 71-72.

⁵CIC 1983, c. 667, §3.

⁶Congregation for Religious and Secular Institutes, Instruction, "Venite seorsum", 15 August 1969, in AAS, 61(1969), p. 674; trans. in CLD, vol. 7, p. 529.

possibility of greater objectivity in a situation where the local superior is also the major superior."⁹⁷

b) Reasons for granting voluntary exclaustration

Canon 686, §1 states that the cause for granting exclaustration must be grave: "gravi de causa concedere potest indultum exclaustationis." P.V. Pinto notes that the concession is employed when it is the only measure available to assist the religious." It must be kept in mind, though, that exclaustration is often a concession that leads to a definitive separation from the institute."

The reasons for granting exclaustration cannot be just any kind of reason or pretext. The gravity of the cause must be determined from the various circumstances that accompany the request.¹⁰⁰

A genuine inability to live community life or to participate effectively in the apostolic works of the religious institute can be and commonly is a sufficiently

⁹⁷R. Smith, "Issues of Separation and Transfer Among Religious: Context and Procedure", in Proceedings of the Forty-Seventh Annual Convention, October 15-18, New Orleans, Canon Law Society of America, Washington, D.C., p. 107.

⁹⁸P.V. Pinto, "Exclaustratio et absentia a domo des religieuses", in Studia canonica, 11(1977), p. 401.

⁹⁹Ibid., pp. 394-395.

¹⁰⁰G. Lobina, loc. cit., p. 118.

grave reason.¹⁰¹ Other causes may be personal (vocation crisis, maturation of personality, health), familial, or the undertaking of a special apostolate or work of the Church; viz., to establish or help establish a new institute.¹⁰² For these reasons and others of similar nature and gravity, and with the hope that they be only temporary in nature, an indult of exclausturation may be in order.

A disagreement between a religious and a superior cannot be considered in itself to be a grave reason, nor would any other reason that could find a just solution by means of dialogue and reciprocal understanding between the parties.¹⁰³

It should be noted also that illness or the infirmity of advanced age cannot be construed as a reason for requesting or granting exclausturation. Such a religious must be cared for as a valued brother or sister.¹⁰⁴

¹⁰¹R. Hill, "Exclausturation: Voluntary and Involuntary Departure", p. 299.

¹⁰²M. O'Reilly, "Permission of Absence from the Community", in Informationes, 10(1984), p. 74.

¹⁰³G. Lobina, loc. cit., p. 118.

¹⁰⁴R. Hill, "Exclausturation: Voluntary and Involuntary Departure", p. 299.

2. Imposed exclauration

The mode of exclauration considered up to this point has been exclauration voluntarily requested by a perpetually professed religious. Such a religious is not deprived of the established right every religious has to live within a community and to benefit from community living.¹⁰⁵ The reasons for voluntary exclauration are situations that cannot be resolved within the community.

However, canon 686, §3 considers another type of exclauration: that which is imposed by the Holy See for religious of pontifical right or by the diocesan bishop for religious of diocesan right. This form of exclauration is not granted upon the petition of a religious. Nor does it allow for the option of acceptance or rejection, or termination before the time willed by the external ecclesiastical authority.¹⁰⁶

Exclauration spoken of in canon 686, §3 is an administrative provision that is distinct because of its imposed character. It suspends the obligation and the right of a religious to live in community.¹⁰⁷

¹⁰⁵CIC 1983, c. 607, §2.

¹⁰⁶A. Gutiérrez, "Exclaustratio ad nutum S. Sedis", in Commentarium pro religiosis, 32(1953), pp. 336, 339.

¹⁰⁷Ibid., p. 337.

At the same time, imposed exclausturation is not necessarily a penalty, nor a punishment or penance. It does not necessarily imply culpability.¹⁰⁸ It is rather in the nature of a remedy or a healing,¹⁰⁹ a disciplinary means, less rigid than dismissal.¹¹⁰ It is an indication of the concern the Holy See or the diocesan bishop has for the common good of religious institutes; the reason can also be for the good of the religious personally.

[Voluntary exclausturation] is primarily for the convenience of the subject, while [imposed exclausturation] is mainly for the good of the community. Of course it can be for the good of the subject ultimately. However, the fact of being a privation of a right that the subject would rather not prefer heightens the common good.¹¹¹

Thus, the good of the community is directly intended by this form of exclausturation, and the inconvenience or partial detriment of the exclaustreated religious is tolerated.

¹⁰⁸M. O'Reilly, loc. cit., p. 76.

¹⁰⁹J. Fernández, "Esclausturazione", in Dizionario degli istituti di perfezione, G. Pelliccia and G. Rocca eds., vol. 3, Roma, Edizioni Paoline, 1976, col. 1280.

¹¹⁰G. Girotti, "Separazione dei membri dall'Istituto", in Monitor ecclesiasticus, 110(1985), p. 185.

¹¹¹M. Nwagu, Autonomy and Dependence of Religious Institutes of Diocesan Law and the Local Ordinary: A Comparative Analysis of the Legislation Concerning Them in the Codes of Canon Law of 1917 and 1983, Ser. 23, vol. 279, Frankfurt am Main, Verlag Peter Lang, 1987, p. 201.

a) Competent authority to concede

Upon request from the supreme moderator with the consent of the council, exclauration can be imposed by the Holy See on a religious of a pontifical right institute and by the diocesan bishop for a member of a diocesan institute.¹¹² An external authority is required in this form of exclauration because the religious institute's involvement in the case makes it at times difficult to be impartial, so the final decision rests with the Holy See or the diocesan bishop.¹¹³ Thus, the competent authority involves both the supreme moderator and the Holy See or, in the case of religious of diocesan right, the diocesan bishop.

Even though a religious is definitively incorporated into a specific institute through perpetual profession, and has acquired rights and obligations in the institute which are to continue until death, canon 686, §3 recognizes that such acquired rights and obligations can be suspended. In a

¹¹²R. Hill, "The Troubling Religious", in Review for Religious, 48(1989) p. 463 believes that the bishop would have to ask the Holy See for the faculty to grant an exclauration of indefinite duration because some of the ad nutum exclaurations are contained only implicitly in the canon and because their practice is known only from Holy See sources. E. McDonough seems correct in saying that for religious belonging to diocesan institutes the bishop is competent to do so by reason of canons 381, §1 and 594-595 provided that he follows the practice of the Holy See in the matter mutatis mutandis ("Exclauration", p. 596).

¹¹³R. Ombres, "Separation from a Religious Institute", in The Clergy Review, 70(1985), p. 415.

case that reached the Apostolic Signatura in 1975, that body explained the authority of the Church to suspend the obligation and right of a religious to common life.

With regard to the suspension of the obligation of the common life, the Holy See can dispense from its own laws and also impose on religious precepts which are beyond or contrary to the common law.

With regard to privation of the common life, the right to common life is from common law an absolute right (subjective right) with respect to superiors and the religious institute, but it is not an absolute right with respect to the Roman Pontiff. A religious acquires rights in a religious institute only insofar as his or her profession is received by the Church. Indeed, when there is a question of supernatural rights which are gratuitously granted, the Church does not intend to so bind herself that in a case of necessity she cannot suspend those rights either for the good of the person himself or herself, or for the higher good of the religious institute.¹¹⁴

b) Reasons for imposing exclausturation

This form of exclausturation is not imposed arbitrarily, but for grave reasons and in situations where there is little hope of amendment. There need not necessarily be malicious intent on the part of the religious, but rather behavioral traits and weaknesses in character which make one unsuitable to community life.¹¹⁵

¹¹⁴Roman Replies 1982, p. 39.

¹¹⁵A. Larraona, Secretary of SCR, allocution, 13 September 1952, "Criteria sequenda in accomodate renovanda vita et disciplina institutorum perfectionis", in Leges

Examples which could necessitate imposed exclausturation are these: religious who manifestly transgress the rule and other observances, who are notably disobedient or who undermine a superior's authority in serious matters, who willfully disturb the unity and peace of the community, who bring about grave misunderstandings with superiors, who cause scandal, who should be dismissed, but because of age or infirmity are exclaustrated in this manner because dismissal would be against equity and charity.¹¹⁶ In such a case, imposed exclausturation can be seen as an act of clemency.

J. Gallen holds that canon 686, §3 requires only a serious reason for a superior to act, and does not oblige a superior to use other means before such action is taken. R. Ombres, however, seems correct when he says that "such a view goes against the spirit of the new law and practice, and against the increasing protection given to individuals and their rights."¹¹⁷ Further, the canon clearly speaks of grave reasons (graves causas).

Ecclesiae, X. Ochoa, ed., vol. II, Rome, Commentarium pro Religiosis, [1942-1958], p. 3091, no. 2306; trans. in CLD, vol. 4, pp. 193-202. See also E. McDonough, "Exclausturation", p. 586.

¹¹⁶See Roman Replies 1982, p. 39; J. Beyer, Le droit de la vie consacrée, p. 141; G. Lobina, loc. cit., p. 120; A. Gutiérrez, "Exclaustratio ad nutum S. Sedis", p. 337; J. Gallen, "Exclausturation and Secularization", in Review for Religious, 15(1956), p. 229.

¹¹⁷R. Ombres, loc. cit., pp. 415-416.

If certain behavioral traits or weaknesses of character can be cause for imposed exclausturation, it must be kept in mind that there are individuals who constitute a healthy burden on the community, calling it to greater charity. Such religious often suffer greatly within themselves without being a major disruptive force within the community, or gravely affecting its mission. Religious in this category are to be accepted as the apostle admonishes: "Carry each other's troubles to fulfill the law of Christ" (Ga. 6:2). The behavioral traits and weaknesses of character in question which could be a cause for imposed exclausturation are those that create unhealthy conflict within the community or gravely affect its apostolate.¹¹⁶

Such individuals need to be dealt with for the health and peace of the community. Pretending that everything is fine is neither charitable nor just, since such individuals often know deep down that things are not correct. They need help and often lack the motivation to change or control their behavior. At times to show endless patience is no help at all. True help manifests itself by instilling a motivation

¹¹⁶D. O'Donnell, "The Problem Member in Community", in Review for Religious, 40(1981), p. 204; see also W. Hogan, "Exclausturation of the Troublesome Religious", in The Jurist, 24(1964), pp. 51-61.

which will be effective in at least controlling their behavior.¹¹⁹

For a superior to speak strongly, to threaten lack of co-operation or to ask them to go elsewhere is not unkindness. In fact, the opposite might be the worst unkindness when we recognize that these people need external motivation in order to grow. At the very least, the external motivation will put some controls on the behavior which upsets the community and its mission, even if it does not institute a deep change.¹²⁰

If a religious is uncooperative, the major superior has a serious obligation to remove such a person from the community. The superior may determine that the individual does not in fact have a vocation to religious life. It may mean determining that exclaustation should be imposed as the religious' behavior places too unhealthy a strain on religious community life. In this way much more room is made for these people in the wider Christian community, where their behavior is less disruptive than it would be in a close, celibate community.¹²¹

¹¹⁹D. O'Donnell, loc. cit., p. 203.

¹²⁰Ibid.

¹²¹Ibid., p. 209.

c) Equity and charity

Due to the seriousness of imposed exclaustation, canon 686, §3 exhorts supreme moderators to observe equity and charity. Though this explicit reference is not found in canon 686, it is clear that the same is to be observed for those who voluntarily seek exclaustation.

The reference to equity in paragraph three is a reminder from the legislator that ecclesiastical laws are human creations; consequently, they may at times prove themselves unable to protect some value in the Christian community or to provide a remedy for an injustice suffered. In that case there must be recourse to equity. Thus the supreme moderator who is competent to initiate imposed exclaustation is required to invoke high principles of morality. Thus through necessary accommodations, the law becomes a servant of the value that must be safeguarded. The Congregation for Religious and Secular Institutes has spoken on this point. "The institute is obliged to provide such exclaustated religious financial assistance according to the needs of the individual."¹²²

As regards charity, exclaustation whether voluntary or imposed is a measure employed by competent authority to assist a religious with a particular difficulty or in special

¹²²SCRIS, "Decisions and Guidelines - Leave of Absence or Exclaustation?", in Consecrated Life, 2(1978), p. 169.

circumstances. It also enables the institute to fulfill this responsibility in charity and justice not only to the individual but also to the community. To achieve the desired purpose of the norms, it is necessary that they be completely understood and properly applied.

