

**THE RIGHT OF ASSOCIATION
AND ITS APPLICATION TO SECULAR PRIESTS**

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fulfillment of the requirements for the degree of
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ABSTRACT

The right of association is a natural right founded on the social nature of human beings. As a natural right it is inherited by every person, and therefore, it is to be preserved, protected and promoted by all people, by every government and legal system. As members of the human society, the secular priests enjoy this right and the Church has formally recognized it in its legislation. Thus the 1983 Code of Canon Law contains several norms governing the establishment, scope, limitations, and different aspects of the association of secular priests.

Canon 278 of the 1983 Code presents principles related to this association in light of the nature and dignity of priesthood. The canon promotes the associations which foster holiness of secular priests, provide fraternal assistance in their priestly ministry, and promote unity among themselves and their bishop. All these principles imply that the right of association of secular priests is always exercised within the context of ecclesial *communio*.

The limitations set forth in the Code are not solely to defend the right of association, but also to safeguard the dignity of priesthood and the rights of others in the Church. Rights in the Church are essentially *ecclesial* by their very nature. Therefore, competent ecclesiastical authority has the right and responsibility to respect this right, to recognize the statutes of the association, to see that secular priests refrain from establishing or joining associations which are not compatible with priestly dignity, and to oversee their wellbeing with a fraternal spirit and pastoral solicitude.

In brief, the statutes of these associations should take into account the freedom of secular priests, the nature and mission of the Church as *communio* and *missio*, the common good of the Church, the dignity of clerical state, and the competence of the Church's authority.

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ABBREVIATIONS

<i>AA</i>	<i>Apostolicam actuositatem</i>
<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
<i>AG</i>	.....	<i>Ad gentes</i>
<i>ASS</i>	.....	<i>Acta Sanctae Sedis</i>
<i>DH</i>	.....	<i>Dignitatis humanae</i>
<i>Gn</i>	.....	<i>Genesis</i>
<i>GS</i>	.....	<i>Gaudium et spes</i>
<i>Heb</i>	.....	<i>Hebrews</i>
<i>Jn</i>	.....	<i>John</i>
<i>LG</i>	.....	<i>Lumen gentium</i>
<i>Lk</i>	.....	<i>Luke</i>
<i>Mk</i>	.....	<i>Mark</i>
<i>Mt</i>	.....	<i>Matthew</i>
<i>OT</i>	.....	<i>Optatam totius</i>
<i>PO</i>	.....	<i>Presbyterorum ordinis</i>
<i>SCC</i>	.....	<i>Sacred Congregation for the Clergy</i>

INTRODUCTION

Among the natural rights set forth in the Universal Declaration of Human Rights, there is a right of association.¹ The official teachings of the Church proclaimed in this century also affirm this right as a genuine right.² This right is connatural with one's membership in the human race and the people of God. It is based on the social nature of the human being and on the ecclesial status of the children of God.

The right to associate with others to promote, exercise, and protect one's legitimate political, economic, religious, social, cultural, professional, labor union, or other interests,

¹ P. Sieghart, *The Lawful Rights of Mankind*, New York, Oxford University Press, 1986, p. 175. Article 20 of the "Universal Declaration of Human Rights" says: "1) Everyone has the right to freedom of peaceful assembly and association; 2) No one may be compelled to belong to an association."

² Sacra Congregatio Concilii, *Corrientem*, November 13, 1920, in *Acta Apostolicae Sedis* (=AAS), 13 (1921), pp. 135-144. See also Commissio de disciplina cleri et populi christiani, in *Acta Vaticano II apparando*, series II, vol. II, pars IV, Romae, Typis polyglottis Vaticanis, 1962, p. 3; John XXIII, Encyclical letter, *Pacem in terris*, April 11, 1963, in AAS, 55 (1963), pp. 257-304, here at p. 264. English translation in D.J. O'Brien and T.A. Shannon (eds.), *Catholic Social Thought: The Documentary Heritage*, Maryknoll, NY, Orbis Books, 1992, pp. 129-162, here at p. 139; Second Vatican Council, Decree on the Apostolate of the Laity, *Apostolicam actuositatem*, November 18, 1965, in AAS, 58 (1966), pp. 852-854. English translation in A. Flannery (ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents*, vol. II, Northport, NY, Costello Pub. Co., 1988, pp. 766-798.

therefore, belongs to every person.³ It would seem that also secular priests enjoy the same right. But such an assertion is likely to raise some important questions. Does the Code of Canon Law recognize this right for secular priests? If so, how does the law regulate this right? Are there any limitations? If yes, what are the limitations? And what are the reasons for such limitations?

Canon 278 of the 1983 Code of Canon Law recognizes the right of association for secular priests and encourages the associations that promote fraternity, effective ministry, and unity with the bishop. At the same time, the canon gives the competent authority the right and duty to prohibit the associations of secular priests that are incompatible with the clerical state or apostolic activity. The canon, however, is still very general. This situation raises questions about the balance between the rights-obligations of the competent authority and the rights-obligations inherent in the freedom of secular priests to exercise their natural right of association.

This study is intended to identify certain general guidelines and juridical principles governing the issue of secular priests' right of association. The inquiry is limited to secular priests. In order to do justice to the subject matter, the study focuses only on the right as it pertains to secular priests and not to priests in general or to deacons incardinated in the diocese.

³ Article 22 of the "American Declaration of the Rights and Duties of Man," in *The Lawful Rights of Mankind*, p. 217.

The primary sources of this study will be relevant canons of the revised Code and their parallel in the 1917 Code which will provide the historical and interpretative basis. Moreover, the theological context of these canons will be derived from conciliar, post conciliar, and papal teachings. Important canonical commentaries on the relevant canons and major studies on human rights, on the right of association of the faithful, of religious, of the clergy etc., will be reviewed for the purpose of this study. The basic approach will be a scientific analysis of the issue from a natural law point of view and of its affirmation in the canonical order.

Some major studies have been done regarding the right of association of the faithful in general.⁴ There are also some studies on the right of association of

⁴ J.R. Amos, *Associations of the Faithful in the 1983 Code of Canon Law: A Canonical Analysis and Evaluation*, Canon Law Studies, no. 516, Ann Arbor, MI, University Microfilms International, 1987, xi, 424 p; A. Diaz Diaz, *Derecho fundamental de asociacion en la Iglesia*, Pamplona, EUNSA, 1972, 275 p; A.R. Duston, *The Rights and Obligations of the Lay Christian Faithful*, Rome, Pontificia Studiorum Universitas a St. Thomas Aquinas in Urbe, 1986, vi, 433 p; L. Kada, *Libertà di religione di stampa e d'associazione; esame storico-critico degli articoli 18, 19 e 20 della dichiarazione universale dei diritti dell'uomo*, Romae, Pontificia Universitas Lateranensis, 1959, xi, 135 p; J. Kinney, *The Juridic Condition of the People of God. Their Fundamental Rights and Obligations in the Church*, Rome, Catholic Book Agency, 1972, viii, 99 p; S. L. Martinez, *El derecho de asociaci3n en la Iglesia*, Romae, Pontificia Universitas Lateranensis, 1973, 319 p; S.L. Martinez, *Las asociaciones de fieles*, Barcelona, Facultad de teologia de Catalunya, 1986, 151 p; T.G. Sullivan, *Obligations of the Bishop Prior to Erecting Associations of the Faithful*, Master's Seminar Paper, (Unpublished), Ottawa, Saint Paul University, Faculty of Canon Law, 1988, ii, 40 p; G. Vromant and L. Bongaerts, *De fidelium associationibus*, Louvain, Desclée de Brouwer, 1955, 138 p; P. Giuliani, *La Distinzione fra associazioni pubbliche e associazioni private dei fedeli nel nuovo codice di diritto canonico*, Rome, PUL, 1986, v, 231 p; E. Worms, *De la libertè d'association, au point de vue du droit public, à travers les àges*, Paris, Dentu, 1887, viii, 383 p.

Religious.⁵ R. Rodriguez-Ocaña has recently dealt with the right of association of the Clergy in general, in which he provides a clear and complete vision of the place of the association of the Clergy in the law and in the life of the Church.⁶ Our study, however, focuses principally on the right of association of the Secular Priests. In this aspect, it is hoped that the study will highlight certain new theoretical and practical canonical insights in regard to the right of association as it pertains to secular priests.

The very nature of this study raises some important questions: What is the source or foundation of the secular priests' right of association? Is it a natural right or only a positive ecclesial right? At this point, the first chapter would lead us to consider this right as a natural right. Therefore, the chapter examines the juridico-theological basis of this right within the context of human rights.

The second chapter concerns this right's place in the life of the Church. In this context, the focus will center on the theological and juridical approaches adopted by the

⁵ S. Da Costa Gomez, *O direito de associacao na vida religiosa*, Roma, Pontificia Università Lateranense, 1989, 256 p; G. Geeroms, *La vie fraternelle en commun dans la vie religieuse du Concile au Code: approche théologique-canonique*, Gijzegem, Servantes des Pauvres, 1989, 212 p; A. Vallini, *Diritto di associazione e vita consacrata*, Roma, Pontificia Università Lateranense, 1975, 285 p.

⁶ R. Rodriguez-Ocaña, *Las asociaciones de clerigos en la Iglesia*, Pamplona, Ediciones Universidad de Navarra, S.A., 1989, 288 p. See also R.M. Umemura, *Sacerdozio comune e sacerdozio ministeriale: una considerazione teologico-canonico sul canone 204*, Roma, Pontificia Universitas Urbaniana, 1991, vii, 266 p.

Church in regard to the right of association of the Christian faithful in general. In the Church the right to associate is exercised within the context of ecclesial communion, the Church's mission, and the common good of the people of God.

Since the secular priests' right of association is based on the theological and juridical foundation of priestly ministry, the third chapter will analyze the canonical principles stated by the legislator in the revised Code of Canon Law. The right of association of secular priests is placed within the context of the communion of the Church with due regard for the dignity of the clerical state.

Finally, since the association of secular priests has become a fact of life in different countries at the national, regional or local levels, the fourth chapter will closely examine the statutes of some associations of secular priests with a view to proposing some general guidelines for the future.

CHAPTER ONE

THE RIGHT OF ASSOCIATION

AS A FUNDAMENTAL RIGHT

Since a person cannot live fully as a human being without joining others, the right of association is acknowledged as a natural right, to be preserved by every person, government and legal system. This right is intimately linked to other individual rights such as freedom of speech, freedom of press, etc. The focus of this chapter is to place the right of association within the context of human rights. To achieve that purpose, we will first deal with rights in general, then with human rights, and finally with the right of association.

1.1. RIGHTS

A clear understanding of rights creates a better environment for justice and peace, freedom and authority. In this section, therefore, we will explore the different aspects of rights, such as the importance of rights, notion of rights, subject of rights, rights and natural law, and diversity of rights.

1.1.1 The Importance of Rights.

One's awareness of rights contributes greatly to one's self respect and personal dignity. It certainly influences the development of one's personality¹ in self realization and in the exercise of personal freedom.² Rights enable persons to control their own lives. A right is a capacity for pursuing one's own interests, projects, and purposes without being subjected to domination and harm from others.³

Right makes it possible to claim something in one's own name. A person may not claim that to which one has no right. The claim imposes on other persons a duty to recognize and to respect the right. The fact that one has the right not to have one's house

¹ F. R. Begin, *Natural Law and Positive Law*, Canon Law Studies, no. 393, Washington, DC, The Catholic University of America, 1959, p. 18. Begin argues that the concept of personality is more than the concept of individuation. By virtue of individuation, a material being becomes autonomous. It acquires a subsistence distinct and independent from that of other beings. Over and above individuation, the notion of personality adds to a subject the characteristic of a rational nature, featuring the spiritual operations of the intellect and the will. Endowed with intelligence, a person is able to reflect upon one's self, thoughts and actions, to take cognizance of personal needs, to formulate the ideal which corresponds to his/her aspirations, to judge the value of personal acts in relation to a definite purpose. See also J. Maritain, *Person and Common Good*, London, Geoffrey Bles, 1948, pp. 26-33.

² M. T. Bendit, *Rights*, Totowa, NJ, Rowman and Littlefield, 1982, p. 30.

³ *Ibid.*, p. 10. See also J. Feinberg, *Social Philosophy*, Englewood Cliffs, NJ, Prentice-Hall, 1973, p. 58. Feinberg notes that rights protect not the interests generally, but only the interest in freedom. The capacity to be free, to decide freely the course of one's own life, is what makes a person.

burned imposes on others a duty not to burn it; or others have the duty to compensate that person if they burn that house.⁴

In social life rights are needed for controlling the behavior of citizens. Rights determine when one person's freedom may be limited by another.⁵ A right is helpful for creating a social condition in which human beings are required to refrain from interference with some range of conduct on the part of someone. Rights specify the circumstances in which a public and general duty is to be exercised. Rights also specify when and under what circumstances individuals who want to do something are to be protected from interference.⁶ In this sense Vladimir Kudryavtsev says that a right is an opportunity guaranteed by the state to enjoy the social benefits and values existing in a given society.⁷

The primary purpose of rights is to secure for each person a certain fundamental

⁴ Bendit, *Rights*, p. 57.

⁵ M. Roshwald, "The Concept of Human Rights," in *Philosophy and Phenomenological Research*, 19 (1958-1959), pp. 354-358.

⁶ L. Armour, "Human Rights: A Canadian View," in *The Philosophy of Human Rights: International Perspectives*, A.S. Rosenbaum (ed.), Westport, CT, Greenwood Press, 1980, p. 203.

⁷ V. Kudryavtsev, "The Truth about Human Rights," in *Human Rights*, 5 (1976), p. 199. See also M.R. Tibor, "On Human Rights, Feudalism and Political Change," in *The Philosophy of Human Rights*, p. 211.

moral status. Rights have an independent bearing in the moral assessment of an action.⁸ They provide for us a circumstance for equality. Rights enable us to stand up and look at others in the eye and to feel fundamentally equal to one another.⁹

1.1.2. Notion of Rights

A right is neither a physical entity nor a mental fiction. Having a right is very different from having a ring or having an idea. A right is something which one can exercise, earn, enjoy, give, claim, demand, assert, insist on, secure, waive, or surrender. A right can be compared and contrasted with a duty, privilege, liberty, power, claim, etc.

William Ockham describes right as a power of acting¹⁰ and T. Holland defines it as a power of influencing the acts of another by the force of society.¹¹ Thomas Hobbes

⁸ Bendit, *Rights*, p. 57. See also A. Gewirth, *Human Rights: Essays on Justification and Applications*, Chicago, University of Chicago Press, 1982, pp. 2-4.

⁹ Bendit, *Rights*, p. 4. See also J. Feinberg, "The Nature and Value of Rights," in *Journal of Value Inquiry*, 4 (1970), p. 252.

¹⁰ W. Ockham, *Summa logicae*, P. Boehner (ed.), Gideon Gal and S. Brown, St. Bonaventura, NY, St. Bonaventure University, 1974, pp. 197-199.

¹¹ T. E. Holland, *The Elements of Jurisprudence*, 5th ed., NY, Oxford University Press, 1900, p. 76. See also A. R. White, *Rights*, Oxford, Clarendon, 1985, pp. 149-154. White writes that some jurists emphasize the core of the notion of rights on power because a right is essentially the power to demand or claim the performance of a duty in another. It is, however, only in the sense of a legal competence (the power to make a will); somebody can have a right even if he/she

and B. Spinoza conceive of a right not as a power but as a liberty.¹² J. Bentham says that every right rests on a relative duty, lying on a party or parties other than the parties in whom the right rests.¹³ Some jurists such as H. Mcloskey, R. Wasserstrom, associate a right as a claim advanced by an individual or group, enforceable by law. To talk of rights

is powerless. Rights may explain why persons have the powers they do, but they are not identical with these powers. In its widest context a power can belong either to a person or a thing, whereas only a person can have a right. One can have either a power or a right to act, but only a right to be acted on. Powers have effects whereas rights have only consequences. Power, but not rights, can be physical as well as non physical. Though there are legal, statutory, and executive rights as well as powers, there are no physical or psychological rights.

¹² T. Hobbes, *Leviathan*, ch. 14, R. Tuck (ed.), Cambridge, Cambridge University Press, 1991, pp. 91-100. See also B. Spinoza, *Tractatus theologico-politicus*, ch. 16, C. Morales (ed.), Madrid, Editorial Magisterio Español, 1978, p. 219; White, *Rights*, pp. 133-137. White notes that Hobbes and Spinoza equate a right with a liberty and the idea of having a right to X with the idea of being free to X. This is preserved by those jurists and philosophers who hold that liberty is at least one sense of right. A right is a liberty of a restricted kind, namely a liberty which is either protected, recognized, or at least allowed by the law. The objection is that there can only be a right to something, whereas freedom can be either freedom to so and so or freedom from such and such. While both persons and things can be free, either to or from, it is at least debatable whether things can have rights. Moreover, a person can be physically as well as legally, morally, or regulatively free, but there is no such thing as a physical right.

¹³ J. Bentham, *The Utilitarians: An Introduction to the Principles of Morals and Legislation*, Garden City, NY, Doubleday, 1961, pp. 352-353. See also Bendit, *Rights*, p. 10; A. Gewirth, "Are There Any Absolute Rights?", in *Theories of Rights*, J. Waldron (ed.), London, Oxford University Press, 1984, p. 92; White, *Rights*, pp. 55-70. White reports that some philosophers and jurists have commonly made various connections between rights and duties. Sometimes they have attempted a definition of one by the other; sometimes they have sought the grounds of one in the existence of the other; and sometimes they have suggested that a right in one person and a duty in another are correlatives or even two sides of the same coin. The problem is that one's right to X does not necessarily impose on its possessor any duty to X; nor does one's duty to X necessarily impose any right to X.

is to talk of what the law ought to enforce, not of what it does in fact enforce.¹⁴ While W.N. Hohfeld states that a right is a privilege of self defence,¹⁵ Albert Kocourck believes that there is a sense of privilege equal to a right.¹⁶

As a matter of fact rights are always possessed in relation to others. To talk of rights is to presuppose the existence of a community in which rights are advanced and in virtue of which rights are possessed. It is impossible to conceive of a right without taking into consideration at least two persons. To say merely that a person has a right is to form an incomplete sentence. The question which always comes to mind is: a right to what? or

¹⁴ H. J. Mcloskey, "Rights," in *Philosophy Quarterly*, 15 (1965), pp. 115-127. See also R. Wasserstrom, "Rights, Human Rights and Racial Discrimination," in *Journal of Philosophy*, 61 (1964), pp. 628-641; White, *Rights*, pp. 115-128. White notes that philosophers and jurists frequently assert a necessary connection between rights and claims. Many equate a right with either a claim or, at least, a justified or recognized claim. Some equate a claim only with one kind of right or sense of the word right. Some contend merely that a right implies a claim or that a right implies a right to claim.

¹⁵ W. N. Hohfeld, *Fundamental Legal Conceptions*, W. W. Cook (ed.), New Haven, CT, Yale University Press, 1919, pp. 44-45.

¹⁶ A. Kocourck, *Jural Relations*, Indianapolis, IN, Bobbs-Merrill, 1927, pp. 24; 83; 125-128. See also White, *Rights*, pp. 155-165. White reports that some jurists assimilate right and privilege. The assimilation of a privilege and right is due to the fact that many rights are privileges that are confined to a few classes of people, and many privileges are forms of rights.

A privilege, however, does not have a correlative right since it could be a privileged power, permission, immunity rather than privileged right. Rights but not privilege implies a correlative duty; privilege is the same as a liberty.

a right toward whom?¹⁷

F. R. Begin maintains that "a right is the relation existing between one person and the action or omission of another, according to which this person may demand this action or omission as due to him/her on the strength of the equality of men, in virtue of the common good, the goal of happiness toward which all persons strive."¹⁸

The definition given by Begin implies several important elements. First, the notion of rights implies the notion of sociability; second, it relates to human action and omission; third, it contains the important element of necessity found in the exigencies of the common good of humanity; fourth, it relates to the equality of human beings.

In summary, a right is characterized by power, liberty, duty, claim, privilege. By its nature, it exists in the realm of human actions in which the person relates to others through actions or omission. A right is teleological, that is, its goal is to achieve the common good of humanity - individually and collectively.

¹⁷ Begin, *Natural Law and Positive Law*, p. 9. See also M.R. Tibor, *Individuals and Their Rights*, La Salle, IL, Open Court, 1989, p. 2.

¹⁸ Begin, *Natural Law and Positive Law*, p. 14. See also L. Bender, *Philosophia iuris*, 2nd ed., Romae, Officium Libri Catholici, 1955, p. 67.

1.1.3. Subject of Rights

There is no right without a subject who owns it. A right which belongs to nobody is meaningless. The concept of rights requires the existence of a subject who is capable of willing and using the means to attain it. The term subject normally refers to a person because only a person is an intelligent and free being.¹⁹

J. Maritain says that in the full language of a right only a person can logically have rights. Firstly, because only a person can be the subject of such predications. Secondly, because a person is a whole and a master of his/her own life, actions and destiny.²⁰

The term person is applied to various beings. The first application is to physical persons including preborn babies, the second is to artificial persons such as moral persons

¹⁹ Begin, *Natural Law and Positive Law*, p. 17. See also J. Feinberg, *Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy*, Princeton, NJ, Princeton University Press, 1980, pp. 167-195. Animals do not have rights because they are not the kinds of beings who have intelligence and freewill. Animals are not capable of being represented because it is impossible to represent a being that has no interests. Without interests the animals are incapable of being benefitted and have no good or sake of its own. A being without interest has no "behalf" to act upon and no sake to act for.

We can have duties concerning animals. But these duties do not have any correlative rights because these duties are not owed to the animals as their dues. These duties are different from the duties to other human beings. The duties to other human beings have correlative rights because of the unique nature and the equality of all human beings.

²⁰ J. Maritain, *The Rights of Man and Natural Law*, London, Geoffrey Bles, 1945, p. 37.

and juridical persons.²¹ Moral persons exist on the basis of the social nature of human being. They do exist and operate, in fact, through the members who serve as their agents. The juridical persons are *sui generis* and they are a creation of law.²²

In conclusion, since rights exist only in a person, everybody is obliged to recognize and respect the right and to actualize its contents. No one can have the duty to actualize an immoral object because the object of rights must be good or at least be capable of being directed towards a good. It is actually a condition and a guarantee for human beings to be able to act according to their nature as rational and responsible beings.

1.1.4. Rights and Natural Law

From ages past the philosophy of the rights of the human person has been based on the idea of natural law.²³ The history of the evolution of human rights is associated

²¹ Begin, *Natural Law and Positive Law*, p. 19. See also J. Raz, *The Morality of Freedom*, Oxford, Clarendon Press, 1986, p. 166.

²² G. Del Vecchio, *Philosophy of Law*, translated by Thomas O. Martin, Washington, DC, The Catholic University of America Press, 1953, p. 344. See also Begin, *Natural Law and Positive Law*, p. 22.

²³ Maritain, *The Rights of Man and Natural Law*, p. 34. The idea of natural law is a heritage of Christian and classical thought. It does not go back to the philosophy of the eighteenth century, which more or less deformed it, but rather to Grotius, and before him to Suarez and Francisco de Victoria; and further back to St. Thomas Aquinas; and still further back to St. Augustine and the Church Fathers and St. Paul; and even further back to Cicero, to the Stoics, to the Great moralists of antiquity and its great poets, particularly Socrates. Antigone is the eternal

with the natural law tradition. In this tradition, rights are seen to be claims justified by the natural law and supported by the related natural duty.²⁴

The essence of natural law is naturalness and law. By nature there is a law of rationality²⁵ and a law of the sociability of the human being. One must live as a person who is aware of personal noble destiny which is rational, free, and social. By nature human reason discovers an order or a disposition in which the human will must act in order to achieve the necessary ends of the human being. There is an order that provides a normative basis for any legitimate critique of existing conditions. There is a natural standard that is independent of and above the positivity of existing conditions.²⁶ There is an ultimate principle of fitness with regard to the nature of human persons as rational and

heroine of natural law, which the Ancients called the unwritten law and this is the name most befitting it.

²⁴ A.S. Rosenbaum, "Introduction: The Editor's Perspectives on the Philosophy of Human Rights," in *The Philosophy of Human Rights*, pp. 8-14.

²⁵ T. Hobbes, *Leviathan*, introduction by A.D. Lindsay, New York, E.P. Dutton, 1953, pp. 66-67. Hobbes says that a law of nature is a general rule ascertained through reason, by which a person is forbidden to do what is destructive of his life, or takes away the means necessary for self preservation and to omit that by which he thinks his life may be best preserved. See also D.P. Chattopadhyaya, "Human Rights, Justice and Social Context," in *The Philosophy of Human Rights*, p. 170.

²⁶ Maritain, *The Rights of Man and Natural Law*, p. 35. See also E. Bloch, *Natural Law and Human Dignity*, Cambridge, MA, The MIT Press, 1988, pp. xiv-xv.

social beings.²⁷

Thomas Aquinas found natural law in the core of the human being as a creation of God. He believed that natural law was a participation of human beings in the eternal law of God. Natural law is the objective order established by God which determines the requirements for human fulfillment and flourishing. It exists prior to any positive human legislation, and is knowable to all human beings.²⁸

The natural law lays down the most fundamental duties and fundamental rights. Pope John XXIII observed that the moral force of rights could not be separated from the natural law.²⁹ This is because we are immersed in the universal order, in the laws and regulations of the cosmos and of the immense family of created nature.

Generally speaking these fundamental rights are called natural rights because they are derived from an understanding of human nature and the requirements of human community life. Like arms and legs these fundamental rights attach to every person. They are inherent and inseparable from the person. They come along with the person from one society to another. They cannot be dismissed without losing the whole person. They

²⁷M. MacDonald, "Natural Rights," in *Theories of Rights*, J. Waldron (ed.), pp. 23-25.

²⁸ Thomas Aquinas, ST I-II, q. 91, aa. 1-6. See also W.P. Baumgarth and R.J. Regan, *On Law, Morality and Politics*, Cambridge, Avatar Books of Cambridge, 1988, pp. 19-21.

²⁹ John XXIII, *Pacem in terris*, p. 264. See also Rosenbaum, "Introduction," pp. 8-32.

belong to all human beings everywhere whether the persons are debtors or creditors, masters or servants, bonded or free.³⁰

M.T. Cicero emphasized the need to apply these rights to all persons equally. He said that there was a true law-namely right reason- which was in accordance with nature. This law is applied to all persons and is unchangeable and eternal.³¹ In the seventeenth century John Locke emphasized three natural rights namely the right of freedom, equality, and property.³²

Today natural rights are better known as human rights and are applied to a variety of rights mentioned in the Universal Declaration of Human Rights. Among these rights, there is a right to form and to join an association.

1.1.5. Diversity of Rights

Rights have been commonly divided into positive and negative rights. Positive

³⁰ Tibor, "On Human Rights, Feudalism and Political Change," p. 210. See also Tibor, *Individuals and Their Rights*, p. 3; Bendit, *Rights*, p. 40; MacDonald, "Natural Rights," pp. 24-27.

³¹ M.T. Cicero, *De republica, de legibus*, Cambridge, MA, Harvard University Press, 1943, p. 211. See also MacDonald, "Natural Rights," p. 27.

³² J. Locke, *Two Treatises of Civil Government*, F.W. Carpenter (ed.), London, J.M. Dent, 1949, pp. 179-182. See also MacDonald, "Natural Rights," p. 26.

rights refer to rights that must be secured through positive action. Negative rights refer to rights that must be secured through negative action.³³ Henry Shue says that the fulfillment of a negative right requires only that other people do nothing. It requires others to refrain from interference with the right-holder's enjoyment of the substance of the right. Positive rights have as their correlative duties, to put it crudely, duties to do something rather than duties to do nothing.³⁴

Rights may also be grouped according to what they are rights to, according to whose rights they are, according to what class they belong to, or according to whether they are specific or general. They can be distinguished as moral and legal rights,³⁵ natural and acquired rights,³⁶ active and passive rights.³⁷

³³ L.W. Holleman, *The Human Rights Movement: Western Values and Theological Perspectives*, New York, Praeger, 1987, p. 88. See also Bendit, *Rights*, p. 65; Tibor, *Individuals and Their Rights*, p. 124.

³⁴ H. Shue, *Basic Rights*, Princeton, NJ, Princeton University Press, 1980, pp. 36-37.

³⁵ *Ibid.*, p. 16. See also Feinberg, *Rights, Justice, and the Bounds of Liberty*, p. 186. Moral rights are rights that everyone should recognize everywhere and in all circumstances. They relate to the moral nature of things. They are different from legal rights which are based on legal rules. The legal rights are not observations made from outside the legal system but rather conclusions drawn within it.

³⁶ D.T. Ozar, "Rights: What They Are and Where They Come From?" in *Philosophical Issues in Human Rights: Theories and Applications*, P.H. Werhane (ed.), New York, Random House, 1986, p. 8. See also Tibor, "On Human Rights, Feudalism and Political Change," p. 210. Natural rights emphasize their being part of the nature of things. The basis of these rights lies in

H.L.A. Hart divides rights into two groups, special rights and general rights. Special rights are rights arising out of special transactions between individuals or out of some special relationship in which they stand to each other. These rights arise from promise,³⁸ consent, or authorization,³⁹ mutuality restrictions,⁴⁰ a special relationship as in

human nature as a rational, free, and social being. These rights are applied to all human persons. Acquired rights, on the other hand, are conferred by positive law or convention. Only those who are bound by that positive law or convention enjoy the acquired rights occasioned from that positive law or convention.

³⁷ White, *Rights*, p. 13. Active rights are rights to do something. The example of these rights is the right to worship as one pleases or to pursue one's trade freely. Passive or recipient rights are rights to have something done to a person, such as to be looked after in one's old age or to be told the truth by one's doctor. These include the right to be in a certain state such as to be free or happy.

³⁸ H.L.A. Hart, "Are There Any Natural Rights," in *Theories of Rights*, J. Waldron (ed.), p. 84. Hart believes that the most obvious cases of special rights are those rights aroused from promise. By promising to do or not to do something, we voluntarily incur obligations and create or confer rights on those to whom we promise; we alter the existing moral independence of the parties' freedom of choice in relation to some action and create a new moral relationship between them, that it becomes morally legitimate for the person to whom the promise is given to determine how the promisor shall act.

³⁹ *Ibid.*, p. 85. The rights may be accorded by a person's consent or authorization. If one consents to another taking precautions for one's health and happiness or if one authorizes another to look after his/her interests, then the authorized person has a right to what is authorized. One cannot complain of the authorized person's interference if it is within the sphere of one's authority.

⁴⁰ *Ibid.*, pp. 85-86. The rules may provide that officials should have authority to enforce obedience and to make further rules. This will create a structure of legal rights and duties. However, the moral obligation to obey the rules in such circumstances is due to the cooperating members of the society, and they have the correlative moral right to obedience.

the case of parent and child, and special liberty.⁴¹

General rights are rights which belong to all persons who are capable of choice. General rights do not require special conditions which are needed for special rights. To assert a general right is to claim the equal rights of all persons. In this case special conditions are not considered.⁴²

It seems that such rights are to be considered as basic rights. The basic rights are inherent to the nature of a human being as an intelligent and free being, a social being and a creation of God. The basic rights, therefore, belong to everybody without any conditions. The basic rights are supported and enriched by other rights that come from positive laws or conventions.

