

**THE PROPER LAW OF AN INSTITUTE OF CONSECRATED LIFE
IN THE LATIN CHURCH:
A CONSIDERATION OF C. 587 CIC**

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Abbreviations

<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
<i>CIC</i>	<i>Codex Iuris Canonici, auctoritate Ioannis Pauli PP. II promulgatus</i>
<i>CICLSAL</i>	Congregation for Institutes of Consecrated Life and Societies of Apostolic Life
<i>CLD</i>	<i>Canon Law Digest</i>
<i>ES</i>	<i>Ecclesiae sanctae</i>
<i>GS</i>	<i>Gaudium et spes</i>
<i>LG</i>	<i>Lumen gentium</i>
<i>MR</i>	<i>Mutuae relations</i>
<i>PC</i>	<i>Perfectae caritatis</i>

INTRODUCTION

The 1983 Code of Canon Law confides many matters concerning consecrated life to the proper law (*ius proprium*) of individual institutes. This paper will consider the norms on proper law that are contained in c. 587 CIC. It will endeavour to provide a thorough understanding of the text of c. 587, to be of use to anyone involved with the proper law of an institute of consecrated life, whether modifying existing law or establishing such law for a new institute.

Canon 587 is found in Book II of the Code (The People of God), in Part III (Institutes of Consecrated Life and Societies of Apostolic Life), in Section I (Institutes of Consecrated Life), Title I (Norms Common to All Institutes of Consecrated Life). It applies therefore to both religious and secular institutes; through c. 732 it also applies to societies of apostolic life, since that canon states that those things which are established in cc. 578-597 apply also to such societies.¹

Chapter 1 of this paper will give, first, a very brief account of the history of the development of the proper law of religious institutes, and then of the evolution of the text of c. 587 from the documents of Vatican II to its form in the 1983 Code.

The first paragraph (§ 1) of the canon names those things which are to be included in the fundamental code or constitutions of the institute, referring back to c. 578 and adding other elements. The meaning and scope of each of these elements will be considered in Chapter 2. The same chapter will also consider §3 of the canon, which calls for a balance between the spiritual and juridic elements in proper law, and §4, on matters to be included in an institute's complementary code.

¹ For convenience, this paper refers only to "institutes"; the application to societies of apostolic life should be understood unless otherwise stated.

Chapter 3 of this paper will consider the second paragraph (§ 2) of c. 587, on the approval and modification of proper law, including a consideration of the body competent to establish such law in the first place.

CHAPTER 1: HISTORY

This chapter has two sections. The first section examines very briefly the development of proper law in the history of consecrated life in the Church from earliest times until the twentieth century. The second considers the evolution of the text of c. 587 CIC, from its origins in the documents of the Second Vatican Council, until its final version in the promulgated Code of 1983.

1.1 Proper Law: History

From earliest times in the Christian era, there were consecrated virgins, ascetics, and widows. The eremitical life flourished especially after St. Athanasius wrote the *Life of St. Anthony* (c. 360). Community life for consecrated followers of Christ was developed by St. Pachomius (c. 288-346) and St. Basil (329-379) in the east, and by various monastic leaders in the west, particularly St. Benedict († c. 543). Early monastic rules were ascetical and spiritual as well as organizational of life within the monastery. Since each monastery was autonomous, there was little focus in them on inter-monastery relationships.

The Council of Chalcedon (451) decreed that monks should not found houses or oratories without the knowledge of the local bishop.² Until Lateran Council IV (1215), this episcopal permission was sufficient for the establishment of a religious house; no papal affirmation or approval was required by law. But though not strictly required, there were some instances of papal approbation of religious foundations before the thirteenth century. “It was done ... for a

² Canons of the Council of Chalcedon, 4. Cf. R. PRICE and M. GADDIS, *The Acts of the Council of Chalcedon*, vol. 3, Liverpool, Liverpool University Press, 2007, 95.

greater stability or also to obtain more independence and freedom from the jurisdiction of the bishop.”³

After a new wave of monastic expansion in the eleventh and twelfth centuries, the thirteenth century saw the rise of the mendicant orders. With these centralized, mobile friars, devoted to teaching and preaching, and with a major emphasis on poverty, the administrative focus shifted from the individual monastery to the “province”.⁴ Fearing that under the bishops’ protection too many new religious communities were being formed,⁵ Pope Innocent III decreed at the Fourth Lateran Council that no further orders were to be established, but despite this provision new orders continued to be recognised in the dioceses. Lateran IV also required that new institutes should adopt one of the already approved Rules.⁶ Thus, for example, the Order of Preachers, founded by St. Dominic in 1216, adopted the Rule of St Augustine and developed its own Constitutions.⁷

In the early sixteenth century, orders of Clerics Regular developed, such as the Society of Jesus. Likewise, new institutes of women were founded for apostolic purposes, but following the Council of Trent these were subject to rather rigid rules concerning enclosure. These apostolic

³ J. SUNDARA RAJ, *The Juridical Nature of Religious Constitutions in the New Law System of the Church*, Rome, Pontificia Università Lateranense, 1991, 20.

⁴ F.G. MORRISEY, *Institutes of Consecrated Life and Societies of Apostolic Life: cc. 573-746 (Class Notes for the Private Use of the Students)*, St Paul University, Faculty of Canon Law, 2008, 15.

⁵ SUNDARA RAJ, *The Juridical Nature of Religious Constitutions*, 21-22.

⁶ There is no documentary evidence that any of the ancient Rules had themselves received formal pontifical or even diocesan approval; tradition and usage established their approval. Cf. M.A. O’REILLY, “The Proper Law of Institutes of Consecrated Life,” in THÉRIAULT and THORN (eds.), *Unico Ecclesiae servitio: Canonical Studies Presented to Germain Lesage, O.M.I., on the Occasion of his 75th Birthday and of the 50th Anniversary of his Presbyteral Ordination*, Ottawa, St Paul University, Faculty of Canon Law, 1991, 289.

⁷ *Ibid.* 290.

institutes had simple vows and, with the exception of the Society of Jesus, were not recognised as ‘religious’.⁸

The decree *De regularibus et monialibus* of the Council of Trent (1563) constituted the basic law in effect until the beginning of the twentieth century.⁹ The eighteenth and nineteenth centuries brought a huge flowering of new apostolic and missionary institutes in the Church. In the absence of any guidelines, many of these drew up constitutions which lacked clear juridical norms and were sometimes comprised largely of spiritual writings of the founder. By the Bull *Conditae a Christo* (1900) Pope Leo XIII recognized congregations with simple vows and dedicated to the active apostolate as ‘religious’, and he regulated the relationship of diocesan bishops to religious institutes of diocesan right. The following year (1901) the Congregation for Bishops and Regulars issued detailed *Norms* for the implementation of this legislation, instructing how a congregation should draw up its constitutions if it wished to obtain formal approval from the Holy See. The *Norms* included a model for such constitutions. These detailed prescriptions “favoured uniformity and stifled individual inspiration.”¹⁰ The *Norms* were revised after the promulgation of the 1917 Code of Canon Law, and constitutions had to be revised in accordance with them.¹¹ They effectively made all institutes very similar in legislation. There was a drastic exclusion from the constitutions of spiritual elements, and often constitutions were little more than transcriptions of the canons of the Code. The *Norms* insisted that constitutions were not to include non-judicial matter, and institutes were impeded from expressing freely in

⁸ MORRISEY, *Institutes of Consecrated Life and Societies of Apostolic Life*, 16.

⁹ Vatican Council I prepared a number of documents relating to religious, but they were not issued due to the early termination of that Council.

¹⁰ C. GALLAGHER, “The Church and Institutes of Consecrated Life,” in *The Way Supplement*, 50 (1984), 8.

¹¹ A further revision of the *Norms* in the 1950s was never published but was used as a working guideline within the Sacred Congregation for Religious. Cf. O’REILLY, “The Proper Law of Institutes of Consecrated Life,” 292.

them the gift received from God and their proper spirit. Consequently many congregations which were recognized through *Conditae a Christo* decided to gather their spiritual and doctrinal aspects into another book, of less juridical importance, often called a Directory.¹²

Pope Pius XII urged the adaptation of the praxis and the proper law of religious institutes to the exigencies of the contemporary world, both for active sisters and for contemplative nuns.¹³ In *Provida Mater Ecclesia* (1947), giving canonical approval to the secular institutes, he stated that their constitutions should be prudently adapted to the general norms and to the scope of the individual institutes, according to their needs and to new circumstances.¹⁴ Finally, *Perfectae caritatis*, the Decree on the Up-to-Date Renewal of Religious Life of the Second Vatican Council, after underlining the importance for each religious institute of returning to its original spirit (n. 2), emphasised also the necessity of revising its proper law. “For this reason, constitutions, directories, books of customs, of prayers, of ceremonies and such like should suitably revised” (PC 3). *Ecclesiae sanctae* II provided norms for the implementation of *Perfectae caritatis* and allowed for a period of experimentation before the submission of new constitutions. This period effectively came to an end with the promulgation of the revised Code of Canon Law in 1983 and the issuance by the Congregation for Religious and Secular Institutes of the decree *Iuris canonici codice* indicating that all proper law had to make the necessary

¹² Y. SUGAWARA, “Il ruolo delle costituzioni negli istituti di vita consacrata (can 587),” in *Periodica*, 98 (2009), 667-668.