3. A comparison between "permission of absence from community living" and "exclaustation"

Extended absence from community living with permission (canon 665, §1) and exclaustation (canons 686-687) address two different canonical situations applicable to religious.¹²³ Further, these canonical provisions have different juridical effects. Canon 655, §1 states:

Observing a common life, religious are to live in their own religious house and not be absent from it without the permission of their superior. However, if it is a question of a lengthy absence from the house the major superior for a just cause and with the consent of the council can permit the member to live outside a house of the institute, but not for more than a year, except for the purpose of caring for poor health, for the purpose of studies or of undertaking an apostolate in the name of the institute.¹²⁴

¹²³Canon 665 is not addressed to monasteries of nuns totally dedicated to contemplative life. These institutes are governed by c. 667, §4 and the legislation found in the Instruction, "Venite seorsum", see footnote 96. See also R. Hill, "Confusion About Leaves", in Review for Religious, 44(1985), p. 458.

¹²⁴CIC 1983, c. 665, §1.

In the 1983 Code, canon 665 is placed under the title "Obligations and Rights of Institutes and Their Members". Paragraph one affirms that religious have an obligation to observe common life¹²⁵ in an assigned house (domus) of the institute.¹²⁶ It is in such a domus that the member fulfills religious consecration. Thus the local house provides a suitable dwelling for religious life to be lived, regulating common life and discipline.¹²⁷

Also considered in canon 665, §1 are exceptions to observance of common life in a house of the respective institute. These exceptions are not the same as ordinary absences from the religious house which proper law governs, but extended absences. The meaning of "lengthy absence" is

¹²⁵CIC 1983, cc. 573, 598, 607, §2, 608.

¹²⁶Technically a religious house has two fundamental characteristics. 1) It is legitimately established or constituted as a stable residence in which common life is observed according to the constitutions and under the authority of a superior. 2) In the case of an established house, it is canonically erected by competent authority according to the constitutions and with the prior written consent of the diocesan bishop. If these two conditions are met the religious house is a public juridic person with rights and obligations established in law. If the canonical requirements for the establishment of a religious house have not been met, the broad interpretation of common life could nevertheless be applicable: religious living together in a house belonging to the same juridic entity and having a designated superior who governs in accord with a designated rule or constitutions by which all members are bound. See E. McDonough, "Exclauration", pp. 569 and 573.

¹²⁷SCRIS, "Decisions and Guidelines - Leave of Absence or Exclauration?", op.cit., p. 165.

not defined. Therefore, proper law may decide the minimum length of extended absence which would require the permission of the superior. Although a shorter period may be appropriate, it would seem that an absence beyond six months would be lengthy enough for the superior to bring the matter to the council. According to the 1917 legislation, there was no prescription requiring the council's involvement in a permission which did not exceed six months.¹²⁸

Paragraph one recognizes two situations for extended absence. The first is absence for a just cause which may be permitted for up to one year. The second refers to absences permitted in law which may exceed one year: reasons of health, studies, or undertaking an apostolate in the name of the institute.

A just cause may be the care of aged or ailing parents in need of assistance which no one else can provide. This is not just a familial obligation, but a work of mercy which can fall within the general purpose of a religious institute. To resolve doubts about one's vocation could be another just reason to grant such a permission of absence. Such a leave could enable a religious to resolve doubts by experiencing the freedom of unstructured life, away from the environment in which the doubts arose. It must be admitted, however,

¹²⁸M. O'Reilly, loc. cit., p. 71, see also SCRIS, "Decisions and Guidelines - Leave of Absence or Exclaustation", op.cit., pp. 164-169.

that when permission of absence is granted due to doubts regarding one's vocation, it is often the beginning of a process of definitive separation from the institute. R. Hill seems correct when he says, "It inevitably raises the question whether the ambience of semi-secular, semi-solitary living is the best environment for vocation decisions, at least in most cases."¹²⁹

Superiors may grant temporary professed religious such permission in order to give them an opportunity to resolve psychological, emotional or other difficulties.¹³⁰

Permission of absence for reasons of health could include serious ailments which require prolonged treatment away from the religious house; viz., hospitalization, convalescence, institutionalization, psychological rehabilitation programs.¹³¹ The health of the community as a whole could also be taken into consideration.

¹²⁹R. Hill, "Confusion About Leaves", p. 458. P.V. Pinto echoes this concern: "[...] une religieuse qui, dans le passé, aurait résolu ses difficultés, ses <<nuits spirituelles>>, en s'approchant davantage de Dieu et en demandant une plus grande aide morale à sa supérieure et à sa communauté, croit aujourd'hui résoudre ses crises en s'éloignant de son lieu naturel pour retourner au monde où la rumeur et les chaos de la vie moderne ne l'aideront certainement pas à retrouver le sens de sa propre vocation ni l'enthousiasme de l'idéal religieux", loc. cit., p. 394.

¹³⁰SCRIS, Instruction, "renovationis causam", 6 January 1969, in AAS, 61(1969), pp. 111-112, no. 8. English trans. in CLD, vol. 7, pp. 498-499.

¹³¹M. O'Reilly, loc. cit., pp. 72-73.

Permission of absence for reasons of studies could be given in order to train a religious for the apostolate to which the institute is dedicated or to acquire an academic degree. Studies include any academic discipline, not only the sacred sciences. Such permission could include private study projects such as research in libraries, archives, etc.¹³²

Canon 665, §1 also considers undertaking a special apostolate in the name of the institute as a reason for permission of absence.¹³³ Religious are subject to hierarchical authority and also to their own superiors in the exercise of the apostolate. A professed religious is obliged to perform the work to which the community is dedicated. Thus a religious is not free simply to undertake some self-chosen special work, opposing a personal charism to that of the institute. Canon 665, §1 thus excludes "free-lancing" on the part of an individual religious, and requires that the institute assume responsibility regarding the apostolate undertaken.¹³⁴

¹³²Ibid., p. 73.

¹³³The post-Conciliar legislation regarding permission of absence to undertake apostolic work required that the apostolate be "in conformity with the purpose of the Institute". See CA, p. 150, no. 15 and RL, p. 362, no. 4. Canon 665, §1 speaks of an apostolate "to be exercised in the name of the institute."

¹³⁴Ibid. See also R. Hill, "Confusion About Leaves", p. 459.

In 1977 the Congregation for Religious and Secular Institutes disapproved of the practice of granting a leave of absence allowing a religious to live alone in an apartment or rented house as a permanent residence. Such a permission, it was argued, was seen to undermine the importance of common life as a juridic institution and was problematic, according to the Congregation, for observance of the vows, especially poverty and obedience. Superiors granting such leaves were cautioned to take into consideration this fact so that the religious life was not seen to be a private affair.¹³⁵

The Congregation also made it clear that superiors may not impose leave of absence in order to remove an undesirable religious from the community.¹³⁶

The major superior, with the consent of the council, of either a pontifical or diocesan institute, is the competent authority to give permission for one year to a religious to live apart from the community for a just cause.¹³⁷

For an absence of more than a year, except for the three specified cases (health, studies, engaging in an apostolate in the name of the institute) the permission of the Holy See

¹³⁵SCRIS, "Decisions and Guidelines - Religious who Live Alone in Apartments", in Consecrated Life, 3(1979), pp. 164-169.

¹³⁶SCRIS, "Decisions and Guidelines - Leave of Absence or Exclausturation", op.cit., p. 167.

¹³⁷M. O'Reilly, loc. cit., p. 71.

is required at least in the case of pontifical institutes. In the case of diocesan institutes it would seem that the diocesan bishop could grant the necessary permission.¹³⁸

It should be borne in mind that permission to be absent from the religious house is not a right of the individual, but a favor granted according to the prudent judgment of the superior. Every vocation is a gift of God, best safeguarded and promoted within the religious community; hence, superiors must be prudent in granting permission to live outside the community. After a more or less lengthy period of absence, many decide not to return; others experience difficulty in readjusting themselves to common life.

Juridically a religious on permission of absence remains a religious and retains all the rights and obligations of the institute. The religious remains bound by the obligations of the vows. The authorized permission may imply, however, a certain relaxation of obligations which are incompatible with the new situation. Thus the implications of poverty may be altered to allow for greater independence in the handling of money. The religious remains subject in obedience to the superior.¹³⁹ If the religious is a cleric he remains bound by his priestly or diaconate obligations and in any exercise

¹³⁸CIC 1983, cc. 87, §1, 594-595.

¹³⁹M. O'Reilly, loc. cit., p. 71. See also SCRIS, "Decisions and Guidelines - Leave of Absence or Exclaustation", op.cit., p. 167-168.

of sacred ministry is subject to the local Ordinary who ought, at least out of courtesy, to be informed of the presence of such a cleric in his diocese.¹⁴⁰

As regards the financial situation of such religious, whatever is earned belongs to the institute.¹⁴¹ The institute must provide whatever is necessary for the religious to carry out his or her vocation.¹⁴² The institute must consider the intention of the extended absence and make appropriate adjustments to care for the particular needs of the religious. A religious on leave of absence could be required to give to the supreme moderator or to the local superior an account of his or her way of life, as well as of expenditures, travels and other activities.

A religious given permission of absence remains enrolled in a specific house, and has his or her own superior, retaining the right of active and passive voice. The constitutions could, however, lay down certain restrictions regarding the exercise of active and passive voice by those

¹⁴⁰Since there is no condition appended to canon 665, §1 regarding clerics, except that the prescriptions of common law be observed, permission of absence given by a legitimate superior to his own subject is not conditioned on the consent of the local ordinary for the religious to remain in his diocese. See SCRIS, Private reply, 27 June 1974, "Juridical Status of a Priest-Religious on Leave of Absence", in CLD, vol. 8, p. 413.

¹⁴¹CIC 1983, c. 668, §3.

¹⁴²CIC 1983, c. 670.

who are absent for personal reasons; not, however, in the case of those absent by reason of illness, apostolate or studies for the institute. Such religious retain the right of receiving all questionnaires and circulars, of going into the communities of the congregations, and the right of wearing the religious habit.¹⁴³

When permission is granted to religious to live outside a house of the institute, it is advisable that an agreement be made regarding contacts to be maintained with the congregation, the exercise of religious rights and duties, and the financial assistance they may require. They should give their superior an account of monies received and spent. Serious failure to comply with religious duties in so far as possible under the circumstances and according to the terms of the agreement would justify a recall of the religious.

Permission of absence from the community even if given for a certain period, may be withdrawn by superiors and in this case the religious would be bound to return to the community.

From the legislation, then, it is clear that canon 665, §1 regarding permission to remain outside the community pertains to cases of a passing nature. Apart from reasons of health, studies or the apostolate, it is given for a just cause. Exclausturation, on the other hand, is a grave

¹⁴³P.V. Pinto, loc. cit., pp.392-393.

measure; the reason must be compelling. It is invoked only when it seems to be the sole and inevitable measure before a definitive departure or dismissal.

Conclusion

Canon 686, §1 of the 1983 Code reflects the conciliar and post-conciliar desire that religious be given the necessary authority to govern their respective institutes without frequent and unnecessary recourse to the Holy See or to the diocesan bishop. With this in mind, the supreme moderator is named as the competent authority to concede an initial indult of exclauration of three years when freely petitioned by a religious in perpetual vows. It would be incorrect to say that this was a novel concession, since faculties previously reserved to external authority were accorded to superiors general during and following the Council as seen in the decrees Cum adnotae and Religionum laicalium.