Summary: Human beings possess rights in virtue of being intelligent and free creatures. Rights, by their nature, exist in the realm of human actions in which the person relates to others or community through actions and omissions. Rights are necessary to express and to fulfill the dignity of a human being. For that reason the rights might be

⁴¹ Ibid., p. 87. A person is exempted from certain obligations to which most are subject. But the person does not acquire a right to which there is a correlative obligation.

⁴² Ibid., p. 88.

protected and promoted by everybody, government and legal system. Among those rights, the natural rights founded on natural law are to be given priority because they are inherent within the nature and the dignity of the human being. In the last century these rights have been known and commonly called human rights.

1.2. HUMAN RIGHTS

The concept of human rights has been playing a very important role in the modern age. Everybody speaks about human rights. Every instance of the exercise of political and social power is subject to critical appraisal from the standpoint of human rights. Activities of groups or countries are justified on the grounds of human rights. But what is a human right? Is there any basis to the claim of human rights? Many other questions have been raised concerning human rights. This section focuses on the nature, foundation, shapes, and protection of human rights.

1.2.1. Nature and Character

Human rights are rights that a person has simply by virtue of being a human person. Persons are rational beings endowed with free will.⁴³ Human rights are given by

⁴³ John XXIII, *Pacem in terris*, p. 259. See also Pius XII, "Radio message," December 24, 1942, in *AAS*, 35 (1943), pp. 9-24; John XXIII, *Sermo*, January 4, 1963, in *AAS*, 55 (1963), pp. 89-91; Feinberg, "Nature and Value of Right," pp. 247-257. Feinberg says that human rights are valid moral claims based on all primary human needs; Wasserstrom, "Rights, Human Rights

no body/government and thus cannot be taken away by any body/government, and they are based neither on class nor on economic status. The poorest shares the same rights as the wealthiest. Rights, therefore, know neither creed nor race.⁴⁴

These rights are universal, inalienable, inviolable and independent.⁴⁵ Human rights are universal because all people have and should enjoy them. Human rights are basic moral guarantees that people in all countries and cultures allegedly have simply because they are people.⁴⁶ Human rights bridge a gap, conceptually, between individualism and collectivism in their emphasis on humanity.⁴⁷

and Racial Discrimination," pp. 628-634. For Wasserstrom human rights are basic moral entitlement possessed only by a person; M. Golding, "Towards a Theory of Human Rights," in *The Monist*, 52 (1968), pp. 548-549. Golding notes that human rights are acts of claiming performed on the level of the human community.

⁴⁴ Feinberg, "Nature and Value of Right," pp. 247-257.

⁴⁵ John XXIII, *Pacem in terris*, p. 259. See also John Paul II, Encyclical letter, *Centesimus annus*, May 31, 1991, in *AAS*, 83 (1991), pp. 793-867, here on pp. 801-802; Feinberg, "Nature and Value of Right," pp. 247-257.

⁴⁶ D. Hollenbach, *Justice, Peace and Human Rights: American Catholic Social Ethics in a Pluralistic World*, New York, Crossroad, 1988, p. 108. See also T. Campbell, "Introduction: Realizing Human Rights," in *Human Rights: From Rhetoric to Reality*, T. Campbell et al. (eds.), Oxford, B. Blackwell, 1986, p. 3; A. Gewirth, "The Epistemology of Human Rights," in *Human Rights*, F.P. Ellen, J. Paul, F.D. Miller (eds.), England, Basil Blackwell, 1984, p. 2.

⁴⁷ Rosenbaum, "Introduction," p. 5. See also J. Moltmann, "A Christian Declaration on Human Rights," in *A Christian Declaration on Human Rights*, A.O. Miller (ed.), Grand Rapids, MI, Eerdmans, 1977, p. 135. Moltmann believes that human rights point to a universal community

Maritain considered the sameness of human nature as the ground of the universality of human rights. He stated:

[...] there is a human nature and this human nature is the same in all men and possessed of a nature, constituted in a given determinate fashion, man obviously possesses ends which correspond to his natural constitution and which are the same for all- as all pianos for instance, whatever their particular type and in whatever spot they may be, have as their end the production of certain attuned sounds. If they do not produce these sounds, they must be attuned or discarded as worthless since man has intelligence and can determine his ends, it is up to him to put himself in tune with the ends necessarily demanded by his nature. Men's rights depend upon this common natural end by which they are subject to the natural or unwritten law.⁴⁸

The claim of universality expresses the idea of equal respect for all persons. Therefore, even the members of oppressed minorities have certain inalienable human rights, such as the right to associate, the right to appeal, etc.⁴⁹

in which alone they can be realized.

⁴⁸ Maritain, *The Rights of Man and Natural Law*, pp. 34-35.

⁴⁹ Holleman, *The Human Rights Movement*, pp. 186-189. See also Feinberg, *Social Philosophy*, p. 85; J.W. Nickel, "Human Rights," in *Encyclopedia of Ethics*, vol. 1, L.C. Becker, C.B. Becker (eds.), New York, Garland Pub., 1992, p. 563. Nickel points out the challenges concerning the universality of human rights. He reports that the alleged universality of human rights has been challenged by cultural relativists. The cultural relativists deny a single set of rights for all the countries with diverse cultures and circumstances. In fact, human rights are always confronted by public order or national security or by the reason of right of privacy. However, in this conflict, rights, especially human rights, are more important, high priority considerations. The rights of the Universal Declaration are *prima facie* rights in the sense that the weight of these rights in competition with other considerations is not fully specified.

Human rights are inalienable because they are commensurate with the essence of human nature. These rights spring from the image of God that inspires human subjectivity. Through it, humans are endowed by God with inalienable creativity which serves the common good of all. The American Declaration says that all human persons are created equal. Human beings are endowed by their creator with certain inalienable rights such as Life, Liberty and the Pursuit of Happiness. For this reason governments are instituted to secure these rights.⁵⁰

John Locke founded these rights on the basis of natural law. He stated that all persons were entitled to all the rights and privileges of the natural law.⁵¹ Similarly, T. Jefferson began the Declaration of Independence by speaking of the entitlement granted by "laws of nature and nature's God." He proclaimed that persons were endowed by their creator with certain inalienable rights. The French Declaration of the Rights of Man and Citizen also stated its intention to set forth the natural, inalienable, and sacred rights of the human person.⁵²

⁵⁰ "American Declaration of The Rights and Duties of Man", in *The Lawful Rights of Mankind*, pp. 214-219.

⁵¹ Locke, *Two Treatises of Civil Government*, pp. 179-182.

⁵² T. Jefferson, *The Writings of Thomas Jefferson*, vol. 1, A.A. Lipscomb et al. (eds.), Washington, DC, The Thomas Jefferson Memorial Association, 1903, p. 29. Also see W. Laqueur

Human rights are inviolable and independent. They are rooted in human dignity. They exist and are available as standards of justification and criticism, whether or not they are recognized and implemented by the legal system or by the officials of a country.⁵³ They are the ultimate legitimate basis for a universal human community.⁵⁴

In summary, human rights which are universal, inalienable, inviolable and independent come from the nature of the human being. They belong to every person.

1.2.2. Human Dignity

Almost all theories of human rights are grounded on the dignity of the human being. The very nature of human dignity consists in the fact that a person's existence is not a ready made entity. Person enjoys a transcendental worth. Person stands head and shoulders above the rest of creation. Endowed with intelligence and free-will, a person is capable of self determination and creative action.⁵⁵ Human being is a creature which has

and B. Rubin (eds.), *The Human Rights Reader*, New York, New American Library, 1979, pp. 62. 106-107; Holleman, *The Human Rights Movement*, p. 84.

⁵³ Nickel, "Human Rights," p. 561.

⁵⁴ This community refers to an ideal association of human persons that is conceived for the individual and collective benefit of its members.

⁵⁵ Maritain, *The Rights of Man and Natural Law*, pp. 5-6. Maritain paraphrases the same idea by saying that the human being is more than a mere parcel of matter, more than an individual

to develop with constant loving in this visible world.⁵⁶

The first article of the Universal Declaration of Human Rights defines the dignity of the human being in terms of intellectual freedom. It notes:

All human beings are both free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.⁵⁷

Pope John Paul II finds the basis of the dignity of the human person in God. He says that every human being has a destiny, and all rights derive from the dignity of the person who is firmly rooted in God.⁵⁸

element in nature, such as is an atom, a blade of grass, a fly or an elephant. See also W.E. O'Rourke, *Roots of Human Rights*, Chicago, Franciscan Herald Press, 1981, p. 13; P.J. O'Mahony, *The Fantasy of Human Rights*, Great Wakering, Mayhew-McCrimmon, 1978, p. 67; John XXIII, *Pacem in terris*, p. 299. For John XXIII the dignity of a human being is the source of human rights. He says that it is in this dignity of the person that human rights find their immediate source. And it is respect for this dignity that gives birth to their effective protection. The human person, even when he or she errs, always maintains inherent dignity and never forfeits personal dignity. The preamble of International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights recognize that these rights are derived from the inherent dignity of the human person.

⁵⁶ A.N. Woznicki, *The Dignity of Man as a Person: Essays on the Christian Humanism of His Holiness John Paul II*, San Francisco, Society of Christ, 1987, p. 130.

⁵⁷ Article 1 of the "Universal Declaration of Human Rights," in *The Lawful Rights of Mankind*, p. 172.

⁵⁸ John Paul II, Encyclical letter, *Redemptoris hominis*, March 4, 1979, in *AAS*, 71 (1979), pp. 257-324, here at pp. 257-259. See also Woznicki, *The Dignity of Man as a Person*, pp. 113-120; O'Brien and Shannon, *Catholic Social Thought: The Documentary Heritage*, p. 16. The

A.N. Woznicki believes that the view of the dignity of the human being depends on the way in which one views human nature. If a person is only a part of the material world, and if one's being does not essentially differ from any other natural thing, the human dignity lies entirely in "his/her relation to nature." But if there is in the person something which surpasses pure matter, then human's dignity consists in God. The more human being needs God, the more perfect humans are.⁵⁹

Christian metaphysics grounds the dignity of a human being on the reflection of God. A human being is created different from other creatures. All created things manifest God's glory, but only human beings share the image of God. Only a human being is called a person by virtue of intelligence and capacity for self giving of love. Only a human person is self-aware, self directing, and ordered to values and goals that transcend the material universe and relate to the absolute reality that is God. A human being is the peak and pinnacle of our created universe; all things are ordered to the human being. A human being is not only at the highest level of the created universe, but also the meaning of the

Council notes that the person governs oneself under the eternal law, the power of God. Human being is able to join the future with the present being, to be a master of his own acts because of the power of reason.

⁵⁹ Woznicki, *The Dignity of Man as a Person*, p. 14. See also D.J. Struik, *Economic and Philosophic Manuscript of 1844*, New York, International Publishers, 1964, p. 134.

universe, its finalizing goal, its supreme ontological value.⁶⁰

It seems that human rights and human dignity are closely associated concepts. Struggles in the name of human dignity have influenced the evolution of the human rights discourse; in turn, this discourse has become the principal vehicle for the expression and evaluation of dignity. Human rights advocates generally hold dignity to be an intrinsic quality of human life. If human rights go unrespected, human life itself is vitiated. Respect for human rights means respect for human dignity.

1.2.3. Shapes of Human Rights

Human rights are the basic means in resolving international problems and harmonizing the actions of nations because human rights are the foundation of freedom, justice, and peace in the world.⁶¹ It is commonly agreed that human rights always relate and refer to freedom, equality, and participation.⁶²

⁶⁰ R.J. Henle, "A Catholic View of Human Rights: A Thomistic Reflection," in *The Philosophy of Human Rights*, pp. 87-91. See also John Paul II, *Centesimus annus*, pp. 848-849.

⁶¹ The preamble to the "Universal Declaration of Human Rights" begins with these words: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world..."

⁶² W. Huber, "Human Rights- A Concept and Its History," in *Concilium*, 124 (1979), p. 6.

Freedom: Freedom is necessary for the fullness of human life and for the preservation of human dignity. Freedom arises from the human capacity that imprints within every person the image of God, the creator.⁶³ It is the highest sign of the divine image in the human person. The Second Vatican Council strongly emphasized that authentic freedom was an exceptional sign of the divine image within the human person.⁶⁴

Freedom means the supremacy of human rights everywhere.⁶⁵ George Jellinek claims that human rights are derived from the idea of freedom of conscience and religion which developed in the confessional argument of the post-Reformation period.⁶⁶ The Second Vatican Council stresses strongly the importance of freedom of conscience in

⁶³ Second Vatican Council, Pastoral Constitution on the Church in the Modern World, *Gaudium et spes*, December 7, 1965, in *AAS*, 58 (1966), pp. 1025-1120, here at p. 1037; English translation in Flannery, *Vatican Council II*, p. 917.

⁶⁴ *GS*, no. 17.

⁶⁵ Rosenbaum, "Introduction," pp. 20-21. Rosenbaum writes that in the 1800s freedom was construed by liberals as the general "right to determine one's own affair" (Kant's self determination). The New Liberalism (of Mill, Hobhouse, Green) emphasized both negative and positive freedoms in the context of a capitalist society. This idea of freedom states constitutional guarantees of individual rights. In the Marxist view, freedom could only mean the liberation of the working class from capitalist exploitation.

⁶⁶ G. Jellinek, "Die Erklärung der Menschen-und Bürgerrechte," in *Zur Geschichte der Erklärung Menschenrechte*, R. Schnur (ed.), Darmstadt, Wissenschaftliche Buchgesellschaft, 1964, pp. 1-77. See also Huber, "Human Rights - A Concept and Its History," p. 4.

individual and social life. The Council says that freedom or immunity from coercion, in matters religious, applies not only to the individual, but also specifically to actions of groups in a community.⁶⁷

Freedom can be considered under different aspects. In respect to God, it appears as freedom of choice (moral); in respect to civil authorities and the Church, it is a religious freedom; in respect to rights, it is a fundamental right; in respect to duties, it is called civil obligation.⁶⁸

Equality: The concept of human rights refers to the legal status of all people equally.⁶⁹ It points out the position of the person before the law in accordance with the dignity of

⁶⁷ Second Vatican Council, Declaration on Religious Liberty, *Dignitatis humanae*, December 7, 1965, in *AAS*, 58 (1966), pp. 923-946, here at p. 929. English translation in Flannery, *Vatican Council II*, pp. 799-812, here at p. 799. See also John Paul II, *Redemptoris hominis*, pp. 278-291.

⁶⁸ L.P. Berger, *Aspiring to Freedom: Commentaries on John Paul II's Encyclical "The Social Concern of the Church"*, Michigan, W.B. Eerdmans Pub. Co., 1988, p. 202.

⁶⁹ R. Dworkin, *Taking Rights Seriously*, Cambridge, MA, Harvard University Press, 1977, pp. 180-183. Ronald Dworkin argues that the right of each person to be treated as an equal is a fundamental presupposition of any adequate social morality. See also L. Lomasky, *Persons, Rights and the Moral Community*, New York, Oxford University Press, 1987, p. 9.

the human being and for the sake of the value of the person.⁷⁰ All persons are of one degree. All persons are born equal, and with equal natural rights; the latter being the only mode by which the former is carried forward.⁷¹

The United Nations Declaration, like many before it, gave great emphasis to equality of human dignity and rights. It says:

All human beings are born free and equal in dignity and rights.⁷²

Equality is fundamentally important and significant for the formation of human society. John XXIII noted that all persons were equal by reason of their natural dignity; racial discrimination can, therefore, in no way be justified.⁷³ Article two of the United

⁷⁰ Huber, "Human Rights - A Concept and Its History," p. 8. See also Rosenbaum, "Introduction," pp. 7-21. Rosenbaum notes that to Plato and Aristotle equality is a key element of human rights: equal respect for all citizens (isotinia), equality before the law (isonomia), equality in political power (isokratia), and in suffrage (isopsephia), and equality of civil rights (isopoliteia). To Western democratic liberals, equality generally meant 1) the equality before the law of all members of society, as individual human beings and the abolition of all immoral discrimination; 2) the equality of conditions for individual competition as a fair beginning in life. To the Marxist equality means social (not political) equality.

⁷¹ T. Paine, *Rights of Man*, Harmondsworth, Penguin, 1969, p. 88. See also O'Mahony, *The Fantasy of Human Rights*, p. 68.

⁷² Article 1 of the "Universal Declaration of Human Rights," in *The Lawful Rights of Mankind*, pp. 172-173.

⁷³ John XXIII, *Pacem in terris*, p. 268.

Nations Declaration further emphasizes the principle of equality.

Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁷⁴

Equality is needed to keep the balance between rights and duties. For awareness of one's rights must necessarily make one aware of one's duties. Thus one who possesses certain rights has likewise the duty to claim those rights as marks of personal dignity, while all others have the obligation to acknowledge and respect those rights.⁷⁵ Thus, since we believe in equal value of human well-being and freedom, we should also believe in the *prima facie* equality of the human person's right to well-being and freedom.

Participation: The realization of human dignity requires that one participate in any field of human life.⁷⁶ Catholic teachings uphold active participation of every person in the political, economic, and cultural life of the society. Participation constitutes a right which

⁷⁴ Article 2 of the "Universal Declaration of Human Rights," in *The Lawful Rights of Mankind*, pp. 172-173.

⁷⁵ John XXIII, *Pacem in terris*, p. 268.

⁷⁶ Hollenbach, *Justice, Peace, and Human Rights*, p. 65 and pp. 82-83.

is to be applied in political, social and economic life.⁷⁷ The 1971 Synod of Bishops asserted the right to development and the right to participation - a right which is to be applied in economic and social life. This right includes both political liberty and basic human needs.⁷⁸

The right to participate requires that every person enjoy the right to act freely and responsibly. Therefore, in social relations, a person should exercise rights and fulfil obligations. In the countless forms of collaboration with others, persons should act chiefly with responsibility and initiative.⁷⁹

The common good itself recognizes the importance of corresponsibility between the government and citizens. Every person is called to advance the common good of all. In keeping with their dignity as persons, citizens should take an active part in government; however, the manner in which they share in it will depend on the level of development of

⁷⁷ T. Mullen, "Constitutional Protection of Human Rights," in *Human Rights: From Rhetoric to Reality*, p. 27. Everyone has the right to participate and all participants are entitled to make their views known.

⁷⁸ Synod of Bishops, *De iustitia in mundo*, November 30, 1971, in *AAS*, 63 (1971), pp. 923-942, here at pp. 926-928.

⁷⁹ John XXIII, *Pacem in terris*, p. 265. R. O'Grady, *Bread and Freedom: Understanding and Acting on Human Rights*, Geneva, World Council of Churches, 1979, p. 7.

the country to which they belong.⁸⁰ Governments must be rooted in the participation of all the people for ultimately the people are sovereign.

1.2.4. Human Rights and the Competent Authority

Human rights are very important and central to all other moral considerations because they are rights of every human being and necessary conditions for a human action. They, therefore, must be respected by every human being. They are to be a primary justification of government's service to the common good.⁸¹

The common good calls on civil authorities to recognize, to safeguard, and to promote these rights. The competent authorities should maintain a careful balance between coordinating, protecting, and promoting the rights of citizens. Certain individuals are not to be treated better than others. Particular social groups should not receive preferential protection. The government should not become an obstacle to seeking protection and promotion of these rights. In turn, the governments should work to expand the freedom in which the protection of the essential personal rights of each and every

⁸⁰ John XXIII, *Pacem in terris*, p. 278.

⁸¹ A. Gewirth, *Droits de l'homme: défense et illustrations*, Paris, Cerf, 1987, pp. 3-5.

individual is effectively secured.⁸²

In keeping with the dignity of every human being the civil authority should appeal primarily to the conscience of the individual citizen. This has been strongly emphasized by the Second Vatican Council. The Council says that by nature all human beings are equal in human dignity, and no one may, therefore, be coerced to perform interior acts.⁸³

In conclusion, the paramount task assigned to government officials is that of recognizing, respecting, reconciling, protecting, and promoting human rights. The governments are, therefore, called to respect justice, public peace, public morality, and public prosperity.

1.2.5. Classification

The human rights mentioned in the Universal Declaration of Human Rights can be divided into four categories: civil rights, political rights, social and economic rights, and cultural rights.⁸⁴

⁸² John XXIII, *Pacem in terris*, p. 275. See also J. Murdoch, "Right of Public Assembly and Procession," in *Human Rights: From Rhetoric to Reality*, p. 175. Power is exercised in a way which gives meaning to the concept of rights. Y. Simon, *Nature and Functions of Authority*, Milwaukee, Marquette University Press, 1948, pp. 17-32.

⁸³ *DH*, no. 1. See also John XXIII, *Pacem in terris*, p. 270.

⁸⁴ Rosenbaum, "Introduction," pp. 29-30. Civil rights are human rights which arise in the conflict between the citizen and governmental tyranny. They include the freedom of speech, press,

In the history of human rights, the civil and political rights are at the center of human rights thinking of the West.⁸⁵ For Marxist Socialism, the social and cultural rights which include the rights to work, minimum levels of nutrition, and to active participation in the process of creating a socialist society are central.⁸⁶

In developing countries, political and economic freedoms are put in the context of policies aimed at meeting basic needs for food, clothing, shelter, and minimum education.⁸⁷ For these countries human rights are identified with basic human needs⁸⁸

assembly-association and worship. Political rights, such as the rights to free elections and representative institutions, are established through constitutional democratic frameworks. Individual rights to education, to health and medical care, or to freedom from social want, fear or terror, are called social and economic rights. Cultural rights emerge within technologically advanced societies. They include the freedom of thought, the freedom of communication, and the freedom of aesthetic expression.

⁸⁵ Holleman, *The Human Rights Movement*, pp. 14-17 and p. 88. The liberal tradition of the West grounds the human rights on the liberty of the individual person. The freedoms of speech, worship, assembly, press, and the juridical guarantees of *habeas corpus* and due process are more important than other rights.

⁸⁶ *Ibid.* Marxist Socialism, on the other hand, believes that the rights grounded on personal freedom are abstract unless they are viewed in the economic and social context that conditions them.

⁸⁷ Hollenbach, *Justice, Peace, and Human Rights*, p. 93.

⁸⁸ A. Pollis and P. Schwab, "Human Rights: A Western Construct with Limited Applicability," in *Human Rights: Cultural and Ideological Perspectives*, A. Pollis and P. Schwab (eds.), New York, Prager Publisher, 1979, p. 9. See also Hollenbach, *Justice, Peace, and Human Rights*, pp. 64-65. Human dignity is not an abstraction but is realized in concrete conditions of

Whereas for the Westerner, economic, social and cultural rights do not seem that important. The Westener attempts to translate a particular historical experience into an abstract universal principle. The Westener's claims appeal to human nature as being proper to a rational and free being.⁸⁹

John XXIII took into account all the rights emphasized on each side of these Marxist Socialist/Western and developed/developing countries debates. He embraced all the rights enumerated in the United Nation's Universal Declaration, International Covenant on Civil and Political Rights, and International Covenant on Economic, Social and Cultural Rights.⁹⁰

personal, social, economic and political life.

⁸⁹ Holleman, *The Human Rights Movement*, p. 100. See also Hollenbach, *Justice, Peace, and Human Rights*, pp. 64-65; Huber, "Human Rights - A Concept and Its History," p. 2. The West understands human rights primarily as the right to individual freedom. The most important rights are the inviolability of the person and his/her privacy, the protection of property, basic legal rights, freedom of conscience, opinion and assembly. In the East human rights are understood primarily as basic social rights with the emphasis on equal access to education and work, healthcare and provision for old age.

⁹⁰ John XXIII, *Pacem in terris*, pp. 259-290. See also Paul VI, Encyclical letter, *Populorum progressio*, March 26, 1967, in *AAS*, 59 (1967), pp. 257-299, here at p. 264. Paul VI did not believe in separating the economic from the human, nor development from the civilization in which it exists. What we hold important is the human being, each person and each group of persons, and we even include the whole of humanity; Hollenbach, *Justice, Peace, and Human Rights*, pp. 92-94. Hollenbach wrote that at the Council the Catholic Church also became, at least, a genuinely transnational body rather than a European one with missionary outposts. The Council gives a new emphasis to the full range of human rights, both civil/political and social/economic.

The differentiation of human rights into civil, political, social and economic, and cultural rights, has become a standard feature of human rights in international law ever since the Universal Declaration.⁹¹ Some philosophers and jurists, however, add the fifth category of rights such as, the rights of personhood including the freedom to reside in the country of one's choice, and freedom from torture, medical experimentation, or other physical abuse.⁹²

Summary: Human rights flow from the dignity of the human being. These rights relate to the nature of the human being as an intelligent and free being, a social creature and creation of God. Because of the rational and free nature, a human being enjoys the rights of freedom of speech, freedom of choice, and so on. These rights are necessary for

⁹¹ Rosenbaum, "Introduction," p. 29. See also A.A. Falconer, "Human Rights," in *The New Dictionary of Theology*, J.A. Komonchak, M. Collins, D.A. Lane (eds.), Wilmington, M. Glazier, 1987, pp. 899-904. Based on the development of human rights Falconer divides human rights into three generations: 1) generation by the concept of liberty (civil and political rights). This concept emerged in the work of Hugo Grotius, T. Hobbes, John Locke. It came to prominence at the time of the American and the French Revolution; 2) generation by the concept of economic, social and cultural rights. This generation is associated with Karl Marx and Socialism which emphasized the importance of health-care, employment, housing and education; 3) generation by the concept of solidarity rights, which is associated with developing nations. The emphasis rests on the basic needs for living: water, food, shelter.

⁹² E.M. Adams, "Personhood and Human Rights," in *Man and World*, 8 (1975), pp. 36-46. Adams claims a right to live one's own life project through the rational exercise of one's own powers. See also J. Maritain, *Les droits de l'homme et la loi naturelle*, Paris, Paul Hartmann, 1975, pp. 110-113. Maritain names the right to basic personal liberty.

being a fully human person. Everybody, every government, and law are, therefore, called to recognize that these rights belong to all human beings. These rights are universal, inalienable, inviolable and independent. They remain such despite a person's status or condition. In this sense, governments have the main task of protecting and promoting these rights. Among these rights, there is the right of association which is the focus of the following section.

1.3. THE RIGHT OF ASSOCIATION

The right of association includes the right of the individual to found and to join an association and the right of an organization's members to impose standards for the admission of new members.⁹³ In this section we will explore the notion of association, the foundation of the right of association, limitations, kinds of associations, and legal protection.

⁹³ Albernathy, *The Right of Assembly and Association*, Columbia, SC, University of South Carolina Press, 1981, p. 230. See also J. Krukowski, "The Situation of Ecclesiastical Associations in Poland," in *Das konsoziative Element in der Kirche: Akten des VI Internationalen Kongresses für kanonisches Recht*, W. Aymans et al. (eds.), Ottilien, EOS Verlag Erzabtei St. Ottilien, 1989, p. 912. In democratic countries, the right of association is viewed as one of the human liberties. The state must not interfere but only secure the possibility to assert this right within the bounds of the common good. In socialist states, the civil right to form associations is treated as one of the political rights. The state authorities have the power to interfere with the use of this right by the citizens. Such interventions are needed to serve the protection of the existing political system. Here the association is required to serve certain ideological and political interests.

1.3.1. Notion of Association

An association⁹⁴ is an organized group formed in pursuit of some common interest with its own self-contained administrative structure and functionaries. It is organized for particular purposes, for the pursuit of specific interests; the members belong to it only by virtue of these interests.⁹⁵ It differs from other formal groups in the sharply defined and specialized nature of its goals.⁹⁶ Unlike the corporation,⁹⁷ an association is not always and necessarily a distinct and separate legal entity.⁹⁸

⁹⁴ V. Neufeldt et al. (eds.), *Webster's New World Dictionary*, New York, Warner Books Inc., 1990, p. 36. The word association comes from the Latin word: ad=to, and socius=companion and an association means an associating or being associated, fellowship, partnership, organization, society, mental connection between ideas. To associate is to connect, to combine, to join, to bring into relationship as partner, to connect in the mind.

⁹⁵ H.P. Fairchild, *Dictionary of Sociology*, New York, Philosophical Library, 1944, pp. 16-17.

⁹⁶ G.A. Theodorson, *A Modern Dictionary of Sociology*, New York, Barnes & Noble, 1979, pp. 17-18.

⁹⁷ A.A. Berle, "Corporation," in *Encyclopedia of the Social Sciences*, R.A. Seligman (ed.), New York, Macmillan, 1937, pp. 414-423. A corporation is a form of organization which enables a group of individuals to act under a common name in carrying on one or more related enterprises, holding and managing property and distributing the profits or beneficial interests in such enterprises or property among the associates.

⁹⁸ A.O. Ginnow et al. (eds.), *Corpus juris secundum*, vol. 7, St. Paul-Minn., West Publishing Co., 1972, p. 26.

The term association denotes both a process and an entity. The process refers to the interaction among the members in achieving a specific end or set of purposes. The entity relates to an organization of individuals who are held together by a recognized set of rules governing their behavior for a specific end or set of purposes.⁹⁹

A legal definition makes an association inseparable from contract. Association is "a convention by which two or more persons place in common, in a permanent manner, their knowledge or their activity in a goal other than merely sharing their benefits. It is ordered, as for its validity, by the general principles applicable to contracts and obligations."¹⁰⁰

To reach back a few centuries in Anglo-American law, however, one can say that voluntary associations of individuals obtained their earliest legal recognition in the common law of contract.¹⁰¹ Herbert Smith stated:

When we come to ask how unincorporated associations are formed the

⁹⁹ G.D. Michell, *A Dictionary of Sociology*, London, Routledge & K. Paul, 1968, p. 9.

¹⁰⁰ G. Jacquenet et al. (eds.), *Dictionnaire de sociologie famille, politique, économique, spirituelle, générale*, vol. 2, Paris, Letouzéy et Ané, 1933-1939, p. 204: "L'association est la convention par laquelle deux ou plusieurs personnes mettent en commun, d'une façon permanente, leurs connaissances ou leur activité dans un autre but que de partager les bénéfices. Elle est régie, quant à sa validité, par les principes généraux applicables aux contrats et obligations."

¹⁰¹ Ginnow et al. (eds.), *Corpus juris secundum*, p. 24 and pp. 31-32. See also Albernathy, *The Right of Assembly and Association*, p. 173.

answer is simple. All such bodies originate in contract, and no person can become a member except by contracting to do so with the other members. The terms of such contracts are to be found in the express rules of the association, if it has any, and in the purposes for which it exists. The man who accepts election to a club usually regards it as incorporation into a definite body enjoying a continuous existence and formed for the promotion of certain ends. He does not realize that in the eye of the law he is making perhaps a thousand separate contracts with a thousand separate individuals of most of whom he has never even heard. In its anxiety to avoid a fictitious person the law has been driven to imagine myriads of fictitious contracts.¹⁰²

It means that the elements of association include membership (group of people), goals (pursuing the common interest), voluntary nature (agreement among members), constitution (the rules), and leadership/governing (structure and function). It may or may not be a legal entity.

1.3.2. Foundation

Every human person is a social being. By nature human persons are destined to live with others and to work for one another's welfare.¹⁰³ Maritain believed that each human

¹⁰² H. Smith, *The Law of Associations, Corporate and Unincorporated*, Oxford, Clarendon Press, 1914, pp. 18-19. See also Albernathy, *The Right of Assembly and Association*, p. 173.