¹³ E.g. PIUS XII, Apostolic Constitution on the Promotion of Institutes of Nuns *Sponsa Christi*, 21 November 1950, in *AAS*, 43 (1951), 5-24, English translation in *CLD*, vol. 3, 221-248.

¹⁴ *Provida Mater Ecclesia*, art. II, §2, 3.

adaptations in the light of the new Code.¹⁵ (Of course some institutes had deliberately held off submitting their revised constitutions until the publication of the revised Code).

The 1983 Code shows great respect for the charismatic inspiration of each institute and positively encourages individuality. The variety of institutes is attributed to the inspiration of the Spirit (c. 577). “Diocesan bishops are to endeavour to discern new gifts of consecrated life which the Holy Spirit entrusts to the Church” (c. 605). The new law allows a significant measure of autonomy to each. “A true autonomy of life, especially of governance, is recognized for each institute. This autonomy means that each institute has its own discipline in the Church and can preserve whole and entire the patrimony described in c. 578” (c. 586). Therefore institutes must have freedom to draw up their own constitutions. Consequently, many matters that used to be decided by the common law of the Church are now left to be settled by the *ius proprium* of each individual institute. Institutes have to draw up their own law about many things that were formerly strictly laid down by the 1917 Code or other universal law.¹⁶

1.2 Evolution of the text of c. 587

Ius proprium is frequently mentioned in Part III of Book II of the 1983 Code (On Institutes of Consecrated Life and Societies of Apostolic Life). This “proper law” of each institute contrasts with the “common law” or norms of universal law which apply to all institutes.¹⁷

¹⁵ SACRED CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES, Decree *Iuris Canonici Codice*, 2 Feb. 1984, in *AAS*, 76 (1984), 498-499, English trans. in *CLD*, 11, 84-85.

¹⁶ GALLAGHER, “The Church and Institutes of Consecrated Life,” 12-13.

¹⁷ There are references to “proper law” at cc. 597 §1, 598 §2, 600, 607 §2, 616 §1, 617, 622, 623, 624 §2 and §3, 626, 627 §2, 628 §1, 629, 630 §2, 631 §2 and §3, 632, 633 §1, 636 §1 and §2, 638 §1 and §2, 641, 643 §2, 645 §3, 650 §1, 653 §2, 655, 657 §2 and §3, 659 §2, 663 §3, 667 §1, 668 §2, §3, §4 and §5, 669 §1, 684 §3 and §4, 696 §1 and §2, 716 §1, 718, 719 §1, 735 §1 and §3, 740, 741 §1 and §2. Other canons refer to the “fundamental code” or “constitutions” of the institute.

Canon 587, the object of this study, gives juridical form to the desire of the Second Vatican Council that institutes of consecrated life have the freedom and responsibility of drawing up their own law. The text of the canon does not include the term *ius proprium*, much less define it, but it outlines the function and contents of constitutions (§1), names the authority which approves them (§2), establishes that juridical and spiritual elements are to be harmonised in them (§3), and authorises that “other codes” of an institute may contain norms not included in the constitutions (§4). The sources for this canon are *Perfectae caritatis* (PC 2) and *Ecclesiae sanctae* II (ES II 12-14), which are on the work of revising the constitutions.

PC 2 encouraged a return to the primitive inspiration of the institutes and their adaptation to the changed conditions of our time; the spirit and aims of each founder should be faithfully acknowledged and maintained, as should each institute’s sound traditions, for all of these constitute an institute’s heritage. *ES II* directed that the general laws of every institute, whatever they may be called, should comprise (a) evangelical and theological principles concerning religious life and its union with the Church and an expression of the spirit of the founder and the particular goals and wholesome traditions which constitute the institute’s heritage; (b) juridical norms which define the character, aims and means of the institute, adequately stated but not multiplied beyond measure (12). The union of both spiritual and juridical elements is necessary so that the text is neither juridical only nor merely exhortatory (13). The fundamental code should exclude anything obsolete or subject to change with the customs of the time, or which corresponds merely to local usage; such norms should be put in supplementary books, called directories, custom books, or similar (14).

At the beginning of the work of the *Coetus de institutis perfectionis* which drew up the draft canons on consecrated life for the new Code, it was proposed as a goal to render to each

institute the possibility of being or of becoming anew that which it is according to its charism, spirit, and the project of the founder.¹⁸ The 1977 first draft of the new canons included as its c. 90 (out of 125) a text with two paragraphs which form the basis for our eventual c. 587.

§ 1. The elements noted in § 2 of the preceding Canon and the fundamental juridical norms concerning the discipline of an institute and its members, its government, and the incorporation and training of members, and the proper object of the sacred bonds are to be stipulated in the principal code of each institute, whatever be its name. A principal code of this kind is to be approved by the competent ecclesiastical authority and cannot be changed without the approval of the same authority.

§ 2. Other norms pertaining to the life of the institute are to be enacted by the competent authority of the said institute and suitably drawn up; such norms, moreover, may be appropriately reviewed and adapted in accord with the constitutions.¹⁹

(The “preceding canon” mentioned in §1 became the eventual c. 578 CIC).

By the time the consultors met in Feb-Mar 1979, the phrase “to protect more faithfully the vocation and identity of each institute” had been added as the beginning of the first paragraph, and the canon had been moved to a location much nearer the beginning of the overall schema.²⁰ The most important points to emerge from the discussion of the consultors in Feb-Mar 1979 concerning this text were, firstly, agreement on the expression “fundamental Code or Constitutions” for the principal code of each institute,²¹ and secondly, acceptance of the term “proper law” for institutes of consecrated life.²² Both of these terms, “fundamental code” and

¹⁸ Cf. J. BEYER, *Le droit de la vie consacrée : commentaire des canons 573-606*, Paris, Tardy, 1988, 80.

¹⁹ PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Schema of Canons on Institutes of Life Consecrated by Profession of the Evangelical Counsels: Draft*, Washington, D.C., Publications Office, United States Catholic Conference, 1977, 55.

²⁰ Text in *Communicationes*, 10 (1979), 53. This intermediate text which formed the basis for the discussions of the Feb-Mar 1979 meetings does not appear in E.N. PETERS, *Incrementa in progressu 1983 Codicis iuris canonici*, Montreal, Wilson & Lafleur, 2005.

²¹ *Communicationes*, 10 (1979), 55, votes 1-3.

²² *Ibid.*, votes 4-6. The term “particular law” was considered but reserved for the law of the particular churches.

“proper law”, are new expressions in the law of the Church and are used as specific canonical terms only in Part III of Book II.²³ Finally, the first paragraph of the proposed text was divided into two, and it was recommended that c. 91 of the *Schema*, concerning the union of the spiritual and juridical elements,²⁴ also become a paragraph of this canon rather than standing apart.²⁵

Thus the next draft of the revised code, the 1980 *Schema Codicis*, proposed a text (c. 515 of that *Schema*) in four paragraphs which differs in no substantial way from either the subsequent 1982 *Schema* (c. 589) or the text of the promulgated Code of 1983 (c. 587), which reads as follows.

§1. To protect more faithfully the vocation and identity of each institute, the fundamental code or constitutions of the institute are to contain, in addition to those elements which are to be preserved in accordance with can. 578, basic norms about the governance of the institute, the discipline of the members, the admission and formation of members, and the proper object of the sacred bonds.

§2. This code is approved by the competent ecclesiastical authority and can be changed only with the consent of the same.

§3. In the constitutions, the spiritual and juridical elements are to be aptly harmonised. Norms, however, are not to be multiplied without necessity.

§4. Other norms which are established by the competent authority of the institute are to be properly collected into codes, but these can be conveniently reviewed and adapted according to the needs of time and place.

The canonical implications of this text will be considered in detail in the following chapters.

²³ SUGAWARA, “Il ruolo delle costituzioni,” 675.

²⁴ *In his textibus redigendis spiritualia et iuridica opportune uniantur; normae tamen absque necessitate ne multiplicentur.* Text in PETERS, *Incrementa in progressu*, 539.

²⁵ *Communicationes*, 10 (1979), 56.

CHAPTER 2: CONTENT OF PROPER LAW

Having considered the evolution of the text of c. 587, we move on to examine what it is that the proper law of an institute of consecrated life is to contain.²⁶ The canon distinguishes between the “fundamental code or constitutions” (§1) and “other norms ... collected into codes” (§4). The latter are sometimes termed “complementary code(s)”, and they are of less juridical import. Our main but not exclusive focus here will be the fundamental code.