Canon 686 also incorporates the praxis of the Congregation for Religious and Secular Institutes over the last several decades regarding exclauration, and thus reflects the legislator's desire to respond more effectively to those seeking a partial separation from the religious institute. The Code does so with caution by placing conditions on the concession of exclauration. Canon 686

implicitly affirms the permanence of the vows and obligations undertaken by a perpetually professed religious, and the importance of common life.

Canon 686, §1 is a more effective expression of the law than its counterpart in the 1917 Code because it identifies the recipient of the indult -- those perpetually professed, and the limit to which an initial concession may be granted -- a period of three years.

Other positive attributes of canon 686, §1 are: 1) the power of religious superiors of lay institutes to concede indults of exclausturation; 2) the equality between pontifical and diocesan institutes; 3) the equality between institutes of men and women; 4) greater respect for the autonomy of institutes.

In situations where the common good of the institute is adversely affected by the behavior or temperament of an individual religious, canon 686, §3 provides a vehicle for meeting such a need. Often in these cases dismissal is not a solution because there is no serious guilt or scandal.

Exclausturation is not to be confused with temporary leave of absence. Exclausturation is a true form of juridical departure from a religious institute, though for a time. Canon 665, §1 concerning leave of absence is not a departure, but prudently considers situations which necessitate against observance of common life. Because of its wider application

and greater extension of time than under the former legislation, it now provides the supreme moderator with more flexibility to determine whether exclaustation or leave of absence is more applicable in a given case.

Chapter I" will focus on the practical application of this revised legislation.

CHAPTER IV

THE JURIDICAL SITUATION OF EXCLAUSTRATED RELIGIOUS

This chapter examines the juridical situation of exclaustated religious, addressing a number of practical issues that superiors and members often face during the process of exclaustation.

The first section studies the application of the legislation: the modalities of voluntary and imposed exclaustation, and the practical ordering of the relationship between the religious and the ecclesiastical superiors.

The second part examines the rights and obligations of exclaustated religious. The rights are those recognized by law as well as those agreed to by the institute in a contract or agreement. The general scope of this agreement will be studied, as well as additional matters that could be addressed in a particular situation. The obligations are those pertaining to the vows and to spiritual life, without forgetting the other general obligations that bind all religious. Also, this section considers special issues applicable to members who are on imposed exclaustation. Since this is an extreme measure, suspending the basic right of a religious to common life, particular reference is made in the legislation to the observance of equity and charity. The implications of these terms will also have to be considered.

Since no two cases are exactly alike, the law was written in somewhat general terms. Therefore, as we try to apply it, we will not be surprised to note that a certain number of issues still remain unresolved.

Superiors ministering to those in turmoil or difficulty must be cognizant of the human dimension as well as the canonical. However, this chapter limits itself intentionally to the canonical situation, realizing that there are many other personal issues that must not be overlooked.

A. PRACTICAL APPLICATION OF THE LEGISLATION

1. The modalities of voluntary exclaustation

Even in the ordinary, everyday performance of their duties, religious superiors

are to meet the personal needs of the members in an appropriate fashion, look after solicitously and visit the sick, admonish the restless, console the faint of heart, and be patient toward all.¹

To do so responsibly means being cognizant not only of the human, but also of the canonical dimensions, and of the options that are available when ordinary resources fall

¹Codex iuris canonici, trans. in Code of Canon Law, Latin-English edition, trans. prepared under the auspices of the Canon Law Society of America, Washington, D.C., Canon Law Society of America, 1983, c. 619 (hereafter cited as CIC 1983).

short. Exclaustation provides an extraordinary avenue with extraordinary resources.

Though the modalities of voluntary exclaustation are less rigorous than those of imposed exclaustation, still ecclesiastical superiors are to give careful attention to the formalities. Failure to do so can lead to misunderstanding and even alienation. Any action on the part of a superior must respect the rights of the religious and the interests of the institute.²

a) The request

A religious who freely desires to petition for exclaustation makes a request in writing to the supreme moderator of the institute. The petition consists of a brief personal history, the reasons for making the request, and an explanation of the steps taken by the religious to help resolve the situation. Assistance may have been sought through spiritual direction or counseling. The desired duration of exclaustation should also be mentioned. In the event the religious is a cleric, the written consent of the Ordinary of the place where he wishes to reside is to be obtained and included with the request.³

²CIC 1983, c. 687.

³CIC 1983, c. 686, §1.

The supreme moderator then presents to the council the petition and any other information necessary to make an informed decision.

b) The conditions on which it is granted

If the petition is granted,⁴ the concession is communicated to the religious through a rescript which also notes the conditions upon which the indult is given. A condition which applies in all cases by canon 687 is the suspension of the right to active and passive voice.⁵ A religious pondering life's course and commitment is not able to give the necessary consideration to the affairs of a chapter nor accept a position in the institute.⁶ The member

⁴If the request for exclausturation is denied, this should be conveyed in writing to the religious, according to canon 48. The reasons for not granting the concession should be stated. Such a decree is a means for the religious to request the supreme moderator to reconsider the petition in accord with canon 57. This canon also foresees the eventuality for referral to a higher authority. However, unless there is an obviously uncalled for denial by the supreme moderator to grant the indult or the formalities have not been followed or some other qualifying circumstance, it is not the practice of the higher authority (i.e., the Holy See or the diocesan bishop) to overturn the decision of the supreme moderator. This is based on the principle of subsidiarity, which respects various levels of competence within the church and their decisions, and, except for unusual cases, upholds their decisions. See E. McDonough, "Exclausturation: Canonical Categories and Current Practice", in The Jurist, 49(1989), p. 600.

⁵CIC 1983, c. 687.

⁶R. McDermott, "Dealing With Difficult Religious", in Bulletin on Issues of Religious Law, 3(1987), no. 2, p. 6.

is thus free to concentrate on the grave cause which prompted the petition for exclausturation.⁷

Canon 687 also specifies that an exclaustreated religious may wear the religious habit, unless it is determined otherwise. This will be treated in more detail later.

Other conditions are determined according to individual circumstances. In the case of a difficult religious, it could be prescribed that a member who misused the indult, not keeping the conditions set down, would be called back to the institute. For those on whom exclausturation has been imposed, a condition might be that they are unable to return to common life until their behavior becomes acceptable. This may mean that the person must address the problematic behavior and constructively alter it. This might require therapy or the completion of a drug or alcohol abuse program.⁸

⁷In some institutes General Chapters have legislated that religious who have been exclaustreated for personal reasons (such as inability to live the regular life, vocational discernment, etc.) are deprived of active and passive voice for a time after returning to the institute.

Such a suspension is not a canonical penalty, but the consequence of circumstances of particular cases, which, in the judgment of the General Chapter, justify the exclusion of the exercise of the right of active and/or passive voice. SCRIS, "Decision and Guidelines: Voting Rights of Those Who Are Living Outside the Community", in Consecrated Life, 1(1977), p. 152.

⁸Canon 630, §5 forbids superiors to induce a religious to make a manifestation of conscience in internal forum matters. E. McDonough notes that this also includes a

c) Agreements or contracts

Because canon 687, on the obligations of the exclaustated, is general in scope, it is appropriate that a written agreement or contract¹⁰ be drawn up between the major religious superior and the member seeking exclaustation.¹⁰

This agreement aims at protecting and clarifying the rights and obligations, spiritual and material, of both the member and the institute, serving the interests and concerns of both parties. It also helps to give direction to an

prohibition against superiors to induce a member to reveal such matters to a psychiatrist or psychologist. A superior who considers a religious's behaviour as disruptive due to psychological causes cannot command such an individual to undergo psychological counseling or therapy. The superior can, however, restrict the member's living assignment. E. McDonough, "The Troubling Religious: Further Considerations", in Review for Religious, 49(1990), p. 620.

¹⁰H.C. Black defines an agreement in law as "a concord of understanding and intention between two or more parties with respect to the effect upon their rights and duties. ... Although often used as synonymous with contract; agreement might lack an essential element of a contract." Black defines a contract as "an agreement between two or more persons which creates an obligation to do or not to do a particular thing. Its essential elements are competent parties, subject matter, a legal consideration, mutuality of agreement and mutuality of obligation." An agreement then is a broader term than a contract. H.C. Black, Black's Law Dictionary, 5th ed., Saint Paul, Minnesota, West Publishing Co., 1979, pp. 62-63.

¹⁰"[...] it is advisable that an agreement be made regarding contacts to be maintained with the congregation, the exercise of their religious rights and duties, the financial assistance they may require." SCRIS, "Decisions and Guidelines - Leave of Absence or Exclaustation", in Consecrated Life, 2(1978), pp. 167-168.

exclaustrated member during the time of reflection and adaptation.

If a religious is particularly problematic, consideration should be given to drawing up a contract valid also in civil law. This would require the expertise of a civil lawyer. Such a document is recommended as a means of protecting the institute from civil liability. The agreement should be as detailed as necessary to forestall misunderstandings and to provide for the accountability of both member and institute. It must be remembered that such an agreement also belongs to the arena of charity, through which harmony and cooperation can be obtained.

The general content of such an agreement should address personal financial issues (insurance coverage, residence and furnishings, automobile and travel expenditures), contacts with the superior and the community, entering into contracts and the incurring of debts, matters requiring special permission, and the right to return to the community. This list is not exhaustive; there may be other, somewhat tangential or unique issues which could be included in its terms. Such an agreement should always be signed by both parties.

Some of the issues which could be considered in the agreement can now be examined in detail.

i. Salary of the exclaustated religious

Financial accountability of exclaustated religious is often a sensitive issue. Although such persons remain in some way dependent and limited in the use of goods, the extent of dependence and limitation is determined by the agreement between the religious superior and the exclaustated member. However, "the accountability should not be so restrictive or dependency-maintaining that it undermines the purpose of the indult, viz., to provide some distance from the institute."¹¹

One practice for exclaustated religious who find employment is that they turn their salary in to the institute which in turn makes provision for the member on a quarterly basis. Such support is often paid into a checking account jointly held by the religious and the superior or some other designated member of the community who has the right to receive a monthly or quarterly statement.

R. Hill¹² and P.V. Pinto¹³ both note that an exclaustated religious who earns more money than is

¹¹R. Smith, "Issues of Separation and Transfer Among Religious: Context and Procedure", CLSA Proceedings of the Forty-Seventh Annual Convention, 47(1985), p. 107.

¹²R. Hill, "Financial Patrimony", in Review for Religious, 44(1985), pp. 143-144.

¹³P.V. Pinto, "Exclaustratio et absentia a domo des religieuses", in Studia canonica, 11(1977), p. 395; also CIC 1983, c. 668, §3.

necessary must give the surplus to the religious community, because the income has been derived from personal work and belongs to the community from the start.

Another practice is to give a general permission to an exclaustrated religious to retain and dispense funds necessary to provide for personal needs. Thus, the individual who finds employment conducts affairs as any other single wage earner. Such a permission will have an effect on the exclaustrated member's tax status.

ii. Tax issues

Generally, a member of a religious institute in the United States and Canada enjoys exemption from federal taxation on individual income.¹⁴ "Exemption from individual income tax for members of institutes of consecrated life is based on the fact that their income accrues to the institute and not to the member."¹⁵ In financial matters, if the religious is acting as a principal agent with the religious institute having no involvement, the individual would be like any other taxpayer.

No principal agency relationship with the religious institute exists. If the religious

¹⁴T. Doyle, "The Canonical Status of Religious Institutes - Additional Considerations", in Studia canonica, 18(1984), p. 357.

¹⁵Ibid., p. 359.

institute were principal it would be able to claim that it controls the income, and it would gain the benefit of the tax laws and avoid personal income taxation on the member.¹⁶

As noted, some religious institutes ask that the salary of an exclaustated religious be given to the community, but a higher living allowance is granted. "Sometimes, this is more than the person would retain if taxes had to be paid on the original income."¹⁷ Or, a member could calculate what would be the rate of taxation; this amount would be retained by the institute and the rest given to the member. "Another acceptable method is the issuance of a paycheck jointly to the institute and the religious."¹⁸ The religious institute should avoid being in the position of claiming that it is the recipient of income when it has little control over it.

iii. Benefit issues

An exclaustated religious who has access to a pension or other benefits, either established by the state or by a private plan, may claim the right to dispose of such at his or her own pleasure. Such subsidies are frequently rendered

¹⁶P. Campbell, "The Code and Religious: Civil Law Considerations", in The Jurist, 44(1984), p. 107.