¹⁰³ John XXIII, *Pacem in terris*, p. 265. John XXIII stresses the social nature of the human being. Since human beings are social by nature they are meant to live with others and to work for one another's welfare. A well-ordered human society requires that persons recognize and observe their mutual rights and duties. It also demands that each contribute generously to the establishment of a civic order in which rights and duties are evermore sincerely and effectively acknowledged and fulfilled. See also John Paul II, *Centesimus annus*, pp. 809-810.

being was always opened to social life, communion, communications of intelligence, love, and friendship. He wrote:

Man is not a little god without doors or windows like Leibnitz's monad, or an idol which sees not, hears not, speaks not. It tends by its very nature to social life and to communion. This is true not only because of the needs and the indigence of human nature, by reason of which each one of us has need of others for his material, intellectual and moral life, but also because of the radical generosity inscribed within the very being of the person, because of that openness to the communications of intelligence and love which is the nature of the spirit, and which demands an entrance into relationship with other persons. We cannot be and become men, we cannot make life within us without breathing in common with our fellowmen.¹⁰⁴

The social life is not something added on to a human being. The person is not first of all an individual and then a social being but is both simultaneously. The Second Vatican Council presents the human being as an individual-social being.¹⁰⁵ The person is able to develop all gifts through dealings with others, reciprocal duties, and fraternal dialogue.¹⁰⁶

Human sociality is commonly expressed in the formation of an association. With regard to the sociality of the human being, the Second Vatican Council encourages the

¹⁰⁴ Maritain, *The Right of Man and Natural Law*, p. 7.

¹⁰⁵ *Ibid.*, pp. 7-8. See also *GS*, nos. 24-25.

¹⁰⁶ *GS*, no. 25.

formation of any kind of association. It says that the social nature of human beings and the very nature of religion call persons to found associations of various types: educational, cultural, charitable, social, etc.¹⁰⁷

Since a human being cannot live adequately or attain the goals of life outside of society, the right of association must be respected as a right based on natural law.¹⁰⁸ In 1830 Alexis de Tocqueville remarked:

The most natural privilege of man, next to the right of acting for himself, is that of combining his exertions with those of his fellow creatures and of acting in common with them. The right of association therefore appears to me almost as inalienable in its nature as the right of personal liberty. No legislator can attack it without impairing the foundations of society.¹⁰⁹

¹⁰⁷ *DH*, no. 4. See also S.I. Benn, *A Theory of Freedom*, Cambridge, Cambridge University Press, 1988, p. 214. Benn believes that the human species is not merely social but sociable, realized in closely integrating communitarian relations, characterized by mutual concern and caring.

¹⁰⁸ John XXIII, *Pacem in terris*, pp. 262-263. For John XXIII the right of association refers to the social nature of human beings. From the fact that human beings are by nature social, there arises the right of assembly and association. They have also the right to give the societies of which they are members the form they consider most suitable for the aim they have in view, and to act within such societies on their own initiative and on their own responsibility in order to achieve their desired objectives.

¹⁰⁹ A. de Tocqueville, *De la démocratie en Amérique*, Introduction par H.J. Laski, Paris, Gallimard, 1951, p. 198. Tocqueville writes: "Après la liberté d'agir seul, la plus naturelle à l'homme est celle de combiner ses efforts avec les efforts de ses semblables et d'agir en commun. Le droit d'association me paraît donc presque aussi inaliénable de sa nature que la liberté individuelle. Le législateur ne saurait vouloir le détruire sans attaquer la société elle-même." English translation is taken from Albernathy, *The Right of Assembly and Association*, p. 173.

John XXIII reaffirmed that principle by stating in his encyclical *Mater et magistra* that entering corporately into an association is of natural law. It could be composed of workers only or of workers and management; they have a right to act freely and on their own initiative within the association.¹¹⁰

In conclusion, the right of association is necessary to express and to fulfil the social nature of human beings. It is a natural/human right. It belongs to every person and applies to any kind of association.

1.3.3. Limitations

The right of association is a natural right but it is not boundless.¹¹¹ In most secular law systems, the right of association is subject to the constitution itself, national security, public safety, and the protection of health and morals or the freedoms and the rights of

¹¹⁰ John XXIII, Encyclical letter, *Mater et magistra*, May 14, 1961, *AAS*, 53 (1961), pp. 401-464, here at pp. 406-407. English translation in O'Brien and Shannon, *Catholic Social Thought: The Documentary Heritage*, pp. 84-128, here at p. 98.

¹¹¹ E. Ocürü, "The Core of Rights and Freedom: The Limit of Limits," in *Human Rights: From Rhetoric to Reality*, pp. 37-41. Ocürü writes that rights are limited. The fact that rights are expressed in a rhetorical form in international documents, where they appear as ultimate aspirations embodying objectives felt to be generally desirable, and also at a more practical level within individual legal systems, make them imperative, regulated, and limited. For all basic rights regulations provide facilitation, and for more basic rights regulations carry limitations. It is also true that some basic rights are specified with inherent limitations.

others.¹¹²

The right of association can be restricted by the state because of special reasons. The state, for example, imposes a public restriction to found various types of secret societies or clubs, for example the Ku Klux Klan in the United States. In some countries public restrictions on association are imposed on communist organizations and members of such organizations.¹¹³

A public limitation on the right of association is also applied to those associations which are intent on using violence to achieve their ends. The associations with criminal types are prohibited because these kinds of associations threaten human rights. This prohibition is also applied to associations which involve criminal conspiracy. History indicates that the prohibition on some labor unions was based on the common law concept

¹¹² Murdoch, "Right of Public Assembly and Procession," p. 180. See also Siegarht, *The Lawful Rights of Mankind*, p. 177. Article 29/2 of the "Universal Declaration of Human Rights" indicates that the exercise of a person's rights and freedoms may be restricted for the purpose of meeting the "just requirement of morality, public order and general welfare in a democratic society." Article 11 of the "European Convention for the Protection of Human Rights and Fundamental Freedoms" expressly permits derogation to the rights of peaceful assembly and association with others in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health and morals or for the protection of the rights and freedoms of others.

¹¹³ M.P.M. Muskens, *Partner in Nation Building: The Catholic Church in Indonesia*, Aachen, Missio aktuel Verlag, 1979, pp. 271-279. PKI (Partai Komunis Indonesia = Indonesian Communist Party) and any kinds of association/organization under PKI are forbidden to exist in Indonesia. See also Alberthy, *The Right of Assembly and Association*, pp. 200-223.

of criminal conspiracy.¹¹⁴ The first American case on this point, commonly described as the "First American Labor Case", was the Philadelphia Cordwainers' Case, tried in the Mayor's Court in 1806.¹¹⁵

Some associations are restricted because the nature and goals of these associations are evidently bad, unjust, or dangerous. In these cases the public authority can intervene to prevent the establishment of those associations. The public authority may dissolve these associations if they already exist. The government may attempt to place restrictions upon them; these restrictions may directly or indirectly strengthen the core of rights of others and safeguard the public order.

The exercise of the right of association, however, is subject only to such restrictions established by law for the promotion of the common good. In a democratic society the restrictions are usually related to the interest of national security, public safety, and public order. These restrictions are to protect public health or morals or the rights and freedoms of others.

Every restriction should take into consideration the rights of individuals and

¹¹⁴ Murdoch, "Right of Public Assembly and Procession," pp. 182-183. A criminal conspiracy arises if two or more persons agree to render one another assistance in doing an act whether as an end in itself or as a means to an end which would be criminal if done by an individual. The crime is complete upon agreement even though no further action is taken.

¹¹⁵ Albernathy, *The Right of Assembly and Association*, p. 181.

unreasonable regulations should not be enacted under the pretense of public good. Legislation must be clearly designed to prevent such violations. For, by nature, laws only bind when they are in accordance with right reason and with the eternal law of God.¹¹⁶

Today the common good is considered mainly as a guarantee for maintaining personal rights and duties. In keeping with the common good, therefore, the right of association is limited only by the criterion of the common good. The end of every association should be the preservation of the natural rights of persons. Hence the government must determine through its legislation the circumstances which protect the rights of the individuals and promote social goals and aspirations.¹¹⁷

It seems that for the sake of the common good, the right to association has its limit based on the nature of the association, the goal of the association, public order, and the rights of others.

¹¹⁶ Ocürü, "The Core of Rights and Freedoms," pp. 41-42. Article 2 of the "Basic law of the Federal Republic of Germany of 1949" says that every one shall have the right to free development of his/her personality, and the recognition of legitimate limitation in so far as one does not violate the rights of others or offend against the constitutional order or the moral code. Article 11 says: "This right may be restricted only by or pursuant to a law and only in cases in which an adequate basis of existence is lacking and special burden would arise to the community as a result thereof, or in which such restriction is necessary to avert an imminent danger to the exercise or the free democratic basic order of the Federation or a land, to combat the danger of epidemics, to deal with natural disasters, or particularly grave accidents, to protect young people from neglect or to prevent crime."

¹¹⁷ MacDonald, "Natural Rights," p. 1.

1.3.4. Kinds of Associations

The social nature of the human being is the foundation of the right of a person to found and to join various types of associations such as cultural, charitable, and social, or any kind of association.¹¹⁸ The different forms of associations are based on their end, origin, legal status, and degree of perfection.¹¹⁹

Associations are classified as natural and voluntary in origin. A voluntary association is an association or organized group in which membership is based on deliberate choice and from which members may resign. The example of this association is a professional association such as Canadian Canon Law Society (CCLS).¹²⁰ A natural

¹¹⁸ Article 16 of the "American Convention on Human Rights 1969" says that everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes. The International Covenant on Civil and Political Rights 1966 declares that every person has the right to associate with others to promote, exercise, and protect legitimate interests of a political, economic, religious, social, cultural, professional, labor union, or other nature.

¹¹⁹ C. Van Gestel, "Association," in *New Catholic Encyclopedia*, vol. 1, W.J. McDonald et al. (eds.), New York, McGraw-Hill Book Co., 1967, p. 964.

¹²⁰ The term association in this writing means a voluntary association. Fairchild, *Dictionary of Sociology*, pp. 16-17. Association is a group freely organized by citizens for the pursuit of some interests in contrast to a state established agency. See also J.L. Adams, "The Voluntary Principle in the Forming of American Religion," in *The Religion of the Republic*, E.A. Smith (ed.), Philadelphia, Fortress Press, 1971, p. 225; J.L. Adams, "Freedom and Association," in *Being Human Religiously*, M.L. Stackhouse (ed.), Boston, Beacon Press, 1976, p. 63. Stackhouse writes that Montesquieu believes that voluntary association stands between the individual and the family and between the individual and state.

association is an association in which membership is determined by natural bond, such as the family.¹²¹

Ferdinand Tönnies distinguishes association/*Gesellschaft* from community/*Gemeinschaft*. Community/*Gemeinschaft* is based on common love arising from natural affinity, while association/*Gesellschaft* is based on common interest pursued by deliberate choice.¹²²

According to their legal status, a public association is distinguished from a private association. A public association is regulated by public law. A private association is ruled mainly by its own law. Some associations are recognized even though they are not incorporated; they may be subject to specific legislation as associations treating of their existence, activities, membership, and extinction. Within private associations, there are associations which enjoy a juridic personality and there are associations which lack a juridic personality.¹²³

¹²¹ Rosenbaum, "Introduction," p. 14. Rosenbaum notes that Rousseau viewed society as a natural moral association with a structure and function determined by both reason and conscience. See also J.L. Talmon, *The Origins of Totalitarian Democracy*, New York, W.W. Norton and Co., 1970, p. 43.

¹²² F. Tönnies, *Gemeinschaft und Gesellschaft: Grundbegriffe der reinen Soziologie*, Darmstadt, Wissenschaftliche Buch-gesellschaft, 1963, pp. 3-5. See also P.B. Horton and C.L. Hunt, *Sociology*, New York, McGraw-Hill, 1968, pp. 166-167.

¹²³ Van Gestel, "Association," pp. 964-965.

1.3.5. Legal Protection

As a natural right, the right of association enriches and fulfills the dignity of a human being. To achieve that purpose, it is necessary to create circumstances in which the right of association can be protected. Campbell believes that if human rights are to be more than mere rhetoric, some strategy must be set up for realizing those rights through law.¹²⁴

In this sense, the government is formed in order to promote and safeguard, among other things, the right of association. Leo XIII strongly called on the states (governments) to protect people's natural rights. He said that entrance into a particular society is the natural right of a human being, the states have the obligation to protect it, but not destroy it.¹²⁵ To protect the dignity of the person and the right to free association, the government is expressly forbidden to be involved in those things which persons and free associations can do for themselves.

¹²⁴ Campbell, "Introduction: Realizing Human Rights," p. 4.

¹²⁵ Leo XIII, Encyclical letter, *Rerum novarum*, May 15, 1891, in *Acta Sanctae Sedis*, 23 (1891), pp. 641-670, here at pp. 668-669. For Leo XIII, entering a particular society is a natural right of a human being. The state must protect natural rights, not destroy them. If a state forbids its citizens to form associations, it contradicts the very principle of its own existence. Both the state and human beings exist in virtue of the same principle, the natural propensity to live in society. See also B.P. Kurland, *Free Speech and Association*, Chicago, The University of Chicago Press, 1975, p. 82.

The government may involve itself in this in two ways. Firstly, by legislating on the right of association in its own legal system.¹²⁶ In fact the right of association has been recognized in most countries. Written declarations and guarantees of individual rights become part of the accepted constitutional package marking a new start in a country's development (or in international relations). It is legally acknowledged even in Communist countries where it is sometimes more clearly formulated statutorily than in democratic nations.¹²⁷

Secondly, governments can provide an international mechanism in which this right is protected and guaranteed. It was in 1948 that the governments of many countries ratified in the Universal Declaration of Human Rights the right of association for the first time, along with the right of assembly.¹²⁸ The European Declaration on the Rights of Man

¹²⁶ Maritain, *The Right of Man and Natural Law*, p. 49.

¹²⁷ The formulation of the right of association in legal systems differs from one country to another, from one constitution to another. The Universal Declaration of Human Rights and The American Declaration of the Rights and Duties of Man formulate this right without any condition. The International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the American Convention on Human Rights do mention some restrictions.

¹²⁸ Sieghart, *The Lawful Rights of Mankind*, p. 175. Article 20 of the "Universal Declaration of Human Rights" says: "1) Everyone has the right to freedom of peaceful assembly and association; 2) No one may be compelled to belong to an association."

the affirmed it in 1950.¹²⁹

Historically, the protection of this right is linked with other civil liberties such as freedom of religion, freedom of the press, freedom of speech, and freedom of petition.¹³⁰

The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom. The 1945 Constitution of the Republic of Indonesia guarantees this right as well as other rights. It says in article 28:

Freedom of association and assembly, of expressing thoughts and of issuing writing and the like, shall be prescribed by statute.¹³¹

¹²⁹ Ibid., p. 199. Article 11 of the "European Declaration on the Rights of Man" states:
 "1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
 "2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

¹³⁰ Murdoch, "Right of Public Assembly and Procession," pp. 176-177. Murdoch points out that the earliest examples of constitutional protection are the Virginian Bill of Rights of 1776, the French Declaration of the Right of Man and Citizen of 1789, and the American Bill of Rights of 1791. See also Albernathy, *The Right of Assembly and Association*, pp. 176-178. Albernathy notes that the right to form religious associations was erected to constitutional status in the first amendment to the United States Constitution and in many constitutions of the 18th century. It is unique. Other types of associations had only general due process provisions of constitutions or statutory safeguards to protect their right to exist and grow. But there is no explicit recognition of a general right of association in that case.

¹³¹ Department of Information of Indonesian Republic, *The Constitution of the Republic of Indonesia*, Jakarta, Dokumentasi Departemen Penerangan, 1989, p. 10.

It seems that the right of association has been protected as a necessary right in the history of human rights. The competent authority and the legal system, national or international, are to provide a protective and supportive means for securing the right of association. Every person has the same opportunity to enjoy this right without any discrimination.

Summary: The right of association relates to the social nature of the human being. Human life and human existence cannot be fully developed without recognizing and respecting this right. This right has been considered as one of the basic human rights belonging to every person. However, it is not an absolute right. The nature of right, the nature of association, the purpose of association, public order, and the rights of other people are among those factors which can limit the right of association. In applying and exercising the right of association, the common good is an ideal measure. For that reason the competent authority and the legal system should create circumstances in which the common good is protected and promoted.

CONCLUSION

The concept of the person and human dignity has played a central role in

describing the notion of rights, human rights, and especially the right of association. By nature a person is rational, free, and social. The dignity of each person relates to the intelligent and free creature. The notion of rights (human rights), therefore, equally implies the notion of personal freedom, personal autonomy and personal responsibility.

It is difficult for persons to live their lives without enjoying rights. Rights safeguard the capacities for developing human personality which is characterized by autonomy, responsibility, and freedom. Rights create circumstances in which freedom, equality, and participation can be guaranteed. Rights help persons and society to achieve the common good.

Certain rights (human rights/natural rights) are inherent to everybody. Each person enjoys these rights by being born as a human being. These rights cannot be dismissed by anybody including governments. Any status, such as rich or poor, clergy or laity, does not make any difference in enjoying these rights. These rights provide the basis of equality, freedom, and participation.

One of the human/natural rights is the right to form or to join an association. Association means an organized group of persons (1) that is formed in order to pursue the same common interests of its members, (2) in which membership is voluntary in the sense that it is neither mandatory nor acquired through birth, and (3) that exists independently of the state. Association contains at least such elements: membership, goal, constitution,

government, headquarters. It may or may not be a legal entity.

As a natural right, the right of association is to be upheld in any condition, any institution, including the Church. This right is not relinquished by becoming a member of some institution, for example the Church. Having a new status such as a president, or a cleric does not negate this right.

The right of association, however, is not unlimited. The nature of the right, the nature of the association, the public good, and the purpose of the association are among those factors which must be taken into consideration in exercising and applying the right of association. It is the right and duty of the competent authority to regulate that consideration.

The paramount task of the competent authority is not to restrict this right but to protect and promote it. To achieve this, it is necessary to incorporate the right of association in the legal system.

The next question, therefore, is how do legal systems deal with the right of association? And among the legal systems which deal with this right, there is the Code of Canon Law. How does the Code of Canon Law provide for the right of association in the context of the life and nature of the Church? The answer to these questions is the focus of the following chapter.

CHAPTER TWO

RIGHT OF ASSOCIATION IN THE CHURCH

In the previous chapter we have demonstrated that the right of association is a natural right and as a fundamental right, it belongs to everybody. This right is not forfeited by one's assuming an affiliation with a particular religious denomination. Therefore a Christian continues to enjoy this right. The focus of this chapter is how a Christian exercises it in the Church. The chapter is divided into two sections: firstly, rights in the Church; secondly, the right of association in the Church.

2.1. RIGHTS IN THE CHURCH

In the Church itself, there has been a long discussion about whether rights can be applied in the Church.¹ Those who are against applying rights in the Church argue that the

¹ D. Hollenbach, *Claims in Conflict. Retrieving and Renewing the Catholic Human Rights Traditions*, New York, Paulist Press, 1979, pp. 41-106. See also J. Langan, "Human Rights in Roman Catholicism," in *Readings in Moral Theology*, R. McCormick and C. Curran (eds.), New York/Mahwah, NJ, Paulist Press, 1986, pp. 117-118; B. Plonger, "Anathema or Dialogue? Christian Reactions to Declaration of the Rights of Man in the United States and Europe in the Eighteenth Century," in *Concilium*, 124 (1979), p. 41; Huber, "Human Rights-A Concept and Its History," p. 5; Pius IX, "Syllabus of Errors," in *Church and State through the Centuries*, S. Ehler and J. Morrall (trans. and eds.), London, Burns and Oates, 1954, pp. 284-285; J.H. Provost,

Church is not a civil society but a theological reality.² Those who are in favor of applying rights in the Church consider that the Church is not only a spiritual community but also a visible society.³

As a matter of fact, in recent years various groups within the Catholic Church have become advocates of respect for the full range of human rights. Also, the central institutional organ of the Church, the Holy See, has adopted the cause of human rights as a prime focus of its ethical teaching and pastoral strategy in the domain of international

"Ecclesial Rights," in *Proceedings of the Annual Convention of the Canon Law Society of America*, 42 (1982), pp. 43-44.

² J. Langan, "Can there be a Human Rights Problem in the Church?" in *The Jurist*, 46 (1986), pp. 14-42. See also A. Maida, "Rights in the Church," in *Chicago Studies*, 15 (1976), pp. 255-267; E. Corecco, "Il catalogo dei doveri-diritti del fedele nel CIC," in *I diritti fondamentali della persona umana e la libertà religiosa*, F. Biffi (ed.), Roma, Libreria editrice Vaticana, 1985, pp. 118-120; J.H. Provost, "Protecting and Promoting the Rights of Christians: Some Implications for Church Structure," in *The Jurist*, 46 (1986), p. 291. The Church is a divinely given reality - antecedent to the individual. The constitution in the Church is given by Christ Himself. Rights in the Church, therefore, are not claims of the individual against society, as they are in civil life. The Church as communion and mission is not based on the rights of individuals, but on the divine mystery revealed in Christ, and committed to the Church as the light for all peoples.

³ Maida, "Rights in the Church," p. 258. See also Provost, "Protecting and Promoting the Rights," pp. 292-294; J. Coriden, "A Challenge: Make the Rights Real," in *The Jurist*, 45 (1985), pp. 1-23; W. Kasper, "Kirche and Freiheit," in *Staatslexikon*, 2 (1986), p. 715. The Church is a divinely established community, united in faith and love. But it is also a community of human beings who must be reminded of the requirements of justice when they fail to act with faith and charity within that community. Just as in the human community, one's basic human rights must be perceived and protected so too in the Christian community a person's basic rights as a Christian must be recognized and respected. Moreover, the issue of human rights is not about rights against God but it is about the protection of the dignity of the human being.

justice and peace.⁴

J.H. Provost says that Christians do not lose their humanity when they are baptized. If grace builds on nature then the dignity which arises from human nature remain theirs as christians. However, the Christian faith does endow the dignity of the human being with a second explicitly christian warrant from baptism. Here, the root reason for human dignity lies in a person's call to communion with God.⁵ Indeed, the 1983 Code not only recognizes the exercise of human rights in the Church but also strengthens them with a

⁴ Provost, "Protecting and Promoting the Rights of the Christian," p. 296. See also 1974 Synod of Bishops, "Human Rights and Reconciliation," in *Origins*, 4 (1974-1975), p. 319; R. Shaw, *Understanding Your Rights: Your Rights and Responsibilities in the Catholic Church*, Ann Arbor, MI, Servant Publications, 1994, pp. 155-157; E. Weingartner, *Human Rights is more than Human Rights: A Primer for Churches on Security and Cooperation in Europe*, Rome, IDOC International, 1977, p. 11; Hollenbach, *Claims in Conflict*, p. 87. Hollenbach notes that in the last century the Church had always affirmed and protected the rights of the faithful. In *Rerum novarum* Leo XIII placed particular emphasis on the social context of human rights, emphasizing the responsibility of public authority to ensure that justice be observed in all labor relations. Then, human rights received forceful vindication when Pius XI set out not merely a positive formulation of human rights but also the general requirements of the common good with the duty of public authority to ensure proper development of social and economic conditions as the precondition for the actual realization of the variety of human rights.

⁵ Provost, "Ecclesial Rights," p. 42. See also see Id. "Protecting and Promoting Rights of the Christian," pp. 289-342; M. Condorelli, "I fedeli nel nuovo Codex iuris canonici," in *The New Code of Canon Law*, Proceedings of the 5th International Congress of Canon Law, M. Thériault and J. Thorn (eds.), Ottawa, Saint Paul University, 1986, pp. 319-344; G. Diqattro, "Lo statuto giuridico dei 'christifidelis' nell'ordinamento di diritto canonico," in *Apollinaris*, 59 (1986) pp. 77-114; H. Rikhof, "The Competence of Priests, Prophets and Kings: Ecclesiological Reflections about the Power and Authority of Christian Believers," in *Concilium*, 197 (1988), pp. 53-62.

theological basis, such as the right of association.⁶

In conclusion, the life of the human person within the ecclesial community has more than purely human dimensions.⁷ Consequently, the expression and manner of exercise of rights in the Church could be different from other societies.

2.1.1. The Context of Rights in the Church

Rights in the Church are always exercised within the context of building communion and carrying out the mission of Christ. The principle of communion includes corresponsibility, subsidiarity, and diversity. The Second Vatican Council and the revised Code stress the radical equality among the faithful within ecclesial communion and mission. Therefore, the common good is an ideal measure in the exercise of rights in the Church.

2.1.1.1. *Communio*

The Church, the People of God, is a social community with a legal structure. Christ

⁶ R.J. Castillo Lara, "Some General Reflections on the Rights and Duties of the Christian Faithful," in *Studia canonica*, 20 (1986), p. 20.

⁷ J. Coriden, "What Became of the Bill of Rights?", in *Proceedings of the Annual Convention of the Canon Law Society of America*, 50 (1990), p. 49.

has provided it with the means which befit it as a visible and social organization. In its spiritual dimension it is a *communio* founded on participation in the life of God.⁸ G. Ghirlanda says that the Church is constituted by the communion among all the baptized, hierarchically united among themselves according to different categories, through the work of the Holy Spirit, in the same faith, hope and charity, in the sacraments and ecclesiastical governance.⁹

Communio represents the human participation in the life of the triune God and the Mission of the Son and Holy Spirit received from the Father. It is at one and at the same time a spiritual reality grounded in and flowing from the divine *communio* of the Trinity.¹⁰ It is necessarily an external and visible reality, manifested at every level within

⁸ Second Vatican Council, Dogmatic Constitution on the Church, *Lumen gentium*, November 21, 1964, in *AAS*, 57 (1965), pp. 5-67, here at pp. 11-12. English translation in Flannery, *Vatican Council II*, pp. 350-426, here at pp. 357-358. See also J. Beyer, *Du concile au Code de droit canonique: la mise en application de Vatican II*, Paris, Éditions Tardy, 1985, p. 73; A. del Portillo, *Faithful and Laity in the Church: The Bases of their Legal Status*, Translated from the Spanish by Leo Hickey, Shannon, Ire., Ecclesia Press, 1972, p. 32.

⁹ G. Ghirlanda, *Il diritto nella Chiesa mistero di comunione. Compendio di diritto ecclesiale*, Milano Edizione Paoline, Rome, Editrice Pontificia Università Gregoriana, 1990, p. 31: "Il nuovo Popolo di Dio, costituito dalla comunione tra tutti i battezzati, gerarchicamente uniti tra di loro in diverse categorie, per opera dello Spirito Santo, nella stessa fede, speranza e carità, nei sacramenti e nel regime ecclesiastico."

¹⁰ J.H. Provost, "The People of God: Canons 204-231," in *The Code of Canon Law: A Text and Commentary*, J.A. Coriden, T.J. Green, D.E. Heintschel (eds.), New York/Mahwah, Paulist Press, 1985, pp. 141-142. See also R. Sobański, "L'ecclésiologie du nouveau Code de droit canonique," in *The New Code of Canon Law*, p. 265; L. Örsy, *The Church: Learning and*

the universal community of faith.¹¹ Canon 205 mentions the threefold bonds of being fully in communion with the Catholic Church: faith, sacraments, and union with the hierarchy.¹²

The foundation of *communio* is always sacramental, whether baptism or sacred orders. The fact of baptism makes an individual a member of a community, the community of faith and love which is the Church. The reception of one and the same baptism establishes *communio* among all the faithful. Likewise the sacrament of orders establishes hierarchical communion, which serves the Christian faithful.¹³

Teaching. Magisterium, Assent, Dissent, Academic Freedom, Washington/Delaware, Michael Glazier Inc., 1987, p. 129; Y. Congar, *L'Eglise, une, sainte, catholique, et apostolique*, Paris, Les éditions du Cerf, 1970, p. 57. Congar says that *communio* in its fundamental meaning is the community which believers have with Christ; it is thus the community of Christian goods: faith, the body and blood of Christ, the spirit; it is finally the community formed by reason of all these things.

¹¹ L. Chiappetta, *Il Codice di diritto canonico. Comento giuridico-pastorale*, vol. I, Napoli, Edizioni Dehoniane, 1988, p. 275. See also N.P. Tanner (ed.), *Decrees of the Ecumenical Councils*, vol. II, Washington, DC, Georgetown University Press, 1990, p. 899. *Communio* is understood, however, not as consisting in some vague disposition, but as an organic reality which requires a juridical form and at the same time is animated by charity.

¹² Canon 205: "Plene in comunione Ecclesiae catholicae his in terris sunt illi baptizati, qui in eius compage visibili cum Christo iunguntur, vinculis nempe professionis fidei, sacramentorum et ecclesiastici regiminis."

¹³ V. De Paolis, "Communio in novo Codice iuris canonici," in *Periodica*, 77 (1988), p. 523.

Within the context of *communio* are applied the rights and responsibilities of all members of the Church.¹⁴ During the early centuries, rights were placed within the ecclesial community. Rights did not exist apart from the dimension of responsibility, and they existed specifically in relation to their functions within the community. In other words, rights are exercised within the proper context of the total life of the community.¹⁵

Indeed, *communio* has been seen as the principal criterion and source of fundamental rights within the Church.¹⁶ Since the Church exists prior to the individual's act of joining it or actualizing his/her membership, a person has rights only in relation to

¹⁴ J. Beyer, "La *communio* comme critère des droits fondamentaux," in *Les droits fondamentaux du chrétien dans l'Eglise et dans la société, Actes du IVe Congrès International de droit canonique*, E. Corecco et al. (eds.), Fribourg, Switzerland, Ed. Universitaires, 1981, pp. 79-96. J. Beyer states that we must contextualize the fundamental rights of the Christian faithful and the expression of their full value and extent within the *communio*. See also see P. Valdrini, *Droit canonique*, Paris, Dalloz, 1989, p. 53; Provost, "Protecting and Promoting the Rights of the Christian," p. 293; The 1985 Extraordinary Synod of Bishops, "The Final Report," in *Origins*, 15 (1985-1986), p. 448.

¹⁵ J.A. Coriden (ed.), *The Case for Freedom: Human Rights in the Church*, Washington, DC, Corpus, 1969, p. 53.

¹⁶ E. Corecco, "Theological Justifications of the Codification of the Latin Canon Law," in *The New Code of Canon Law*, p. 93. See also J.H. Provost, "The Nature of Rights in the Church," in *Proceedings of the Annual Convention of the Canon Law Society of America*, 51 (1991), pp. 4-9.

communion with the God and the Church.¹⁷ Through baptism the Christian has all rights necessary to assure his/her full participatory membership and freedom within the Christian community.¹⁸ Canon 96 of the 1983 Code says:

By baptism one is incorporated into the Church of Christ and constituted a person in it, with the duties and the rights which, in accordance with each one's status, are proper to Christians, in so far as they are in ecclesiastical communion and unless a lawfully issued sanction intervenes.¹⁹

It seems that rights exist in the Church only within the context of communion. Therefore, the primary obligation of the Christian faithful is to keep that *communio* with the Church and with God.²⁰ The Christian faithful maintains this *communio* by

¹⁷ Corecco, "Theological Justifications," p. 93.

¹⁸ Maida, "Rights in the Church," p. 258.

¹⁹ Canon 96: "Baptismo homo Ecclesiae Christi incorporatur et in eadem constituitur persona, cum officiis et iuribus quae christianis, attenta quidem eorum condicione, sunt propria, quatenus in ecclesiastica sunt communione et nisi obstet lata legitime sanctio."