During the period of the revision of the Code of Canon Law, the question arose whether those institutes which continue to follow one of the ancient Rules (those of St. Basil, St. Augustine, St. Benedict and St. Francis of Assisi) could consider that venerable Rule as their “fundamental code”, i.e. if those institutes were obliged to present revised “constitutions” or whether they could instead gather all their other legislation into a “complementary code” which would not require the approbation of the Holy See.²⁷ Ultimately it was clarified that all institutes must have constitutions. Orders which follow an ancient Rule as a fundamental code also have constitutions which explain and apply the *Rule*.²⁸ “In a religious institution [*sic*] having a religious rule, the constitution is the practical activation of the rule to existing circumstances. In a religious institute without a religious rule, it is the constitutive law incorporating the

²⁶ “Institutes” in this sense can include federations of *sui iuris* houses of monastics or of canons regular. Cf. B. PRIMETSHOFER, “Il valore giuridico del diritto proprio negli IVC e nelle SVA,” in *Commentarium pro Religiosis et Missionariis*, 87 (2006), 174. The proper law of a non-federated *sui iuris* house is also governed by c. 587.

²⁷ Fr. BEYER, S.J., invited to the General Chapter of the monks of the O.C.S.O. in 1967 as a canon law expert, was of the opinion that the Rule of St Benedict alone would suffice as the ‘fundamental code’ for the Order. Cf. A. VIELLEUX, *La genèse des Constitutions de l’OCSO (1967-1990)*, available at http://www.citeaux.net/wri-av/constitutions_genesis.htm (accessed 23 Jan 2017). Beyer expresses the same thought in *Le droit de la vie consacrée*, 83, concluding with “il serait inexact de dire que le Code fondamental consiste en un seul livre, un seul document.”

²⁸ Cf. SUGAWARA, “Il ruolo delle costituzioni,” 676. He then says that the constitutions of these orders are therefore part of the ‘complementary code’ (“in questi casi le Costituzioni sono il codice che spiega ed applica la *Regula*, quindi quello che viene oggi chiamato codice complementare”); however, the CICLSAL does not regard the Constitutions as ‘complementary’ in the sense of falling under c. 587 §4 but as something requiring the approbation of the Congregation.

principles of religious life and delineating the rights and obligations of the members.”²⁹ The term constitution (or constitutions) was already in widespread use because the *Norms* of 1901 imposed it on congregations of religious of simple vows, forbidding them from using the term *Regula*.³⁰

Canon 587 §1 identifies a number of constitutive elements for the fundamental code of an institute of consecrated life. “Insofar as laws define those elements which are essentially constitutive of institutes or of juridic acts, they are not subject to dispensation” (c. 86). Therefore the fundamental code of an institute of consecrated life must include these constitutive elements in order to be recognized as such in the Church, and are therefore of the utmost importance.³¹ We will now consider each of these constitutive elements in turn. The chapter has three major sections, the first on the elements to be included in the fundamental code, the second on the balance to be maintained between the spiritual and juridical elements in this code, and the third on complementary codes.

2.1 Elements to be included in the fundamental code (c. 587 §1)

Canon 587 §1 states that

To protect more faithfully the vocation and identity of each institute, the fundamental code or constitutions of the institute are to contain, in addition to those elements which are to be preserved in accordance with can. 578, basic norms about the governance of the institute, the discipline of the members, the admission and formation of members, and the proper object of the sacred bonds.

This list can be broken down into ten elements: five are contained in c. 578, to which this canon refers, and five others are listed here. These two groups of elements correspond to what was

²⁹ J. I. O’CONNOR, *Religious, Constitutions of*, *New Catholic Encyclopaedia*, vol. 12, col. 276b.

³⁰ SUGAWARA, “Il ruolo delle costituzioni,” 675.

³¹ Cf. S. GIEGBEFUMWEN, *The Role of the Constitutions of a Religious Institute of Diocesan Right to Define Its Relationship with the Bishop: A Particular Reference to the Institute of the Sisters of the Sacred Heart of Jesus (Nigeria)*, Ottawa, St Paul University, 2014, 41.

called for in *Ecclesiae Sanctae* II, 12: on the one hand, “the evangelical and theological principles concerning the religious life and its union with the Church, and some appropriate and definite expressions which ‘acknowledge and present the spirit of the Founders and all the particular goals and wholesome traditions which constitute the heritage of each Institute’ (*PC* 2b)”, and on the other, “the juridical norms which are needed to define clearly the character, the aims, and the means of the Institute.” Thus the canon itself represents a harmonisation of the spiritual and juridical elements which will be explicitly called for in § 3.

2.1.1 The elements of c. 578 (the patrimony of the institute)

Canon 578 says that

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

As we have seen, the *Norms* of 1901 excluded from the constitutions all ascetical and mystical considerations, as well as any developments of the spirit proper to the institute so that, in practice, these were relegated to the complementary code or directory. But *Ecclesiae sanctae* II insisted on the opposite: the constitutions must contain “the juridical norms necessary to define the character, aims and means employed by the institute” and also “the evangelical and theological principles concerning religious life” as well as an adequate and precise description of the “particular patrimony of each institute.” Canon 578 establishes the components of this spiritual patrimony – a patrimony which is to be observed by all.³² “Spiritual patrimony” is another term new to the 1983 Code. Formerly “patrimony” had been used only in relation to

³² It was changed from “all religious” in an earlier draft, to “all,” thus extending beyond religious institutes themselves to include bishops, the hierarchy, and all others, who are to respect and observe the spiritual patrimony with which God has gifted the individual institutes. Cf. GIEGBEFUMWEN, *The Role of the Constitutions of a Religious Institute of Diocesan Right*, 42, note 129.

temporal goods.³³ The canon also “requires that the institutes know their legitimate history, both of founders and graced development since then, and that legitimate historical changes be distinguished from historical accretions.”³⁴

Studies on this rich canon abound. We can explore it only briefly here, attempting to establish what is meant when c. 587 §1 says that its elements are to be included in an institute’s constitutions. Most commentators identify five such elements: the nature of the institute, the purpose of the institute, the spirit of the institute, and the character of the institute, each of these understood according to the mind and dispositions of the founder and the institute’s sound traditions.³⁵ Others propose that it is unhelpful to try to separate these concepts too rigidly, e.g. “We are dealing with concepts which are not excessively precise in themselves, and which can be validly applied to diverse realities.”³⁶ (Usually the same commentators then go on to do exactly that – to comment on the various concepts individually).

2.1.1.1 The nature of the institute

Commentators differ as to what exactly is meant by the nature of an institute. “The Latin term *natura* ... means the nature, quality, character, or natural order of things. It implies the

³³ Cf. especially P. NGUYEN DAN, *The Spiritual Patrimony of an Institute of Consecrated Life*, Rome, Urbaniana Pontificia Universitas, 1989, 11-12.

³⁴ E. O’HARA, “Norms Common to All Institutes of Consecrated Life: Canons 573-606” in J.F. HITE, S. HOLLAND, and D.J. WARD, *A Handbook on Canons 573-746*, Collegeville, MN, Liturgical Press, 1985, 36.

³⁵ MORRISEY, *Institutes of Consecrated Life and Societies of Apostolic Life*, 33, counts seven, listing “the mind of the founder” and “the dispositions of the founder” as separate elements. But in the context of c. 587 it is difficult to see how these could be included except in relation to the nature, purpose, spirit and character of the institute. In any case it is not the number which matters but the inclusion of all the elements in the constitutions.

³⁶ J. TORRES, *Commentario ai canoni 573-606: Norme comuni a tutti gli istituti*, Rome, 1987, 23, quoted in B.J. SWEENEY, *The Patrimony of an Institute in the Code of Canon Law: A Study of Canon 578*, Rome, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1995, 61.

inherent character, essence, or basic make-up of a person or thing.”³⁷ For Kurumbath, the “nature of the institute means the form in general of the institute, whether it is religious or secular.”³⁸ For Beyer, it is the “general physiognomy”³⁹ of an institute according to the established typology of the Church’s tradition: monastic, apostolic, secular. All three are founded on the example of Christ, who is the exemplar. The Gospel is lived according to the nature of the institute, as set forth in the constitutions. The nature of an institute situates it within a *type* of consecrated life. This nature of the institute thus imposes fundamental requirements, proper to each kind of life – monastic, apostolic or secular.⁴⁰

Giegbefumwen refers to canon 588 which says in § 1 that “In itself, the state of consecrated life is neither clerical nor lay,” but then goes on to define a clerical institute in § 2 (“one which, by reason of its end or purpose ... is under the governance of clerics, implies the exercise of sacred orders, and is recognised as such by the authority of the Church”) and a lay institute in § 3 (“one which is recognised as such by ecclesiastical authority because, by its nature, character, and purpose, its proper role ... does not include the exercise of sacred orders.” The constitutions should therefore indicate whether an institute is lay or clerical.⁴¹

Since c. 578 speaks of “the mind of the founders and their dispositions” concerning the nature of the institute, this must also be taken into consideration. Occasionally this may prove

³⁷ GIEGBEFUMWEN, *The Role of the Constitutions of a Religious Institute of Diocesan Right*, 43.