¹⁷F. Morrissey, "The Vow of Poverty and Personal Patrimony", in Religious Life Review, 25(1986), p. 146.

¹⁸D. Dessingue, "Discrete Tax Issues for Clergy and Religious", in The Catholic Lawyer, 28(1983), p. 157.

to the holder or to a duly delegated person.¹⁹ Unless it is otherwise stated in proper law or special permission is given to the exclaustated persons, according to canon 668, §3 those things which accrue to a religious by way of pension or other subsidy are acquired by the institute. A religious who is given such permission might be liable for payment of personal income tax on the revenue.

If an exclaustated religious does not receive this permission, such subsidies should be handed over to the institute in accord with canon 668, §3 since a pension could be considered analogous to a fee given as remuneration for work or a service done by a religious.²⁰ The same can be said for benefits granted by the civil authority or by legal entitles,

since such benefits, though granted "in consideration of the person" and not "in consideration of the Institute or of the Congregation," are meant to satisfy the fundamental needs of the holder which are directly incumbent upon the institute.²¹

From such a pension or other benefits the institute may in turn support an exclaustated religious.

¹⁹SCRIS, "Decisions and Guidelines: Pensions for Religious", in Consecrated Life, 2(1978), p. 152.

²⁰Ibid.

²¹Ibid., p. 153.

Exclaustrated religious who have not made a total renunciation of temporal goods and who receive goods which accrue to their patrimony, according to proper law,²² can either add them to their patrimony, turn them over to the institute, or receive permission to renounce them in favor of some other person. In some instances permission may be given to use such income during the period of exclaustration. Again, such a religious may be liable to pay income tax on these revenues.

iv. Monetary supplement from the institute

Superiors are to be aware of the legitimate needs of exclaustrated religious and at the same time help them appreciate the constraints of a modest lifestyle, since they remain bound to some degree by the vow of poverty which imposes a certain limitation on spending and a dependence on the religious institute.

At times it may be necessary for the religious institute to supplement the financial earnings of an exclaustrated member who is unable to obtain satisfactory employment. This assistance is based on the principle that "every religious family has the obligation to provide for the spiritual, moral, social and temporal well-being of its members while

²²SCRIS, Reply, (undated), "Pensions of Religious", in Consecrated Life, 5(1981), p. 204.

they remain in the institute itself."²³ The measure of financial assistance should be considered in relation to the individual case. The needs of a religious who has good qualifications and experience and is assured of a job placement will greatly differ from one who, due to age or other circumstances, is unable to provide personal support.²⁴ The measure of the assistance will also depend on the resources of the institute and its obligations of charity, equity and justice towards those members who persevere in the community. An institute may not burden its members by ill-proportioned generosity towards those who seek temporary separation.²⁵

v. Personal budget

If an exclaustated religious agrees to hand over any salary to the institute for periodic reimbursement, the institute could then assist such a member in working out a personal budget to ensure a simple yet dignified life style. Such a budget would include residence, furnishings and utilities, food, clothing, laundry, toiletries, automobile

²³SCRIS, Decree, 25 January 1974, "Assistance to Those Leaving Religious Life", T. Bouscaren, J. O'Connor, Canon Law Digest, vol. 8, Milwaukee, Bruce Publishing Co., 1978, p. 425 (hereafter cited as CLD).

²⁴Ibid., p. 426.

²⁵Ibid., p. 426.

and travel expenditures, entertainment, recreation, books and subscriptions, professional membership dues, and alms.

vi. Bank accounts

It is reasonable that exclaustrated religious be given permission to open a bank account. The account should be held jointly by the individual and the religious institute. In this way funds remain under the ultimate control of the institute.

vii. Residence

The residence of the exclaustrated religious should be made known to the religious superior. This includes not only the address but also the telephone number. The major superior should also inform the local Ordinary of the exclaustrated religious' place of residence.

viii. Contacts between the religious superior
and the exclaustrated member

An exclaustrated religious remains under the vigilance and assistance of the religious superior. Religious often need someone with whom to discuss their difficulties and to help them acclimatize to their new situation, lest they feel alienation or rejection. They need to be encouraged and to

experience the love of other members of the institute.²⁶ Such contact should not be impersonal and bureaucratic. The interaction should be one in which confidentiality, charity, and patience exist.²⁷

Regular contact through personal meetings, letters and phone conversations reflect the interest of the superior and the community while reminding the exclaustated religious of the seriousness of this time of reflection and adaptation. "Too often there is neither communication to nor from the exclaustated member, and the member experiences alienation, loneliness and isolation."²⁸

If there are personal difficulties between the religious and the superior, another member could be delegated as the superior's representative.

ix. Contracts

Religious superiors should foresee the possibility of an exclaustated religious entering into an employment contract. The religious need not be over-hesitant about signing such an agreement as long as permission has been obtained beforehand

²⁶See SCRIS, Instruction, "Decisions and Guidelines - Leave of Absence or Exclaustation?", in Consecrated Life, 2(1978), p. 169.

²⁷D. O'Connor, Witness and Service: Questions About Religious Life Today, New York, Paulist Press, 1990, p. 42.

²⁸R. McDermott, "Dealing With Difficult Religious", p. 5.

from the superior. Canon 639, §3 tells the consequences of acting without permission when it states:

A religious who has made a contract without any permission of superiors must answer for it, but not the juridic person.²⁹

Thus, religious superiors should take care that the agreement drawn up between the superior and the member bars any authority to contract for or incur any liability of any nature whatsoever on the part of the religious institute without permission.³⁰

x. Not presenting oneself as an agent
of the institute

Care should also be taken to make it clear to all parties concerned that the exclaustated religious, in most cases, is not acting as an agent of the religious institute. If the religious should act as such, the institute could be

²⁹CIC 1983, c. 639, §3.

³⁰See P. Campbell, loc. cit., pp. 104-105. See also Canon Law Society of America, Roman Replies and CLSA Advisory Opinions 1990, W. Schumacher, ed., Washington, D.C., Canon Law Society of America, 1990, p. 71: A canonist drafted a declaration of non-liability for the monasteries of his congregation and sent it to Holy See. It was approved. The declaration says: "If a monk does not return to the monastery at the end of a period of exclaustation or other lawful absence, or if a monk is unlawfully absent from the monastery, the monastery is not liable for any debts or actions or omissions or obligations whatsoever incurred by the monk."

bound."¹¹ The agreement should contain a clause indicating that for the duration of the exclaustation, the religious is without authority to act for or in the name of the religious institute, including a phrase: "representing the institute apostolically or contracting debts and obligations on its behalf."

xi. Insurance

A religious institute is to provide its members with the necessary means to meet their legitimate vocational needs.¹² This requirement is applicable to religious who are exclaustated and includes ways adequately to meet both physical and psychological health care.¹³ In some countries, civil law specifically provides social health insurance which is also enjoyed by religious and clerics. In others, religious institutes may be covered by private insurance plans. In the latter instances it is recommended that an exclaustated member remain on the insurance plan of

¹¹J. Leonard, "Temporal Goods - Canons 634-640", in Handbook on Canons 573-546, J. Hite, S. Holland, D. Ward, eds., Collegeville, Minn., The Liturgical Press, 1983, p. 112.

¹²CIC 1983, c. 670: "An institute must furnish for its members all those things which are necessary according to the norm of the constitutions for achieving the purpose of their vocation."

¹³E. McDonough, "The Troubling Religious: Further Considerations", p. 624.

the institute. The institute, however, is not required to meet the needs of an exclaustated religious solely in a way that is considered satisfactory to such a religious. Such needs must be considered in regard to the rest of the members of the institute and also in respect to the institute's material means.³⁴ If there are sufficient reasons why specific requests cannot be met, then the religious superior has the right to limit the options of the member, especially when the religious is covered by a community policy which may restrict to which physicians, clinics or hospitals one may go. "In ordinary circumstances it is reasonable that discretion be left to an exclaustated religious to select his [her] own doctor, dentist or other professional."³⁵

Another area of insurance coverage which should be considered for the exclaustated member is automobile insurance. Again, it is recommended that, because of liability issues, community coverage be continued if the use of an automobile is authorized.

xii. Visitation of the local community

Since exclaustated religious are seeking distance from the religious institute in order to gain perspective to reflect on their situation or because of personal or family

³⁴Ibid., p. 624.

³⁵D. O'Connor, Witness and Service, p. 55.

needs, it seems best, even when it is voluntary, that an exclaustrated religious refrain from regular contacts with the community.³⁶ These should be made rarely and then only with the permission of the competent superior. In requesting exclausturation, the religious must be presumed to have accepted a limitation on the right to live in a religious community. On the other hand, superiors cannot compel a voluntarily exclaustrated member to remain outside the institute unless this is specified in the indult.³⁷

xiii. Reception of the community newsletter
and bulletins

Exclaustrated members should be informed of community news, particularly of appointments, sickness, death, and changes in policy. They should receive newsletters, circulars and possibly even questionnaires.

xiv. Matters requiring special permission

The supreme moderator should define the areas and circumstances in which the exclaustrated member is required to have recourse for special permissions. This may depend

³⁶P.V. Pinto, loc. cit., p. 396.

³⁷By canon 654, a member incorporated into a religious institute through profession obtains an acquired right to live religious life according to universal and particular law.

upon the type of exclaustation which the religious has been granted, and the circumstances of the case.

i. General permissions

An exclaustated religious should be given a number of general permissions to avoid frequent and constant recourse to superiors. In this way the purpose of exclaustation is preserved, namely, a certain distance and autonomy from the institute. General permissions may include employment, place of residence, management of ordinary expenditures, travel, and personal relationship with members of the institute.

ii. Specific permissions

Instances where an exclaustated religious could be required to seek specific permission are the following: a) to assume any of the obligations mentioned in canon 285, §4; b) to assume public office according to canons 285, §3; c) to enter into business and trade (canon 286); d) to take an active role in political parties or in the management of labor unions (canon 287, §2); e) to volunteer for military service (canon 289); f) to enter into a contract affecting the patrimonial condition of the juridic person (canon 638, §3); g) to change any of the following provisions: 1) administration of one's temporal goods, 2) disposition of their use and revenue, 3) to change a will (canon 668, §§1,

2); h) to accrue for oneself funds, pensions, or other subsidies (canon 686, §3).

The major superior may set down in the agreement other areas wherein specific permission could be required.

2. The modalities of imposed exclaustation

When exclaustation is imposed as a disciplinary measure because of difficult and disruptive attitudes or behavior, the formalities of canons 697-699 on dismissal are followed, insofar as they are applicable. In this way the rights of the religious are protected and proper documentation is available in the event the religious appeals the decision.³⁶ Thus, careful attention needs to be given to these formalities. Failure to do so could eventually lead to declaring the decision null and void.

The major superior has the authority to propose imposed exclaustation with the consent of the council. Natural justice demands that before such an extreme administrative measure is applied the religious in question be fully heard. Various avenues should also be explored to see if a less

³⁶A religious on whom exclaustation has been imposed could have recourse against the decision. The initial recourse, according to canon 1734 is made to the same authority. M. O'Reilly, "Permission of Absence from Community", in Informationes, 10(1984), p. 75. Hierarchic recourse does not automatically suspend the effect of the indult as in the case of dismissal, canon 700. See canons on recourse 1734, §1, 1736, §1.

severe solution can be found. If it is determined that the situation and the reasons are grave enough and other remedies have failed, the proofs pertinent to the situation and the behavior of the religious are gathered or completed.”