²⁰ Canon 209.1: "The Christian faithful are bound by an obligation, even in their own patterns of activity, always to maintain communion with the Church." See also R.J. Castillo Lara, "La communion ecclésiastique dans le nouveau Code de droit canon," in *Communicationes*, 16 (1984), pp. 242-266; G. Ghirlanda, "De obligationibus et iuribus Christifidelium in communione ecclesiali deque eorum adimpletione et exercitio," in *Periodica*, 73 (1984), p. 374; Corecco, "Theological Justifications," p. 93. He says that since the Church itself is a *communio* and since the Church exists prior to the individual's act of joining it or actualizing her/his membership in it, the primary obligation of the Christian faithful is to keep that *communio* with the Church and with God.

proclaiming the one true faith and exercising charity. They have to remain steadfast to the truth to which the Church adheres naturally as saving truth²¹ and to lead a holy life²² in the exercise of charity.²³

2.1.1.2. Mission

The Church is a sacrament of intimate union with God and of the unity of humankind.²⁴ As a sacrament, the Church has the mission to proclaim and establish among all people the kingdom of Christ and of God.²⁵ This necessarily implies that the Church is by nature missionary.²⁶

²¹ Canons 748.1; 750; 752-754; 212.1. See also Ghirlanda, "De obligationibus et iuribus Christifidelium," pp. 334-336.

²² Canon 210.

²³ Ghirlanda, "De obligationibus et iuribus Christifidelium," p. 331.

²⁴ *LG*, no. 1.

²⁵ *LG*, no. 5. See also John Paul II, Encyclical letter, *Redemptoris missio*, December 7, 1990, in *AAS*, 83 (1991), pp. 251-254; Del Portillo, *Faithful and Laity in the Church*, pp. 19-20.

²⁶ Second Vatican Council, Decree on the Church's Missionary Activity, *Ad gentes*, December 7, 1965, in *AAS*, 58 (1966), pp. 947-990, here at p. 948. English translation in Flannery, *Vatican Council II*, pp. 813-856, here at p. 814. The Council says that since this mission originates in the mission of the Son and the mission of the Holy Spirit in accordance with the decree of God the Father, the Church is missionary by nature. See also John Paul II, *Redemptoris missio*, pp.

The mission of the Church is an expression and an answer to Christ's commands.²⁷ This mission also expresses the Church's positive relationship with the world, a relationship which is rooted in the meaning of human dignity, human community, and human activity.²⁸ Like the incarnate Word, the Church has an external dimension, a communal structure, which serves God's Spirit and which in turn is vivified by that same spirit.²⁹

The mission of the Church is universal. It is for all Christians, not only the clergy. It is based on baptismal dignity and confirmation.³⁰ All are equally called to participate in the three functions of Christ. All share in the threefold mission of Jesus Christ as priest,

264-278.

²⁷ Mt. 28,19-20; Mk. 16,15.

²⁸ M.D. Place, "In the Manner of A Leaven. The Lay Mission to the Secular World," in *The Jurist*, 47 (1987), p. 96. See also John Paul II, *Redemptoris missio*, p. 252. John Paul II says that the Church's fundamental function in every age, and particularly in ours, is to direct the person's gaze, to point the awareness and experience of the whole of humanity toward the mystery of Christ.

²⁹ *LG*, no. 8.

³⁰ *LG*, no. 32. See also Del Portillo, *Faithful and Laity in the Church*, p. 20.

prophet, and king.³¹ They share in the priesthood of Christ by receiving the sacraments, by prayer and thanksgiving, by the witness of a holy life and by self-denial and active charity.³² In proclaiming and spreading the word of God they share in the prophetic function of Christ.³³ Sharing in the royal office of Christ, they find themselves ordered in a hierarchical ministry that serves within the Church as pastors and shepherds.

In fulfilling this mission the Church speaks to the dignity and rights of all people.³⁴ Sharing in the Church's mission entitles the Christian faithful to certain rights and obligations.³⁵ Alvaro del Portillo says that the Christian faithful have received from Christ

³¹ *AA*, nos. 2-4. The Council says that by its very nature the Christian vocation is also a vocation to the apostolate. See also *LG*, no. 32; John Paul II, *Redemptoris missio*, pp. 318-320; Del Portillo, *Faithful and Laity in the Church*, p. 21. He comments that the Church's mission devolves equally upon all her members; so all of them are called in the same degree to fulfil the three aspects of the Church's mission: personal holiness, strengthening others, attracting nonbelievers, and cooperating actively in the consecration of the world. Any differences are founded upon a basis of common equality, which is in no way destroyed by them.

³² *LG*, no. 10.

³³ *LG*, nos. 12 and 17.

³⁴ *GS*, nos. 40-41.

³⁵ P. Bonnet, "Est in Ecclesia diversitas ministerii sed unitas missionis," in *Les droits fondamentaux*, pp 291-308. See also John Paul II, Apostolic constitution, *Sacrae disciplinae leges*, January 25, 1983, in *AAS*, 75 (1983), p. xii. American version of English-language translation: *Code of Canon Law*, Latin English ed., translation prepared under the auspices of The Canon Law Society of America, Washington, DC, Canon Law Society of America, 1983, p. xv; John Paul II, Apostolic exhortation, *Christifideles laici*, December 30, 1988, in *AAS*, 81 (1989),

himself through the sacraments of baptism and confirmation the right and the duty to carry out the missionary apostolate.³⁶

Both the rights and the obligations of the Christian faithful contribute to the mission of the Church. Pio V. Pinto believes that rights are not an end in themselves, but are instruments to be used in pursuit of the supernatural end toward which they are ordered. One category of rights deals explicitly with spirituality, another with the Christian's mission of evangelization in the world, and still another with the internal workings of the Church in service of its saving mission. It would be contrary to the nature of the Church to view rights as autonomous or unrelated to this mission.³⁷

It seems that the participation and responsibility in the Church's mission is connatural with the membership of the People of God. Therefore, it is *officium nativum* which gives one a natural right to take an active part in the mission of the Church.

pp. 409-416. John Paul II explicitly links the obligations and rights of the faithful with their participation in the threefold office of Christ. Concerning the canons on obligations and rights, he says that one-third of the canons derive from baptismal participation in this threefold office, while the other two-thirds fall either under natural law or the general principles of law.

³⁶ Del Portillo, *Faithful and Laity in the Church*, p. 20.

³⁷ P.V. Pinto, *Commento al Codice di diritto canonico*, Rome, Urbaniana University Press, 1985, p. 115. See also S. Holland, "Equality, Dignity and Rights of the Laity," in *The Jurist*, 47 (1987), p. 122.

2.1.1.3. Equality

While John XXIII spoke of equality based on the dignity of being human,³⁸ the Second Vatican Council stressed the fundamental equality of all the baptized in their christian dignity. The Council said that there was a common dignity of Christians founded on their regeneration in Christ. They share in common the grace of being heirs, the call to perfection, one salvation, one hope and one undivided charity. Therefore, there should be no inequality in Christ and in the Church.³⁹

The equality of being a Christian is sacramentally rooted in baptism. Baptism establishes the common concern among the Christian faithful for building up the body of Christ.⁴⁰ Through this sacrament Christians receive from Christ himself the right and the duty to carry out the missionary apostolate. Through this sacrament all the Christian faithful are fundamentally and radically equal.⁴¹

³⁸ John XXIII *Pacem in terris*, pp. 270-271. Since by nature all human beings are equal in human dignity, it follows that no one may be coerced to perform interior acts. That is in the power of God alone who sees and judges the hidden designs of a person's heart. See also canon 748.

³⁹ *LG*, no. 32. See also Tanner, *Decrees of the Ecumenical Councils*, p. 875.

⁴⁰ *LG*, no. 32. See also P.A. Bonnet, "De laicorum notione adumbratio," in *Periodica*, 74 (1985), p. 237. Bonnet stresses the sacramental basis of equality in apostolic action.

⁴¹ Del Portillo, *Faithful and Laity in the Church*, p. 20.

Canon 208 affirms the radical equality of all the faithful based on regeneration in Christ. It clearly speaks of an equality of dignity and of action among all the Christian faithful in the building up of the body of Christ. It implies the radical equality of the Christian in virtue of one Lord, one faith, one call and one common sacramental initiation.⁴²

Radical equality does not mean that differences do not exist in the participation in the mission of the Church. Differences do exist, not only in degree but also in substance. The action of the bishop is substantially different from that of the laity or the religious. It would be a real error to confuse fundamental equality with functional identity.⁴³

The radical equality means that all Christians have certain fundamental rights and obligations in common.⁴⁴ They have a common fundamental legal status, because they all share and belong to the same basic theological condition and belong to the same primary common category. All of them share one and the same vocation, the same faith, the same

⁴² Ibid. See also Provost, "The Nature of Rights in the Church," pp. 1-18; Castillo Lara, "Some General Reflections," p. 28.

⁴³ Castillo Lara, "Some General Reflections," pp. 28-29. See also F. Retamal, "*La igualdad fundamental de los fieles en la Iglesia según la constitución dogmática Lumen gentium*," Santiago, Universidad católica de Chile, 1980, p. 334; Holland, "Equality, Dignity and Rights of the Laity," p. 110; J. Heranz, "Le statut juridique des laïcs: l'apport des documents conciliaires et du Code de droit canonique de 1983," in *Studia canonica*, 19 (1985), pp. 249-255.

⁴⁴ Castillo Lara, "Some General Reflections," p. 19.

spirit, the same grace. They are all in need of appropriate sacramental and spiritual aids.⁴⁵

In conclusion, baptism establishes a real equality within the community of the faithful. This equality builds up the communitarian dimension within the Church. It also provides a new understanding of rights in the Church. This fundamental equality in the dignity of being Christian is affirmed in legal form.

2.1.1.4. Diversity and Subsidiarity

The Second Vatican Council sought to adapt the Church to present circumstances and it singled out the diversity of situations from one country to another. The Council recognized that not all in the Church walk along the same path. Some are appointed as teachers and some as pastors. Some are called to function as lay people, some as clergy.⁴⁶

Diversity forms an important aspect of the Church's life. It enriches the rights and the responsibilities of the faithful for the building up of the Body of Christ.⁴⁷ John Paul

⁴⁵ J. Hervada, "De omnium christifidelium obligationibus et iuribus," in *Code of Canon Law Annotated*, E. Caparros, M. Thériault, J. Thorn (eds.), Latin-English Edition of the Code of Canon Law and English Language translation of the 5th Spanish-language edition of the commentary prepared under the responsibility of the Instituto Martín de Azpilcueta, Montreal, Wilson & Lafleur Limitée, 1993, pp. 190-191.

⁴⁶ *LG*, no. 32. See also Holland, "Equality, Dignity, and Rights of the Laity," p. 110.

⁴⁷ G. Thils, "La communauté ecclésiale sujet d'action et sujet de droit," in *Revue théologique de Louvain*, 5 (1974), pp. 444-468. He mentioned that in 1972, while the Code was under revision, Joseph Ratzinger called for the recognition of the rights of the churches (ecclesiae)

II says that inside the heart of the Church, from the diversity of persons and offices, flow rights and duties.⁴⁸

In keeping with diversity, the revised Code leaves more room to the lower authority to adapt to local conditions the general orientations contained in the universal law of the Church.⁴⁹ It is compatible with the principle of subsidiarity which highlights the potential of the individual and groups in the Church.⁵⁰ P. Felici invoked subsidiarity as a principle that promoted the unity and diversity of ecclesiastical organs as well as the plurality wisely stated in the Council. He emphasized the need to apply the principle of subsidiarity

in the Church (l'Eglise). Each time that the Church exists as a community it is a subject of rights in the larger Church. It is not only the office-holders on the one hand, and the individual believers on the other, who have rights in the Church. The churches themselves, as they exist in each community, are holders of rights. They are, properly speaking, the subjects of rights, in fact they connect all the other subjects of rights in the Church.

⁴⁸ John Paul II, "Presentazione ufficiale del nuovo Codice di diritto canonico," in *Communicationes*, 15 (1983), p. 13. See also L. Swidler and H. O'Brien (eds.), *A Catholic Bill of Rights*, Kansas City, MO, Sheed & Ward, 1988, p. 2.

⁴⁹ *Communicationes*, 6 (1974), p. 172.

⁵⁰ *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus*, Vatican City, Libreria editrice Vaticana, 1983, p. xxi. See also T.J. Green, "Subsidiarity during the Code Revision Process: Some Initial Reflections," in *The Jurist*, 48 (1988) p. 779; A. Dulles, "The Reception of Vatican II at the Extraordinary Synod of 1985," in *The Reception of Vatican II*, G. Alberigo et al. (eds.), Washington, DC, The Catholic University of America Press, 1987, p. 361. Since Pius XI introduced it, the principle has been championed as a first principle of civil society by Pius XII, John XXIII, Paul VI and John Paul II. It was also invoked in this sense in three passages of the Second Vatican Council.

in every institution in this world in light of the signs of the times.⁵¹

The concept of subsidiarity implies the importance of the rights and duties of all Christian faithful. It respects the dignity of the human person and the right to pursue freely personal perfection.⁵² Pius XII placed the principle of subsidiarity in relating to personal dignity as a free creature and child of God. The principle was used as an argument against excessive centralization of authority.⁵³

Subsidiarity also underlines the corresponding obligation of Church authority to recognize and facilitate the ecclesial initiatives of believers.⁵⁴ It contains the limits of the right and duty of the public authority to intervene in the life of the smaller community and

⁵¹ J. Komonchak, "Subsidiarity in the Church: The State of the Question," in *The Jurist*, 48 (1988) pp. 309-314. See also H. Kung et al. (eds.), *Council Speeches of Vatican II*, Glen Rock, Deus Books, 1964, pp. 87-88; *Communicationes*, 1 (1969), p. 89. Subsidiarity was invoked as a principle of the Church's life particularly during the Council. First it was invoked as a principle of the Church's life in discussion about the laity. Bishop Joseph Hoffner echoed Pius XII asking that it govern the role of the laity, particularly for their activity in the temporal order. Second, it was invoked regarding the bishops and the government of dioceses. Bishop Joseph Gargitter referred to subsidiarity in his call for greater decentralization. Third, it was invoked as a principle that should govern the exercise of the apostolate by religious.

⁵² W. Bertrams, "De principio subsidiaritatis in iure canonico," in *Periodica*, 46 (1957), p. 13.

⁵³ Pius XII, Allocution, *Ad E.mos ac Rev.mos patres cardinales recentes creatos*, February 20, 1946, in *AAS*, 38 (1946), p. 144.

⁵⁴ Green, "Subsidiarity during the Code Revision," p. 797.

of the individual. Subsidiarity calls for decentralization of authority and decision making.⁵⁵

Subsidiarity does not mean substitution, because subsidiarity requires active responsibility of the larger social body to promote the self-responsibility of smaller communities and of the individual.⁵⁶ Subsidiarity helps the hierarchy to protect and promote the common good of the Church.⁵⁷ Paul VI argued that the principle of

⁵⁵ Swidler, *A Catholic Bill of Rights*, p. 107. See also Komonchak, "Subsidiarity in the Church," p. 309; Bertrams, "De principio subsidiaritatis in iure canonico," p. 20. Bertrams considers that the expression of the principle of subsidiarity as a formal principle does not show materially what is to be offered by society as subsidy. One element in the operation of this principle prescribes that individuals and lesser societies be left to operate and achieve their own ends. Help is to be offered only as much as is necessary. Another element of the principle prescribes that, when the matter is beyond the competence of the individual or society, aid be given. The specific form this aid or help takes or the material to be offered is not set forth by the principle of subsidiarity. The material determination of the exercise of social activity is specified by the concrete common good of the respective society.

⁵⁶ Komoncak, "Subsidiarity in the Church," p. 338. See also O. Nell-Breuning, "Subsidiaritätprinzip," in *Staatslexikon: Rechth, Wirtschaft, Gesellschaft*, vol. 7, Freiburg, Herder, 1962, p. 827.

⁵⁷ John Paul II, *Centesimus annus*, p. 854. The principle of subsidiarity must be respected: a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good. See also Del Portillo, *Faithful and Laity in the Church*, p. 38. He says that the subsidiarity function is essential to the hierarchy as protector and promoter of the common good. It takes positive and negative action of the authority. It is to respect the common good, stimulate a social activity which originates in private initiatives, provide the necessary spiritual support, and complement the activity of the faithful that is necessary for the common good.

subsidiarity protected the common good of the Church from individualism.⁵⁸

2.1.1.5. Common Good

Common good does not mean the good of isolated individuals in society or the good of the collectivity/the society with concerns for individuals being secondary. It transcends the personal goods of the individual members of the society. It goes beyond the institution's interest or the convenience of authorities or even the collectivity's good. It is the sum total of social conditions which allow people, either as individuals, as families or as groups, to achieve their own fulfillment more fully and more easily.⁵⁹ D. Hollenbach maintains that the common good demands the establishment of social, political, economic and cultural conditions in which one is able to participate in the life of the community to a degree that respects at least the most basic demands of personhood.⁶⁰

Common good is intimately bound up with human dignity. It consists especially

⁵⁸ Paul VI, Allocution at the extraordinary Synod of Bishops, *Quemadmodum nostis*, October 11, 1969, in *AAS*, 51 (1969), pp. 719-720.

⁵⁹ John XXIII, *Mater et magistra*, pp. 416-418. See also *GS*, nos. 26 and 74; *DH*, no. 6; Holleman, *The Human Rights Movement*, p. 54.

⁶⁰ D. Hollenbach, "The Common Good Revisited," in *Theological Studies*, 50 (1989), p. 88.

in the observance of the rights and duties of human persons and their communities.⁶¹ Common good cannot exist fully and completely unless the human person and human rights are taken into consideration.⁶² John XXIII claimed that common good demanded the recognition of human rights. Common good is chiefly guaranteed when personal rights and duties are maintained.⁶³

On the other hand, the common good is the best way to characterize that the individual and society are related. It is a foundational element of understanding rights in the Church.⁶⁴ John XXIII noted that the dignity of the human person involves the right to take an active part in public affairs and to contribute one's part to the common good of the citizens.⁶⁵

⁶¹ *DH*, no. 6. See also Provost, "Protecting and Promoting the Rights of the Christian," p. 293; Coriden, "What Became of The Bill of Rights?" p. 56.

⁶² John XXIII, *Pacem in terris*, pp. 272-273. See also Hollenbach, "The Common Good Revisited," p. 89.

⁶³ John XXIII, *Pacem in terris*, pp. 274-275. See also *DH*, no. 6. The common good consists especially in the rights and duties of the human person; Provost, "Protecting and Promoting the Rights of the Christian," p. 293.

⁶⁴ Hollenbach, "The Common Good Revisited," pp. 70-94.

⁶⁵ John XXIII, *Pacem in terris*, pp. 263-264.

Canon 223 presents the common good as a principle of limitation of exercising rights in the Church. It says that in exercising their rights, the Christian faithful, both individually and in associations, must take account of the common good of the Church, as well as the rights of others and their own duties to others.⁶⁶

It seems that the basic elements of common good are the effective safeguard of the rights of all citizens, the peaceful settlement of conflicts of rights, and sufficient protection of public peace.⁶⁷

2.1.2. Types of Rights in the Church

The classification of rights in civil society influences the classification of rights in the Church. The distinction between positive and negative rights, for example, can also be applied to the rights ascribed to Christians in the Code of Canon Law. The right to be free from any kind of coercion in choosing a state of life (can. 219) clearly is a negative right, which others respect by abstaining from coercive interference. The right to a Christian education affirmed in canon 217 is clearly a positive right which requires

⁶⁶ Canon 223.1: "In iuribus suis exercendis christifideles tum singuli tum in consociationibus adunati rationem habere debent boni communis Ecclesiae necnon iurium aliorum atque suorum erga alios officiorum."

⁶⁷ John XXIII, *Pacem in terris*, pp. 276-277.

Church leaders and members to provide personal, intellectual and financial resources.⁶⁸

Grounded on the dignity of human persons, John XXIII distinguishes three kinds of rights: 1) personal rights, the basis for human dignity; 2) social rights, needed to preserve human dignity; 3) instrumental rights, overreaching institutional conditions for human dignity to be respected and preserved.⁶⁹

As a matter of fact, the bases of having rights in the Church are various. Provost mentions four bases for having rights in the Church. First, human dignity as a basis of human rights; second, baptism as a basis of ecclesial rights; third, office as a basis of ecclesiastical rights; and fourth, vows as a basis of communal rights. Some canonists still believe that there is also a contractual right arising from contract.⁷⁰

It seems that there are basic rights and positive rights in the Church. Basic rights derive both from our basic humanity as persons and from our baptism as Christians. These rights are inherent with the dignity of being human and of being Christian. Membership in the human community and membership in the community of the Church jointly confer

⁶⁸ Langan, "Can there be a Human Rights Problem in the Church?" p. 22.

⁶⁹ Provost, "Ecclesial Rights," p. 46.

⁷⁰ Ibid., p. 42. See also J.P. McIntyre, *Clergy and Laity (canon. 204-297)*, (Class Notes for the Private Use of the Students), Ottawa, Saint Paul University, 1989-1990, p. 49.

the rights which guarantee our dignity and freedom as persons and as Christians.⁷¹ In this sense J. Villadrich concludes that the root of all fundamental rights in the Church is the ontological and sacramental state of the faithful.⁷² Positive rights, on the other hand, come from the positive law, agreement, and contract. These rights are to support and enhance the basic rights.⁷³

2.1.3. Human Rights in the Church

The Church has its own teaching about human rights. Human rights cannot be separated from their theological dimension. Besides, the expression and the exercise of these rights are to be regulated by the law of the Church.

2.1.3.1. Theological and Anthropological Bases of Human Rights

The human right itself is rooted in the very nature and dignity of what it means to be human. The dignity comes more precisely from the endowment of men and women

⁷¹ Basic rights include human rights and ecclesial rights.

⁷² J. Viladrich, *Teoria de los derechos fundamentales del fiel. Presupuestos criticos*, Pamplona, EUNSA, 1969, p. 45.

⁷³ Positive rights include ecclesiastical rights, communal rights, and contractual rights.

with reason and free will. Here, human rights derive from the ontological character of human beings and are not the result of particular social systems.

Within the Christian tradition, the ontological foundation of human rights is supplemented with theological foundations: creational, christological, pneumatological and eschatological theologies of human dignity. Creation theology regards human dignity as being based on God's creation of men and women in His image and likeness (Gn. 1,26). Even injured by sin, human dignity is far from being thereby completely destroyed and abolished. For even sinners, even the worst criminals, still have a claim to their fundamental rights as human beings.⁷⁴

Pope Leo the Great emphasized the Christological basis of human dignity. He said that in the person of Jesus Christ, God once and for all took on himself everything human and so bestowed unique dignity on human beings.⁷⁵ The Second Vatican Council confirmed it by stressing not only the dignity of human nature in general but also the dignity of every individual human person. *Gaudium et spes* says that by the incarnation

⁷⁴ W. Kasper, "Theological Foundation of Human Rights," in *The Jurist*, 50 (1990), p. 158. See also Ghirlanda, "De obligationibus et iuribus Christifidelium," p. 332; M. Reuver (ed.), *Human Rights: A Challenge to Theology*, Rome, IDOC International, 1983, p. 18; Swidler, *A Catholic Bill of Rights*, p. 70.

⁷⁵ W. Dürig, "Dignitas," in *Revue de l'Art Chrétien*, 3 (1987), p. 1028. See also Reuver, *Human Rights*, p. 18; Swidler, *A Catholic Bill of Rights*, p. 70.

Jesus Christ, the Son of God, has in a certain way united himself with each person.⁷⁶

This dignity is strengthened by the pneumatological basis and the eschatological vocation. The salvation of Jesus Christ is transmitted to human beings by the Holy Spirit who enables them to have the freedom of the children of God. Under the same Spirit all are called to be perfect, to the destiny beyond history.⁷⁷

It is not enough, consequently, to consider the Christian faithful as merely a human person. Over and above that, the Christian faithful have been elevated to the supernatural order by baptism. It is by baptism that one is incorporated into Christ and the communion of the Church. By baptism one is endowed with a theological personality (the infusion of sanctifying grace in the soul, the theological gifts and virtues, and the adoptive filiation to the God-head), and enjoys a juridic capacity (as a subject of rights and obligations) in the Church.⁷⁸ Baptism constitutes the legal, social and supernatural bonds of brotherhood.⁷⁹ By baptism the ontological basis of human rights is supplemented by the

⁷⁶ GS, no. 22.

⁷⁷ GS, no. 12. See also Ghirlanda, "De obligationibus et iuribus Christifidelium," p. 333.

⁷⁸ J. Calhoun, *The Restraint of the Exercise of One's Rights*, Canon Law Studies, no. 462, Washington, DC, The Catholic University of America, 1965, p. xi.

⁷⁹ Del Portillo, *Faithful and Laity in the Church*, p. 24.

theological basis.

2.1.3.2. Respect for Human Dignity

The centerpiece and foundation of modern Catholic tradition in human rights is the dignity of the human person. Pope Leo XIII, who laid the groundwork for the modern Catholic theory of human rights, emphasized the dignity of the human person as the measure of political, economic and legal institutions. Facing liberalism and socialism, he said that the person, who preceded the state, was never of mere functional or utilitarian value.⁸⁰

Pius XI added a new dimension to the understanding of human rights and of human dignity. He noted that human dignity was a social rather than a purely private affair. Human dignity makes a genuine moral demand upon the organizational patterns by which public life is structured.⁸¹ In the same way, Pius XII confirmed that human rights could

⁸⁰ Leo XIII, *Rerum novarum*, pp. 641-670. See also Hollenbach, *Claims in Conflict*, p. 49; Shaw, *Understanding Your Rights*, pp. 155-157; Swidler, *A Catholic Bill of Rights*, pp. 20-21.

⁸¹ Pius XI, Encyclical letter, *Quadragesimo anno*, May 15, 1931, in *AAS*, 23 (1931), pp. 177-228. See also Hollenbach, *Claims in Conflict*, pp. 55-56. Hollenbach comments that Pius XI's writings represented a major development in the traditional recognition of the social conditions and limits which enter into the specification of the meaning of human dignity and human rights.

not be understood apart from social interdependence, nor can social well-being be understood apart from personal rights.⁸²

In May 1961 John XXIII stated that the entire modern tradition is always dominated by one basic theme - an unshakeable affirmation and vigorous defense of the dignity and rights of the human person. In his view, human dignity is the concrete normative value which the entire tradition has attempted to defend. Respect for the dignity and worth of the person is the foundation of all the specific human rights and more general social ethical frameworks adopted by the encyclicals and other Church teachings.⁸³

The Second Vatican Council further declares that the very dignity of the human person is known to the revealed word of God and to reason itself. It says in *Gaudium et spes* that all human beings endowed with a rational soul and created in the image of God, share the same nature and the same origin; all redeemed by Christ, enjoy the same calling

⁸² Pius XII, Radio message, *Benignitas et humanitas apparuit salvatoris nostri Dei*, December 24, 1944, in *AAS*, 37 (1945), pp. 10-23. See also Hollenbach, *Claims in Conflict*, pp. 60-61.

⁸³ J. Coriden, "A Challenge: Make the Rights Real," in *The Jurist*, 45 (1985), p. 15. See also Hollenbach, *Claims in Conflict*, pp. 4-42. Hollenbach maintains that human dignity as a basis for human rights is clearly expressed in *Pacem in terris*. Rights which protect human dignity are rights of persons in community. It is not a question of the individual against the community, or the community against the individual. Rather it is a question of rights and responsibility of the individual and of the community. *Pacem in terris* provides a way to relate political, social and economic rights.

and divine destiny.⁸⁴ This dignity bases the right to religious freedom and other human rights in the Church.⁸⁵

In *Populorum progressio* and *Octogesimo adveniens*, Paul VI taught that protection of human dignity required respect for the multiple social, economic, intellectual, interpersonal and religious conditions of personal development. Material well-being is not simply an instrumental value or a means to a dignified life. Rather it is integral to the standard of all moral values and human dignity.⁸⁶

The Synod of Bishops spelled out human dignity in terms of a fundamental right to participation and the right to development.⁸⁷ The right to development is the first specification of the demands of dignity in the present historical situation. Respect for persons demands active participation in the process of social change and development.

⁸⁴ *GS*, no. 29.

⁸⁵ *DH*, no. 1. Contemporary people are becoming increasingly conscious of the dignity of the human person. The right to religious freedom is based on the very dignity of the human person. See also *GS*, no. 16. *Gaudium et spes* considers all other human rights to be based on the dignity with which men and women are endowed by God himself.

⁸⁶ Paul VI, Encyclical letter, *Populorum progressio*, March 26, 1967, in *AAS*, 59 (1967), pp. 257-299. See also Apostolic letter, *Octogesimo adveniens*, May 14, 1971, in *AAS*, 63 (1971), pp. 401-441; Hollenbach, *Claims in Conflict*, pp. 67-81.

⁸⁷ Synod of Bishops, *De iustitia in mundo*, pp. 926-928.

The rights to participation and development have become conditions for the realization of all other rights.⁸⁸

The commitment to human dignity and to human rights intrinsically belongs to the witness of the gospel.⁸⁹ Indeed, John Paul II could even declare: "the name for that deep amazement at man's worth and dignity is the Gospel, that is today: the Good News."⁹⁰ Consequently, the 1983 Code intends not only to guarantee human dignity but also to protect the freedom to live according to the dignity which is due to the human person. These rights enable persons to achieve the ends of human living as envisioned by society and to fulfill the role in society to which, as individuals, they find themselves suited.⁹¹

In conclusion, Catholic human rights theory is neither simply the liberty of the individual person stressed by liberal democracy nor the social participation and economic

⁸⁸ Swidler, *A Catholic Bill of Rights*, p. 23.

⁸⁹ Synod of Bishops, *De iustitia in mundo*, p. 923. See also Paul VI, Apostolic exhortation, *Evangelii nuntiandi*, December 8, 1975, in *AAS*, 68 (1976), pp. 5-76, here at pp. 23-26.

⁹⁰ John Paul II, *Redemptoris hominis*, pp. 274-275. See also G. Höver et al. (eds.), *Die Würde des Menschen. Die theologisch-antropologischen Grundlagen der Lehre Papst Johannes Pauls II*, Mainz-Munich, Matthias-Grünwald, 1986, p. 19-34; Ernst-W. Böckenförde, "Das neue politische Engagement der Kirche. Zur 'politischen Theologie' Johannes Pauls II," in *Stimmen der Zeit*, 198 (1980), pp. 219-234.

⁹¹ Coriden, "What Became of the Bill of Rights?" p. 48.

well-being stressed in various ways by marxism and socialism. Catholic human rights theory rather stresses respect for freedom, the meeting of basic needs, participation in community and social relationship as these are essential aspects of human dignity, the foundation of all rights.

2.1.3.3. Protection of Human Rights in the Church

The protection of the human rights of the faithful within the ecclesial community is a natural consequence of the teaching of Vatican II concerning the dignity of the Christian faithful. The Council declares that effective safeguards for rights are part of the fundamental common good in society.⁹² The protection of human rights is needed for the Church to be credible in its preaching of justice to others.⁹³ Therefore, the protection of human rights should be constituted in a legal system.⁹⁴ Without adequate means for the promotion and protection of these rights in the Church, their listing would be an empty and meaningless exercise.⁹⁵

⁹² *DH*, no. 7.