³⁸ S. KURUMBATH, “The Canonical Basis of Statutes and Constitutions of Religious Institutes according to CCEO and CIC,” in *Eastern Legal Thought*, 9 & 10 (2010-2011), 131.

³⁹ BEYER, *Le droit de la vie consacrée*, 60.

⁴⁰ When the Code was being revised, it was proposed that it include a section entitled *De ordine monastico*. Although this was not incorporated into the final version, the Code does distinguish monastic life in some ways from other forms of consecrated life and includes various canons and references to monastic communities. Cf. D.J. WARD, “Monastic Life under the Rule of St. Benedict and the New Code,” in J.F. HITE, S. HOLLAND, and D.J. WARD, *A Handbook on Canons 573-746*, Collegeville, MN, Liturgical Press, 1985, 305.

⁴¹ GIEGBEFUMWEN, *The Role of the Constitutions of a Religious Institute of Diocesan Right*, 43.

problematic, “especially if the initial intent of the founder or foundress was not faithfully stated when the institute was approved. Examples of this are institutes that were secular by nature but which were treated as religious prior to being recognized as such in 1947; or religious institutes that, due to events, were required to review their original charism, nature, and the ensuing changes that have affected their charism.”⁴²

Sweeney concludes, on the basis of *PC* 7-11 and *LG* 43, that the nature of an institute includes whether it is contemplative, apostolic, or monastic; secular or religious; clerical or lay; and whether it is lived in solitude or community.⁴³ In any case, as Kallumkal notes, in drawing up constitutions an institute must define its nature in conformity with the actual categories of canon law, since what does fit into those categories is to be considered as a “new form” of consecrated life” (c. 605).⁴⁴

In practice, constitutions often describe the ‘nature’ of an institute rather briefly, even in one simple sentence, perhaps combined in the same paragraph with another one of the essential elements. For example, Constitution 2 of the Order of Cistercians of the Strict Observance is entitled “The Nature and Purpose of the Order”. The first sentence expresses its nature: “This Order is a monastic institute wholly ordered to contemplation.” The rest of this constitution describes the *purpose* of the institute.⁴⁵ Similarly, the constitutions of the Society of Mary combine “nature” with “the foundations of the Society”, giving the title “Nature and Foundations

⁴² Ibid., 43-44.

⁴³ SWEENEY, *The Patrimony of an Institute in the Code of Canon Law*, 65.

⁴⁴ KALLUMKAL, *The Patrimony of an Institute according to the Code of Canon Law*, 137.

⁴⁵ “This Order is a monastic institute wholly ordered to contemplation. The nuns dedicate themselves to the worship of God in a hidden life within the monastery under the Rule of St Benedict. They lead a monastic way of life in solitude and silence, in assiduous prayer and joyful penitence as defined in these Constitutions, thus rendering to the divine majesty a service that is at once humble and noble.” *Constitutions and Statutes of the Order of Cistercians of the Strict Observance (Nuns)*, Rome, 1990, Cst. 2; likewise for the monks.

of the Society” to its Chapter 1. “This little congregation of priests and brothers approved by Pope Gregory XVI on April 29, 1836, is called the Society of Mary. It takes this name from the initiative which it acknowledges as its origin. It is a clerical religious institute of pontifical right.”⁴⁶

2.1.1.2 The purpose of the institute

The purpose (*finis*) of an institute is its end or goal. It arises from and is an expression of the mind of the founder, concerning what the institute intends to achieve in and through its members and structures. It is an expression of the reason for the existence of the institute.⁴⁷

The purpose of an institute both derives from and identifies its nature. It determines the ministries to be engaged in, the special tasks of the institute. When the constitutions identify the activities or works proper to the institute, they will probably also mention the means it will use to effect them.⁴⁸

According to c. 114 §2, the purposes for which juridical status may be granted, including (though not limited) to institutes of consecrated life, include “those which concern works of piety, of the apostolate or of charity, whether spiritual or temporal.” Constitutions therefore must express the purpose of the institute in such terms, i.e. the purpose expressed must be one which is appropriate to consecrated life.

The *Norms* of 1901 imposed the obligation on institutes of specifying their primary and secondary ends. The primary and general end of any institute was the sanctification of its members by the observance of the evangelical counsels and the proper constitutions; the

⁴⁶ PADRI MARISTI, *Constitutions of the Society of Mary*, Rome, 1988, Art. 1, 1.

⁴⁷ SWEENEY, *The Patrimony of an Institute in the Code of Canon Law*, 67.

⁴⁸ GIEGBEFUMWEN, *The Role of the Constitutions of a Religious Institute of Diocesan Right*, 45.

secondary and special end proper to each institute was the particular works of charity towards God and neighbour for which the institute was founded. These distinctions are not included in the 1983 Code and are no longer required in the constitutions.⁴⁹

2.1.1.3 The spirit of the institute

The “spirit” of an institute is more than just its “spirituality”, claims one commentator.⁵⁰ It is “an orientation of spirituality”, says another.⁵¹ Its “precise definition is elusive”, concludes a third.⁵² It can be thought of as “something intangible, like a family spirit, but seen by its fruits”,⁵³ or as “the complex of ideas, instructions, opinions, and affections of a person, passed on, the case of Founders of Institutes of perfection, to their members.”⁵⁴ It can be compared to an institute’s soul, which vivifies and informs the whole institute and each of its elements and imprints on them a very distinct character, or a special style of life, which translates into a particular way of seeing, of judging and of evaluating things, and into a particular way of becoming inserted into the mystery of the Church and making it present to the world.⁵⁵

⁴⁹ Cf. SWEENEY, *The Patrimony of an Institute in the Code of Canon Law*, 68, note 264.

⁵⁰ BEYER, *Le droit de la vie consacrée*, 61.

⁵¹ S. HOLLAND, “Commentary on Institutes of Consecrated Life and Societies of Apostolic Life, cc. 573-606,” in J.A. CORIDEN, T.J. GREEN and D.E. HEINTSCHEL (eds.), *The Code of Canon Law, A Text and Commentary*, commissioned by CANON LAW SOCIETY OF AMERICA, New York and Mahwah, NJ, Paulist Press, 1985, 456.

⁵² SWEENEY, *The Patrimony of an Institute in the Code of Canon Law*, 71.

⁵³ MORRISEY, *Institutes of Consecrated Life and Societies of Apostolic Life*, 34.

⁵⁴ E. FOGLIASSO, *Il Decreto ‘Perfectae Caritatis’. Sul rinnovamento della vita religiosa in rispondenza alle odierne circostanze* (collana Magistero Conciliare, 8), Turin, 1967, p. 301, quoted in SWEENEY, *The Patrimony of an Institute in the Code of Canon Law*, 71.

⁵⁵ E. GAMBARI, *Il rinnovamento nella vita religiosa : principi generali, costituzioni, formazione*, Milan, Ancora, 1967, 177 (my translation).

Of course the constitutions will refer to any particular spirituality assumed by an institute, such as some aspect of Jesus Christ, the Blessed Virgin Mary, or any of the saints, such as Teresa of Avila, Francis, Ignatius, or Alphonsus.⁵⁶ “The constitutions should try to present the spirit of the institute in a few articles expressed in a concise and effective form, but *the whole text will reflect it in the treatment of the various topics.*”⁵⁷

2.1.1.4 The character of the institute

The character (*indoles*) of an institute is one of the most difficult points to determine. Kallumkal notes that “‘nature’ (*natura*) and ‘character’ (*indoles*) have somewhat interchangeable meanings (or at least overlapping).”⁵⁸ But he also points out that when both terms are used in the same canon, they must mean different things.⁵⁹

The document *Mutuae relationes*, in a paragraph entitled “The distinctive character of every Institute”, speaks of this character as the “very charism of the Founders [which] appears as an ‘experience of the Spirit,’ transmitted to their disciples to be lived, safeguarded, deepened and constantly developed by them.” This distinctive character “also involves a particular style of sanctification and of apostolate, which creates its particular tradition, with the result that one can readily perceive its objective elements.”⁶⁰

⁵⁶ GIEGBEFUMWEN, *The Role of the Constitutions of a Religious Institute of Diocesan Right*, 46.

⁵⁷ GAMBARI, *Il rinnovamento nella vita religiosa*, 178, emphasis added (my translation).

⁵⁸ KALLUMKAL, *The Patrimony of an Institute according to the Code of Canon Law*, 136.

⁵⁹ *Ibid.*, 150.

⁶⁰ *MR* 11.