In the presence of two witnesses or in writing, the major superior is to admonish the religious regarding the grave violation and explicitly warn of subsequent imposed exclaustation if there is no improvement. The major superior should present to the religious a written directive or precept which includes: a) the reasons for the threat of imposing exclaustation; b) the steps necessary for the religious to remedy the situation; c) an opportunity and means for self-defense; d) and a statement that failure to comply with the mandate could result in enforced exclaustation.⁴⁰

A suitable period is then given to the religious, of at least fifteen days, to mend his or her ways. Any defense offered by the religious should be in writing and signed. If the religious does not comply with the mandate within the given time period, the supreme moderator is to give a second warning. If this also proves ineffective, the major superior (if he or she is not the supreme moderator) is to transmit to

³⁹CIC 1983, c. 697, §1.

⁴⁰CIC 1983, c. 697, §2.

the supreme moderator the acts countersigned by a notary, together with the defense signed by the member.⁴¹

The supreme moderator and the council carefully weigh the proofs, arguments and defenses. As the supreme moderator must receive the consent of the council, a secret vote is held to decide whether to submit a request for imposed exclaustation to either the Holy See or to the diocesan bishop.⁴² The decision is communicated to the religious and is effective as indicated in the decree.⁴³

a) Request to the Holy See or diocesan bishop

The request to the Holy See or the diocesan bishop should include (a) all the acts of the case; (b) a curriculum vitae of the religious; (c) an account of what was done to resolve the situation; (d) a statement of the supreme moderator; (e) in the case of a cleric a votum of the diocesan bishop or other ordinary who is willing to receive him; in the case of a lay religious pertinent information

⁴¹CIC 1983, c. 697, §3.

⁴²CIC 1983, c. 699.

⁴³In contrast to granting a favor, E. McDonough notes that in this type of exclaustation the competent authority issues a precept. A precept is one of several kinds of individual administrative acts (cc. 35-93). It is a special form of decree (c. 48) that orders one to do or to omit something (c. 49). It is given in writing and must express the reasons for being issued (c. 50). E. McDonough, "Exclaustation: Canonical Categories and Current Practice", in The Jurist, 49(1989), pp. 597-598.

concerning residence; (f) concerns that the supreme moderator and council believe the indult should contain, i.e., the right to return to common life only after certain conditions have been fulfilled; and (g) information concerning means of support of the religious, including health insurance, if necessary. Canon 686, §3 specifically mentions the obligation of the institute to observe equity and evangelical charity towards the member.

b) Special norms in the case of a cleric

A religious cleric⁴⁴ on whom exclaustation is to be imposed may be received by a bishop who is willing to accept him. The supreme moderator should strive to find a benevolent bishop before the Holy See is asked to impose exclaustation.⁴⁵ The cleric is under obedience to his superior and canonical obedience to the bishop since he would exercise the ministry under his authority. If a bishop cannot be found, another ecclesiastical authority may assume this responsibility. In this latter case the exclaustated cleric, if a priest, could be allowed to say Mass only in a specified religious house. If even this cannot be secured, then the Holy See usually does not impose exclaustation.

⁴⁴CIC 1983, c. 266, §2.

⁴⁵A. Gutiérrez, "Ex iurisprudencia et praxi S.C. de religiosis - De exclaustatione qualificata", in Commentarium pro religiosis, 32(1953), p. 388.

In the event that the exclaustrated cleric, after a period of time, wishes to take up residence in another diocese, and this has not been prohibited in the indult, he must first obtain the consent of the Ordinary of the new diocese. Such a petition should be made through the major superior.⁴⁶

c) Special precautions

Special consideration needs to be given when deciding to impose exclaustation on a religious who is behaviorally dysfunctional, emotionally or psychologically ill, or chemically dependent, and has not responded in a positive way to intervention. At times it may be necessary to place the religious in a residential care center. The main apostolic work of some religious institutes, e.g., the Servants of the Paraclete, provides such programs and these may be considered when dealing with members who have to be removed from the normal and active life of the community and are unable to function on their own. Some programs provide general care and supervision, while others offer comprehensive medical, educational, and therapeutic treatment.

A religious whose behavior is totally out of control may be committed to a hospital or sanatorium, with the help of

⁴⁶A. Calabrese, Gli istituti religiosi: lineamenti di diritto canonico, Roma, Fonti vive, 1986, p. 328.

the physician or psychiatrist, until he or she is at least minimally capable of living elsewhere.

Superiors should present well-researched and viable alternatives to troubled members, stressing the institute's desire to find a healthy atmosphere for them which will enable them to function at a more acceptable and personally satisfying level. If the religious is able to live alone, the superior should investigate the member's relationship to family and relatives. The institute should do all in its power so that the individual is not socially isolated and floundering.

3. Relationship between the exclaustated and ecclesiastical superiors

Canon 687 articulates the relationship between exclaustated religious, superiors, and local Ordinary with the words:

[they] remain dependent on and subject to the care of their superiors and also the local ordinary, especially if the member is a cleric.⁴⁷

The new code leaves the religious subject in obedience and in care of the religious superior. However, a certain relationship does exist between exclaustated religious and the local Ordinary.

⁴⁷CIC 1983, c. 687.

a) With the diocesan bishop

Though canon 687 specifies that an exclaustated religious remains subject to the superior, nevertheless, a "certain dependence on the local Ordinary is not completely suppressed."⁴⁸ This can first be seen in the light of the pastoral solicitude bishops are to have toward all religious,⁴⁹ and secondly, in the light of the bishop's responsibility to guide and coordinate pastoral activity in the diocese⁵⁰ in which exclaustated religious, particularly clerics, often desire to participate.

This pastoral care extends also to those who are not directly engaged in pastoral activity, since all "religious

⁴⁸J. Beyer, Le droit de la vie consacrée - commentaire des canons 607-746, Paris, Editions Tardy, 1988, p. 142.

⁴⁹Sacred Congregation for Religious and Secular Institutes and Sacred Congregation for Bishops, Directives, "Mutuae relationes", 23 April 1978, (hereafter cited as MR followed by page and paragraph number), in Acta Apostolicae Sedis (hereafter cited as AAS), 70(1978), p. 500, no. 52; trans. in A. Flannery, ed. Vatican II, More Postconciliar Documents, vol. II, Grand Rapids, Eerdmans Publishing Co., 1982, p. 238, no. 52. Pope John Paul II referred to this duty of bishops in his April 3, 1983, letter to the bishops of the United States, inviting them to devote particular care to religious. (John Paul II, Letter, 3 April 1983, "Criteria for Relationships between Bishops and Religious -- 'Commission on Bishops' Role and Life of U.S. Religious Orders'", in Origins, 13(1983-1984), pp. 129, 131-133).

⁵⁰MR, pp. 447-478, no. 6; MR, p. 497, no. 44; CIC 1983, c. 680.

belong in a special sense to the diocesan family."⁵¹ Two conclusions can be drawn: (1) exclaustrated religious are included in the pastoral care of bishops; and (2) canon 687 does not exclude non-clerical exclaustrated religious from dependence on and the care of the local Ordinary by the words "[...] and also the local ordinary, especially if the member is a cleric." The canon makes reference to the relationship of clerics to the bishop which arises from the reception of orders and the exercise of their respective ministry.⁵²

⁵¹Vatican II, Decree, "Christus Dominus", 28 October 1965, in AAS, 58(1966), p. 690, no. 34 (hereafter cited as CD followed by page and paragraph number); A. Flannery, ed., The Documents of Vatican II, New York, America Press, 1966, p. 584; MR, p. 494, no. 36; MR, pp. 500-501, no. 52.

⁵²Vatican II defined the relationship between bishops and priests as sharing in the "one identical priesthood and ministry of Christ." Vatican II, Decree, "Presbyterorum Ordinis", 7 December 1965, in AAS 58(1965), p. 1001, no. 7 (hereafter cited as PQ followed by page number and paragraph number; A. Flannery, The Documents of Vatican II, p. 875. The Council also said that priests "constitute, together with their bishop, a unique sacerdotal college (presbyterium) dedicated [...] to a variety of distinct duties." Vatican II, Constitution, "Lumen gentium", 21 November 1964, in AAS, 57(1965), p. 35, no. 28; A. Flannery, The Documents of Vatican II, p. 385. The same document said that priests "depend on the bishops in the exercise of their own proper power." LG, p. 34, no. 28; A. Flannery, The Documents of Vatican II, p. 384. Referring to the relationship of deacons to bishops, the Council noted that deacons are "dedicated to the People of God, in conjunction with the bishop and priests, in the service of the liturgy, the Gospel and of works of charity." LG, p. 36, no. 29; A. Flannery, The Documents of Vatican II, p. 387. Paul VI defined the relationship of deacon to bishop as being "[...] at the disposal of the bishop that he may serve the whole people [...]." Apostolic Letter Containing the Norms for the Order of Diaconate, "Ad pascendum", 15 August 1972, in AAS, 64(1972), p. 535; A. Flannery, The Documents of Vatican II,

As regards religious who are engaged in an apostolic undertaking of the Church, the Council referred to them as "auxiliaries of the bishop and subject to him."⁵³ Canon 678, §1 states:

Religious are subject to the authority of bishops, whom they are obliged to follow with devoted humility and respect, in those matters which involve the care of souls, the public exercise of divine worship and other works of the apostolate.⁵⁴

Thus, exclaustrated religious who are involved in "matters which involve the care of souls, the public exercise of divine worship and other works of the apostolate" are subject to the authority of the bishop.⁵⁵ The canon lists three areas of apostolic activity that are especially entrusted to the supervision and authority of the bishop.

i. Care of souls (cura animarum)

The term cura animarum describes the parochial office and technically is applied only to priests. Thus canons 515-552 on parishes, pastors, and parochial vicars, and canons 564-572 in reference to some types of chaplains speak of

p. 434.

⁵³CD, pp. 690-691, no. 35; A. Flannery, The Documents of Vatican II, p. 584.

⁵⁴CIC 1983, c. 678, §1.

⁵⁵CIC 1983, c. 678, §1.

pastoral care. Deacons and lay people can cooperate in pastoral care. Not included in this term are spiritual and temporal works of mercy, e.g., hospital work, schools, and centers of the social apostolate -- for migrant workers, unions, peace and justice commissions,⁵⁶ and so forth.

ii. The public exercise of divine worship

The public exercise of divine worship includes strictly liturgical worship: the public celebration of the Eucharist, the sacraments, the celebration of the Liturgy of the Hours, religious profession, and even public paraliturgical worship: a reconciliation service that does not include the celebration of the sacrament, a funeral vigil, the recitation of the rosary. Thus, an exclaustated religious is subject to the authority of the bishop in these instances, since the latter has the responsibility to see that the public exercise of the liturgy is performed in conformity with universal and particular liturgical law.⁵⁷

⁵⁶R. Hill, "The Apostolate of Institutes, Canons 673-683", in A Handbook on Canons 573-746, J. Hite, S. Holland, D. Ward, eds., p. 206.

⁵⁷Ibid., pp. 206-207.

iii. Other works of the apostolate

A religious who undertakes an external work which is directed to building up the Body of Christ is subject to the authority of the bishop. Vatican II spelled out the details:

All religious, whether exempt and non-exempt, are subject to the authority of the local ordinary in the following matters: public worship, without prejudice, however, to the diversity of rites; the care of souls; preaching to the people; the religious and moral education, catechetical instruction and liturgical formation of the faithful, especially children. They are also subject to diocesan rules regarding the comportment proper to the clerical state and also the various activities relating to the exercise of their sacred apostolate. Catholic schools conducted by religious are also subject to the local ordinaries as regards their general policy and supervision without prejudice, however, to the right of the religious to manage them. Likewise, religious are obliged to observe all those prescriptions which episcopal councils or conferences legitimately decree as binding on all.⁵⁸

This list should not be considered, however, as all-inclusive. Prudence demands that an exclaustated religious who is to participate in an apostolic work of the diocese be given an assignment only after consultation between the bishop and the major superior. Such communication clarifies the expectations and responsibilities of the local Ordinary, the religious superiors, and the exclaustated religious.