⁹³ Synod of Bishops, *De iustitia in mundo*, pp. 936-938.

⁹⁴ P. Lombardia, "The Fundamental Rights of the Faithful," in *Concilium*, 48 (1969), p. 42.

⁹⁵ Z. Grocholewski, "Aspetti teologici dell'attività giudiziaria della Chiesa," in *Monitor ecclesiasticus*, 110 (1985), p. 197. See also J.P. Beal, "On Due Process: The Third Decade," in

Accordingly, the principal and essential object of canon law is to determine and safeguard the rights and obligations of each individual person with respect to the rights and obligations of others and of society at large. Certainly this can be done in the Church in all that pertains to the worship of God and the salvation of souls.⁹⁶ Indeed, four of the ten fundamental principles guiding the revision of the Code emphasized the protection of rights.⁹⁷ The revised Code articulates not only the rights of the faithful but also the protection and vindication of these rights.⁹⁸ Canon 221.1 says:

Protection of Rights of Persons in the Church: Revised Report of the Canon Law Society of America on the Subject of Due Process, Washington, DC, CLSA, 1991, p. 2.

⁹⁶ *Communicationes*, 1 (1969), p. 79: "Canonici quoque iuris objectum praecipuum et essenziale est iura et obligationes uniuscuiusque hominis erga alios et erga societatem definire atque tueri, etsi eatenus fieri possit in Ecclesia quatenus ad Dei cultum et animarum salutem pertineant."

⁹⁷ *Communicationes*, 1 (1969), pp. 78-83. The first principle defines and protects the rights and obligations of each person toward the other and toward society. The next calls for the rights and duties that come within the juridic organization of the Church to be suited to its supernatural end. The sixth principle directly addresses the protection of the rights of persons based on the natural law and divine positive law and on what follows in light of the social condition that persons have in the Church. Finally, the seventh principle looks to a procedure for safeguarding and vindicating subjective rights in the Church.

⁹⁸ John Paul II, Allocution to Rotal Officials, *Sono vivamente*, February 26, 1983, in *AAS*, 75 (1983), pp. 554-559, here at p. 556. English translation is in *Origins*, 12 (1982-1983), p. 631. He says that in the new Code, indeed, the Church has promulgated the rights as a fundamental charter (cf. cann. 208-223). She thus offers opportune judicial guarantees for protecting and safeguarding adequately the desired reciprocity between the rights and duties inscribed in the dignity of the person of the faithful Christian.

The Christian faithful can legitimately vindicate and defend the rights which they enjoy in the Church before a competent ecclesiastical court (in foro competenti ecclesiastico) in accord with the norm of law.⁹⁹

Every right whatsoever is safeguarded not only by an action but also by an exception unless something to the contrary is expressly stated.¹⁰⁰ Besides, the Code provides an elaborate judicial procedure for the vindication of rights (cann. 1400-1670), and a more skeletal procedure for making recourse against administrative actions that impinge on the rights of the faithful (cann. 1732-1739) as well as norms allowing for mediation and arbitration of conflicts (can. 1733).¹⁰¹

However, there is skepticism concerning the provisions existing in the Code for protecting rights in the Church. Provost agrees that the Code contains an accurate statement of rights of Catholics as taught by the magisterium. All the rights, freedoms and obligations taught by Vatican II are reflected here. However, there is a basic weakness in the canonical system as it now stands. There is a regrettable lack of structure and procedure in providing an effective means for vindicating and protecting the rights of the

⁹⁹ Canon 221.1: "Christifidelibus competit ut iura, quibus in Ecclesia gaudent, legitime vindicent atque defendant in foro competenti ecclesiastico ad normam iuris."

¹⁰⁰ Canon 1491.

¹⁰¹ J.P. Beal, "Protecting the Rights of Lay Catholics," in *The Jurist*, 47 (1987), p. 130.

faithful.¹⁰²

Concern has been expressed to structure administrative discretion. There is a question about the fairness of the norms established and the appropriateness of applying those norms to groups' own structures and practices.¹⁰³ There is a doubt whether due process, which comes from the Anglo-American legal tradition, can be applied in the other particular Church.¹⁰⁴ In addition, canon law has no established procedure for challenging allegedly unjust laws.¹⁰⁵

It seems that the protection of human rights requires respect for the multiple social, economic, intellectual, interpersonal and religious conditions of personal development.

¹⁰² Provost, "Protecting and Promoting the Rights of Christians," pp. 313-314.

¹⁰³ Langan, "Can there be a Human Rights Problems in the Church?" pp. 14-25. See also J.J. Folmer, "Promoting and Protecting Rights: An Introduction," in *The Jurist*, 46 (1986), pp. 11-12; R.T. Kennedy, "Address on Due Process to the National Conference of Catholic Bishops," in *Proceedings of the Annual Convention of Canon Law Society of America*, 31 (1969), p. 11; Provost, "The Nature of Rights in the Church," p. 14: "The distinction between administrative acts and acts of administrative power may have made sense in a special section on administrative law. But it is now divorced of its original setting and is causing considerable debate as to what it really means. Is it a distinction without a difference, so that even the canons on where you can sue the bishop in certain financial matters are really dead letters; that is, can he be sued in court at all, since even his financial transactions are acts of administrative power? [...] This leads to the exclusion of practically all rights cases from diocesan tribunals."

¹⁰⁴ Swidler, *A Catholic Bill of Rights*, p. 62.

¹⁰⁵ Z. Grocholewski, "Atti e ricorsi amministrativi," in *Apollinaris*, 57 (1984), p. 259.

Provisions for the protection of human rights existing in the 1983 Code need to be explored at the national or diocesan level. In the American context, J.P. Beal advises confining, structuring, and checking authority to help prevent rigid juridicism and discretionary arbitrariness. He also stresses the need for consultation, information, reasons and proofs in exercising authority.¹⁰⁶

Summary: There are various rights existing in the Church. The Christian faithful enjoys basic rights arising from the dignity of being human and of being Christian and positive rights occasioned from positive law, agreement or contract. In the Church human rights based on ontological and theological ground belong to every Christian. Christians exercise these rights in the context of building the communion of the Church and carrying out the mission of Christ. They exercise these rights in order to achieve the common good of the Church. Consequently, the exercise of these rights should respect the principles of equality, subsidiarity and diversity.

2.2. THE RIGHT OF ASSOCIATION IN THE CHURCH

Among the human rights existing in the 1983 Code, there is the right of association. This section will explore that right within its ecclesial context. To achieve that purpose,

¹⁰⁶ Beal, "Protecting the Rights of Lay Catholics," pp. 132-133.

the following sequence will be pursued. First, we will explore the historical aspect of the right of association in the Church; second, the need for association; third, the notion of the right of association in the Church; fourth, the purpose of associations in the Church; fifth, kinds of associations; finally, the limitations.

2.2.1. Historical Aspect

The history of associations in the Church is as old as the Church itself. Before the fourth century some of the faithful had organized themselves in order to care for the needs of the sick and to provide mutual assistance in time of need - especially proper funeral rites and burial. *Collegia teniorum*, which were organized and awarded official status by civil law, and *lectiarii*, whose members were laity and clergy, were well-known as organizations of burial societies. None of them, however, had any direct legal aid from the Church.¹⁰⁷

In the fourth century, the liturgy occasioned the first societies to come directly under Church supervision. Groups such as the *spondaei* and the *philopones* began assisting at liturgical services in the Near East. In the fifth century, the Orient also

¹⁰⁷ *Novellae Iustiniani*, 43.1. See also T.J. Clarke, *Parish Societies*, Canon Law Studies, no. 176, Washington, DC, The Catholic University of America Press, 1943, pp. 10-11; Amos, *Association of the Faithful*, pp. 6-7; E. Quinn, *Archconfraternities, Archsodalities, and Primary Unions with a Supplement on the Archconfraternity of Christian Mothers*, Canon Law Studies, no. 421, Washington, DC, The Catholic University of America Press, 1962, pp. 5-6.

witnessed the birth of another group of societies under the Church's auspices, namely, nursing societies which were called the *parabolani*.¹⁰⁸

The development of monasticism in the West during the eighth and ninth centuries increased the forms of associations which included not only monks but also secular clergy. At the same time the Christian faithful formed guilds for secular purposes, for instance developing their professions. In the tenth century ecclesiastical associations emerged as a type of organic body possessing internal government, dependent on episcopal supervision or vigilance. It was in 852 that Hincmar of Rheims expressly banned societies whose meetings were characterized by excessive eating and drinking, quarreling and revelry.¹⁰⁹

Innumerable groups arose in the twelfth and thirteenth centuries. Most Christians participated in them. Some focused on the need of the poor, some on the sick, some on prisoners, some on building churches, some on orphans and widows. Some of them began to own and administer their own property under the supervision of the bishop or a

¹⁰⁸*Codex Theodosiani* XVI.2.42-43. See also Amos, *Associations of the Faithful*, pp. 7-8; Quinn, *Archconfraternities*, pp. 7-8; J. Duhr, "La confrérie dans la vie de l'Église," in *Revue d'histoire ecclésiastique*, 35 (1939), pp. 448-450.

¹⁰⁹ Amos, *Associations of the Faithful*, pp. 8-10. See also Clarke, *Parish Societies*, pp. 9-13; Quinn, *Archconfraternities*, pp. 8-11; I.D. Mansi, *Sacrorum conciliorum nova et amplissima collectio*, Parisiis - Arnheim - Leipzig, 1901-1927, XXXIII, col. 59. The Benedictines, for example, began forming purgatorial societies or fraternaries of prayer.

religious order. At that time the impact of the mendicants and confraternities was very significant.¹¹⁰

After the Reformation, the Council of Trent promoted the first universal legislation on associations of the faithful. It gave more authority to the bishop to visit and supervise lay associations. The second universal legislation was published by Clement VIII in *Quaecumque* of 1604. This apostolic constitution issued the limitations religious institutes, archconfraternities, and congregations to establish associations of the faithful.¹¹¹

Until the promulgation of the 1917 Code of Canon Law, the terminology and the juridic status of associations were variable. The 1917 Code attempted to clarify the terminology of associations of the faithful. It defined the associations of the faithful based on their relationship to Church authority, their ends and internal juridic structure. The Code treated associations separately from religious institutes. It contained varieties of

¹¹⁰ Amos, *Associations of the Faithful*, pp. 11-13. See also G. Onclin, "Principia generalia de fidelium associationibus," in *Apollinaris*, 36 (1963), p. 71; S. de Angelis, *De fidelium associationibus*, vol. 2, Neapolis, M. d'Auria, 1959, pp. 6; 131; 148-156; 177. The examples of these associations are the Confraternity of the Holy Trinity (1198) and of Our Lady of Montserrat (1223), the Archconfraternity of Galflonis (1264).

¹¹¹ Amos, *Associations of the Faithful*, pp. 14-20. See also Council of Trent (Sessio XXII, *de reformatione*, capita VIII et IX), *Canones et decreta sacrosancti oecumenici concilii Tridentini*, Romae, ex Typographia polyglotta S.C. de Propaganda Fide, 1882, pp. 146-147; Clement VIII, Apostolic constitution, *Quaecumque*, December 7, 1604, in *Codicis iuris canonici fontes*, P. Gasparri and J. Suredi (eds.), vol. 1, Romae, Civitate Vaticana, Typis polyglottis Vaticanis, 1923-1929, pp. 366-370; Quinn, *Archconfraternities*, pp. 16-19.

associations: third orders, confraternities and pious unions, archconfraternities and primary unions. It restricted the membership of associations to lay people.

Prior to the Second Vatican Council the development of associations of the faithful was influenced by the resolution, *Corrientem*,¹¹² the calling for Catholic Action by Pius XI,¹¹³ and the development of pious unions.¹¹⁴ The Second Vatican Council recognized the right of association as a natural right. The Council also encouraged the formation of

¹¹² Sacra Congregatio Concilii, The resolution *Corrientem*, pp. 135-144. An English translation is in *Canon Law Digest*, 1 (1917-1933), pp. 714-715. The resolution *Corrientem*, issued on November 13, 1920, reaffirmed the group's lay character. It dealt with the relationship between the Bishop of Corrientes, Argentina, and the Society of Saint Vincent de Paul. The resolution stated that this society was not subject to the local ordinary mentioned in canons 686-699. It was subject according to canon 336 which concerned the bishop's supervisory role regarding worship, faith and morals, and the administration of last bequests in favor of pious causes. See also A. del Portillo, "Ius associationis et associationes fidelium iuxta Concilii Vaticani II doctrinam," in *Ius canonicum*, 8 (1968), p. 6. Del Portillo maintains that this first development reasserted the natural right of the Christian faithful to form associations without the intervention of the hierarchy.

¹¹³ Pius XI, Encyclical letter, *Ubi arcano Dei*, December 22, 1922, in *AAS*, 14 (1922), pp. 673-700, here at p. 695. On December 23, 1922, Pope Pius XI called the whole world to Catholic Action. Catholic Action broadened the organized apostolate of the laity by creating so many groups for which the Code had no place. See also Pius XII, Allocution, *Six ans se sont*, October 5, 1957, in *AAS*, 49 (1957), pp. 929-930; F. Klostermann, "Laity, Catholic Action," in *Sacramentum mundi*, vol. 3, K. Rahner et al. (eds.), London, Burns & Oates, 1968-1970, pp. 264-268; D.J. Geaney, "Catholic Action," in *New Catholic Encyclopedia*, vol. 3, pp. 262-263.

¹¹⁴ Pius XII, Apostolic constitution, *Provida mater ecclesia*, February 2, 1947, in *AAS*, 39 (1947), pp. 114-124; Motu proprio, *Primo feliciter*, March 12, 1948, in *AAS*, 40 (1948), pp. 283-286. The development of pious unions called Pope Pius XII to issue the apostolic constitution *Provida mater ecclesia*, and the motu proprio *Primo feliciter*. These documents reduced the rank of associations and pointed out a new institute into which the association might evolve.

associations on the basis of the nature of the Church as a communion and the nature of its mission. This conciliar teaching has been incorporated in the revised Code.

2.2.2. Need for Association

The history of associations in the Church indicates that the need for association is fundamentally important in the Church. This indication confirms the ultimate bases, called the anthropological and theological bases, of the right to form and to join associations.

The ultimate foundation of association relates to the social nature of human beings and the nature of the Church as *communio* and its supernatural mission.¹¹⁵ The Second

Vatican Council says in *Apostolicam actuositatem*, no. 18:

The faithful are called to engage in the apostolate as individuals in the varying circumstances of their life. They should remember, nevertheless, that man is naturally social and that it has pleased God to unite those who believe in Christ in the People of God and into one body. Hence the group apostolate of Christian believers happily corresponds to a human and Christian need and at the same time signifies the communion and unity of the Church in Christ who said: "Where two or three people gather together

¹¹⁵ Del Portillo, "Ius associationis et associationes fidelium," p. 8. See also G. Dalla Torre, "De omnium Christifidelium obligationibus et iuribus," in *Commento al Codice di diritto canonico*, p. 121; E. Jombart, "Associations pieuses," in *Dictionnaire de spiritualité*, G. Beauchesne et al. (eds.), Paris, 1937, pp. 1030-1031; Swidler, *A Catholic Bill of Rights*, p. 54. He notes that the right of the Catholic to voluntary associations, including association for worship, derives both from the nature of human community and from the nature of the Church as a spiritual community. Human communities are formed by free and voluntary consent of persons to enter into a covenant together. Consent to enter into community implies a participation by all members in decision-making at some level and a social relationship intended to be just and beneficial to all.

for my sake, there am I in the midst of them (Mt. 18.20).¹¹⁶

The Council reaffirms the traditional natural law argument that human beings are social by nature.¹¹⁷ It also goes on to specifically theological arguments for the Church's mission to build up the bonds of community and mutual interdependence among all people. The need to associate is deeply rooted in the very nature of the Church and its mission.¹¹⁸ The very nature of the Church is collegiality. The nucleus of collegiality is founded on the collegiality of the Apostles which quite naturally was followed by spiritual and apostolic groups in the first Christian community.¹¹⁹

¹¹⁶ *AA*, no. 18.

¹¹⁷ Leo XIII, *Rerum novarum*, pp. 662-665. See also Pius XI, *Quadragesimo anno*, pp. 186-187; John XXIII, *Mater et magistra*, pp. 406-407; *Pacem in terris*, pp. 260-262; *GS*, nos. 43, 65, 68, 73, 90; *DH*, no. 1; John Paul II, *Christifideles laici*, pp. 446-448. The natural right of association has been repeatedly affirmed in the documents of the magisterium and there appears to be no reason why its exercise should be limited within the Church's ambit. In the original schema, "de fidelium associationibus" of 1962, the right of association was expressed as a right based on man's social nature: "It is proper to man and belongs to him as an authentic natural right, to establish particular associations with other men to attain certain ends, which conduce to the common good of the members of others. The Church also, since the earliest times of her foundation has fostered many associations among the faithful."

¹¹⁸ *LG*, no. 9.

¹¹⁹ R. Pagé, "Associations of the Faithful in the Church," in *The Jurist*, 47 (1987), p. 198. See also Swidler, *A Catholic Bill of Rights*, p. 55. The Church as a spiritual community is essentially a voluntary association. It is intended to be paradigmatic of authentic human community as a free, just and participatory society. Although the Church necessarily takes on the character of a historical institution, perpetuating itself by laws and organizational structures, it can never lose the element of free, voluntary association. Christians remain free to form new voluntary

The Church's mission cannot be fulfilled exclusively on an individual basis. Since Christ has founded his Church as a society and community, apostolic activity is in need of collaboration. Besides, this social mission is founded on the command to love God and one's neighbors. This social mission reflects the Christian faith in God as a trinitarian unity of persons. It manifests the fact that God's saving grace draws persons into a communion of solidarity with one another. It also expresses the nature of the Church as a sacrament, a sign and instrument, of intimate union with God, and of the unity of all humankind.¹²⁰

The right and obligation to participate in the social mission of the Church are granted to every Christian through the sacraments of baptism and confirmation.¹²¹ John Paul II emphasized that the right of association was a true and proper right that was not derived from any kind of concession by authority, but flowed from the sacrament of baptism, which calls the faithful to participate actively in the Church's communion and

communities and associations on the local, regional, national and international level to express new social needs and visions. Such associations recontextualize the vision of redemption of the gospel in each new historical period. Voluntary associations are manifestations of the ongoing presence of the spirit in the Church. Such associations are appropriate to express the prayer life of groups bonded together around particular commitments.

¹²⁰ John Paul II, *Redemptoris missio*, pp. 324-333.

¹²¹ *LG*, no. 33. See also *AA*, nos. 2-3 and 15; A. Jacob, "Les associations de fidèles dans l'Eglise," in *Studia canonica*, 21 (1987), p. 362.

mission.¹²² By baptism a genuine natural right to associate is strengthened with a supernatural basis.¹²³

The revised Code reaffirms the natural and supernatural basis of the right of association. Canon 215 points out the principle related to the capacity of each of the faithful to found and govern associations. All members of the Church have the right to freedom of association. This is a right granted not by ecclesiastical law, but flowing from human nature and Christian vocation.¹²⁴

In conclusion, the right of association is clearly defined as a natural right which is fitting to the nature of the person as well as the nature of the Church. This right is not based on any concession of human authority nor consequently is its origin in positive law. It is a genuine right which all the faithful enjoy; it is connatural with their membership of the human race and the people of God. It is based, therefore, on the social nature of the human being and on the community of the children of God. Therefore, it is a *ius nativum* which corresponds to the requirements of the faithful, both human and Christian.

¹²² John Paul II, *Christifideles laici*, pp. 443-446.

¹²³ Jacob, "Les associations de fidèles dans l'Eglise," p. 362.

¹²⁴ Canon 215: "The Christian faithful are at liberty freely to found and to govern associations for charitable and religious purposes or for the promotion of the Christian vocation in the world; they are free to hold meetings to pursue these purposes in common."

2.2.3. Notion

There is no precise notion of association in the Church. John Paul II defines it as a union of the christian faithful in which they exercise their mission and by which the common goal of the Church is achieved. He says that the concept of a people of God implies the concept of association. The principle of association in the Church rests on the union of all the faithful for the achievement of the Church's single and common goal. In the Church all are responsible according to each one's particular mission.¹²⁵

The revised Code describes association by giving the essential elements of the nature of the association of the faithful.¹²⁶ Firstly, canon 298 distinguishes the association from Institutes of Consecrated Life¹²⁷ and Societies of Apostolic Life.¹²⁸ It means that the

¹²⁵ John Paul II, *Christifideles laici*, pp. 443-446.

¹²⁶ Pagé, "Associations of the Faithful in the Church," p. 171.

¹²⁷ Can 573.1: "Life consecrated through profession of the evangelical counsels is a stable form of living, in which the faithful follow Christ more closely, under the action of the Holy Spirit, are totally dedicated to God, who is supremely loved. By a new and special title they are dedicated to seek the perfection of charity in the service of God's Kingdom, for the honor of God, the building up of the Church and the salvation of the world. They are a splendid sign in the Church, as they foretell the heavenly glory."

¹²⁸ Can. 731: "Societies of apostolic life approximate to institutes of consecrated life. Their members, without taking religious vows, pursue the apostolic purpose proper to each society. Living a fraternal life in common in their own special manner, they strive for the perfection of charity through the observance of the constitutions."

members of an association are not bound by the constitutive elements of Institutes of Consecrated Life and Societies of Apostolic Life.¹²⁹ The members of association are not bound by vows or other sacred bonds by which the evangelical counsels are assumed. They are not bound by living a life in common.

Secondly, canon 298 denotes membership of the association which may consist of clerics, laity, or clerics and laity together. The members of an association can be exclusively lay persons, religious men, religious women, or clerics. Associations can also bring together persons from these various groups as members of one and the same association.

Thirdly, the canon contains the purposes of associations. These include promoting a more perfect life; fostering public worship or Christian doctrine; and performing other apostolic activities such as evangelization, works of piety or charity, and animation of the temporal order with the Christian spirit.¹³⁰

¹²⁹ Pagé, "Associations of the Faithful in the Church," p. 171. The public profession of the evangelical counsels and the free assumption of their obligations whether by public vows or other sacred bonds (solemn oaths, or promises in secular institutes), constitutes the fundamental elements, both theological and canonical, of institutes of consecrated life. Other elements such as community life or separation from the world are complementary.

In societies of apostolic life, their members, without taking religious vows, pursue the apostolic purpose proper to each society. Living a fraternal life in common in their own special manner, they strive for the perfection of charity through the observance of the constitutions (can. 731.1).

¹³⁰ Canon 298.1: "In Ecclesia habentur consociationes distinctae ab institutis vitae consecratae et societatibus vitae apostolicae, in quibus christifideles, sive clerici sive laici sive

Fourthly, canon 304 requires all associations of the Christian faithful to have their own statutes. The statutes define the goal, headquarters, government, and the membership of the association.

It seems that while John Paul II gives a broad definition, the 1983 Code describes associations of the Christian faithful both negatively and positively. Negatively, it distinguishes associations from such ecclesiastical organizations: Institutes of Consecrated Life and Societies of Apostolic life. Positively, the Code mentions certain essential elements of association, such as membership (laity, clergy, clergy and laity together), common goals, constitution, and government.

2.2.4. Purposes of Associations

There have been various purposes of associations in the Church. The 1917 Code mentioned only three ends for founding associations: fostering spiritual perfection, performing works of piety or charity, and promoting public worship (can. 685).¹³¹ The Second Vatican Council acknowledges the right of each association to establish its own

clerici et laici simul, communi opera contendum ad perfectiorem vitam fovendam, aut ad cultum publicum vel doctrinam christianam promovendam, aut ad alia apostolatus opera, scilicet ad evangelizationis incepta, ad pietatis vel caritatis opera exercenda et ad ordinem temporalem christiano spiritu animandum."

¹³¹ Pagé, "Associations of the Faithful in the Church," p. 167.

purposes. However the Council also emphasizes the need to contextualize the ends of the associations in the broad apostolate of the Church: building the communion of the people of God. It says in *Apostolicam actuositatem*, no. 19:

There is a great variety of associations in the apostolate. Some set before themselves the broad apostolic end of the Church; others aim to evangelize and sanctify in a special way. Some propose to infuse a Christian spirit into the temporal order. Others bear witness to Christ in a particular way through works of mercy and charity. Among these associations, those which promote and encourage a closer harmony between the everyday life of the members and their faith must be given primary consideration. Associations are not ends unto themselves; rather they should serve to fulfill the Church's mission to the world. Their apostolic dynamism depends on their conformity with the goals of the Church as well as on the Christian witness and evangelical spirit of the individual member and of the association as a whole.¹³²

The Council stresses that the main purpose of any association in the Church is to support and bring to success the apostolic mission of the Church.

Canon 215 gives three generic purposes justifying the exercise of the right of association: charity, piety, and the promotion of the Christian vocation in the world. Canon 298 explicates these three purposes by providing for seven general purposes of associations: to foster the perfection of Christian life, to promote public worship, to promote Christian teaching, to undertake initiatives for evangelization, to carry out works of piety (the spiritual works of mercy) and works of charity (the temporal works of

¹³² *AA*, no. 19.

mercy), and to animate the temporal order with the Christian spirit (as, for instance, the justice apostolate), fostering an intimate union between faith and life.

Canon 298 includes the purposes mentioned in canons 301, 303, 683, 796.¹³³ This canon is also open to any other purposes. Roch Pagé says that just the mention of "other apostolic activities such as ..." leaves room for a very broad interpretation. The purposes expressed in the text of canon 298 must serve as criteria in examining an association's request for recognition presented to the competent authority.¹³⁴ E. Kneal also notes that the list of ends in canon 298.1 is not taxative but exemplary.¹³⁵

In conclusion, the 1983 Code expands the purposes of associations mentioned in the 1917 Code. This broadening of purposes reflects the Church's deeper understanding of her mission in the world and particularly her broader understanding of the laity's role in the mission. This understanding is consistent with the spirit of the Second Vatican

¹³³ F.G. Morrissey, "The Right of Association as a Basic Right of the Faithful," in *Das konsoziative Element in der Kirche: Akten des VI. Internationalen Kongresses für kanonisches Recht*, Ottilien, EOS Verlag Erzabtei St. Ottilien, 1989, pp. 11-12.

¹³⁴ Pagé, "Associations of the Faithful in the Church," p. 172.

¹³⁵ E. Kneal, "Associations of the Christian Faithful," in *The Code of Canon Law: A Text and Commentary*, p. 244. See also G.Dalla Torre, "Le associazioni dei fedeli," in *Commento al Codice di diritto canonico*, p. 173; J.L. Gutiérrez, "De las asociaciones de fieles," in *Código de derecho canónico*, P. Lombardia et al. (eds.), Pamplona, Ediciones Universidad Navarra, 1986, p. 248.

Council.

2.2.5. Kinds of Associations

Up to the 1917 Code, there were two basic kinds of associations, ecclesiastical and lay. Ecclesiastical associations were founded or approved by persons enjoying ecclesiastical authority. Lay associations were founded and run by other members of the Christian faithful.¹³⁶

The 1917 Code mentioned three kinds of associations related to their ends: third order fostered spiritual perfection (can. 702.1); pious unions performed works of piety or charity (can. 707.1); confraternities promoted public worship (can. 707.2).¹³⁷ Based on the juridic status the Code also mentioned erected and approved associations. Erected associations are those associations erected by the competent authority and by that fact endowed with a juridic personality. Approved associations are those associations approved by the competent authority without receiving juridic personality.¹³⁸

¹³⁶ Amos, *Associations of the Faithful*, pp. 96-100.

¹³⁷ Canon 700 of the 1917 Code: "Triplex distinguitur in Ecclesia associationum species: tertii Ordines saeculares, confraternitates, piaae uniones."

¹³⁸ Canons 686-687. See also T.L. Bouscaren, A.C. Ellis, F.N. Korth (eds.), *Canon Law: A Text and Commentary*, Fourth Edition, Milwaukee, The Bruce Publishing Company, 1966, pp. 361-364; Pagé, "Associations of the Faithful in the Church," p. 167.

The 1983 Code mentions various kinds of associations according to their relationship with ecclesiastical authority, their extension, and their membership. The relationship to the Church's hierarchy establishes two fundamental kinds of associations: Public associations, those erected and directed by ecclesiastical authority,¹³⁹ and private associations, those established and run by Christian faithful other than those in ecclesiastical authority.¹⁴⁰

Among public associations, there are several kinds based on their ends. Some aim at ends whose pursuit is reserved to ecclesiastical authority: promoting public worship and teaching Christian doctrine in the name of the Church. Ecclesiastical authority can establish other public associations which aim at ends whose pursuit is not reserved to

¹³⁹ Public associations erected by competent ecclesiastical authority are governed by canons 312-320. These associations are always constituted a juridic person. They receive a mission from the ecclesiastical authority to act in the name of the Church. Their statutes must be approved by the ecclesiastical authority. An example of a public association is the Third Orders erected by the competent ecclesiastical authority.

¹⁴⁰ Private associations can be established by any Christian faithful. These associations may or may not be given a juridic personality. They are governed very closely by their own statutes. In comparison with public associations, private associations enjoy a rather notable freedom of activity. Private associations freely select their own moderator and officials in accord with the norm of their statutes. The choice of a spiritual advisor needs confirmation of the local ordinary. Private associations freely administer their goods which they possess according to the prescriptions of their statutes. They cease to exist in accord with the norm of their statutes. An example of a private association is the Knights of Columbus.

ecclesiastical authority, e.g. providing humanitarian aid.¹⁴¹

Based on scope/extension there are three kinds of associations of the Christian faithful 1) universal or international, 2) national, and 3) diocesan associations. Based on the status of their members, there are three kinds of associations of the Christian faithful: associations of the clergy, associations of the laity, and associations of the clergy and laity.¹⁴²

In conclusion, the 1983 Code returns to the fundamental distinction between those associations founded by ecclesiastical authority and those founded and directed by other Christian faithful. But the Code also provides greater flexibility regarding the kinds of associations which may be founded. The 1983 Code explicitly mentions several associations namely private associations, public associations, clerical associations, and third orders.

¹⁴¹ Kneal, "Associations of the Christian Faithful," p. 246.

¹⁴² Amos, *Associations of the Faithful*, p. 185. Among these associations there are associations called clerical associations and Third Orders. Clerical associations are those which are under the direction of clergy, presume the exercise of sacred orders, and are recognized by competent authority. Third Orders are associations in which members lead an apostolic life and strive for Christian perfection while living in the world and who share the spirit of some religious institute under the higher direction of that same institute.

2.2.6. Limitations

The right of association is not absolute. The rights of others, the common good of the Church, the nature and purpose of the association can limit the exercising of this right. Canon 223 limits the rights of association in regard to the common good of the Church, the rights of others as well as the duties toward others.¹⁴³

Canon 307.3 limits members of religious institutes enrolling in associations in accord with their own law and with the consent of their superior. Canon 1374 explicitly prohibits the faithful to join an association which plots against the Church. One who joins this kind of association is to be punished with a just penalty; and one who promotes or moderates such an association is to be punished with an interdict.

In the interest of the common good ecclesiastical authority has competence to regulate the exercise of the rights belonging to the Christian faithful.¹⁴⁴ Canon 216 provides that no initiative can lay claim to the title "catholic" without the consent of the competent ecclesiastical authority. In 1971 the Pontifical Council for the Laity issued a directory concerning the norms whereby Catholic International organizations are defined: a) taking account of the openness of the Church in the Spirit of Vatican II; and b) drawing

¹⁴³ Canon 223.1. See also Pagé, "Associations of the Faithful in the Church," p. 170.