Some commentators suggest that while the “nature” of an institute is a generic description, its “character” is something specific;⁶¹ or that the distinctive character is much the same as ‘the authentic charism of any institute’.⁶² After an extensive treatment of the matter, Sweeney concludes that it is “that synthesis of *nature*, *purpose* and *spirit* which confers on the institute a particular and proper identity.”⁶³

Others, however, believe that in the juridical context, *indoles* has a very precise meaning: “The character of the institute means its structure.”⁶⁴ In drafts of the Code it was proposed that apostolic institutes choose between being “conventual” (emphasis more on group apostolate, prayer in common, stability, poverty, collegial forms of government) or “integrally apostolic” (emphasis more on personal prayer, mobility, obedience, forms of government identified with a superior). This proved almost impossible, and the proposal was dropped from the final version of the Code.⁶⁵ But this lies behind Holland’s understanding that the character is found in “the organizational principle of an institute (e.g. centralization, autonomy of houses).”⁶⁶ McDermott, on the other hand, suggests that “character” means “monastic, conventual, [or] apostolic,” which others place under “nature”, as we have seen.⁶⁷ In practical terms, constitutions should certainly

⁶¹ M. GERMINARIO, *I nuovi termini della vita religiosa*, Editrice Rogate, Rome, 1983, 100-102, in SWEENEY, *The Patrimony of an Institute in the Code of Canon Law*, 74.

⁶² F. VIENS, *Charismes et vie consacrée*, Rome, Pontifica Universitas Gregoriana, 1983, 93, in *ibid.*

⁶³ SWEENEY, *The Patrimony of an Institute in the Code of Canon Law*, 76.

⁶⁴ KURUMBATH, “The Canonical Basis of Statutes and Constitutions of Religious Institutes,” 132.

⁶⁵ MORRISEY, *Institutes of Consecrated Life and Societies of Apostolic Life*, 34.

⁶⁶ HOLLAND, “Commentary on Institutes of Consecrated Life and Societies of Apostolic Life, cc. 573-606,” 456.

⁶⁷ R. MCDERMOTT, “Institutes of Consecrated Life and Societies of Apostolic Life,” in J.P. BEAL, J.A. CORIDEN, and T.J. GREEN (eds.), *New Commentary on the Code of Canon Law*, commissioned by the CANON LAW SOCIETY OF AMERICA, New York and Mahwah, NJ, Paulist Press, 2000, 747.

specify and reflect the character of the institute as regards its structure, whether it is conventual, integrally apostolic, contemplative, or mixed.⁶⁸

In relation to all the elements discussed so far (nature, purpose, spirit, and character), it is to be noted that only those “ratified by competent ecclesiastical authority” which are to be incorporated into the constitutions. The reasons for approval by competent authority will be discussed in Chapter 3 below.⁶⁹

2.1.1.5 The sound traditions of the institute

The final constitutive element of the patrimony of an institute mentioned in c. 578 is its “sound traditions” (*sanae traditiones* – some translations prefer “wholesome traditions”). *PC* 2b said that “the spirit and aims of each founder should be faithfully acknowledged and maintained, as indeed should each institute’s sound traditions, for all of these constitute an institute’s heritage,” and *ES* II, 12 repeated this call. But once again we are dealing with a concept whose “exact definition is elusive.”⁷⁰

Three characteristics of tradition are that it is of ancient origin, unwritten or not committed to writing by its author, and that it has been handed down through the generations.⁷¹ “Tradition is an organ of transmission of the Christian message and reality or the content of faith, which bears the seal of authenticity. Tradition plays an important role in the life of a religious

⁶⁸ GIEGBEFUMWEN, *The Role of the Constitutions of a Religious Institute of Diocesan Right*, 47.

⁶⁹ Canon 578 uses *sancire* while c. 587 §2 uses *approbare*. That the two are used virtually synonymously can be seen from the fact that, in the process of revision of the Code of canon law, a proposal to change the text of c. 578 from “*a competenti auctoritate ecclesiastica sancita*” to “*a competenti auctoritate ecclesiastica agnita*” was rejected on the grounds that what is in question is not a matter of “recognition” but of “approval”: “*non agitur tantum de ‘agnitione’ ex parte auctoritatis, sed de ‘approbatione’*”. The related references *LG* 45 and *PC* 1, both of which use *approbare*, in support of its use of *sancire* and rejection of *agnoscere*. Cf. *Communicationes*, 15 (1983), 60, and SWEENEY, *The Patrimony of an Institute in the Code of Canon Law*, 79.

⁷⁰ SWEENEY, *The Patrimony of an Institute in the Code of Canon Law*, 168.

⁷¹ Cf. *ibid.*, 81.

community and it can explain the values, which the community abides by.”⁷² The tradition of a religious institute is part of the tradition of the church as a whole, and therefore worthy of being safeguarded in the constitutions.⁷³

“Sound” traditions are the only ones to be considered part of an institute’s spiritual patrimony. Such traditions are real, universal or general (transcending time and place) and related to the nature, end, spirit, apostolate, or particular mode of exercise of ministry of an institute, and they are in agreement with the example and teaching of the founder.⁷⁴ Those traditions are not sound or wholesome which are contrary to the proper charism of the institute, such as the enforced adoption of a monastic-style enclosure by apostolic sisters. In other cases, the original value and purpose of the tradition may have been lost, and its observance becomes merely legalistic and counterproductive to the life of the community.⁷⁵ Traditions which do not have a universal or general value, but which are not contrary to the charism of the institute and which are valued by it could be included in the complementary code if so desired.

2.1.2 Other essential elements

As well as those elements of an institute’s patrimony expressed in c. 578 and which we have just considered, c. 587 §1 lists five other points which are to be treated in the constitutions of an institute of consecrated life. These are: norms regarding the governance of the institute, the discipline of members, the admission and formation of members, and the proper object of the sacred bonds. Each of these aspects will now be examined.

⁷² KURUMBATH, “The Canonical Basis of Statutes and Constitutions of Religious Institutes,” 131.

⁷³ D. ANDRÉS GUTTIÉREZ, “Tradiciones, constituciones e incorporación a los IVCR, IVCS y SVA según el Código latino: tres conceptos claves y complejos bastante inexplorados,” in *Forum canonicum*, vol. 3, no. 2 (2008), 25.

⁷⁴ Cf. KURUMBATH, “The Canonical Basis of Statutes and Constitutions of Religious Institutes,” 132.

⁷⁵ Cf. O’HARA, “Norms Common to All Institutes of Consecrated Life: Canons 573-606,” 37.

2.1.2.1 Norms about the governance of the institute

An institute's constitutions must spell out how authority is exercised within it, both personal and collegial authority. According to c. 596 it is superiors and chapters of institutes who exercise authority; councils (every superior must have a council, in accordance with c. 627) may also participate in ecclesiastical authority. The constitutions should spell out the essential structures of governance on all levels, including the convocation and composition of the general chapter and the matters entrusted to it (c. 631-632),⁷⁶ the definition of the major superiors, their authority and term of office (cc. 623-624), how they are constituted, and provision for their resignation; the election of the supreme moderator (c. 625 §1), the term and constitution of the councillors at various levels (c. 627), their number, roles in decision-making, and the matters in which they are to give consent or to be consulted.⁷⁷ The constitutions should also define intermediate governance structures, such as provinces or regions, if they exist, and any essential provisions to be made for governance at the local level.⁷⁸ They should include those things the Code leaves to an institute's constitutions to identify, such as the role of the competent authority on issues of mergers, unions, suppression, and related matters (cc. 580-585). A monastery of nuns associated with an institute of men is to define its autonomy in the constitutions and the mutual rights and obligations of both parties (c. 614).

Under the heading of governance would also be included matters relating to the institute's temporal goods (c. 634), such as who can place acts of ordinary and extraordinary administration and acts of alienation.⁷⁹ "In general, structures and areas of competency which are

⁷⁶ Cf. MCDERMOTT, "Institutes of Consecrated Life," 754.

⁷⁷ Ibid.

⁷⁸ GIEGBEFUMWEN, *The Role of the Constitutions of a Religious Institute of Diocesan Right*, 50.

⁷⁹ MCDERMOTT, "Institutes of Consecrated Life," 754.

called for in the universal law should be provided for and protected by inclusion in the fundamental code of the institutes.”⁸⁰

2.1.2.2 Norms about the discipline of the members

Disciplina as employed in the canon means way of life, or code of behaviour. The constitutions are to include the norms by which the members of the institute live the charism in their daily lives. This includes what is called for in c. 598 §1: “Each institute ... is to define in its constitutions the manner in which the evangelical counsels of chastity, poverty and obedience must be observed for its way of living,” but it also extends to other matters not necessarily covered by the vows. The diversity of charisms of institutes means that the manner of living out the evangelical counsels will not be uniform among them but will be based on the purpose and character of each institute.⁸¹ The constitutions should include norms on the essential elements of the spiritual life of the institute, including personal and common prayer and the celebration of the liturgy (c. 1174 §1). They should indicate how members deal with temporal goods and the issue of personal patrimony, in view of the vow of poverty (cc. 600, 668 §1); the kind of obedience required by the institute towards its superiors (c. 601), and the expectations regarding the participation of the members in community life (c. 602). When an institute has vows other than those of poverty, chastity and obedience, the meaning and manner of living these vows should also be included in the constitutions; similarly for the observance of, for example, monastic or constitutional enclosure (c. 667 §3) or any other core element of the life of the members. The norms of the constitutions must also concretize how the institute will “supply the members with everything that ... is necessary to fulfil the purpose of their vocation” (c. 670).