⁵⁸CD, pp. 691-692, no. 35, (4); A. Flannery, The Documents of Vatican II, p. 585.

Finally, if it comes to the bishop's attention that an exclaustated religious is not remaining faithful to the conditions laid down in the indult of exclaustation and the agreement, he has an obligation to contact the superior in order to urge faithfulness.⁵⁹ If an exclaustated religious becomes a source of division or scandal in the diocese, the bishop should ask the superior to call him or her back to the community. For a grave reason the bishop could prohibit such a member from continuing to live in the diocese.⁶⁰

b) With the major superior

Superiors have a pastoral role to exercise towards the members entrusted to their care.⁶¹ This responsibility includes the exclaustated, since they remain subject to the care and vigilance of their religious superiors.⁶² This pastoral solicitude should find expression in respect⁶³ for the exclaustated.

⁵⁹Cf. CIC 1983, c. 678, §2.

⁶⁰CIC 1983, c. 679.

⁶¹CIC 1983, c. 619.

⁶²CIC 1983, c. 687.

⁶³Vatican II, Decree, "Perfectae caritatis", 28 October 1965, in AAS, 58(1966), p. 709, no. 14 (hereafter cited as PC, followed by paragraph and page number); A. Flannery, The Documents of Vatican II, p. 619. Also CIC 1983, c. 618.

Major superiors or their delegates should be available and show interest in the exclaustated member so as to create a climate of trust and openness. They should listen to their requests regarding personal needs; visit them, particularly if they are sick; console them if disheartened; show patience,⁶⁴ and be aware of their physical needs. At times the major superior may be called upon to correct an exclaustated member. Such correction should be viewed as a right and duty linked with the exercise of charity.⁶⁵ It can help the exclaustated religious grow in self-knowledge and assist in the discernment process.

Not only do exclaustated religious remain subject to the care of their superiors, but they remain dependent on them.⁶⁶ Dependence means that the exclaustated member must have recourse to superiors in certain instances. The scope of this dependence should be determined in the agreement. The prescription of canon 687 that exclaustated religious "remain dependent on and subject to the care of their superiors" guards against the temptation to consider themselves as already detached from the religious institute.

⁶⁴CIC 1983, c. 619.

⁶⁵"*Perfectae caritatis*" no. 15 recalls that charity "sums up the law (cf. Rom. 13, 10) and is the bond which makes us perfect (cf. Col. 3, 14)." PC, p. 709, no. 15; A. Flannery, the Documents of Vatican II, p. 620.

⁶⁶CIC 1983, c. 687.

When exclausturation is requested by a religious who is discerning a vocation and who needs space to reflect upon the validity of this feeling, the possibility of making a free choice is most important. The superior must provide realistic options for the member to consider. The person in doubt regarding continuance in the religious vocation needs to be enabled to evaluate all the consequences of a change. For this purpose the institute could even pay for retaining an employment placement agency so that the member may make an informed and responsible decision regarding his or her vocation.

Related to the issue of freedom of choice for a religious in a vocation crisis is the need of a careful review of the options offered by canon law to a religious, especially a priest, who decides to seek a dispensation from religious vows. According to the way the situation is perceived, the person may choose laicization because of a desire to marry, but a priest who wishes to remain celibate may ask for a dispensation from his religious vows either to seek incardination in a diocese or to cease for the time to exercise priestly functions as he pursues his new career.

B. RIGHTS AND OBLIGATIONS OF THE EXCLAUSTRATED

1. The rights

Some rights attributed to an exclaustated religious are derived from the juridic bond between the member and the institute arising from definitive incorporation. Other rights flow from the dignity of human nature. Thus, canon 220⁶⁷ speaks of the right to a good reputation and the right to privacy. Consideration is given now to rights recognized by law for exclaustated religious and those which the institute itself may grant.

a) Those recognized by law

i. Right to be sustained

Religious institutes in accepting members have the responsibility of furnishing the spiritual and material resources necessary to sustain them.⁶⁸ Though exclaustated religious normally are expected to work in order to maintain themselves, the proper authorities within the institute are obliged to see that such members are adequately cared for. This includes food, clothing, suitable housing, and proper medical attention when required. Special provisions need to

⁶⁷CIC 1983, c. 220.

⁶⁸CIC 1983, c. 670.

be made at times for the sick, the elderly, and the incapacitated. The obligations of the institute to the exclaustated member and the manner in which assistance is given should be articulated in the agreement. It is ultimately the responsibility of the institute to care for such members and not the responsibility or obligation of their relatives or friends.

ii. Right to wear the religious habit

Unlike the 1917 Code,⁶⁹ the new law provides that exclaustated religious may wear the religious habit, unless the indult specifies otherwise. It will be for the authority granting the exclaustation to decide according to the circumstances of each case whether it is desirable that the exclaustated religious continue to wear the habit of the institute while living outside. A religious needing time and distance to evaluate a vocation or who is forced to live separated from the community is not bound to represent the institute as a public person by wearing the habit unless the rescript determines otherwise. While the habit may be worn, in most cases the practice is not to wear it. At times this is a sensible decision, since a religious in habit and living

⁶⁹Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, Romae, Typis polyglottis Vaticanis, 1917 (hereafter cited as CIC 1917), c. 639.

alone in an apartment could be a source of wonderment. Further, exclaustrated religious often find work beyond the apostolate of the Church.⁷⁰ E. McDonough notes:

Not wearing the habit is usually not an issue for those who have requested exclaustation for vocational discernment. On the other hand, restrictions on wearing the habit can often be very much an issue for instances of imposed exclaustation. It is often the difficult religious who is being forced to live at a "juridic distance" from the institute who wants most to be visibly identified with it. For imposed exclaustation superiors would include in the request an opinion with supporting reasons regarding the advantages or disadvantages of the religious being permitted to wear the habit of the institute. If the supreme moderator deems it necessary, a specific request should be made that the rescript state that the religious is not to wear it. It is possible in some instances that wearing of the habit by an exclaustrated religious -- like having a community credit card or driving a community car -- can contribute to the appearance that he or she may be acting as an agent of the institute for the purposes of civil liability, so the issue is far from moot in its practical consequences.⁷¹

iii. Right to a good reputation

Canon 220 protects the right of a religious to a good reputation by prohibiting its "unlawful" damage.⁷² In

⁷⁰R. McDermott, "Dealing With Difficult Religious", p. 5.

⁷¹E. McDonough, "Exclaustation: Canonical Categories and Current Practice", in The Jurist. 49(1989), pp. 603-604.

⁷²CIC 1983, c. 220. See F. Morrissey, "Confidentiality Issues Regarding a Religious Institute and Its Relationship with a Diocese", in Bulletin on Issues of Religious Law,

itself exclaustation does not deprive a religious of a good reputation. The modifier "unlawfully" indicates that the right is not absolute and unconditional."⁷³ Thus, a reputation may be damaged if there is cause. A member whose witness to religious life is derogatory and a cause of scandal, though not deserving dismissal because of diminished imputability, but who is exclaustated ad nutum Sanctae Sedis, may suffer a damaged reputation. Just because there is cause does not mean, however, there is sufficient reason to damage a person's reputation. Superiors have an obligation to ensure that an exclaustated member's right to a good reputation is respected. Furthermore, canon 18 states that laws which restrict the free exercise of a right are to be interpreted strictly."⁷⁴

iv. Right to privacy

Another right which is applicable to exclaustated religious is the right to privacy."⁷⁵ When gathering the documentation for exclaustation, superiors should maintain control over the collection, use, and disclosure of

7(Fall 1991), 8p.

⁷³R. Hill, "Screening Candidates: The Need to Know", in Review for Religious, 45(1986), p. 459.

⁷⁴CIC 1983, c. 18.

⁷⁵CIC 1983, c. 220.

information of a personal nature regarding the member either petitioning for or on whom imposition of exclaustation is being requested. Such information may include medical or psychological reports.

v. Right to return to community

Those who have freely petitioned and received an indult of exclaustation are entitled to return to community even before the expiration of the time for which it was granted unless it was otherwise provided. The religious superior too can shorten the time of exclaustation:

The authority which granted the exclaustation may also for proportionate cause withdraw the indult before its expiry; this could happen especially if the indult is being misused, the religious leading a life unworthy of the religious state or harmful to the institute.⁷⁶

At the expiration of the time for which it was granted, unless the period has been extended, the religious is bound to return to the community.

On the other hand, a religious on enforced exclaustation does not acquire a right to return to common life by simply expressing a desire to do so, nor does the supreme moderator have the right to oblige the religious to return. Unless the indult provided otherwise, a religious on

⁷⁶M. O'Reilly, "Permission of Absence from Community", p. 77.

imposed exclaustation can return to common life only with the permission of the Holy See in the case of a religious of pontifical right, or of the diocesan bishop in the case of a religious of a diocesan institute.⁷⁷ The competent authority who imposed the exclaustation determines whether the conditions for requiring the exclaustation remain. If such is not the case, a decree of revocation is issued stating that the religious has the right and obligation to return to common life.⁷⁸

b) Rights recognized by the institute
in the agreement

The agreement drawn up between the competent superior and the exclaustated member may list rights which the institute recognizes towards the latter beyond those accorded by the general law. Such may be the right a) to visit the community; b) to participate in the annual retreat; c) to receive the institute's newsletter and other communications; d) to remain on the institute's health plan and, if applicable, auto-insurance coverage.

⁷⁷G. Lobina, "Juridico-Pastoral Observations on Disciplinary Measures in Regard to the Conduct of Religious", in Consecrated Life, 1(1977), pp. 71-72.

⁷⁸A. Gutiérrez, loc. cit., p. 339; also in CLD, vol. 4, p. 244.

2. The obligations relating to the vows

Life consecrated by the profession of the evangelical counsels is a total dedication of the person to God. It is meant to be a permanent choice or state in life. The indult of exclaustation dispenses a religious from certain consequences of the vows of poverty and obedience, but not from their substance.

a) Poverty

Canon 600 speaks of "dependence and limitation in the use and disposition of goods" in the life of a religious.⁷⁹ In the acquisition, use and administration of temporal goods exclaustated religious remain limited due to 1) the juridic consequences of the vow of poverty as determined by proper law and, 2) the prescriptions of the agreement made between the exclaustated religious and the superior. In addition, the religious also remains dependent on the superior as regards the vow of poverty 1) if the exclaustated member is unable to provide for himself or herself, and 2) when recourse to superiors is required, as determined in the agreement.

⁷⁹CIC 1983, c. 600.

i. Obligation to earn one's living

Exclaustrated religious are obliged to earn their own living, since the vow of poverty binds them to "the common law of labor."⁸⁰ If an exclaustrated member is unable to work due to age or impaired mental or physical health, the institute has an obligation of support since the person remains a member of the institute. Furthermore, an exclaustrated religious should not have to embrace a debilitating, crushing, inhuman form of economic poverty.

ii. Juridic implications of the vow of poverty

An exclaustrated member of an institute that requires a total renunciation of personal goods can possess and use goods, but whatever accrues during exclaustration -- property, pension, inheritance -- belongs to the institute. Contrary acts would be invalid.⁸¹

Members of institutes that do not require this total renunciation retain the right to own personal goods acquired before profession and the capacity to acquire more, unless proper law determines otherwise. Sums received by way of gifts or inheritance could be retained as part of personal

⁸⁰PC, p. 708, no. 13; A. Flannery, The Documents of Vatican II, p. 618.

⁸¹CIC 1983, c. 668, §5.

patrimony.⁸² The administration of such goods would be carried out according to the cession made at the time of profession unless permission was obtained to change the disposition for the administration of such goods.⁸³

An exclaustated religious could be given permission to use personal goods in whole or in part. If such a member acted without the proper permission, such acts would be illicit, but not invalid.

iii. The last will and testament

An exclaustated religious is required to seek permission, usually from the major superior,⁸⁴ in order to change⁸⁵ the dispositions of the last will and testament. This may be done to ensure that a) the last will and testament is in accord with law; b) ambiguity is eliminated; c) the capacity of the subject to benefit is determined; d)

⁸²As regards pensions, subsidy or insurance benefits canon 668, §3 states unless the institute's own law decrees otherwise, such benefits belongs to the institute.