¹⁴⁴ Canon 223.2.

the inferences on the level of relations with the ecclesiastical authority.¹⁴⁵

Canon 216 is parallel with the prescriptions of canon 803.3 and canon 808 regarding schools and universities. Canon 803 and canon 808 state the external and internal criteria for a school and university to be considered Catholic. These canons emphasize the need for the consent of competent authority and the need for maintaining the principles of Catholic doctrine. Although canon 216 does not refer explicitly to associations, one could reasonably argue that the prescriptions of canons 803 and 808 could apply to them, particularly in view of the high profile their activities often take.¹⁴⁶

Canon 305 specifies certain limitations placed on activities of associations. All associations - whether private or public - are subject to the supervision of the competent ecclesiastical authority, particularly in matters regarding faith and morals. Canon 305.2 states that the Holy See is competent to supervise the activities of every association; likewise, in his territory, a bishop has the right of supervision over all diocesan associations of his particular diocese, as well as over any other association working there,

¹⁴⁵ Pontifical Council for Laity, December 3, 1971, in *AAS*, 63 (1971), pp. 948-956. English translation is in *Canon Law Digest*, 7 (1968-1972), pp. 569-578.

¹⁴⁶ Morrisey, "The Right of Association," pp. 10-11. See also Pagé, "Associations of the Faithful in the Church," p. 167. Pagé says that canon 215 must be read in the light of canon 216 which in effect bears on the right of initiative of the faithful: "all the Christian faithful, since they participate in the mission of the Church, have the right to promote or to sustain apostolic action by their own undertakings..."

even though its headquarters may be elsewhere. By analogy, and through his sharing in the bishop's authority, a priest would have responsibility for associations operating in the parish, but it does not seem that his authority would be truly personal, unless the statutes provide for this, or possibly if the associations were purely parochial.

In conclusion, the exercise of rights is to be limited not because of the institution's convenience, but only because such an exercise would harm the conditions within which Christians seek their perfection in the life of the Church. The limitation intends to maintain the integrity of faith, moral and canonical discipline, and the rights of others.

CONCLUSION

The Church's teaching about human rights respects the dignity of human beings as children of God. This dignity is based on the Church's belief in the divine creation of human beings, Jesus Christ's own participation in humanity and his redemptive sacrifice, the dignity of the new person given by the Holy Spirit and the calling for communion with God.

By its own unique nature the ecclesial society will have its own proper dimensions of the expression and exercise of these rights. Human rights are exercised in the context of building the communion of the Church and carrying out the mission of Christ. The exercise of these rights also requires respect for the multiple social, economic, intellectual,

interpersonal and personal development. In exercising these rights, the common good is an ideal measure.

The fundamental values described above distinguish the Catholic human rights theory from liberal democracy which stresses the liberty of the individual person, or from Marxism and Socialism which emphasize merely social participation and economic well-being. Catholic theory rather stresses respect for freedom, the meeting of basic needs, participation in community and social relationships as these are essential aspects of human dignity, the foundation of all rights.

Among these human rights, there is the right of association. The right of association is clearly defined as a natural right which is therefore fitting to the nature of human beings as well as the nature of the Church. This right is not based on any concession of human authority nor consequently does it have its origin in positive law. It is a genuine right which is connatural with their membership in the human race and the people of God. It is based, therefore, on the social nature of the human person and on the community of the children of God. It is a *ius nativum* which corresponds to the requirements of the faithful, both human and Christian.

As a genuine natural right, the right of association belongs to every Christian. Indeed, the history of associations in the life of the Church indicates the respect of the right and freedom of every Christian faithful to form and join associations. Since the early

Church there have been varieties of associations. The type, purpose, the membership and the juridical status of these associations are different from one to another.

Unlike the 1917 Code, the Second Vatican Council and the 1983 Code explicitly recognize the right of association as a natural right. Furthermore, both Vatican II and the 1983 Code pay attention to the theological basis of the right of association. Canon 215 of the 1983 Code recognizes the natural and supernatural bases of the right of association.

Besides, the revised Code describes an association different from Institutes of Consecrated Life and Societies of Apostolic Life. The elements of associations of Christian faithful are constitution, membership, goals, government, relationship with the competent ecclesiastical authority.

In the light of the Second Vatican Council, the 1983 Code also expands the purposes of associations and provides greater flexibility regarding the kinds of association mentioned in the 1917 Code. This broadening reflects the Church's deeper understanding of her mission in the world and particularly her broader understanding of the laity's role in the mission.

However, the Code does place certain limitations on the exercise of the right of association in the Church. These limitations, of course, are not based on the institution's convenience, but only because such an exercise would harm the conditions within which Christians seek their perfection in the life of the Church. The limitations are intended to

maintain the integrity of faith, moral and canonical discipline, and the rights of others.

These limitations also concern secular priests. How these limitations restrict the right of secular priests to form and/or to join an association will be discussed in the following chapter.

CHAPTER THREE

THE RIGHT OF ASSOCIATION OF SECULAR PRIESTS

As we have seen in the second chapter, the right of association is a fundamental right of all Christians. In the Church the right to associate is exercised within the context of ecclesial communion, the Church's mission, and the common good of the people of God. This chapter is concerned with the right of association of secular priests. It will be divided into three sections: the rights of secular priests, the right of association of secular priests, and finally the distinction between the association of priests and Societies of Apostolic Life.

3.1. THE RIGHTS OF SECULAR PRIESTS

Priests are taken from among the people and appointed for the people in order to offer to God gifts and sacrifices for sins.¹ Like other people, priests have basic human needs such as physical security, a sense of belonging, self esteem and a share in determining their destiny. Being a priest does not change or take away one's human

¹ Heb. 5,1.

personality. Priestly ordination does not cause in priests loss of their membership in the human or ecclesial community. Consequently, the fundamental rights flowing from one's human dignity and of being Christian remain when one is ordained a priest.

The Code Commission ascribed to clerics all the rights that belong to the Christian faithful:

Clerics also have the same rights which are accorded to all the Christian faithful and which are dealt with under another title in the revised Code of Canon Law.²

The 1983 Code affirms these rights of clerics in the list of obligations and rights proper to all Christians (cann. 208-223) by reason of their baptism (can. 204) and full communion with the Church (can. 205). These rights, unknown in the 1917 Code, were enunciated in the documents of the Second Vatican Council, especially in *Presbyterorum ordinis*, *Lumen gentium*, and *Christus Dominus*.³

Certain important rights which are proper to clerics themselves - especially by reason of the clerical state - are also emphasized in the Code. The *coetus* dealing with this subject matter proposed seven rights of clerics: a right to obtain ecclesiastical ministry,

² *Communicationes*, 3 (1971), p. 196: "Clericis autem etiam per se competunt iura quae omnibus christifidelibus agnoscuntur, et de quibus sub alio titulo in Codice I.C. recognito agitur."

³ K.E. Lasch, "The Rights and Obligations of Clerics," in *Code, Community, Ministry*, J.H. Provost (ed.), Washington, DC, Canon Law Society of America, 1983, p. 38.

to form associations with others for promoting spiritual life or for pursuing ends consonant with the clerical state, to receive a fitting and decent remuneration proportionate to their needs and to make provision for their care in times of illness, infirmity, or old age, to an appropriate vacation as determined by particular law, to cooperate with their own bishop in the exercise of the ministry, to have sufficient time to use spiritual resources and to perfect their intellectual formation, and to have recourse to competent ecclesiastical authority in vindicating the rights proper to the clerical state.⁴

A. Celeghin states that the 1983 Code only mentions three or four of these rights: the right to obtain ecclesiastical office (can. 274.1), to adequate income in remuneration for the fulfillment of their priestly ministry (can. 281.1),⁵ to a reasonable period of

⁴ A. Celeghin, "Obligationes, iura, associationes clericorum," in *Periodica*, 78 (1989), p. 34: "Sequentes Coetus commissionis operam, septem clericorum iura invenimus: ius ad obtinendum aliquod ministerium ecclesiasticum; ius sese cum aliis consociandi; ius ad honestam et congruam remunerationem; ius ad debitum feriarum tempus; ius ad cooperandum cum proprio episcopo; ius ad tempus sufficiens pro subsidiis spiritualibus et formatione perfecienda; ius ad competentem auctoritatem ecclesiasticam recurrendi." See also Pontificia Commissio Codici Iuris Canonici Recognoscendo, "Coetus studiorum de sacra hierarchia," in *Communicationes*, 16 (1984), pp. 170-172.

⁵ The remuneration should be enough to permit a proper vacation each year (*PO*, no. 20). Diocesan or interdiocesan funds are to be established for health insurance and for the proper support of priests who suffer from sickness, ill health or old age (*PO*, no. 21). This income should be commensurate with their position, adequate for their necessities and sufficient for the priest to give an equitable income to those whose services he may require in the fulfillment of his responsibilities (can. 281.1). The Code also takes special notice of health and retirement benefits (can. 281.2). However, the Church's great concerns for the welfare of the clergy is subject to the supreme law of the Church: the salvation of souls (can. 1752).

vacation (can. 283.2),⁶ and to form and join an association (can. 278).⁷

The rights of clerics are very often closely related to duties and therefore more correctly considered within the same title. Canons 273-289 consider the obligations and the rights of clerics. The exercise of the right of association, for example, must foster the fulfillment of a cleric's priestly duties and enjoyment of his rights, because the purpose or activity of associations of clerics must conform to the obligations proper to the clerical state, and should not hinder the fulfillment of the office entrusted to them by competent ecclesiastical authority.

3.2. THE RIGHT OF ASSOCIATION OF SECULAR PRIESTS

The revised Code formally recognizes the right of association of secular priests within the Church (can. 278). This right to associate is now legally affirmed not merely as a concession by competent authority but as a fundamental right based on the social

⁶ The 1983 Code permits the pastor to take a month's vacation every year; the time spent on retreat is not to be counted (cann. 533.2 and 550.3). The same amount of time is granted the parochial assistant (can. 550.3). However, clerics are not to leave the diocese for a notable time without at least the presumed permission of their ordinary. In that the cleric is ordained for the good of the diocese, he is supposed to have some assignment.

⁷ Celeghin, "Obligationes, iura, associationes clericorum," p. 34: "Si autem huic codicis capiti respicimus, tantum tres vel quattuor iura enumeramus. Ius sese consosciandi; ius ad remunerationem et ius ad feriarum tempus, ut iura agnoscuntur. Ius ad obtinendum ministerium ecclesiasticum non ab omnibus ut ius consideratur. De ceteris iuribus nihil."

nature of human beings. The Code also regulates the exercise of this right. The focus of this section, therefore, is to examine the nature and implications of canon 278. It is divided into five parts: first, historical antecedents, second, sources of canon 278 of the 1983 Code, third, development of canon 278, fourth, its interpretation, and finally its significance.

3.2.1. Historical Antecedents

The need for secular priests to associate has been felt for centuries and history attests to the establishment and benefit of associations intended specifically for priests. Basically the associations run or joined by secular priests were meant to deepen their spiritual life, to promote works of piety or charity, and to pursue other goals which were in full harmony with their sacramental consecration and mission.⁸

In the early development of associations of priests, such associations were strictly not restricted to the clergy only. St. Jerome wrote in the fifth century that the *fossarii*⁹

⁸ Sacred Congregation for the Clergy (=SCC), Declaration, "Quidam episcopi," March 8, 1982, in *AAS*, 74 (1982), p. 642. English translation in *Canon Law Digest*, 10 (1982-1983), p. 16.

⁹ F. Bisconti, "Fossor," in *Encyclopedia of the Early Church*, vol. I, A. di Berardino (ed.), translated by A. Walford, New York, Oxford University Press, 1992, pp. 328-329. See also E. Venables, "Fossarii or fossores," in *A Dictionary of Christian Antiquities*, vol. I, W. Smith et al. (eds.), Toronto, Willing & Williamson, 1880, pp. 684-685. The term *fossarii* or *fossores* had developed with various meanings. The most common appearance of the term referred to the gravediggers who worked without fee or reward from the surviving brethren. When the Church had

could be included among the *ordo clericorum*.¹⁰ It is possible to identify the *fossarii* themselves as the first associations of clerics in the history of the Church.¹¹ The *Lectarii*, who shared the same purposes with the *fossarii*, were established by Constantine and included members of both clergy and laity, which had no ecclesiastical approbation.¹² Clerics¹³ were also members of *parabolani* as mentioned in the Code of Theodosius and

become more numerous, it was carried out at the public expense under special care of the presbyters of the *tituli* of Rome. The *fossores* were evidently organized into corporations, to be identified, for the earliest with the *collegia teniorum*, and were subsidized by the community. With the end of the persecution the *fossores* constituted a very strong social group, though the quality of their work was declining, and they acquired many privileges; at the end of the 4th century they became the effective owners of the cemeteries, directly controlling the sale of tombs. With the 5th century, perhaps due to the excessive greed and continual abuses of the *fossores*, members of the clergy took on the responsibility of cemetery administration.

¹⁰ St. Jerome, Epistola XII: seu opusculum de septem ordinibus Ecclesiae, in *Patrologia latina*, vol. XXX, J.P. Migne (ed.), Parisiis, Excudabat Migne, 1946, col. 150: "Primus igitur in clericis fossariorum ordo est: qui in similitudinem Tobiae sancti, sepelire mortuos admonentur."

¹¹ Ocaña, *Las asociaciones de clerigos en la Iglesia*, p. 22.

¹² *Novellae Iustiniani* 43.1. See also A. Rush, *Death and Burial in Christian Antiquity*, The Catholic University of America Studies in Christian Antiquity, Washington, DC, The Catholic University of America Press, 1941, pp. 111-112; Quinn, *Archconfraternities*, pp. 5-6. Also see Clarke, *Parish Societies*, pp. 10-11.

¹³ A.W. Haddan, "Clerus," in *Dictionary of Christian Antiquities*, vol. I, pp. 396-397. See also A. di Berardino, "Clergy, clerics," in *Encyclopedia of the Early Church*, vol. I, pp. 181-182. In the early Christian community, those with a ministry of direction were called by the collective term *clerus*, a loan translation from Greek, to distinguish them from the *laicus* (layman).

Justinian's Code.¹⁴ *Parabolani* worked under the bishop's supervision.¹⁵

The development of monasticism in the eighth century in the West not only increased the associations formed by lay people but also associations constituted of clerics, especially secular priests. Confraternities, for example, were established not only by lay people but also by secular priests.¹⁶ Examples of these confraternities are mentioned in the Council of Attigny (762),¹⁷ Council of Frankfort (794),¹⁸ Council of

¹⁴ *Codex Theodosiani* XVI.2.42-43. See also *Codex Iustiniani* I.3.18.

¹⁵ H. Leclercq, "Parabolani," in *Dictionnaire d'archéologie chrétienne et de liturgie*, vol. 13, Paris, Letouzey et Ané, 1938, p. 1577. See also J. Duhr, "La confrérie dans la vie de l'Eglise," in *Revue d'histoire ecclésiastique*, 35 (1939), pp. 459-461; Quinn, *Archconfraternities*, pp. 7-8.

¹⁶ Amos, *Associations of the Faithful*, p. 8. See also Ocaña, *Las asociaciones de clérigos en la Iglesia*, p. 23; Quinn, *Archconfraternities*, pp. 8-9; F. Kempf et al., "The Church in the Age of Feudalism," in *History of the Church*, H. Jedin and J. Dolan (eds.), vol. 3, Freiburg, Herder, 1969, p. 461; N. Thompson, *A History of the Catholic Church*, St. Louis, MO, Herder Book, 1930, pp. 376-379. The majority of confraternities were formed by laymen, but there were also special confraternities for secular priests modelled on the earlier associations of prayer.

¹⁷ A. Werminghoff (ed.), *Monumenta Germaniae Historica*, Legum sectio III, concilia, Tom. II, pars 1, Hannoverae et Lipsiae, Impensis bibliopolii Hahniani, 1904, p. 72.

¹⁸ *Ibid.*, p. 110.

Salzburg (799),¹⁹ and Council of Freising (805).²⁰ Confraternities were founded with a double purpose: a life of unity in prayer, and to offer masses and prayers for the repose of the deceased members.

In the twelfth and thirteenth centuries the number of clerics who joined and formed societies and confraternities increased.²¹ This growth of societies and confraternities was also motivated by monastic and religious spirituality.²²

When abuses occurred in many associations, the ecclesiastical authority, bishops and particular Councils, stepped in and provided norms governing associations in order to correct them. Slowly, the restrictions on the right of association amounted to strict prohibition on clerics, as well as on laity joining those associations or establishing new

¹⁹ Ibid., p. 205.

²⁰ Ibid., p. 233.

²¹ Societies in the Church never received any definite or permanent standing. As a result numerous and varied societies were established. Their form or purpose often changed. Different societies took on different works.

A confraternity was founded to assist the deceased members with masses and prayers.

²² G. Meersseman, *Ordo fraternitatis. Confraternità e pietà dei laici nel medioevo*, Roma, Herder, 1977, pp. 150-187.

ones.²³ The ecclesiastical authority was confronted by some confraternities of clerics who claimed benefices. In some instances, conflicts of economic interests had led *confraternities* of clerics in some areas to rebel against ecclesiastical superiors, which led to papal intervention. Consequently, such confraternities were banned.²⁴

At the same time, the competent authority considered that moral support was needed for the spiritual life of the clergy. Therefore, since the Gregorian reform (1073-1085), the common life among the clergy was encouraged and became more widespread.²⁵ This common life did not have the juridical character of association. But from it were born new associative forms for the clergy. In general, they resulted in canonical

²³ H. Durand, "Confrérie," in *Dictionnaire de droit canonique*, vol. 4, R. Naz (ed.), Paris, Letouzey et Ané, 1949, pp. 151-152. See also Meersseman, *Ordo confraternitatis*, pp. 18-34; Onclin, "Principia generalia de fidelium associationibus," pp. 72-75; Martinez, *El derecho de asociación en la Iglesia*, p. 184.

²⁴ J. Rivera, *La Iglesia de Toledo en el siglo XII (1086-1208)*, vol. 2, Toledo, Iglesia nacional española, 1976, pp. 133-141. On May 23, 1182/83 Pope Lucius III issued the decree prohibiting the confraternities of clerics. The decree was given in Velletri to the archbishop and suffragans of Toledo and the bishop of Avila. The document maintained, as was reported to the Pope, that almost all the clerics in the parishes of these respective dioceses were in a state of rebellion. They gathered in assemblies and celebrated meetings to conspire against their prelates. This caused serious scandal and bad example. So Pope Lucius III, supported by the norms of Pope Alexander III, prohibited these confraternities. However, he permitted those that might be useful to survive. The document on this prohibition is not widely known, nor published and it is found in the Cathedral de Toledo, Archivo A. 6 F1.8. See also Quinn, *Archconfraternities*, p. 11.

²⁵ Ocaña, *Las asociaciones de clérigos en la Iglesia*, p. 25. See also Kempf, "The Church in the Age of Feudalism," pp. 370-403.

movements based on the so called "Rule of St. Augustine." They formed into two kinds: Canons Regular and Canons Secular.²⁶ It was the first time that this new style of life diffused among the members of chapters of cathedral and collegiate churches. However, the majority did not adopt the *vita canonica*,²⁷ and many after a period of time wanted to secularize.²⁸

Before the Council of Trent, local legislation required permission from the ordinary to begin associations.²⁹ The Council of Trent issued the first universal legislation on

²⁶ Ocaña, *Las asociaciones de clérigos en la Iglesia*, p. 26. See also Kempf, "The Church in the Age of Feudalism," pp. 264-266, 460-462. C. Violante and C. Fonseca, "Introduzione allo studio della vita canonica del medioevo," in *La vita commune*, pp. 495-536. The associative form of life of the Canons cannot be called associations of priests in the strict sense. They resembled more the religious institutes.

²⁷ W.M. Borgman, *The Common Life among Clerics in the Writings of St. Augustine of Hippo and Ecclesiastical Legislation*, Ann Arbor, MI, University Microfilms International, 1988, p. 85. See also H.A. Ayrinhac, *General Legislation in the New Code of Canon Law*, New York, Blase Benziger & Co., Inc., 1923, p. 286. The *vita canonica* is synonymous with *vita communis* because canonical life, at that time, was essentially the observance of a rule of common life by all the diocesan clergy.

²⁸ B. Llorca et al. (eds.), *Historia de la Iglesia católica*, vol. 2, Madrid, Edad Media, 1958, p. 792. See also N. La Salandria, *Vescovi e presbiteri in comunità per la missione*, Ponteranica, Bologna, Edizioni Centro Eucaristico, 1986, p. 64.

²⁹ Durand, "Confrérie," p. 154.

associations.³⁰ The 1917 Code provided a number of canons about associations. The right of association was subject to the limits determined by the competent authority. The 1917 Code was silent on the association of priests.³¹ Nevertheless, during the regime of the 1917 Code, there were numerous associations of clergy.³²

³⁰ Council of Trent, sessio 22, "De reformatione, cc. 8-9," in *Canones et decreta sacrosancti oecumenici concilii Tridentini*, Romae, Typis Polyglottis, 1982, pp. 146-147. See also I.D. Mansi, *Sacrorum conciliorum collectio*, XXXIII, col. 136; Tanner, *Decrees of the Ecumenical Councils*, p. 740; Clarke, *Parish Societies*, p. 24.

³¹ Ocaña, *Las asociaciones de clerigos en la Iglesia*, pp. 37-40. See also A. del Portillo, "Le associazioni sacerdotali," in *Liber amicorum Monseigneur Onclin*, R. Baccari et al. (eds.), Gembloux, J. Ducuiot, 1976, p. 133. Portillo said that the Code was silent because associations of the faithful were placed under an improper name *De laicis*; J.M. Setien, "Organización de las asociaciones sacerdotales," in *Aspectos del derecho administrativo canonico*, Trabajos de la IX Semana de derecho canonico, Salamanca, 1964, pp. 87-88. According to Setien, the Code was silent because the canons about associations were few; M. Bonet, "Asociaciones sacerdotales de perfeccion," in *Actas del Congreso nacional de perfeccion y apostolado*, vol. 1, Congreso Nacional de Perfeccion y Apostolado, Madrid, Editorial Coclusa, 1957, p. 539. The Code was silent because of the lack of clarity in theological doctrine and canonical perspective regarding the sanctity of clergy and the theology of the episcopate; B. Primetshoffer, "The Right to Assembly in Canon Law," in *Concilium*, 8 (1969), pp. 47-51; del Portillo, "Le associazioni sacerdotali," p. 136; Primetshoffer and del Portillo believe that the prohibition for priestly associations in the encyclical *Pascendi dominici gregis* was the reason of the silence of the Code. In this encyclical, issued on September 8, 1907, Pope Pius X ordered that bishops should very rarely permit the free associations of clerics in view of the rising tide of modernism; Ocaña, *Las asociaciones de clerigos en la Iglesia*, p. 40. Ocaña maintains that the Code was silent because of the lack of clarity in the concept of a cleric belonging to the hierarchy and belonging to the faithful.

³² La Salandria, *Vescovi e presbiteri*, pp. 64-175. There were many associations for priests, such as Oblates of St. Ambrose or Oblates of St. Charles, founded by St. Charles Borromeo in 1578; Oblates of Verona in 1919; Oblates of Virgin Mary, Torino, 1816; Diocesan Missionary Oblates of the Mary Immaculate, Pavia 1908; Pious Union of St. Massimo, Torino, 1869; Oblates of St. Charles Borromeo, London 1866; Oblates of St. Francis de Sales, Aube 1871; The Priests of the Sacred Heart of Jesus in Paris, France in 1862; The Marian Congregation of True Friends

Pius X's exhortation, *Haerente animo*,³³ John XXIII's encyclical, *Sacerdotii nostri primordia*,³⁴ Paul VI's encyclical, *Sacerdotalis coelibatus*,³⁵ highly recommended the association of priests, especially for the sanctification and perfection of priests.

The Second Vatican Council considered the fundamental right of association for clerics to be the same as that of associations of the other faithful. Priests cannot be denied what is proper to the laity by reason of human dignity which corresponds to natural law.³⁶

in Venice, Italy in 1860; The Association of Priests of Prado, Lyons, France in 1860. The apostolic union of secular priests, founded in France 1879, approved by Pope Pius IX in 1875. See also A. Brou, "Associations pour la sanctification du clergé," in *Dictionnaire de spiritualité, ascétique et mystique*, vol. 1, M. Viller et al. (eds.), Paris, Beauchesne croit, 1937, pp. 1038-1045. Union of Priests, founded by M. Beaulaye; Priests of St. Francis de Sales, founded by l'abbé Chaumont in 1884.

³³ Pius X, Exhortation, *Haerente animo*, August 4, 1908, in *ASS*, 41 (1908), pp. 555-557.

³⁴ John XXIII, Encyclical letter, *Sacerdotii nostri primordia*, August 1, 1959, in *AAS*, 51 (1959), pp. 545-579.

³⁵ Paulus VI, Encyclical letter, *Sacerdotalis caelibatus*, June 24, 1967, in *AAS*, 59 (1967), pp. 657-697.

³⁶ Congregatio generalis CLXVI, "Schema decreti de presbyterorum ministerio et vita. Textus recognitus et modi," in *Acta synodalia sacrosancti concilii oecumenici Vaticani Secundi*, (= *Acta synodalia*), vol 4. pars 7, Romae, Typis polyglottis Vaticanis, 1970-1978, p. 168: "Non potest negari Presbyteris id quod laicis, attenta dignitate naturae humanae, concilium declaravit congruum, utpote iuri naturali consentaneum."

PO no. 8 recognizes a true right of association for clerics.³⁷ The Council promotes certain types of association for the clergy which sustains the holiness of priests in the exercise of their ministry.³⁸

Following the Council, a number of priests began to apply in their ministry the spirit of openness to the world and concern for justice which was affirmed by conciliar teaching. Priests became involved in many movements and associations. However, during the priest-worker movement in France, priests were prohibited from taking on responsibilities in political parties or labor unions.³⁹ In 1982 the Sacred Congregation for the Clergy again prohibited the clergy from becoming involved in political associations, unions and certain associations which harm the Church and clerical dignity.⁴⁰

Canon 278 of the revised Code clarifies the nature of the right of association for

³⁷ Del Portillo, "Ius associationis et associationes fidelium," p. 27.

³⁸ G. Feliciani, "I diritti fondamentali dei cristiani e l'esercizio dei 'munere docendi et regendi'," in *I diritti fondamentali del Cristiano nella Chiesa e nella società*, Atti del IV Congresso Internazionale di Diritto canonico, Fribourg (Suisse), 6-11 October 1980, Fribourg, Suisse, Milano, 1981, p. 237.

³⁹ J.H. Provost, "Priest and Religious in Political Office in the U.S.: A Canonical Perspective," in *Between God and Caesar: Priests, Sisters and Political Office in the United States*, M. Kolbenschlag (ed.), New York, Paulist Press, 1985, p. 84.

⁴⁰ SCC, "Quidam episcopi," p. 642.

the clergy. In the light of *PO* no. 8, the canon emphasizes that secular clerics have the right to associate for goals "which befit the clerical state." Consequently, certain kinds of associations of clergy enjoy preference over others.

3.2.2. Sources of Canon 278

Canon 278 is located in Book II, Part I, Title III, Chapter III of the 1983 Code. It is among the canons concerned with the obligations and rights of the clergy (cann. 273-289). There is no parallel canon in the 1917 Code. However, some canonists believe that there were several canons in that Code which had implicitly recognized the association of priests mentioned in canon 278 of the 1983 Code.⁴¹

The principal sources of this canon are the decrees issued by the Sacred Congregation of the Holy Office in 1927 and in 1951, the decree issued by Sacred Consistorial Congregation in 1929, *Presbyterorum ordinis* no. 8 of Vatican Council II,

⁴¹ Celeghin, "Obligaciones, iura, associationes clericorum," p. 43. Canon 278 was implicitly expressed in canons 135, 707 and 709.2 of the 1917 Code. See also J.E. Lynch, "The Obligations and Rights of Clerics," in *The Code of Canon Law*, p. 211; R. Castillo Lara, "I doveri ed i diritti del 'christifidelis'," in *Salesianum*, 48 (1986), pp. 307-329; Pagé, "Associations of the Faithful in the Church," p. 167; G. Lo Castro, *Il soggetto e i suoi diritti nell'ordinamento canonico*, Milano, Giuffrè, 1985, pp. 25 and 202. It is not correct to state that for CIC 1917, the "faithful" were laypersons only and therefore associations of the faithful were in fact lay associations. In fact, only two canons referred to laity in Book II, Part III called *De laicis*. The other forty-three canons spoke about associations of the faithful in general which comprised not only associations of laity, but also of clerics including religious.

Ultimis temporibus issued by the Synod of Bishops in November 1971, and the *Directorium de pastoralis ministerio Episcoporum* no. 129c issued by the Sacred Congregation for Bishops on February 22, 1973.⁴²

3.2.2.1. Curial Decrees

In 1927 the Holy Office gave a negative answer to the question about whether Catholics were allowed to belong to or to favor the associations of non-Catholics which intended to unite all those who called themselves Christians in one religious federation.⁴³ This decree confirmed the preceding decree issued by the Holy Office on July 4, 1919 regarding the participation of Catholics in the Society for the union of Christendom.⁴⁴

In 1929, the Sacred Consistorial Congregation noted that clerics were not allowed to belong to Rotary Clubs.⁴⁵ This prohibition was repeated in 1951 when the Sacred

⁴² Pontificia Commissio Codici Iuris Canonici Authentice Interpretando, *Codex iuris canonici*, Fontium annotatione et indice analytico-alphabetico auctus, auctoritate Ioannis Pauli PP. II promulgatus, Vatican City, Libreria editrice Vaticana, 1989, p. 79.

⁴³ Sacred Congregation of the Holy Office, Letter, "Occasione conventus," July 8, 1927, in *AAS*, 19 (1927), p. 278.

⁴⁴ Sacred Congregation of Holy Office, Decree, "Society for Union of Christendom," July 4, 1919, in *AAS*, 11 (1919), p. 309.

⁴⁵ Sacred Consistorial Congregation, Letter, "Rotary Clubs," February 4, 1929, in *AAS*, 21 (1929), p. 42.

Congregation of the Holy Office answered the question of the bishops. Clerics were not allowed to join the association "Rotary Club" nor to be present at its meetings.⁴⁶ These three decrees are considered to be the sources of canon 278.3.⁴⁷

3.2.2.2. *Presbyterorum Ordinis* no. 8

The Second Vatican Council has become a remarkable source of canon 278 through its decree *Presbyterorum ordinis*.⁴⁸ Among the replies to the questionnaire from bishops, Roman Congregations, and Ecclesiastical faculties, 768 proposals touched directly on the life, discipline and holiness of the clergy. The commission *De disciplina cleri et populi Christiani*, presided over by Cardinal Ciriaci, prepared and worked during 1961-1962 on the schema *De clericis*, which was discussed in the Council. Having

⁴⁶ Sacred Congregation of the Holy Office, Letter, "Quaesitum est," January 11, 1951, in *AAS*, 43 (1951), p. 91. The reason for this prohibition is that Rotary Clubs are infiltrated by false ideologies opposed to Christian ideals.

⁴⁷ Pontificia Commissio Codici Iuris Canonici Authentice interpretando, *Codex iuris canonici*, p. 79.