⁸⁰ HOLLAND, “Commentary on Institutes of Consecrated Life and Societies of Apostolic Life, cc. 573-606,” 459.

⁸¹ Cf. O’HARA, “Norms Common to All Institutes of Consecrated Life: Canons 573-606,” 52.

2.1.2.3 Norms about the admission of members

Norms about the admission of members are to be included in the fundamental code. This is not alluding to “discernment of vocations”. Nor does it refer to the initial admission of a member (acceptance as a postulant or pre-postulant), but to *incorporatio*, becoming a full member, fully or thoroughly united with the pre-existing institute. According to c. 654, *incorporatio* occurs through religious profession. Although the 1977 *Schema* used the word *cooptatio* (“admission”) in its draft text for this canon, it was changed to *incorporatio* in the 1980 draft.⁸²

To be incorporated into a religious institute, one needs first to be admitted into the institute, and perhaps it would have been more logical to order the canon chronologically, placing formation (including admission) before incorporation (profession) (thus saying *membrorum institutionem et incorporationem*). In any case, the constitutions should supply norms relating to the process of incorporation into an institute: the conditions for admission to temporary and to perpetual profession, the maximum and minimum length of time in temporary profession, and the juridical effects of temporary, perpetual or definitive profession with the duties and rights that come with each.⁸³ “The inclusion of these matters is important, not only because of canonical requirements but in justice to prospective members.”⁸⁴ The constitutions should also include norms about the form, content, and instrument of the bond to be used for incorporation.

⁸² In fact it was already changed in the intermediate document used at the Feb-Mar 1979 *Coetus* meeting, mentioned in note 18 above.

⁸³ MCDERMOTT, “Institutes of Consecrated Life,” 754.

⁸⁴ HOLLAND, “Commentary on Institutes of Consecrated Life and Societies of Apostolic Life, cc. 573-606,” 460.

2.1.2.4 Norms about the formation of members

Formation, denoted as *institutio* in canon 587 §1, means education or the act of forming or shaping someone or something.⁸⁵ The constitutions should mention the purpose of each stage of initial and ongoing formation, and the minimum and maximum length of each. They should state who has the authority to admit and to dismiss at the different stages and should outline the rights and obligations of those at different stages of formation. Cloistered nuns (*moniales*) will need to conform their formation programmes, and possibly make adaptations to their constitutions, in the light of *Vultum Dei quarere*, which prescribes “that for initial formation and that following temporary profession, to the extent possible, ‘ample time must be reserved’, no less than nine years and not more than twelve” (n. 15).⁸⁶ Other institutes should include norms concerning any periods of apostolic activity allowed during the novitiate in accordance with canon 648.

2.1.2.5 The proper object of the sacred bonds

The “sacred bonds” in a religious institute are public vows (c. 607 §2). The bonds by which the evangelical counsels are undertaken in secular institutes are to be established in their constitutions (c. 712). Societies of apostolic life do not necessarily undertake to live the evangelical counsels, but if they do, their bonds should also be defined in their constitutions (c. 731). Sacred bonds other than vows include promises, oaths, or other solemn commitments.⁸⁷

⁸⁵ GIEGBEFUMWEN, *The Role of the Constitutions of a Religious Institute of Diocesan Right*, 52.

⁸⁶ FRANCIS, Apostolic Letter *motu proprio Vultum Dei quaerere* on Women’s Contemplative Life, 29 June 2016, English translation in *L’Osservatore Romano*, 29 July 2016, 1-2. At the time of writing of this paper (January 2017), the Instruction on the application of the provisions of this Apostolic Constitution has not yet been published.

⁸⁷ Cf. E. JARAMILLO, “The Establishment of a Religious Institute: Where the Rubber Meets the Road,” in *Proceedings of the Seventy-Fourth Annual Convention, Oct 8-12 2012*, Washington, Canon Law Society of America, 135.

The object of these bonds is not the same as the object or purpose of the institute, nor is it the same as “the manner in which the evangelical counsels of chastity, poverty and obedience are to be observed (c. 598, §1). Their “proper object” (*obiectus*) is their purpose or goal, the “why?” of the vows – why does somebody profess these vows or bind her/himself in this way? The object is often expressed in terms of “consecration to God” or dedication to Christ or to the Gospel. *PC 5* mentions among the reasons for the profession of the evangelical counsels that it is a response to a divine call, a renunciation of worldly things to live for God alone, a dedication of one’s entire life to God’s service. These bonds also “show forth the indissoluble bond of union that exists between Christ and his bride the church” (*LG 44*). Whatever particular emphasis an institute puts on its understanding of the object (or objective) of the vows needs to be stated in the constitutions.

These ten elements, five of which are included in the spiritual patrimony of the institute according to c. 578, and five others explicitly stated in c. 587 §1, must be present in the fundamental code of an institute of consecrated life. They are quite precise in many of their requirements, yet they also allow the institute to define itself, its spirit, mission, and charism in individual terms. If such a document is well drawn up, it can stand as a basis not simply for juridical purposes but also in the formation of new members and in any circumstances where the institute needs to explain itself to others.

2.2 Balance between spiritual and juridical elements (c. 587 §3)

The third paragraph of the canon under consideration states that “In the constitutions, the spiritual and juridical elements are to be aptly harmonised. Norms, however, are not to be multiplied without necessity.”

The source of this text is the instruction *Ecclesiae sanctae* II, n. 13 which says in part, “The union of both elements, the spiritual and the juridical, is necessary so that the principal books of the Institute may have a firm foundation and breathe a true spirit and a vital norm; hence care should be taken not to produce a text which is only juridical or merely exhortatory.” And n. 12(b) of the same document stated that the juridical norms needed to define the character, aims, and means of an institute “should not be multiplied beyond measure, but must always be adequately stated.”

We saw in Chapter 1 that the *Norms* issued in 1901 for the implementation of *Conditae a Christo*, and the revised *Norms* issued after the promulgation of the 1917 Code, effectively rendered constitutions exclusively juridical, and often almost indistinguishable from one institute to another. The call of *Ecclesiae sanctae* II and of this canon for a balance between both spiritual and juridical elements, therefore, not only gives to institutes the possibility of expressing their unique spirit more adequately in their fundamental code, it actually obliges them to do so. Juridical norms alone fall short especially of describing the elements of the *nature*, *spirit*, *purpose* and *character* of the institute. Nevertheless, the fundamental code is a juridical text and must express essential juridical norms in juridical language.

“Our fundamental documents should breath the *agape* love of the New Testament rather than the cold legalism of a civil statute.”⁸⁸ On the other hand, constitutions are not to be works of poetry. Drawing up constitutions in such a style is challenging. Cardinal Rodé, when Prefect of the CICLSAL, noted that this element often presents difficulties. “Sometimes fundamental codes or constitutions are drawn up which are easily mistaken for books of spiritual reading, more or less profound, more or less inspired. Or, conversely, these constitutions or rules of life are

⁸⁸ KURUMBATH, “The Canonical Basis of Statutes and Constitutions of Religious Institutes,” 136.

nothing more than transcriptions of the canonical norms in more or less reduced form, often the only novelty being errors of citation!”⁸⁹

The canon also indicates that norms are not to be multiplied unnecessarily.⁹⁰ For example, there is no need to include in the constitutions all those things in universal law which bind members of the institute. Likewise, matters which can be dealt with in the complementary code should be dealt with there, so that the fundamental code contains only those elements which are constitutive and binding on all. Since no other guidelines are given about how to discern what is necessary and what is unnecessary, the best reference or example are constitutions which have already been approved by the Holy See – although even these may vary.⁹¹

2.3 The Complementary Code (c. 587 §4)

The proper law of an institute is made up of more than just its constitutions or fundamental code. The fourth paragraph of c. 587 provides:

Other norms established by competent authority of an institute are to be collected suitably in other codes and, moreover, can be reviewed appropriately and adapted according to the needs of places and times.

PC 3 had asked that not only the constitutions but also “directories, custom books, books of prayers and ceremonies and similar compilations” be suitably revised. *ES II* directed that “The norms which are linked with present-day life or with the physical and psychical conditions or

⁸⁹ F. RODÉ, “Vita consacrata e struttura normativa. Esperienza e prospettive del rapporto tra norma generale e statuti propri,” in *La legge canonica nella vita della Chiesa*, Pontificio Consiglio per i Testi Legislativi, Vatican City, Libreria Editrice Vaticana, 2008, 141 (my translation).

⁹⁰ A. HEREFORD, *The Role of Law in the Life Cycle of a Religious Institute*, Saint Louis, Religious Life Project, 2014, Kindle ed., location 125, notes that “use of law should be balanced with other elements in the life and growth of the institute, otherwise the group may find the multiplication of norms over-burdensome, or it may find that with too few norms, it lacks the organization and cohesion for fruitful life and growth.”