⁸³CIC 1983, c. 668, §1, §2.

⁸⁴F. Morrissey, "The Vow of Poverty and Personal Patrimony", p. 142.

⁸⁵J. Gallen notes that "the meaning with regard to a will is a real change; that is, in the beneficiaries. It is not a change to interpret the will, to put it in a better and clearer form, to add a disposition with regard to property recently acquired, or to substitute a beneficiary for one who had died." J. Gallen, Canon Law for Religious: An Explanation, New York, Alba House, 1983, p. 163.

"that what belongs to the institute will not be claimed by relatives, such as damages from accidental death";⁶⁶ e) "that pension funds returnable to the institute after death are secured";⁶⁷ and f) that one's wishes regarding the rites of Christian burial are in accord with proper law and are respected.

iv. Acquisitions upon return to the institute

Upon returning to the institute, an exclaustated religious who accumulated any funds or other personal goods during exclaustation could not keep them, since they have been acquired by personal work and belong to the community.⁶⁸ The individual who has not made a total renunciation of goods, however, could claim funds accrued from gifts or inheritance as personal patrimony, if this was in accord with proper law. Policies for such members should be clearly stated in the agreement.

⁶⁶F. Morrissey, "The Vow of Poverty and Personal Patrimony", p. 142.

⁶⁷Ibid.

⁶⁸CIC 1983, c. 668, §3.

b) Chastity

Exclaustrated religious remain bound by the obligation of "perfect continence in celibacy",⁸⁹ that is, chastity lived in celibacy. This entails not only abstention from all acts forbidden by the sixth and ninth commandments, but also an inward attitude which "rejects whatever is opposed to chastity."⁹⁰ Canon 277, §2 is also applicable to exclaustrated religious when it states that [religious] are

to conduct themselves with due prudence in associating with persons whose company could endanger their obligation to observance of continence or could cause scandal for the faithful.⁹¹

In a situation where concern is raised, the religious superior is competent to pass prudent judgment on an exclaustrated religious' conduct relative to the observance of this obligation.⁹²

⁸⁹CIC 1983, c. 599, see also LG, pp. 49-50, no. 43, PC, pp. 707-708, no. 12.

⁹⁰PC, p. 707, no. 12; A. Flannery, The Documents of Vatican II, p. 617.

⁹¹CIC 1983, c. 227, §2.

⁹²CIC 1983, 227, §3.

c) Obedience

Exclaustrated religious remain subject in obedience to their proper religious superiors, but the conditions under which the exclaustration was granted or imposed must be respected. Therefore, exclaustrated religious exercise greater freedom than other members of a religious institute, since they are not pursuing the common good or the corporate mission of the institute, but the goal for which exclaustration was granted.

Areas should be delineated in the agreement whereby the religious is required to ask permission; other areas might be noted where general permissions are given or can be presumed.

d) Spiritual obligations

A number of other obligations listed in canons 662-672 are applicable, with the necessary adaptation, to exclaustrated members due to their objective status as religious.

These would include the following of Christ (canon 662), the contemplation of things divine (canon 663, §1), participation in the Eucharist where possible (canon 663, §2), reading of Sacred Scripture and mental prayer (canon 663, §3), praying the liturgy of the hours (if a cleric)

(canon 276, §2, §3),⁹³ as well as other practices such as devotion to the Blessed Virgin Mary (canon 664, §4), annual retreats (canon 663, §5), and continually striving for conversion (canon 664).⁹⁴

e) Other obligations

Canon 672 specifies certain activities which are prohibited to clerics and religious without special permission because they are considered generally inappropriate in view of the religious or clerical public commitment and service in the Church. These include: engaging in unbecoming activities (canon 285, §1, §2), assuming public office (canon 285, §3), assuming financial responsibilities for others (canon 285, §4), entering into business and trade (canon 286), involvement in political and

⁹³Vatican II, Constitution, "Sacrosanctum concilium", 4 December 1963, in *AAS*, 56(1964), p. 896, no. 79; Sacred Congregation for Religious, Decree, "Religionum laicalium", 31 May 1966, in *AAS*, 59(1966), II, no. 9, p. 363 dealt with dispensations for the recitation of the Liturgy of the Hours. M. O'Reilly notes that "the 1983 Code does not speak about this but seemingly leaves the matter to the conscience of the individual or presupposes the faculties still exist, in accord with canon 2." (M. O'Reilly, Norms on Consecrated Life: cc. 572-633: 641-746, [unpublished classnotes], Ottawa, Saint Paul University, 1991-1992, p. 352-353.

⁹⁴For a commentary on these obligations, see E. Gambari, Religious Life According to Vatican II and the New Code of Canon Law, trans. by the Daughters of St. Paul, Boston, St. Paul Editions, 1986, pp. 352-383; also D. J. Andres, El derecho de los religiosos: comentario al Código, 2a ed., Madrid, Publicaciones Claretianas y Commentarium pro Religiosis, 1984, pp. 404-423.

trade movements (canon 287, §2), and volunteering for military service (not chaplaincy service, though) (canon 289).⁹⁵

3. The special situation of religious subject to
enforced exclaustation

a) The practice of equity and charity

i. The notion of equity

In Roman jurisprudence equity was a benevolent application which tempered the rigidity of strict legal prescriptions (positive law) and affirmed moral values (natural law). Thus equity added a qualitative character which brought about a more balanced solution.⁹⁶

In canon law equity is a "higher form of justice with a spiritual goal in mind."⁹⁷ It is Christian mercy which tempers strict justice and takes particular circumstances into account.

⁹⁵For a commentary on these obligations, see D. O'Connor, "Obligations and Rights", in A Handbook on Canons 573-746, J. Hite, S. Holland, D. Ward, eds., pp. 190-194; see also D. Andres, op.cit., pp. 479-502.

⁹⁶M. Amen, "Canonical Equity Before the Code", in The Jurist, 33(1973), p. 4.

⁹⁷Pope Paul VI, Address to the Sacred Roman Rota, "The Value of Canonical Equity", 8 February 1973, in The Pope Speaks, 18(1973), p. 79.

ii. Particular application to the exclaustated
religious

Not only does canon 686, §3 exhort superiors to observe "equity and charity" during the process of imposing exclaustation, but it also requires particular solicitude for the welfare of those who have been exclaustated.¹⁰⁰ Superiors are exhorted to be mindful of this dual obligation, since those on whom exclaustation has been imposed are denied the enjoyment of a basic right of religious life, the right to common life." Also, such separation is often experienced as a traumatic adjustment to secular life. Members who find themselves in such a situation are often at mid-life, at times lacking the support of family and friends, with limited job opportunities, and few social contacts. J. Beyer notes the experience, before the revision of the Code, of flagrant cases of serious lack of charity towards members on whom exclaustation had been imposed:

Certain exclaustated members, who no longer had family, or any other means of subsistence, would have been in the greatest misery if they had not been taken care of by generous Christians.¹⁰⁰

¹⁰⁰By application, see R. McDermott, "Canon 702, § 2 - Equity and Charity to Separated Members", in Bulletin on Issues of Religious Law, 6(1990), no. 2, 8p.

¹⁰¹M. O'Reilly, "Permission of Absence from the Community", p. 75.

¹⁰⁰J. Beyer, op. cit., p. 141.

iii. Notion of charity

The love of God "most of all" and the love of neighbor "in service to the Kingdom of God" are at the center of religious life.¹⁰¹ Religious superiors are to exercise this charity in a spirit of service to those entrusted to their care.¹⁰² The Gospel imperative reflected in canons 619 and 665, §2 sheds light on the meaning of the charity that canon 686, §3 requires to be shown to exclaustrated religious. Although they are deprived of participation in the life to which they have committed themselves by their vows, they remain members, however incapacitated, of their religious family, and their very need entitles them to the special care and concern of their superior.

4. The spiritual obligations on the part of the institute

The purpose and end of religious life is to promote a Christlike holiness in the members. Institutes remain bound to strive spiritually to assist members on whom exclausturation has been imposed.¹⁰³ In order to ensure this

¹⁰¹CIC 1983, c. 573, §1. See V. Fagiolo, "Law for Religious in Canonical Legislation", in Consecrated Life, 10(1986), pp. 98-99.

¹⁰²CIC 1983, c. 618.

¹⁰³CIC 1983, c. 659, §1, §2; c. 600, §1.

spiritual well-being, the institute should provide such members with the necessary resources for spiritual development,¹⁰⁴ i.e., access to the sacramental life of the Church, material for spiritual reading, and the means for extended periods for retreat.

5. Financial obligations on the part of the institute

Institutes should make sure that the needs of those on whom exclaustation has been imposed are prudently foreseen and suitably provided for. A. Gutiérrez comments that the obligation on the part of the religious institute to assist a member on whom exclaustation has been imposed has as a rule more weight because the religious is reduced to this state for the benefit of the religious body.¹⁰⁵ Such a member remains a member of the institute, and has an acquired right by profession to support from the institute if unable to provide for personal support. Regarding religious who leave their institute, L. Ricceri states: "It is supremely important that the person leaves with the conviction of having been treated with justice and charity¹⁰⁶ ... [and],

¹⁰⁴CIC 1983, c. 661.

¹⁰⁵A. Gutiérrez, loc. cit., p. 339.

¹⁰⁶L. Ricceri, "The Economic Subsidy to be Granted Religious Who Leave Their Institute", in Consecrated Life, 1(1977), p. 165.

needless to say, an enlightened and well understood charity should not be stingy or restrictive."¹⁰⁷ This admonition is also applicable when exclaustation is imposed.

6. Other obligations

a) Therapy and programs of treatment

If counseling, therapy, or residential treatment programs are recommended to a religious on whom exclaustation has been imposed, the competent superior should present well-researched and viable alternatives to such an individual. The superior should also be acquainted with the qualifications of the counselors, therapists, or treatment facilities. E. McDonough notes that the superior should be provided with the following information from therapists or health care programs: 1) the qualifications of personnel; 2) the type of therapy or treatment employed; 3) costs of patient assessment and length of treatment; 4) kind of medication, if any; 5) the means of assessing prognosis and accessibility of progress reports; 6) the expectation of the professional regarding the realistic reintegration of the member into community life; 7) the cost of continued therapy; 8) the possibility of insurance coverage for treatment.¹⁰⁸

¹⁰⁷Ibid., p. 168.

¹⁰⁸E. McDonough, "The Troubling Religious: Further Considerations", op.cit., p. 622.

b) Personal contact with other members

St. Benedict in his Rule gives wise counsel regarding those who have been excommunicated. His pastoral approach is an example for superiors today who may have a religious on imposed exclaustation.

The abbot must exercise the utmost care and concern for wayward brothers, because 'it is not the healthy who need a physician, but the sick' (Matt 9:12). Therefore, he ought to use every skill of a wise physician and send in senpectae, that is, mature and wise brothers who, under the cloak of secrecy, may support the wavering brother, urge him to be humble as a way of making satisfaction, and 'console' him 'lest he be overwhelmed by excessive sorrow' (2 Cor 2:7). Rather, as the Apostle also says: 'Let love for him be reaffirmed' (2 Cor 2:8), and let all pray for him.¹⁰⁹

In most cases it will be fruitful if the superior appoints a member or members to keep in contact with the exclaustated member to support, console, and even urge satisfaction if necessary. Religious superiors may also request the assistance of the episcopal vicar¹¹⁰ in supporting such a member.

¹⁰⁹T. Fry et al. eds., RB 1980: The Rule of St. Benedict in Latin and English with Notes, Collegeville, Minnesota, The Liturgical Press, 1981, RB 27, 1-4.