⁴⁸ Ocaña, *Las asociaciones de clerigos en la Iglesia*, pp. 63-164. See also J. Lecuyer, "Decree on the Ministry and Life of the Priests. History of the Decree," in *Commentary on the Documents of Vatican II*, vol. 4, H. Vorgrimler et al. (eds.), New York, Herder and Herder, 1969, pp. 183-209.

attended to the suggestions of the Council Fathers, the schema was reworked with a suitable change in its title.

The ideas about association received their present expression only after much alteration and refinement of the text. In the first draft, the primary idea of association was intended to face the loneliness of the priests. The proposed text read:

As far as possible, communal life shall be encouraged for clergy; conventions and associations of priests are also encouraged so that they may be saved from the dangers arising perhaps from loneliness, and that they may be joined together with a fraternal bond of charity, prayer, pastoral collaboration, and recreation.⁴⁹

The association of clergy was viewed more as a concession by the competent authority for the sanctity of the clergy.⁵⁰

⁴⁹ Appendix II, "De vita et ministerio sacerdotali," in *Acta synodalia*, vol. 3. pars 4, 1963, pp. 828-829: "Vita communis, quantum fieri potest, in clero foveatur: item, sacerdotum conventus et adsociationes, ita ut a periculis e solitudine forte orientibus ipsi eripiantur, ac fraterno uniantur vinculo caritatis, orationis, pastoralis collaborationis, recreationis."

⁵⁰ Acta Commissionis Centralis Praeparatoriae Concilii Oecumenici Vaticani II, "De clericorum vitae sanctitate," in *Acta et documenta concilio oecumenico Vaticano II apparando*, Series II, vol. II, pars I, Romae, Typis polyglottis Vaticanis, 1965, p. 598: "Vitam spiritualem cleri dioecesiani quam maxime fovant, uti experientia constat, vita communis atque conventus et associationes, quibus sacerdos dioecesanus ex solitudine tum physica tum morali eripitur et confratribus unitur vinculo amicitiae, fraternitatis, recreationis, aemulationis, orationis, studiorum, pastoralis collaborationis. Hinc eiusmodi associationes in honore habendae sunt eaeque, de consensu Ordinarii, in quavis dioecesi erigantur." See also P.J. Cordes, "Decree on the Ministry and Life of the Priests, Commentary on the Decree," in *Commentary on the Documents of Vatican II*, vol. IV, p. 253.

During the Council the legal status of associations became a topic of very long discussion. Some viewed that associations of priests should be subject to episcopal jurisdiction because of their pastoral responsibility within the diocese. For other reasons some insisted on the necessity of episcopal approbation for priestly associations in the diocese. The Commission pointed out the juridical and practical reasons against the constitution of priestly association by episcopal legislation.⁵¹

In the final formulation, the chief motive for association is not the fear of loneliness. The association of clerics, needed for their personal holiness and their ministry, was placed within the context of sacerdotal brotherhood. Association was not a means provided by the competent authority for clergy but a right founded on their human dignity.⁵² The final formulation, which appeared in no. 8 of the decree *Presbyterorum ordinis*, read as follows:

Associations of priests are also to be highly esteemed and diligently promoted, when by means of rules recognized by competent authority they foster priestly holiness in the exercise of the ministry through a suitable and properly approved rule of life and through brotherly help, and so aim at

⁵¹ Cordes, "Commentary on the Decree," p. 254.

⁵² R. Ocaña, "El lugar teologico-canónico de las asociaciones de clérigos," in *Das konsoziative Element in der Kirche*, W. Aymans et al. (eds.), München, Eos Verlag Erzabtei St. Ottilien, 1989, pp. 211-212.

serving the whole order of priests.⁵³

The decree reflects a remarkable progress by recognizing the fundamental right of association to clerics on the same grounds as that of associations of the other faithful.⁵⁴ Priests cannot be denied what the Council, attentive to the dignity of human nature, declared as belonging to the laity since it corresponds to natural law. This recognition is reflected in canon 278.1.

The decree also promotes associations of which the members are priests, whose statutes recognized by the competent ecclesiastical authority, to help the sanctity and the ministry of priests. Here, the right of association is located in the context of the brotherly bond and cooperation among priests in the diocese, whether secular or religious. Thus, it is clear that the decree is a main source of canon 278.1-2.

⁵³ Second Vatican Council, Decree on the Ministry and Life of Priests, *Presbyterorum ordinis*, December 7, 1965, in *AAS*, 58 (1966), pp. 991-1024, here at p. 1005: "Magni quoque habendi sunt et diligenter promovendae associationes quae, statutis a competenti ecclesiastica auctoritate recognitis, per aptam et convenienter approbatam vitae ordinationem et per iuvamen fraternum, sanctitatem sacerdotum in exercitio ministerii fovent, et sic toti Ordini Presbyterorum servire intendunt."

⁵⁴ Congregatio generalis CLXVI, "Schema decreti de apostolatu laicorum, 20-10-1965," in *Acta synodalia*, vol. 4, pars 6, pp. 94-95. See also "Schema decreti de presbyterorum ministerio et vita. Textus recognitus et modi," in *Acta synodalia*, vol.4, pars 7, p. 168; Ocaña, "El lugar teológico-canónico de las asociaciones de clérigos," p. 212. The term recognition leads to many interpretations. However, in the light of the introduction of the text, it indicates the nature of the right of association as a fundamental right and not a faculty.

3.2.2.3. Pastoral Directories

The 1971 Synod of Bishops reaffirmed the teaching of *PO* no. 8 in fostering the associations of priests. These must also be fostered in a spirit of ecclesial communion, recognized by legitimate ecclesiastical authority, aim at promoting the objectives proper to this function as well as priestly holiness in the exercise of the ministry.⁵⁵

Such affirmation was also emphasized by the Sacred Congregation for Bishops in the Directory on the Pastoral Ministry of Bishops of February 22, 1973. It says:

The Bishop is to favor priests' associations that promote holiness in the exercise of the ministry according to Gospel examples through a suitably regulated life and fraternal charity. The statutes of these associations are to be approved by ecclesiastical authority.⁵⁶

The content of the above text relates to the exhortation of Pope Paul VI that encouraged priests to help each other in spiritual, social, and intellectual life.⁵⁷

The 1971 Synod of Bishops also reminded the priests to abstain from a secular association which by nature is contrary to the mission of the Church and dangerous for

⁵⁵ Synod of Bishops, *De sacerdotio ministeriali*, November 30, 1971, in *AAS*, 63 (1971), p. 897. English translation is in *Canon Law Digest*, 7 (1968-1972), p. 363.

⁵⁶ Sacred Congregation for Bishops, "Directory on the Pastoral Ministry of Bishops," February 22, 1973, no. 109c.

⁵⁷ Paul VI, Encyclical letter, *Sacerdotalis caelibatus*, June 24, 1967, in *AAS*, 59 (1967), p. 689.

the communion of the Church. The priests should refrain from political associations because political options are, of their nature, contingent and do not adequately and perennially interpret the gospel. Moreover, the priests are the sign of peace and unity.⁵⁸

It seems that the spirit and intent of these directories is embodied in canon 278. 1-3. The text of the Directory on the Pastoral Ministry of Bishops is expressed in canon 278.1-2 and the text of the 1971 Synod of Bishops is found in canon 278.1-3.

3.2.3. Development of Canon 278

In 1966, the consultors (the special study group for clerics) noted from the beginning of their discussion that the right of association was common to all the faithful. But they also believed that an affirmation of this right for priests in the new Code would be especially useful. A priest associates not only with other priests but also with the laity.⁵⁹ The proposed text was as follows:

Clerics have the right to associate themselves with others in order to foster

⁵⁸ Synod of Bishops, *De sacerdotio ministeriali*, pp. 912-913.

⁵⁹ *Communicationes*, 16 (1984), p. 171: "Insuper proponitur ab uno Consultorum ut affirmetur clericorum ius ad associationes cum aliis clericis constituendas ad fines honestos. Animadvertit alius hoc ius non esse clericis exclusivum, sed esse ius omnibus christifidelibus commune, et ideo hoc ius non esse affirmandum in hoc loco." See also Celeghin, "Obligaciones, iura, associationes clericorum," pp. 44-45; *Communicationes*, 3 (1971), p. 196.

spiritual life or to pursue goals proper to the clerical state.⁶⁰

In 1972, the canon concerning the right of association for clerics was placed under the title *De clericorum obligationibus et iuribus*, together with 24 other canons. The *Coetus*, on 11-16 December 1972, did not propose any change.⁶¹

In 1973, it was proposed that *ad normam canonum* be added to the end of the canon.⁶² So the amended text read:

Clerics have the right to associate themselves with others in order to foster spiritual life or to pursue goals proper to the clerical state according to the norms of the canons.⁶³

This norm became canon 137 in the 1977 schema of the Code. The canon was divided into four paragraphs and it read:

1. Clerics have the right to associate with others in order to pursue honest ends proper to the clerical state.
2. Secular clerics are to value greatly those associations in particular which, through statutes recognized by competent authority, foster holiness in the

⁶⁰ *Communicationes*, 16 (1984), p. 171: "Ius est clericis sese consociandi cum aliis ad vitam spiritualem fovendam vel ad alios fines honestos statui clericali congruentes consequendos."

⁶¹ *Communicationes*, 24 (1992), p. 277 and p. 294.

⁶² *Ibid.*, pp. 302-306.

⁶³ *Ibid.*, p. 326: "Ius est clericis sese consociandi cum aliis ad vitam spiritualem fovendam vel alios fines honestos statui clericali congruentes consequendos, ad normam canonum."

exercise of the ministry by means of a suitable and properly approved style of life and fraternal assistance, and which promote the unity among the clerics themselves and with their bishop.

3. The secular clerics are to enroll in only those associations of priests which preserve the proper character of the secular clergy, and whose statutes duly provide, without respect of persons, for the promotion of harmony among all the members of the presbytery of the particular church.

4. Clerics are to refrain from establishing or participating in associations whose ends or particular activity cannot be reconciled with the obligations proper to the clerical state or which could impede the diligent fulfillment of the duty entrusted to them by competent ecclesiastical authority.⁶⁴

The canon not only recognizes the right of association for the clergy but also regulates it as due to the clerical state. In the *praenotanda* of the 1977 schema, it was indicated that though the rights mentioned in the chapter *De clericorum obligationibus et iuribus* are rights proper to clerics by reason of their clerical status, some rights pertain to clerics by reason of their being members of the Christian faithful, the right of

⁶⁴ *Communicationes*, 14 (1982), p. 78. The formula of the text: "1. Ius est clericis sese consociandi cum aliis ad fines honestos statui clericali congruentes consequendos.

"2. Magni habeant clerici saeculares illas praesertim consociationes quae, statutis a competenti auctoritate recognitis, per aptam et convenienter approbatam vitae ordinationem et fraternum iuvamen, sanctitatem suam in ministerii exercitio fovent quaeque clericorum inter se et cum proprio Episcopo unioni favent.

"3. Illis tantum consociationibus presbyterorum cleri saecularis dent nomen, quibus indoles propria cleri saecularis servetur, quarumque statutis debite caveatur ut omni personarum acceptione seclusa, concordia inter omnia presbyterii Ecclesiae particularis membra plene promoveatur.

"4. Clerici abstineant a constituendis aut participandis consociationibus quarum finis aut actio propria cum obligationibus statui clericali propriis componi non valent aut diligentem muneris ipsis ab auctoritate ecclesiastica competenti commissi adimpletionem praepedire possunt."

association of clerics being one such example. This right pertains to clerics, just as it belongs to the rest of Christian faithful, but subject to the limits which are indicated. According to this view, the formula and the following three paragraphs of canon 137 limit the right to association of clerics.⁶⁵

On January 14-19, 1980, the observations and new proposals that were presented on canon 137 of the 1977 schema were examined. The following changes were proposed to modify the canon: a) in paragraph 1, the term *secularibus* must be added after *clericis*, and the adjective *honestos* was to be suppressed; b) paragraph 2 was to remain unchanged while paragraph 3 was to be suppressed; c) the term *propria* in paragraph 4 was to be left out. The canon became canon 252 in the 1980 schema, and it read:

1. Secular clerics have the right to associate with others in order to pursue the ends proper to the clerical state.
2. Secular clerics are to value greatly those associations in particular which, through statutes recognized by competent authority, foster holiness in the exercise of the ministry by means of a suitable and properly approved style of life and fraternal assistance, and which promote unity among the clerics themselves and with their bishop.
3. Clerics are to refrain from establishing or participating in associations whose ends or activity cannot be reconciled with the obligations proper to

⁶⁵ *Communicationes*, 9 (1977), p. 245. "Quaedam tamen horum iura, prae momento quod habent et ut omnia tollantur dubia, uti clericis etiam competentia affirmatur: ita est v.g. eorundem ius consociationis, quod scilicet clericis, non secus ac ceteris christifidelibus competit, certis tamen sub limitibus quae indicantur." See also *Communicationes*, 3 (1971), pp. 192-196; Celeghin, "Obligaciones, iura, asociaciones clericorum," pp. 45-47.

the clerical state or which would impede the diligent fulfillment of the duty entrusted to them by competent ecclesiastical authority.⁶⁶

There were four observations to further amend the canon. One Father held that paragraph 1 was very extensive, so the suggestion was to place restrictive clauses so as to avoid trade union like associations which would proceed against the hierarchy in vindicating their right to a decent living and other rights.⁶⁷ This observation was not accepted by the consultants because the right of association of clerics in this canon is a natural right, which was always recognized by the Church, and which the Second Vatican Council had explicitly enunciated also for clerics. The phrase *ad fines statui clericali congruentes* in paragraph 1 and the norm in paragraph 3 sufficiently embody the

⁶⁶ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema Codicis iuris canonici iuxta animadversiones S.R.E. Cardinalium, Episcoporum conferentiarum, Dicasteriorum Curiae Romanae, Universitatum facultatumque ecclesiasticarum necnon Superiorum Institutorum vitae consecratae recognitum*, Roma, Libreria editrice Vaticana, 1980, p. 57:

"1. Ius est clericis saecularibus sese consociandi cum aliis ad fines statui clericali congruentes prosequendos.

"2. Magni habeant clerici saeculares illas praesertim consociationes quae, statutis a competenti auctoritate recognitis, per aptam et convenienter approbatam vitae ordinationem et fraternum iuvamen, sanctitatem suam in ministerii exercitio fovent quaeque clericorum inter se et cum proprio Episcopo unioni favent.

"3. Clerici abstineant a constituendis aut participandis consociationibus quarum finis aut actio cum obligationibus statui clericali propriis componi non valent aut diligentem muneris ipsis ab auctoritate ecclesiastica competenti commissi adimpletionem praepedire possunt."

⁶⁷ *Communicationes*, 14 (1982), p. 171: "Norma #1 nimis ampla videtur: esset ponenda aliqua clausula restrictiva, ut vitentur associationes (sic dicta <<Syndicata>>) ad honestam sustentationem aliaque iura vindicanda adversus hirarchiam (aliquis Pater)."

legitimate restriction which must be held in the exercise of this right.⁶⁸

The second observation suggested to have paragraph 3 completed with the following amendment: "...whose ends or activity are incompatible with the specific spirituality of clerics, based on the sacrament of Holy Orders and the mission they have received from the Church..."⁶⁹ This observation was also rejected for three reasons. First, what is already said in the canon seems sufficient. Second, it is not easy to decipher and explain the elements implied in the words *sua peculiari spiritualitate*. Third, there are associations, for example, Third Orders, which are not based on the Sacrament of Holy Orders, nevertheless, secular clerics cannot be prohibited from joining these associations.⁷⁰

⁶⁸*Communicationes*, 14 (1982), pp. 116-230. It says on p. 171: "Animadversio recipi non potest, quia a) oportet ut ius naturale associationis, quod Ecclesia semper agnovit etiam clericis quodque Concilium Vaticanum II explicite enuntiavit (cfr. Decretum Presbyterorum Ordinis, no 8.3 et responsio competentis Commissionis conciliaris ad modum 129 schematis: Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani II, vol. 4, pars 7, p. 168) in canone quoque recipiatur; b) per verba #1 {ad fines statui clericali congruentes} atque per normam in #3 statutam iam sufficienter significantur restrictiones legitimaе quae haberi possunt ac debent in exercitio istius iuris; et quidem non tantum illae quae in animadversioe explicite dicuntur, sed etiam aliae similes." See also *Communicationes*, 15 (1983), pp. 57-109; 16 (1984), pp. 27-99.

⁶⁹ *Communicationes*, 14 (1982), p. 171. The second animadversio proposed that paragraph 3 be complemented like this: "... quarum finis aut actio cum sua peculiari spiritualitate, in sacramento ordinis et in missione ab Ecclesia recepta fundata, vel cum obligationibus..."

⁷⁰Ibid.

The third observation suggested the use of the term *diocesanis* instead of *saecularibus*. But the term *saecularibus* was maintained for the clarity of the text because religious are also in some way diocesan.⁷¹ In the fourth observation, it was asked that the following words be added to paragraph 2: "...because priests are his collaborators by virtue of sacred ordination..."⁷² The addition as proposed seemed unnecessary to the redactors because the idea was already contained in other canons.⁷³

In the 1982 schema, the right of association of clerics was found in canon 281 under the title: *De clericorum obligationibus et iuribus*. The words *non valent* in paragraph 3 were substituted with the word *nequeunt*.⁷⁴ The text was not changed in the

⁷¹ Ibid.

⁷² Ibid., p. 172: "... cuius praesertim presbyteri vigore sacrae ordinationis collaboratores sunt...unioni favent."

⁷³ Ibid.

⁷⁴ Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Codex iuris canonici schema novissimum*, (E Civitate Vaticana, 25 Martii 1982), Typis polyglottis Vaticanis, p. 48:

"1) Ius est clericis saecularibus sese consociandi cum aliis ad fines statui clericali congruentes prosequendos.

"2) Magni habeant clerici saeculares praesertim illas consociationes quae, statutis a competenti auctoritate recognitis, per aptam et convenienter approbatam vitae ordinationem et fraternum iuvamen, sanctitatem suam in ministerii exercitio fovent, quaeque clericorum inter se et cum proprio Episcopo unioni favent.

"3) Clerici abstineant a constituendis aut participandis consociationibus, quarum finis aut actio cum obligationibus statui clericali propriis componi nequeunt vel diligentem muneris ipsis ab auctoritate ecclesiastica competenti commissi adimpletionem praepedire possunt."

promulgated Code, other than being numbered canon 278. It is now one of the rights enshrined in the juridical statute of the clergy in the chapter titled - *De clericorum obligationibus et iuribus* (cann. 273-289).

3.2.4. The Interpretation of Canon 278

Dealing with the right of association of secular clerics, canon 278 points out three important elements: first, it acknowledges officially and generally the right of association of secular clerics; second, it praises and fosters positively those priestly associations which promote the holiness of their members through the ministry and through unity amongst themselves and with their bishop; third, it also disapproves of those associations with aims and activities unworthy of the priestly condition, or which hinder the fulfillment of the ecclesiastical ministry.⁷⁵

3.2.4.1. Nature of the Right of Association of Secular Priests

Canon 278 encourages secular priests to form or join the associations whose ends are suitable to their identity. The identity of priests is intimately connected with the nature

⁷⁵ T. Rincón, "Los sujetos del ordenamiento canonico," in *Manual de derecho canonico*, Instituto Martin de Azpilcueta, Pamplona, Ediciones-Universidad de Navarra, 1988, p. 195.

and the mission of the Church. A priest is a member of the Christian faithful. He has been permanently configured by Christ through holy orders to serve the Church, in collaboration with the local bishop. He acts as the representative and agent of Christ, the head of the Church, and as the representative and agent of the Church community before God and the world.⁷⁶ Thus, it is impossible to analyze the right of association of secular priests without reflecting at the same time on the dignity of the clerical state and the mystery of the Church which is a *communio*. This section, therefore, examines the right of association as a fundamental right which is to be exercised within the *communio* of the Church and with due regard for the dignity of the clerical state.

3.2.4.1.1. Fundamental Right

According to the official teachings of the Church proclaimed in this century, the right of association is a natural right. A decree of the Sacred Congregation of the Council declared in 1920 that the right of association was indeed an authentic and natural right.⁷⁷ In the original 1962 Schema, *De fidelium associationibus*, the right of association was

⁷⁶ Canon 207. See also John Paul II, *Christifideles laici*, pp. 428-429.

⁷⁷ Sacra Congregatio Concilii, *Corrientem*, p. 139.

expressed as a right based on the social nature of the human being.⁷⁸ Pope John XXIII offered a full explanation of this right in his 1963 encyclical *Pacem in terris*.⁷⁹ Documents of the Second Vatican Council, too, insisted that since human beings are social by nature, there is a fundamental need for Christians to carry out group apostolates and that while preserving intact the necessary link with the ecclesiastical authority, Christians have the right to establish and direct associations, and to join existing ones.⁸⁰ The Council also goes on to emphasize the specifically sacramental or theological basis of the right of association. In the Church, the right of association is endowed with a second basis, for this right is deeply rooted in the very nature of the Church and its mission.⁸¹

Both *PO* no. 8 and canon 278 apply the right of association as an authentic right to secular priests. This right was declared, not granted. It was not a concession or privilege granted by the hierarchy. The right of association was recognized as inherent to human

⁷⁸ Commissio de disciplina clerici et populi christiani, *Schema decreti de fidelium associationibus*, Roma, Typis polyglottis Vaticanis, 1962, p. 3: "Proprium est hominis, ac verum ius natura inditum ei competit, ut peculiare associationes cum aliis hominibus ineat ad determinatos fines in commune sociorum vel aliarum personarum bonum perseguendos. Ecclesia quoque, inde a prioribus suae institutionis saeculis, plures fidelium associationes fovit."

⁷⁹ John XXIII, *Pacem in terris*, pp. 261-263.

⁸⁰ *AA*, nos. 18-19. See also *PO*, no. 8.

⁸¹ *LG*, no. 9.

dignity. It is a right of the human person, a natural, fundamental right of the Christian faithful: of laity and clergy alike.⁸²

In discussing the right of association for priests, the conciliar Commission gave the following reply to *modus 129*, proposed to chapter two of the decree *PO*:

Priests cannot be denied what the Council, taking account of the dignity of human nature, declares as proper to the laity, since it corresponds to natural law.⁸³

Paragraph one of canon 278 clearly affirms the right of secular clerics with the phrase "secular clergy have the right." It concedes a true right to associate, and not a faculty.⁸⁴ It is a true *ius nativum*⁸⁵ recognized for all the faithful and in common with all

⁸² *AA*, nos. 18-19; *PO*, no. 8; *LG*, no. 37. See also John Paul II, *Christifideles laici*, pp. 443-446; Del Portillo, *Faithful and Laity in the Church*, pp. 64-68; Ocaña, *Las asociaciones de clerigos en la Iglesia*, pp. 130-132.

⁸³ Congregatio generalis CLXVI, "Relatio de singulis numeris capituli II," in *Acta synodalia*, vol.4, pars 7, p. 168: "Non potest negari presbyteris id quod laicis, attendita dignitate naturae humanae. Concilium declaravit congruum, utpote iuri naturali consentaneum." See also Del Portillo, *Faithful and Laity in the Church*, p. 68.

⁸⁴ D. Composta, "De ministris sacris seu de clericis," in *Commento al Codice di diritto canonico*, P.V. Pinto (ed.), Roma, Urbaniana University Press, 1985, p. 163. See also Rincón, "Los sujetos del ordenamiento canonico," p. 195; Ocaña, "El lugar teologico-canonico de las asociaciones de clerigos," p. 210.

⁸⁵ Rincón, "De clericorum obligationibus et iuribus," in *Code of Canon Law Annotated*, p. 232. See also L. Chiappetta, *Il Codice di diritto canonico*, p. 355; Sacra Congregatio Concilii, *Corrientem*, p. 139.

the faithful, which canon 278 recognizes as proper to the clergy.⁸⁶ Association falls within the area of the personal life of secular priests and the exercise of their legitimate liberty.⁸⁷ However, any associations arising from this right are subject to the vigilance of competent ecclesiastical authority.⁸⁸

In his commentary on this canon, John E. Lynch notes that it is the very first affirmation of the right to associate for secular clerics. This right is affirmed because of its importance and lest there be any doubt about it.⁸⁹ This affirmation is not contradictory to the *ordo presbyterorum* for two reasons. First, the diocesan priesthood is not an association of clerics but a form of organization for ministry. Second, apart from the relationship of dependence maintained with the Ordinary by virtue of the sacramental bond (sacred orders) and the juridical bond (incardination), the priesthood has lawful areas of personal autonomy and freedom. This includes the right of association (both in

⁸⁶ Composta, "De ministris sacris seu de clericis," p. 163. See also *AA*, nos. 18-21; *PO*, no. 8; *GS*, nos. 68,73,75; *DH*, nos. 2,4; Rincón, "Los sujetos del ordenamiento canonico," p. 195; G. Ghirlanda, *Il diritto nella chiesa, mistero di comunione*, Milano, Edizioni Paoline, 1990, p. 161.

⁸⁷ Lynch, "The Obligations and Rights of Clerics," p. 212.

⁸⁸ Canons 305 and 323. See also Chiappetta, *Il Codice di diritto canonico*, p. 355.

⁸⁹ Lynch, "The Obligations and Rights of Clerics," pp. 211-213. See also *Communicationes*, 9 (1977), p. 245; Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema canonum libri II de Populo Dei*, Romae, Typis polyglottis Vaticanis, 1977, p. 10.

civil associations and in those formed within the Church), except, at all times, where the general limits imposed by morals and the obligations of the priestly condition prevail.⁹⁰

Hence, the Council and the Code defend the realm of personal freedom of the clergy to exercise their right of association. According to the Council, personal freedom is to be in the context of responding to one's own vocation and to the charisms received from God. It should support the well-ordered mutual relationship of all in the service of the community and for the good of the mission, and to a condition under which the proper mode of the Church's pastoral activity can be shaped and fulfilled.⁹¹

Any intrusion of authority into this personal freedom will create only confusion and division.⁹² It does not mean that it excludes the right of the hierarchy to express its judgement, the recognition of the statutes, their approbation etc.⁹³ The associations of priests are subject to ecclesiastical jurisdiction and vigilance (can. 305), exercised for the common good of the Church (can. 223). The ecclesiastical authority has the function 1)

⁹⁰ Rincón, "Los sujetos del ordenamiento canonico," p. 195. See also Ocaña, "El lugar teologico-canonico de las asociaciones de clerigos," p. 212.

⁹¹ *PO*, no. 7.

⁹² L. Sanchez and M. Lira, Excursus, "De ministerio et vita presbyterorum," in *Acta synodalia*, vol. 4, pars 5, pp. 479-480.

⁹³ *PO*, no. 8.

to direct the exercise of those personal spheres of autonomy towards the common good of the Church, 2) to ensure that doctrine and order are at all times respected, and 3) to promote the exercise of this right together with its corresponding duty, by giving doctrinal guidance and the necessary spiritual help.⁹⁴

It seems that the reference to ecclesiastical authority is not intended to negate the main characteristic of the right of association. The main character belongs to the sphere of the private autonomy of the person. This means that the exercise of this fundamental right can be directed toward the common good.

3.2.4.1.2. Ecclesial Communion

All priests are bound together by an intimate sacramental bond. The common sharing in the same priesthood and ministry is the foundation of the bond of brotherhood and cooperation among priests and with the bishops. The sacrament of holy orders is the clamp which binds all priests together in a single community, *ordo presbyterorum*, in spite of their individuality and variety of functions.⁹⁵

⁹⁴ Del Portillo, *Faithful and Laity in the Church*, pp. 37-38.

⁹⁵ Cordes, "Commentary on the Decree," p. 245. See also John Paul II, Homily at Concelebrated Mass with U.S. Priests' Council, Civic Center, Philadelphia, September 4, 1979. Unity among priests, lived out in fraternity and friendship, becomes a demand and an integral part of the life of a priest.

Priestly fraternity also manifests itself in the form of associations. In 1971, the Synod of Bishops maintained that associations of priests were also considered with the brief treatment of the sacramental fraternity of priests.⁹⁶ *PO* no. 8 and Canon 278 of the 1983 Code encourage priests to join or establish such associations which foster priestly holiness, priestly fraternity, and the exercise of their ministry.

Priestly community or association is situated within the ecclesial communion arising from baptism. For a priest is a brother among brethren and with them a member of the Body of Christ: he is called to build the communion and mission of the Church according to the measure of the grace and endowments bestowed upon him.⁹⁷ The missionary reality of his priesthood is in total harmony with the Church who sends out her ministers. It is to be lived by priests, individually or within associations, above all and essentially as the gift of living within the community and being at her service.⁹⁸

⁹⁶ Synod of Bishops, *De sacerdotio ministeriali*, p. 920. See also *PO*, no. 8; A. de la Hera, "El derecho de asociacion de los clerigos y sus limitaciones," in *Ius canonicum*, 23 (1983), p. 180; Ocaña, "El lugar teologico-canónico de las asociaciones de clerigos," p. 13.

⁹⁷ *PO*, no. 9. See also Cordes, "Commentary on the Decree," p. 256; G. Thils, *The Diocesan Priests: The Nature and Spirituality of the Diocesan Clergy*, Translated by A.J. LaMothe, Notre Dame, IN, Fides Publishers, 1964, p. 184; John Paul II, "Priestly Fraternity Means Cooperation," in *L'Osservatore romano*, 36 (1993), p. 11.

⁹⁸ Congrégation pour le Clergé, *Directoire pour le ministère et la vie des prêtres*, Montréal, Québec, Fides, 1994, pp. 16-17.

In fact, in canon 209.1, the obligation of living in communion with the Church, deliberately appears as a primary obligation of the Christian faithful and as the source from which other obligations and rights of the Christian derive. E. Correco says that since the Church itself is a *communio*, and since the Church exists prior to the individual's act of joining it or actualizing her/his membership in it, the primary obligation of the Christian faithful is to keep that communion with the Church and with God.⁹⁹

The exercise of the right of association for secular priests, therefore, is meant to support ecclesial communion.¹⁰⁰ Such associations must be instrumental in building up unity in the Church which is a mystery and a communion. They must serve the common good of the Church and her mission.¹⁰¹

Associations of secular priests serve the whole Church which is a communion by being united to its own bishop and the close relationship with the presbyterium.¹⁰² J.M.R. Tillard says that priests share in ecclesial communion in so far as they are in communion

⁹⁹ Correco, "Theological Justification," p. 93.

¹⁰⁰ John Paul II, *Christifideles laici*, pp. 446-448.

¹⁰¹ Synod of Bishops, *De sacerdotibus formandis in hodiernis adjunctis. Instrumentum laboris*, E Civitate Vaticana, 1990, p. 38.

¹⁰² *PO*, nos. 6-8. See also John Paul II, Apostolic exhortation, *Pastores dabo vobis*, March 25, 1992, in *AAS*, 84 (1992), pp. 793-794; Synod of Bishops, *Instrumentum laboris*, p. 16.

with their bishop, who is himself in communion with all his brother bishops because all the bishops are in communion with the bishop of Rome.¹⁰³

It seems that the *ratio* of associations is to be at the service of the whole priesthood within the communion of the Church. The associations of secular priests are to promote the unity of clergy with one another, with their bishop, and with all the people of God.¹⁰⁴ This unity is very important because the sacred minister is one who serves Christ present in the Church which is Mystery, Communion, and Mission.