⁹¹ Cf. ANDRÉS GUTTIÉREZ, “Tradiciones, constituciones e incorporación,” 34. He suggests that an argument can be made for saying that the norms should be allowed to multiply to the extent that is necessary to guarantee justice and fundamental rights.

situations of the subjects, should be entered in separate books, such as directories, books of customs or similar documents.”

When the *CIC* states that some point is to go into the constitutions (or the fundamental code), then that is to be observed. However, if it says that is to be included in the “proper law” of an institute, without a more precise indication, it belongs to the institute to put it in either the constitutions or in another code, according to the importance of the material.

There is great liberty about what names may be used for the complementary codes: directories, books of usages, manuals, customaries, complementary norms, etc. Some institutes use the term ‘statutes’, if that is not already used for the fundamental code. Each institute is free to decide on the number of complementary codes it has and on their contents. Examples include: “a complementary code on formation, another on the various apostolic activities; another on the procedure for provincial and general chapters; another on superiors and councils on the different levels; another on temporal administration, etc.”⁹² Procedural norms of general chapters and provincial chapters also come under this heading.

In addition to the constitutions and the complementary code valid for the whole institute, there may also exist particular rules, for example for each province, not binding on the whole institute, but only if the constitutions permit this, specifying the areas in which the provinces may have their own rules, and mentioning who has the power to enact these rules.⁹³

In some cases it may be useful to place complementary code norms in the same book as the constitutions in such a way that the norm of a more practical kind, or which is more susceptible to change, is placed immediately after the Constitution which states the general

⁹² M. DORTEL-CLAUDOT, “The Complementary Code,” in *Consecrated Life*, 9 (1983), 109.

⁹³ *Ibid.*, 117. He adds “In order to preserve the unity of the institute, these particular rules should not be multiplied and should treat of points of a practical order or of juridical details of minor importance.”

principle or value in question. Thus, for example, in the OCSO Constitutions we find a norm of the constitutions on “Monastic Clothing” followed immediately by two statutes which spell out some practicalities.

C. 12 Monastic Clothing

The characteristic Cistercian habit is the white cowl. Given at solemn profession it is a sign both of a nun’s consecration and of the unity of the whole Order.

ST 12.A

The clothing, which traditionally includes a white robe, a black scapular and veil with a leather belt, can be adapted to local conditions.

ST 12.B

Temporarily professed and novices wear a white veil, and a cloak instead of the cowl. The novices’ scapular is white.⁹⁴

Speaking of a directory for the administration of temporal goods, Morrissey says that “though a directory is part of the proper law of an institute, it is generally understood that the detailed norms laid out in it do not bind under the vow of obedience. Rather, we are dealing with a series of agreed-upon practices to provide for smooth administration and for reasonable security in financial matters.... By analogy, it could be said that a directory implementing the constitutions and rules would be for a religious institute what an instruction is to a decree of the Roman Curia.”⁹⁵ Other complementary codes can take the form of “Guidelines”, e.g. “Guidelines for Formation” which are to be adapted in each province or novitiate house as local circumstances suggest.

Since the norms of *ES II* applied only to the constitutions, more liberty can be allowed in the complementary code regarding the integration of spiritual and juridical elements, i.e. of

⁹⁴ *Constitutions and Statutes of the Order of Cistercians of the Strict Observance (Nuns)*, Cst. 12.

⁹⁵ F. MORRISEY, “The Directory for the Administration of Temporal Goods in Religious Institutes,” in THÉRIAULT and THORN (eds.), *Unico Ecclesiae servitio*, 271, including footnote 9.

literary style.⁹⁶ Institutes “remain free to prepare a complementary code which is either purely practical and juridical or both spiritual and practical-juridical.”⁹⁷

The “competent authority” to approve and modify the complementary code will be discussed in the following chapter.

Although there is no strict requirement of approval of the complementary code by the competent ecclesiastical authority, it is usual that it be submitted to the Holy See, together with the fundamental code, for its information.

⁹⁶ *Communicationes*, 10 (1979), 56.

⁹⁷ DORTEL-CLAUDOT, “The Complementary Code,” 111.

CHAPTER 3: APPROVAL OF NEW CODES AND MODIFICATIONS OF EXISTING ONES

The constitutions of an institute of consecrated life fall into the general category of “statutes” as defined in c. 94 §1. “Statutes properly so called are regulations which are established in accordance with the law in aggregates of persons or of things, whereby the purpose, constitution, governance and manner of acting of these bodies is defined.”⁹⁸ Canon 631 §1 includes issuing “norms which all are bound to obey” among the competencies of the general chapter of an institute. (Since c. 119, 3° says that “that which affects all as individuals must be approved by all,” the general chapter is the appropriate body to draw up such norms, as the general chapter is, according to the same canon, “to be composed in such a way that it represents the whole institute”.)

The second paragraph of c. 587, with which this paper is concerned, deals with the approval of constitutions and with the consent required for their subsequent modification. This chapter treats the approval and modification of fundamental codes of institutes of consecrated life. It has four sections: the requirement of approval, the authority competent to approve, issues concerning the constitutions of a new institute, and the modification of the complementary code.

3.1 The requirement of approval

Canon 587 § 2 states that “A code of this type [a ‘fundamental code’] is approved by competent authority of the Church and can be changed only with its consent.” There are a

⁹⁸ On this basis, the fundamental code of a religious institute is considered to be established through an exercise of executive power, unless it is an institute which by grant of the Supreme Authority or by privilege can promulgate statutes in virtue of legislative power, in accordance with c. 94 §3. The statutes of these latter institutes are regulated by the general norms for laws (cc. 7-22). E. COTTER, “Canon 631 and the Juridic Act,” in V.G. D’SOUZA (ed.), *In the Service of Truth and Justice: Festschrift in Honour of Prof. Augustine Mendonça, Professor Emeritus*, Bangalore, St. Peter’s Pontifical Institute, 2008, 383-386, develops this thoroughly, following closely J.M. HUELS, “The Power of Governance and its Exercise by Lay Persons: A Juridical Approach,” in *Studia Canonica*, 35 (2001), 59-96.

number of reasons why an institute must obtain such approval, rather than simply being permitted to establish its own governing norms without reference to any outside authority. In the first place, institutes of consecrated life are a gift of God “with gifts that differ according to the graces given them” (c. 577) not merely for the members themselves or for those immediately affected by their ministry, but for the whole Church. “The whole patrimony of an institute must be faithfully preserved by all” (c. 578) – not just by the members of the institute, but by the whole People of God. If the members of an institute are tempted to remove something essential from their constitutive norms or to deviate significantly from their established tradition, it is fitting that an ecclesiastical authority be enjoined with double-checking this proposed change, “testing the spirit to see if it comes from God” (1 Jn 4:1). The gift is thus protected for the whole Church through the decision of the general chapter and the *approbatio* of the Holy See.

Secondly, as a public juridic person, an institute of consecrated life pursues its mission in the name of the Church (c. 313); the apostolic action of its members is exercised in the name of the Church and is to be performed in communion with the Church (c. 675 §3). Since the members do not constitute a merely private group, it is the prerogative of legitimate authority to approve the norms by which they interpret the practice of the evangelical counsels; and to do what is in its power to ensure that institutes grow and flourish according to the spirit of their founders and to their sound traditions (cf. c. 576). Approving changes in the fundamental code of an institute is part of that task.

Thirdly, universal law permits certain members of institutes, particularly major superiors, to place juridical acts which can have consequences far beyond the bounds of the institute itself. How such superiors are constituted or appointed to office is of relevance to the wider Church,

and an appropriate subject for oversight by hierarchical authority through review and approval of the institute's fundamental code.

Again, when aspirants apply for entrance to an institute to test what may be a vocation from God, they have a right to the assurance that a particular institute has the approval of Church authorities. "Consecrated persons commit themselves to live according to the prescriptions of the constitutions of their institute, and recognize in these the authentic expression of the spirit, traditions and style of life of their institute, approved by the Church."⁹⁹ Likewise, approval of constitutions gives donors or volunteers a guarantee that this is an authentic, approved institute. And of course approval by competent authority ensures that nothing is included in the proper law of an institute which conflicts with universal law.

3.2 Competent authorities

An institute of consecrated life is of either diocesan or pontifical right. According to c. 589, it is of pontifical right if it has been established by the Apostolic See or approved by it by means of a formal decree; it is of diocesan right if it has been established by the diocesan bishop and has not obtained a decree of approval from the Apostolic See. So in the matter of the approval of constitutions, or of modifications to constitutions, the competent authority is the Holy See for institutes of pontifical right¹⁰⁰ and the diocesan bishop for institutes of diocesan right. If a diocesan institute has houses in more than one diocese, it is the bishop of the diocese in

⁹⁹ SUGAWARA, "Il ruolo delle costituzioni," 664.