¹¹⁰CIC 1983, c. 476. J. Pfab specifically mentions the care of exclaustated religious living in the diocese as one of the duties of the episcopal vicar for religious. J. Pfab, "The Episcopal Vicar for Religious", in Consecrated Life, 14(1989), p. 88.

c) Relationship with the family of the
exclaustrated religious

Superiors will have to exercise much discretion and sensitivity for the feelings, reactions, and concerns not only of the member on enforced exclaustration, but also of his or her worried relatives and friends.

d) Death of a religious
on enforced exclaustration

The funeral rites for an exclaustrated member are to be offered in a church or oratory of the institute.¹¹¹ The member retains the right to be buried in the cemetery of the institute.¹¹²

Finally, the religious community would be obligated to offer the suffrages as accorded any member of the institute as specified in proper law.

Conclusion

Over the past years numerous religious have been juridically separated from their religious institutes through the procedure of exclaustration. Those who have had the responsibility of assisting such members know that

¹¹¹CIC 1983, c. 1179.

¹¹²CIC 1983, c. 1241. See J. Hill, "Funeral Rites for Religious", in Review for Religious, 48(1989), pp. 619-621.

exclaustration is a painful situation not only for the individual member, but also for those who persevere in the institute. It can be concluded from what has been said that it is not enough to know the law on exclaustration; it must be carefully applied to ensure the fulfillment of ecclesial and moral responsibilities.

Attention to the formalities of exclaustration, whether voluntary or imposed, is a safeguard against arbitrariness; it gives direction to the stated purpose of exclaustration; it protects personal and institutional rights; specifies obligations of members and institutes; provides an avenue of recourse, serves as a reminder of the radical commitment of vowed life and the gravity of exclaustration, and calls to mind the special solicitude superiors are to have toward members who are in turmoil or difficulty.

The legislation on exclaustration addresses a genuine need and attempts to respond positively to the complexities of the juridic situation of exclaustrated religious. It is more comprehensive than the former law since it includes the possibility of imposed exclaustration. It incorporates the principle of subsidiarity; makes particular reference to equity and charity, and is based on the jurisprudence of the Holy See. It allows an exclaustrated member to maintain a closer relationship with the institute and aims at

facilitating a return to the community by leaving the member subject to the proper superior, unlike the former law.

In spite of the remarkable improvement in the law, questions often arise regarding the concrete application of the legislation. The following points can be made:

(1) canon 687 is inevitably general and abstract. It does not address the concrete circumstances to which the law is to be applied, since the application of the law depends on the individual, the circumstances, and the type of exclaustation sought. From this it can be concluded that the legislator wanted to leave the solution to concrete questions open for application. (2) The canon charges the local ordinary to be pastorally solicitous not only toward exclaustated clerics but to all exclaustated religious, but does not provide how this is to be done. (3) The law does not make reference to the delicate procedures that are required for enforced exclaustation; and 4) canon 687 expresses the exclaustated persons' status negatively: they are "free from the obligations which are incompatible with their new condition of life", while the former law defined the obligations of the exclaustated religious in a more positive way.

The law on exclaustation in the 1983 Code alludes to mutual rights and obligations of members and institutes. Ecclesiastical superiors must balance and define these rights and obligations. An agreement or in some cases a contract is

an appropriate means to secure this end. Thus when charity and love falter, and even common sense fails, the rule of justice is still there.

CONCLUSION

Religious life is an ecclesial reality.¹ Guided by the Spirit, Church authority guarantees the authenticity of religious life and determines its juridic elements.

It belongs to the competent authority of the Church to interpret the evangelical counsels, to regulate their practice by laws, to constitute the stable forms of living by canonical approbation, and, for its part, to take care that the institutes grow and flourish according to the spirit of the founders and wholesome traditions.²

Among the juridic elements is the obligation to live in common.³

From the beginning, religious life has been a response of Christians who, in fidelity to a divine call, consecrate themselves to Christ in a radical manner in order to follow Him closely.⁴ In the early days of Christianity this call expressed itself by a search for solitude. Soon however Christians, moved by the same inspiration, began to come together to live out this call in community. From this time

¹See Vatican II, Dogmatic Constitution, "Lumen gentium", 21 November 1964, (hereafter cited as LG followed by page and paragraph number), in Acta Apostolicae Sedis (hereafter cited as AAS), 57(1965), pp. 49-50, no. 43.

²Codex iuris canonici, in c. 576; trans. in Code of Canon Law, Latin-English edition, Washington, D.C., Canon Law Society of America, 1983, c. 576 (hereafter cited as CIC 1983).

³CIC 1983, c. 607, §2, c. 665, §1, c. 602.

⁴CIC 1983, c. 573.

together to live out this call in community. From this time life lived in community became a characteristic element of consecrated life.

Common life was reaffirmed by the Second Vatican Council and post-conciliar legislation. Thus, Perfectae caritatis recalls the duties and the advantages of common life.⁵ Lumen gentium speaks of common life as a proven way of acquiring perfection,⁶ while the Motu proprio, Ecclesiae sanctae, states that common life should be promoted in a way that is consistent with the vocation of each institute.⁷ Paul VI's exhortation, Evangelica testificatio, reminds us that common life must be lived in charity to be truly efficacious.⁸ The Church promotes, fosters, and protects common life because a) it contributes efficaciously to the realization of the evangelical counsels; b) provides for vita fraterna in communio in the service of the Lord; c) is an outstanding witness of the universal reconciliation won in Christ and of the world to come; e) and assists members in faithfully maintaining the life which they have professed.

⁵Vatican II, Decree, "Perfectae caritatis", 28 October 1965, in AAS, 58(1966), pp. 709-710, no. 15.

⁶LG, pp. 49-50, no 43.

⁷Paul VI, Motu proprio, "Ecclesiae sanctae", 2 August 1966, in AAS, 58(1966), p. 770, no. 25.

⁸Paul VI, Apostolic Exhortation, "Evangelica testificatio", 29 June 1971, in AAS 63(1971), pp. 517-518, no. 39.

If common life represents a fundamental element of religious life, the general rule has, nevertheless, always admitted to exceptions as this study has shown.

Before the eighteenth century there was no explicit law of the Church providing for an indult to be given to allow a religious to remain temporarily outside the community. Any concessions given were granted solely by the consent of the religious superior.

Primarily because of the suppression by civil authorities of religious orders, congregations, and houses in the eighteenth century, the Apostolic See granted bishops and superiors general authority to concede indults of temporary secularization to religious who had been dispersed. The effects of such indults were determined in each indult. The vows remained intact, but those regulations that were incompatible with the exclaustated member's new condition were dispensed. This remedy was seen as a last resort. The Holy See instead encouraged such religious, if possible, to take up residence in other religious dwellings even if not of the same order, congregation or house.

Given new demands in society, in the Church, and in religious life, as well as a renewed understanding of the vows, the 1917 Code no longer referred to "temporary secularization" but to "exclaustation", introducing a distinction between saecularizatio and exclaustatio.

Secularization came to mean a permanent departure from the institute, while exclaustation was understood as a temporary absence from the religious community.

The law on exclaustation set down general norms applicable to all; it determined the competent authority to concede the indult, the nature of such a concession, and its effects. Two other forms of exclaustation were also applied after the 1917 legislation was promulgated, even though they are not mentioned in the Code: exclaustatio ad nutum Sanctae Sedis and exclaustatio qualificata. In these ways the situation of exclaustated religious was clarified and more effectively provided for.

Though the law on exclaustation was well ordered, it implied uniformity of practice and consequently lacked the capacity to take into account the exigencies of particular situations and of members who sought such a concession. Likewise, by reserving exclaustation to hierarchical authority, the law reflected the centralization of Church authority and demonstrated the fact that religious superiors frequently lacked the autonomy to govern and regulate the discipline of their members without frequent recourse to hierarchic authority. Furthermore, the transfer of an exclaustated member's obedience to the local Ordinary was not entirely sensitive to the pastoral needs of the religious. As a result, a void was often created in which no

one assisted the exclaustrated member in practical ways or gave spiritual guidance and encouragement.

Since the legal system of the 1917 Code no longer adequately served all the needs of the changing Church, Pope John XXIII called for the revision of the Code in order that it might be better adapted to the current life and activity of the People of God. This revision translated into canonical terms the theological and ecclesiological doctrine of the Second Vatican Council. As a result, not only was the law on exclaustation revised in this context, but also against the background of a mass exodus from religious communities with the grief and pain experienced both by those who departed and by those they left behind. The very existence of many religious institutes was threatened, and their well-being, and even more that of their members and of the Christian community as a whole called for great wisdom and sensitivity on the part of the members of the Commission for the Revision of the Code as they addressed the complicated issues.

This study has shown that the 1983 canons on exclaustation are more effective than the previous legislation since they a) reflect the decentralization of Church authority called for by the Council and carefully apply the principle of subsidiarity, b) acknowledge a rightful autonomy of governance of religious institutes and

give the necessary power to superiors to govern their members, c) manifest an equality between pontifical and diocesan institutes, and between institutes of men and women, d) implicitly acknowledge and remind us of the pastoral sensitivity, respect, equity and charity that should be accorded an exclaustated member, and of the rights and obligations of both member and institute, e) and, finally, provide flexibility in applying the law.

The examination of the historical development of the institution of exclaustation has allowed us to place the 1983 legislation in a particular context, to study its development, and even more to address a number of practical issues that superiors and members often today face during the process of exclaustation.

Among these issues, we could mention: salary, taxes, benefits, monetary supplement from the institute, personal budget, bank accounts, residence, insurance, right to visit the institute, and matters requiring special permission.

What is clear is that attention needs to be given to the formalities of exclaustation, both voluntary and imposed, so that the respective parties are served and justice and equity maintained. Religious superiors have the responsibility to balance and define the rights and obligations of members and of the institute. Agreements or contracts often provide a means to assure clarity and mutual responsibility of members

and institutes. Though the present law on exclaustation may be seen as abstract, the intent of the legislation seems clear: to provide general norms accessible to all, but at the same time requiring a prudent application to concrete circumstances, since much depends on the individual, the circumstances, and the type of exclaustation sought. Though the law leaves the exclaustated member subject in obedience to the religious superior, the Code alludes to a certain dependence on the local Ordinary as well. This dependence reflects the Council's understanding of the place of religious in the local Church --they are truly part of "the diocesan family",⁹ and of the pastoral solicitude that bishops are to have toward all religious.¹⁰ It also recalls the bishop's responsibility to guide and coordinate pastoral activity in the diocese¹¹ in which exclaustated religious, particularly clerics, often desire to participate.

To conclude, the present law on exclaustation is at the service of those who seek to be (or are for grave reasons) temporarily separated from their institute of profession, and

⁹Sacred Congregation for Religious and Secular Institutes and Sacred Congregation for Bishops, Directives, "Mutuae relationes", 23 April 1978, in *AAS*, 70(1978), p. 485, no. 18b (hereafter cited as *MR*, followed by page and paragraph number) and Vatican II, Decree, "Christus Dominus", 28 October 1965, in *AAS*, 58(1966), p. 690, no. 34.

¹⁰*MR*, p. 500, no. 52.

¹¹*MR*, pp. 447-478, no. 6.

at the same time intends to foster good order in the Church. It expresses a means to an end and facilitates the attainment of this end. The law provides predictable and reliable procedures and seeks to facilitate a tranquil transition in what is often a painful situation for the exclaustrated and the community. It is cognizant of rights and obligations of the exclaustrated member and the institute, and provides avenues of recourse in the case of imposed exclaustation. Since the law requires a grave reason for the indult to be conceded, it serves to educate all regarding the seriousness of such a step and reminds us of the stability and juridic elements required of religious by their profession.

There remain some unanswered questions. With time and practice, it is quite probable that a body of jurisprudence will evolve, enabling us to apply the new legislation in the best way possible. In the meantime, we can rely on past experience and on general legal principles so that actions taken will be inspired by charity and equity for all concerned.

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