¹⁰⁰ The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, Office II for monastic institutes, Office III for other institutes in the Latin church.

which the principal house is located who is the competent authority (c. 595 §1). The diocesan bishop is also the competent authority for those *sui iuris* monasteries which fall under c. 615.¹⁰¹

Constitutions, once established, should be stable, not subject to frequent change.¹⁰² However, modifications may be necessary in the light of significant changes in the mission or life of the institute, or of its internal governance structures, or if experience has shown that there is some lacuna in the constitutions, or if proper law must be brought into conformity with changes to the universal law introduced by the supreme legislator (as for example will be necessary for at least some contemplative women's institutes in the light of *Vultum Dei quarere*).¹⁰³

A change to the fundamental code of an institute must be approved first by the general chapter, according to the norms of universal law and/or proper law (c. 119). Precisely because it deals with fundamental, constitutive elements, a two-thirds qualified majority is often required to approve modification of the constitutions, while an absolute majority may suffice for the other codes. (The required majorities should be specified in the constitutions themselves). The general chapter then petitions the competent authority for definitive approval. "The decree of the competent authority confirms the act of the chapter and has the juridic effect of approving the law (*ius*) for the institute concerned. However, the obligatory force does not come from the

¹⁰¹ C. 615: "If an autonomous monastery has no major Superior other than its own Moderator, and is not associated with any institute of religious in such a way that the Superior of that institute has over the monastery a real authority determined by the constitutions, it is entrusted, in accordance with the norms of law, to the special vigilance of the diocesan Bishop."

¹⁰² "The terms *stable* and *stability* have been used during these past years to designate the juridical status of constitutions in opposition to that of the complementary code." DORTEL-CLAUDOT, "The Complementary Code," 118, note 4.

¹⁰³ After the promulgation of CIC 1983, the Holy See approved revisions to the constitutions and statutes of more than 2,260 institutes, monasteries and associations. RODÉ, "Vita consacrata e struttura normativa," 141.

approval but from the establishment of the norm by the general chapter and its promulgation to the institute.”¹⁰⁴

3.3 Constitutions of a new institute

Canon 579 provides that diocesan bishops in their own territory can erect institutes of consecrated life by a formal decree, provided that the Apostolic See has been consulted. The process for establishing such an institute is that outlined in Part I of Book II of the Code in the section on Associations of the Faithful (cc. 298-329).

Usually a new institute goes through many phases of development before it is ready to be recognized as an institute of consecrated life: an informal association without any recognition or juridical existence; a private association of the faithful; a public association of the faithful established in view of being erected in the future as an institute of consecrated life of diocesan right. At this last stage, the association will have the statutes of a public association of the faithful, but since at this time “the association imitates the spirit and structure of a religious institute,”¹⁰⁵ those statutes should in the measure possible reflect the elements mentioned in c. 587 §1, i.e. they should begin to look like the constitutions of an institute of consecrated life. But as the association works out its precise aim, spirit and charism, as well as its governance structures, and adapts in the light of experience, the constitutions at this stage will be more flexible and less stable than those required of a recognized institute. And some elements will not yet exist: a new association will not have much to include as its “tradition”, for example.

Erecting a new institute of consecrated life includes the approval of its constitutions. Since the Rescript *ex audientia Sanctissimi* of April 2016, the consultation by the diocesan bishop of

¹⁰⁴ COTTER, “Canon 631 and the Juridic Act,” 384.

¹⁰⁵ JARAMILLO, “The Establishment of a Religious Institute,” 124.

the Holy See mentioned in c. 579 is for validity, and this consultation will include submission of the proposed constitutions of the new institute to the Holy See for its examination.¹⁰⁶ This does not lessen the bishop's right to discern new charisms in his diocese, but it brings the wide experience of the CICLSAL to bear on the matter.¹⁰⁷

3.5 Modification of the complementary code

The *ius proprium* of an institute includes both its fundamental and complementary codes.¹⁰⁸ Only the fundamental code (constitutions) is subject to the requirement of c. 587 §2, that it be approved by competent authority and changed only with its consent. The complementary code is not subject to this requirement. Usually the norms of the complementary codes come from the general chapter, but on occasion they may be issued by other governing bodies such as the superior general with his/her council. The constitutions should indicate the competence of the bodies or individuals to issue and modify complementary codes.

¹⁰⁶ SECRETARY OF STATE, Rescript *ex audientia Sanctissimi*, 4 April 2016, at [www.vatican.va](http://www.vatican.va/roman_curia/secretariat_state/parolin/2016/documents/rc_seg-st_20160511_parolin-rescritto-can579cdc_en.html).
http://www.vatican.va/roman_curia/secretariat_state/parolin/2016/documents/rc_seg-st_20160511_parolin-rescritto-can579cdc_en.html

¹⁰⁷ Cardinal Carballo, Secretary of the CICLSAL, expressed in very strong terms some of the difficult situations that the Congregation has witnessed when bishops either ignored the advice of the Holy See or failed altogether to have any such consultation. He mentions the reckless creation of new institutes, either unnecessary or lacking in sufficient originality; institutes established without formative capacity or real possibility of development; institutes lacking the essential traits of consecration through the profession of the evangelical counsels; institutes which emerged without discernment, internally divided because of alleged charismatic motivations that masked power struggles, or because of the authoritarianism of founders who felt themselves to be the authors and masters of the charism, or filled with disciplinary abuses; institutes that should never have been approved, and which had to be suppressed by the Holy See. See J.R. CARBALLO, "Un dono fatto a tutta la Chiesa," in *L'Osservatore Romano* (Italian ed.), 7 June 2016; available at <http://www.osservatoreromano.va/it/news/discernere-il-dono-alla-chiesa-intera> (accessed 28 Jan 2017).

¹⁰⁸ Some Orders of greater antiquity have their own liturgical rites, approved by the Holy See. The rubrics and *praenotanda* of such approved rites also form part of the Order's proper law.

Normally it is the body that enacted a law which can interpret, modify, or abrogate that law. Provincial statutes formulated or modified by the provincial chapter must be approved by the supreme moderator of the institute in accord with its proper law.¹⁰⁹

¹⁰⁹ MCDERMOTT, "Institutes of Consecrated Life," 755-756.

CONCLUSION

An understanding of c. 587 is essential for an accurate comprehension of the canonical meaning of the “proper law” of an institute of consecrated life. The canon establishes the many elements which comprise the essential content of the fundamental code or constitutions; it gives norms about the establishment and modification of this code, identifies the required style of composition, and differentiates it from other codes which may also form part of an institute’s *ius proprium*. Anyone working on the modification of the proper law of an existing institute, or involved in drawing up the constitutions of a new institute, needs to be aware of its implications, particularly supreme moderators and their councillors, all general chapter members, and anyone called on to advise in the modification of constitutions or the writing of new ones.

The current legislation provides institutes with much scope to express their own charism freely in their fundamental code. However the elements of “spiritual patrimony” such as “nature”, “purpose”, and “character” have some precise canonical meanings, and definitions in accordance with them must be incorporated in the institute’s texts. The term “spirit” is broader, and the spirit of the institute will not merely be defined in one norm of the constitutions but will permeate the whole document. The necessity of including the institute’s “sound traditions” means that a new institute should not proceed too quickly to writing its fundamental code. Checklists of those canons which require certain matters to be defined in the constitutions or the proper law of the institute can help to ensure that none of the essential elements concerning governance, discipline of life, incorporation and formation of members, are omitted.¹¹⁰ The “proper object of the sacred bonds” is not the same as the object of the institute itself and must be separately defined.

¹¹⁰ Such as those found in SUGAWARA, “Il ruolo delle costituzioni,” 669ff, or in M.M. MODDE, “Questions Asked by the CICLSAL,” in P.J. COGAN (ed.), *Selected Issues in Religious Law*, Washington, DC, Canon Law Society of America, 1997, 6-8.

The norms of the constitutions are drawn up, or modified, by the general chapter, and approved by the Holy See or the diocesan bishop as appropriate. This done, they become binding on the members of the institute, who make profession “according to the norms of the constitutions.”

The requirement of the integration of spiritual and juridical elements is taken very seriously by the CICLSAL. Care should be taken to see that it is achieved.

Codes other than the fundamental code can be profitably used by an institute to contain norms on those matters which are more susceptible to change according to times, circumstances and place, or which deal with matter of lesser importance. Though not “constitutive” of the institute, they are nevertheless part of the *ius proprium*, and care must be taken to see that they conform in all aspects to canonical norms.

A canonist assisting an institute in the work of crafting or re-crafting its proper law will know that those who live the charism of the institute are the ones who can truly state what that gift of God to the Church is. He or she will help the members to express their patrimony in suitable canonical terms and through the juridical norms to establish and clarify the obligations and rights of the institute and of its members so that all can live their vocation fruitfully. In this way the *ius proprium* of an institute of consecrated life becomes an instrument of service to the members and thus to the whole Church.

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