3.2.4.1.3. The Dignity of the Clerical State

The exercise of the right of association of secular priests is based on sacerdotal dignity (can. 278.1). One enjoys the dignity of the clerical state through ordination and incardination.¹⁰⁵ By the sacrament of ordination a person is consecrated and made a sacred minister for the purpose of sanctifying, teaching and governing. They receive the spiritual powers and office in favor of the community, to announce in the name of Christ the Gospel, to exercise sacred functions of divine worship, especially the Holy Eucharist, the

¹⁰³ J.M.R. Tillard, *The Bishop of Rome*, Delaware, M. Glazier, 1983, p. 129.

¹⁰⁴ AA, no. 25.

¹⁰⁵ Canon 266.1.

administration of sacraments, and the governance of the people of God.¹⁰⁶

The sacrament of ordination constitutes the basis of the call to sanctity of priests. By that sacrament, priests are consecrated to God, configured to Christ - the Priest in a special manner - and enabled and obliged even in the midst of human weakness to seek perfection. Sanctity is required for sacramental fidelity to the mission received from Christ.¹⁰⁷ Canon 276 presents the sanctity of life as the first duty of priests in exercising their ministry.¹⁰⁸ In turn, the exercise of the priestly ministry creates for the priest an ideal ground for his own holiness.¹⁰⁹

In virtue of ordination, a priest is formally inserted into a network of relationships, the context in which the priestly ministry is exercised. Regarding the priest's relationship

¹⁰⁶ *LG*, nos. 20, 21, 28. See also *PO*, nos. 2, 3, 5, 10; *CD*, no. 12.

¹⁰⁷ A. Ballestrero, "Il fondamento sacramentale del sacerdozio ministeriale," in *La rivista del clero Italiano*, 61 (1980), p. 935.

¹⁰⁸ Ballestrero, "Il fondamento sacramentale del sacerdozio ministeriale," p. 935. The priest has to search for the holiness proper to him in the more perfect fulfillment of his ministerial obligations inherent to priesthood. The means to acquire sanctity in the clerical order are when one faithfully and untiringly fulfills his duties of pastoral ministry (can. 276, *PO*, no. 18, and *LG*, nos. 28, 41).

¹⁰⁹ *PO*, no. 12. See also M. Caprioli, *Sacerdozio e santità - Temi di spiritualità sacerdotale*, Roma, Edizioni del Teresianum, 1983, p. 164; M. Caprioli, *Il decreto conciliare "Presbyterorum ordinis" (II) storia, analisi, e dottrina*, Roma, Edizioni del Teresianum, 1989, p. 53; *LG*, nos. 40-41.

with the laity, his responsibility is to call the community to accountability for what it truly represents and to call for leadership within the community.¹¹⁰ In speaking of the relationship of priests among themselves, the Council emphasizes the importance of associations. The priest's relationship to the bishop is characterized by the intimacy of friendship and brotherhood. It is marked by the bishop's eagerness to get to know the priest not only casually, but as much as possible individually and intimately. It is also indicated by the priest's desire to befriend his bishop as a person with whom he is deeply united in faith, fraternity and responsibility.¹¹¹

The existence of associations, of course, is primarily to help the priests in maintaining the dignity of priesthood: the sanctity in the exercise of the ministry, sacerdotal fraternity, the unity between priests and bishop, and good service of the people of God.¹¹² Associations of priests in the right spirit confirm and strengthen the secular and diocesan nature of their members. All the means of the association are intended to support their holiness, the perfect realization of priestly brotherhood and pastoral communion

¹¹⁰AA, no. 3. See also Congrégation pour le Clergé, *Directoire pour le ministère et la vie des prêtres*, p. 22.

¹¹¹PO, nos. 7-9.

¹¹²A.N. Jubany, Excursus, "De ministerio et vita presbyterorum," in *Acta synodalia*, vol. 4, pars 4, pp. 756-757.

among the priests of a diocese, between them and the bishop.¹¹³

Canon 278, therefore, provides a legal system for secular priests to form and join associations which befit the clerical state. Paragraphs two and three propose what type of associations are to be highly esteemed and those which are to be avoided. The associations must be consistently related to the life and ministry of clerics. They might support, qualify, comfort and help to attain those possibilities which are not easily obtainable by the individual.

In conclusion, association of priests should support the nature of the priesthood which is divinely instituted.¹¹⁴ They must have a suitable and well tried rule of life, which helps the clergy to live better spiritually, intellectually, culturally, socially and economically. The associations also assist the bishop as his trusted collaborators. Priests' association should help in the level of communion, fraternal solicitude and care, in spiritual and human welfare and cooperation in the ministry.

¹¹³ Pius X, *Haerent animo*, p. 574. See also Pius XII, Apostolic exhortation, *Menti nostrae*, September 23, 1950, in *AAS*, 42 (1950), pp. 682-698; John XXIII, *Sacerdotii nostri primordia*, p. 551; Paul VI, *Sacerdotalis caelibatus*, p. 689; John Paul II, *Pastores dabo vobis*, p. 799; Synod of Bishops, *Sacerdotio ministeriali*, p. 920; SCC, "Quidam episcopi," p. 642. *Communicationes*, 3 (1971), p. 193; 16 (1984), pp. 172-173. Jubany, "De ministerio et vita presbyterorum," pp. 756-757.

¹¹⁴ Canon 1008.

3.2.4.2. Elements of Association

Canon 278 refers to some elements of the associations of priests. The canon speaks the constitution, goals, membership, competent authority, and the limitations of the association of priests. The canon promotes associations of priests which pursue the common interests that are suitable to the clerical state and whose constitutions are approved by the competent authority.

3.2.4.2.1. Constitution

Paragraph two of canon 278 encourages an association of priests which has statutes recognized by the competent authority. Statutes make an association different from a movement.¹¹⁵ The statutes contains certain basic information for purpose of identification.¹¹⁶ This information includes the end of the association or its social objective, its headquarters, its government, the conditions of membership, and the persons to whom its policies are aimed (can. 304.1).

Statutes are required for all associations - private or public - of the Christian

¹¹⁵ Canadian Conference of Catholic Bishops, *Recognition of National Catholic Associations*, Ottawa, CCCB, 1993, p. 10. A movement is a group of people who come together for a same concern. It is a loose or non stable organization. Its members are not constant; it may or may not have a structure.

¹¹⁶ Dalla Torre, "Associazioni," p. 178.

faithful (can. 304). For the most part, private associations provide their own statutes. These associations must have their statutes reviewed by ecclesiastical authority to obtain recognition (can. 299.3). To become private juridic persons, the competent ecclesiastical authorities mentioned in canon 312 must approve the statutes of private associations (can. 322.2).¹¹⁷

Public associations receive their statutes from the ecclesiastical authority competent to erect them in accord with the norm of canon 312.1. Revising or changing these statutes requires the approval of this same authority (can. 314).

The type of association determines the competent ecclesiastical authority. The Holy See has the right to erect universal and international public associations. The same authority has the power to review the statutes of universal or international private associations. The conferences of bishops enjoy the right to erect national public associations and to recognize the statutes of national private associations in its territory. The diocesan bishop can erect diocesan public associations and recognize the statutes of the diocesan private associations within his territory.¹¹⁸

¹¹⁷ Ibid., p. 174. See also A. Gutiérrez, "Asociaciones de fieles," in *Código de derecho canónico*, Pamplona, Ediciones Universidad de Navarra, S.A., 1987, p. 230.

¹¹⁸ Chapter IV will give more information about constitution and statutes.

3.2.4.2.2. Goals

The right of association responds to the same needs and the same purposes. It provides the parties forming the association a good which cannot be attained or can be attained with difficulty if the member remains alone. Canon 278 encourages the secular priests to establish or join associations whose ends are suitable to the clerical state. Such are associations which a) foster holiness, b) help the priestly ministry and fraternal assistance, and c) promote unity among the clergy themselves and with their bishop.¹¹⁹

According to Dalla Torre and Gutiérrez, the associations of clergy mentioned in canon 278 have purposes different from those of the clerical associations dealt with by canon 302. Associations of clergy, which are the object of canon 278.2, foster their members' personal goals, e.g., holiness in the exercise of the ministry, unity among priests, and unity between priests and their bishop. Whereas, clerical associations of canon 302 promote the exercise of ministry in ways which exceed the efforts of individual clerics and the boundaries of their dioceses. That is, these associations respond to circumstances which require special pastoral care, e.g., ministry in mission lands or among certain ethnic or other social groups. The same commentators also maintain that associations of the clergy can be public or private whilst clerical associations are always

¹¹⁹ Canon 278.2. See also *PO*, no. 8; J. Herranz, *Studi sulla nuova legislazione della Chiesa*, Milano, Giuffrè, 1990, p. 285.

public.¹²⁰

3.2.4.2.3. Membership

The reception of members is to be done in accord with the norm of law and the statutes of each association (canon 307). Canon 278 specifies who among the clergy are entitled to this norm on the right of association. It restricts this right to secular clerics, and excludes those who are members of Institutes of Consecrated life and Societies of Apostolic life. The natural right to associate is not denied the latter. They are already associated in an institute to pursue those purposes envisaged in canon 298.1, such as to promote the perfection of Christian life, exercise of apostolic works, etc. They are associated in their proper institute to pursue goals inherent to their community.¹²¹

¹²⁰ Dalla Torre, "Associazioni," pp. 176-178. See also Gutiérrez, "Asociaciones de fieles," p. 233. Regulation of pastoral care in mission lands and or to special groups, since this involves the promotion of public worship and Christian doctrine, pertains to ecclesiastical authority. Only public associations can pursue these goals. Therefore, clerical associations must be erected by competent ecclesiastical authority. Moreover, canon 302 is parallel to canon 588.2 which defines clerical religious institutes. Because their public character is questionable, one could reasonably argue that clerical associations are public. Besides, the only other canon referring to clerical associations, canon 317.3, appears in the chapter on public associations. However, some canonists still argue that clerical associations are not necessarily public; they can be public or private.

¹²¹ Chiappetta, *Il Codice di diritto canonico*, p. 355. See also Rincón, "Los sujetos del ordenamiento canonico," p. 195; Ocaña, "El lugar teologico-canónico de las asociaciones de clerigos," p. 211.

As regards those with whom to associate, the canon does not place a limit. It is the right to associate themselves with "others" (*sese consociandi cum aliis*). That is, to associate not only among themselves but also with the laity.¹²² It means that lay persons are allowed to be members of such associations. Public associations, however, cannot validly receive persons who have publicly rejected the Catholic faith, who have abandoned ecclesiastical communion, or who have incurred an imposed or declared excommunication (can. 316.1).

How many associations can one join? Canon 307.2, departing from the previous legislation, which forbade members of one Third Order enrolling in another, says the same person can be enrolled in several associations. But the cleric cannot be a member of every association. The right of clerics is limited with regard to the ends of the association. The purpose and nature of the association might benefit the clerical state. That is, it must be consistently related to the life and ministry of clerics, whom the association supports, qualifies, and comforts. It must help to attain those possibilities which are not easily obtainable by the individual secular cleric. The right of association which is recognized as a natural right has an instrumental and subsidiary function with respect to the life and

¹²² D. Mogavero, "I ministri sacri o chierici," in *Il diritto nel mistero della chiesa*, II, Pontificium Institutum Utriusque Iuris, Roma, Libreria Lateranense, 1990, p. 120.

ministry of the sacred minister.¹²³

Valid reception to membership qualifies a person to enjoy the rights and privileges, indulgences and other spiritual favors granted to an association unless and until that association dismisses him or her (can. 306). The dismissal of the member cannot be done without a just cause in accord with the norm of law and the statutes.

3.2.4.2.4. Limitations

Associations of secular priests are limited by their purposes. The aims of the associations must not only absolutely and exclusively be fitting to the clerical state, but also not be obstacles to priests fulfilling their duties as pastors of souls and servants of Christ. Nor must they become obstacles to brotherhood and pastoral communion among the clergy and with the bishop in their diocese. The associations must be at the service of the whole order of priesthood.¹²⁴

Paragraph three of canon 278 prohibits associations which are contrary to the ministry and life of clerics. Secular priests should not join associations which are contrary to or are harmful to Catholic doctrine and the discipline of the Church, or which cause

¹²³ *Ibid.*, p. 120.

¹²⁴ *PO*, no. 8.

serious spiritual harm to the faithful, obscuring the identity and mission of the Catholic priest. Clerics who are supposed to be ministers of peace and justice, are to avoid associations that disrupt the unity and peace of society.

Dario Composta and other commentators interpret this prohibition in accord with the 1982 declaration of the Congregation of the Clergy and the declaration issued by the Congregation for the Doctrine of the Faith in 1981.¹²⁵ The 1982 Declaration prohibited secular clergy from joining or running associations that advocate or practice violence or are antithetical to clerical commitments or plot against the Church. The declaration of the Congregation for the Doctrine of the Faith indicated that Catholics joining them were separated from the Church, and being in a state of serious sin they must abstain from receiving communion.¹²⁶

The prohibition of canon 278.3 is not only for the secular clergy but for all the clergy, religious and secular who establish, promote and participate in any such

¹²⁵ Composta, "De ministris sacris seu de clericis," p. 164. See also J. Manzanares, "De las obligaciones y derechos de los clérigos," in *Código de derecho canonico*, L. de Echeverria et al. (eds.), Madrid, Editorial catolica, 1984, p. 169.

¹²⁶ Lynch, "The Obligations and Rights of Clerics," p. 213. See also Composta, "De ministris sacris seu de clericis," p. 164; Sacra Congregatio pro Doctrina Fidei, "Declaratio de canonica disciplina quae sub poena excommunicationis vetat ne catholici nomen dent sectae massonicae aliisque eiusdem generis associationibus," February 17, 1981, in *AAS*, 73 (1981), pp. 240-241; Id., "Declaratio de associationibus massonicis," November 23, 1983, in *AAS*, 76 (1984), p. 300.

association. Paragraphs one and two specify secular clergy and paragraph three states that clerics are prohibited from remaining in associations whose ends and activities are incompatible with or are an obstacle to their ministry.¹²⁷

Among the associations forbidden for secular priests, there are 1) associations which plot against the Church; 2) associations which pursue aims relating to politics, no matter what their external aspect or motivation; 3) associations which unite deacons and/priests in a union.¹²⁸

3.2.4.2.4.1. Associations Which Plot Against the Church.

An association plots against the Church, if at least one of the objects of the association consists in the commission of subversive acts against the Church. Usually, the nature, goals and programs of these kinds of associations impede hierarchical communion, harm priestly identity, and hinder fulfillment of priestly duties. The offence is committed merely by registration, independent of any offenses that might be committed subsequently when the specific orders from that association are carried into effect. The offence is

¹²⁷ Ghirlanda, *Il diritto nella chiesa, mistero di comunione*, p. 161.

¹²⁸ SCC, "Quidam episcopi," p. 642.

permanent since it continues as long as the offender's adhesion to the association lasts.¹²⁹

Canon 2335 of the 1917 Code referred explicitly to masonic association. According to this canon, those who joined a Masonic sect or other similar societies, which plotted against the Church or against legitimate civil authority, incurred *ipso facto* an excommunication simply reserved to the Holy See.

In 1929 the Sacred Consistorial Congregation decided that it was expedient for Ordinaries not to permit clerics to become members, or even attend meetings of the Rotary Clubs. Then in 1951 the Holy Office reaffirmed this position. Paul VI, however, explained that this reservation of the Church was based on the fear that Rotary Clubs might be infiltrated by false ideologies opposed to Christian ideals. The Sacred Congregation for the Doctrine of Faith in 1973 indicated that episcopal conferences have from the Apostolic See the faculty of permitting the inscription of clerics in Rotary Clubs but not in masonic organizations.¹³⁰ The Sacred Congregation repeatedly notes that

¹²⁹ L. del Amo, "Offense Against Religion and Unity of the Church," in *Code of Canon Law Annotated*, pp. 855-856.

¹³⁰ Sacred Consistorial Congregation, "Rotary Clubs," p. 42. See also Sacred Congregation of the Holy Office, "Quaesitum est," p. 91; Paul VI, Allocution, "Italian Rotary Clubs," March 20, 1965, in *The Pope Speaks*, 10 (1965), pp. 411-412; Sacred Congregation for Doctrine and Faith, December 22, 1973, reported in Letter of the Apostolic Delegate to Canada, July 3, 1975, Prot. N. 21924.

Freemasonry actually plots against the Church.¹³¹

The association of Saint Pius V-Saint Pius X of Lorraine was also considered as an association conspiring against the Church because this association publicly accused Pope Paul VI's Mass of heresy and the bishops of apostasy. This association seemed to be related to Archbishop Lefebvre.¹³²

Canon 1374 of the 1983 Code also speaks of associations which plot against the Church. However, the canon does not refer automatically to masonic associations. It also makes a distinction between simple membership and the promoting of or holding office in such associations. For those who join an association that conspires against the Church, a just penalty or indeterminate mandatory *ferendae sententiae* penalty is to be imposed. It is different from those who promote or direct such associations, because the promoter and director have greater responsibility, and are therefore subject to a more severe penalty: determinate mandatory -interdict- that is *ferendae sententiae*. If registration into such associations entails apostasy, heresy, or schism, the offense stated in canon 1364 is

¹³¹ Sacred Congregation for Doctrine and Faith, Letter, July 18, 1974, Prot. N. 272/44. Copy of the original text is found in the Chancery of the Archdiocese of Chicago. See also Episcopal Conference of England and Wales, November 1974, in *Canon Law Digest*, 8 (1973-1977), p. 1212.

¹³² J. Vilnet, Declaration, "A propos de l'association Saint Pie V - Saint Pie X de Lorraine," in *Documentation catholique*, 76 (1979), p. 246.

committed.¹³³

3.2.4.2.4.2. Political Associations

Political associations are those composed wholly or partially of groups of people who are pursuing goals of a political nature. Basically these associations support a specific ideology or political system. They can directly or indirectly, openly or secretly, pursue goals which pertain to politics. Sometimes these associations externally appear to be pursuing humanitarian objectives, and fostering peace or social progress.¹³⁴

Such kinds of associations are forbidden to secular priests because they cannot be harmonized with the clerical state.¹³⁵ A priest is officially commissioned to accomplish by his word and his actions salvation in Christ. This is the true content of the specific ministry of priests in the public life of the Church. The aim of priestly ministry is to

¹³³ Canon 1364 - "1) With due regard for can. 194.1.n. 2, an apostate from the faith, a heretic or a schismatic incurs an automatic (*latae sententiae*) excommunication and if a cleric, he can also be punished by the penalties mentioned in can. 1336.1.nn. 1, 2 and 3.

"2) If long lasting contumacy or the seriousness of scandal warrants it, other penalties can be added including dismissal from the clerical state."

¹³⁴ SCC, "Quidam episcopi, p. 643. Sacrée Congrégation pour les Religieux, "Actes du Saint- Siège, Religieux et promotion humaine," in *Documentation catholique*, 78 (1981), pp. 169-170.

¹³⁵ SCC, "Quidam episcopi," p. 642. See also Synod of Bishops, *Sacerdotio ministeriali*, p. 913.

enable the people of God to come to the Lord and thus find salvation. Therefore, the mission of priests should be concerned primarily with spiritual matters and the salvation of souls rather than with the political, technical or economic.¹³⁶ John Paul II says to priests:

You are not social directors, political leaders or functionaries of a temporal power. So I repeat to you: let us not pretend to serve the gospel if we try to "dilute" our charism through an exaggerated interest in the broad field of temporal problems. [...] Do not forget that temporal leadership can easily become a source of division, while the priests should be a sign and factor of unity, of brotherhood. The secular functions are the proper field of action of the laity, who ought to perfect temporal matters.¹³⁷

In fact, from time to time the ecclesiastical authority has addressed three reasons

¹³⁶ Document du conseil pontifical pour les laïcs, "Les prêtres au sein des associations de fidèles," in *Documentation catholique*, 79 (1982), pp. 151-163.

¹³⁷ John Paul II, Address to the Ecclesiastical Assistants of International Catholic Associations, December 13, 1979, in *Origins*, 8 (1978-1979), pp. 548-549. See also J. Komonchak, "Clergy, Laity, and the Church," in *Between God and Caesar: Priests, Sisters, and Political Office in the United States*, M. Kolbenschlag (ed.), New York, Paulist Press, 1985, pp. 149-150: "Pope John Paul II [...] has taken steps to discourage and ban direct political activity by priests and religious, the best known cases being those of Jesuit Fr. Robert Drinan, the priests holding government positions in Nicaragua, three sisters of Mercy, as well as a priest in the Canadian Parliament, Fr. Robert Ogle. The Pope's motivation for these disciplinary interventions is apparently complex, aimed at avoiding several dangers: the possibility of scandal involved in the support of controversial legislation or public policies; the confusion of Christian principles of social action with political ideologies and their reduction to political programs; the compromising of the unifying role of the priest and the loss to both the Church and the world of the witness to the transcendent given by the religious. He does not entirely preclude the possibility of the clergy and religious engaging in social and political activities but it is clear that for him these activities are typically the role of the laity."

for prohibiting the participation of clergy in political affairs and public office. First, for the sake of the dignity of the clerical state; second, based on the belief that one person simply could not do justice to more than one major task in life; third, the fear that a portion of the liberty and discipline of the Church would be lost due to the fact that a cleric would necessarily become dependent upon those from whom one received temporal power.¹³⁸ They are never to put themselves at the service of any ideology or human action opposed to the nature of their ministry, but, as heralds of the gospel and shepherds of the Church, they are to spend themselves in fostering the spiritual growth of the Body of Christ.

A priest should be a sign of unity. Canon 287 puts in first place the role of the priest to foster peace among all people, that is most of all founded on justice. They are required to do everything possible to defend the rights of the human person when they concern the demands of natural and positive justice. However, it does not presuppose an involvement in the affairs of political parties because the mission of the Church has to do with the religious order.¹³⁹ A true christian prophet is described as someone who can never

¹³⁸ Synod of Bishops, *Sacerdotio ministeriali*, p. 912.

¹³⁹ Ibid., pp. 912-913: "Priests should [...] select a definite pattern of action, when it is a question of the defense of fundamental human rights, the promotion of the full development of persons and the pursuit of peace and justice [...]. In circumstances in which there legitimately exist different political, social, and economic options, priests like all citizens have the right to select personal options. But since political options are by nature contingent and never in an entirely

fully identify with any one political system, because of an intense awareness of the human weakness that lies at the heart of every political ideology.¹⁴⁰

A priest's service within an association, therefore, must guarantee his identity and his role as an architect of unity in the association itself or between the association and the Church.¹⁴¹ It is inappropriate for priests in pastoral offices, with parish responsibilities, to take part in partisan involvement. As part of their pastoral office they are called to be ministers of peace and harmony. Priests should try to bring together, bridge over, or unify their people and not engage in things which are explicitly partisan in a political sense.¹⁴²

Consequently, such associations which cause divisions and discord among the people of the Church are forbidden.¹⁴³ It may often happen that political associations stir

adequate and perennial way interpret the gospel, the priest who is the witness of things to come, must keep a certain distance from any political office or involvement [...]. Moreover, care must be taken lest this option appear to christians to be the only legitimate one or become a cause of division among the faithful."

¹⁴⁰ Sacrée Congrégation pour les Religieux, "Religieux et promotion humaine," pp. 169-170.

¹⁴¹ SCC, "Quidam episcopi," pp. 642-644. See *Origins*, 11 (1981-1982), p. 647.

¹⁴² R. Smith, "Political Involvement and the Revised Code," in, *Between God and Caesar*, p. 110.

¹⁴³ SCC, "Quidam episcopi," p. 644.

up division and discord among the people of God, whether among the faithful, or among priests, both among themselves and with their own Ordinaries. Organizations like Priests for Peace in Hungary, Christian Reality in Yugoslavia, and Pacem in terris in Czechoslovakia were considered as political associations. Such organizations were said to work in close collaboration with the communist government and often to be in open conflict with the bishops of their nations.¹⁴⁴

3.2.4.2.4.3. Trade Unions

Trade unions are the voluntary organizations of workers for the protection of their economic and social interests in the labor market. They enable the workers to bargain for just labor contracts in a collective way since workers acting in concert are much stronger than the individual employee. The basic function of unions is of a temporal nature because they are concerned mostly with the settlement of just and fair working conditions in collective bargaining with employers and their associations.

The modern social teachings of the Church encourage workers to establish associations or unions for the realization of justice among the people. Leo XIII declared that the right to form unions was a true right of the worker. Pope Pius XI maintained that the doctrine of an innate right of forming unions issued in *Rerum novarum* was properly

¹⁴⁴ Ibid.

extended to other areas of activity, particularly amongst farmers and others of humbler classes.¹⁴⁵ He also praised the clergy who devoted themselves to the creation of such unions. Pope John XXIII went on to urge the formation of professional unions for craftsmen and artisans. John Paul II has considered labour unions to be an instrumental means for realizing the right to work, to a just wage and to social justice.¹⁴⁶

No matter how useful the trade union is in defending the rights of lower classes and promoting justice, the Church's mind is clear in regard to the prohibition on priests directing labour unions (can. 287.2). In 1982, the Sacred Congregation for Clergy stated that labour unions tend to reduce the sacred ministry to a profession or a trade or a profane career. They cannot be reconciled with the clerical state because they reduce the performance of the tasks of priestly ministry to a kind of relationship with a job performance, as it were, and so they can easily set clerics in opposition to their sacred

¹⁴⁵ Pius XI, *Quadragesimo anno*, pp. 181-183.

¹⁴⁶ John Paul II, Homily, "U.S. Priest Addresses Solidarity Convention," in *Origins*, 11 (1981-1982), p. 263: "Labor unions are an indispensable element of social life [...] a mouthpiece for the struggle for social justice, for the rights of the working people in their various occupations and professions. It is an integral part of our Catholic tradition in the field of social ethics. They are indispensable means to safeguard the dignity of the human person and his freedom while leaving intact a sense of responsibility. The inalienable right to form such organizations includes the right to give unions 'the form one considers most suitable for the aims he/she has in view. It also provides a freedom to act within such organizations on one's own initiative and on one's own responsibility in order to achieve his/her desired initiatives'."

pastors who would be considered merely as work foremen.¹⁴⁷

Trade unions give the impression of desacralization among the clergy. T. Pazhayampallil maintains that such activities are unbecoming to the clerical state, inevitably result in neglect of things that are of God, expose clerics to avarice, and finally, often give scandal to people and cause religion to be ridiculed. For the same reasons, when the Holy See allowed for a new experiment in the priest-workers in France, the priests were asked to renounce all responsibility for syndicalist (labor union) activity.¹⁴⁸

3.2.4.2.5. Competent Authority

Although the right of association falls within the area of personal life and the legitimate freedom of priests, the exercise of this right is limited by the nature of the right itself, the common good of the Church, and the dignity of the clerical state. And for this reason, the competent authority has a responsibility to be watchful and take care that the exercise of this right does not harm the common good of the Church and deprive the clerical state of its dignity.

Accordingly, the 1983 Code leaves some room for the competent authority to

¹⁴⁷ SCC, "Quidam episcopi," p. 644.

¹⁴⁸ T. Pazhayampallil, *A Commentary on the New Code of Canon Law*, India, K.J.C Publications, 1985, p. 193. See also Provost, "Priest and Religious in Political Office," p. 84.

exercise this responsibility. First of all, the competent authority has the power to recognize the statutes of the associations of secular priests.¹⁴⁹ The Synod of Bishops in 1971 exhorted that the associations of priests should be fostered in the spirit of ecclesial communion and be recognized by the competent ecclesiastical authority, through an apt and properly approved rule of life and, through brotherly assistance, to seek to advance the aims which belong to their function and holiness in the exercise of the ministry.¹⁵⁰ The mere "recognition" of statutes of an association of clerics does not necessarily signify formal approval in the juridical sense. It may be interpreted as a concession of a *nihil obstat*, or to indicate the modifications by which the statutes may conform to the laws of the Church.¹⁵¹

Secondly, it is the right and the duty of the competent ecclesiastical authority to see to it that clerics refrain from establishing or joining associations or unions of any kind whatever which are not compatible with the priestly state.¹⁵² However, the competent

¹⁴⁹ Canon 278.2.

¹⁵⁰ Synod of Bishops, *Sacerdotio ministeriali*, p. 920.

¹⁵¹ Herranz, *Studi sulla nuova legislazione della chiesa*, pp. 284-285. See also Canadian Conference of Catholic Bishops, *Recognition of National Catholic Associations*, pp. 10-11.

¹⁵² SCC, "Quidam episcopi," p. 642.

authority cannot interfere with or take away the basic right. Their involvement in this area should be one of encouragement and not interference.¹⁵³

Vatican II presents the concept of authority in terms of service within the *communio*. Authority exists because the community and the common good need it. So, the concept of service is key to an understanding of authority in the Church. Authority is required to guide the energies of all towards the common good, not in a mechanical or despotic manner, but through moral persuasion based on freedom and a sense of responsibility.¹⁵⁴

Thirdly, canon 305 empowers the competent authority to supervise these associations. All associations - whether private or public - are subject to the supervision of the competent authority, particularly in matters regarding faith and morals. Public associations are under the overall direction of ecclesiastical authority (can. 315), but private associations are subject to supervision. Supervision by the authority is to ensure 1) that the integrity of faith and morals is maintained in the associations, 2) that abuses in ecclesiastical discipline do not creep in, and 3) that their powers are not dissipated and that their apostolate is ordered toward the common good.

¹⁵³ Celeghin, "Obligaciones, iura, associationes clericorum," p. 49.

¹⁵⁴ GS, no. 74.

Canon 305.2 states that the Holy See is competent to supervise the activities of every association; likewise, in his territory, the diocesan bishop has a right of supervision over all diocesan associations of his particular diocese, as well as over any other association(s) working there, even though its headquarters may be elsewhere. The canon does not refer directly to the Episcopal Conference. However, canon 312 notes that the Episcopal Conference has authority to erect national public associations in its territory. Furthermore, public associations are under the overall direction of ecclesiastical authority mentioned in canon 312 (can. 315) and the Conference has the right to suppress associations it has established (can. 320.2).

For secular priests, the competent authority is at least their own diocesan bishop. They are bound by a special obligation to obey their own Ordinary (can. 273), are to undertake duties entrusted to them by him (can. 274.2), and need at least his presumed permission to be absent from the diocese for a notable period of time (can. 283.1). Their diocesan bishop has a special bond of authority over them in virtue of the priests' incardination (can. 265).¹⁵⁵

3.2.4.2.6. Cessation of the Association

An association ceases to exist in accord with the norms of its statutes or it can also

¹⁵⁵ Provost, "Priests and Religious in Political Office," p. 88.

be suppressed by competent authority. Private associations, for example, can cease to exist on their own initiative. The competent authority can suppress a private association if its activity causes a serious harm to ecclesiastical doctrine or discipline or is a scandal to the faithful (can. 326.1).

Dalla Torre provides examples of constitutional reasons for the suppression of private associations. These include the impossibility of carrying out the ends of the association, the associates' decision to disband, and the death of all the associates.¹⁵⁶ De Echeverria claims that aggrieved private associations have the same right as public associations to appeal assertedly unjust and unwarranted suppression.¹⁵⁷

The type of private association determines the authority competent to suppress it. That is, the Holy See suppresses universal or international private associations; the conference of bishops suppresses national private associations; and the diocesan bishop suppresses diocesan private associations including those erected into private juridic persons.

Regarding the public association, the ecclesiastical authority who erects the public associations enjoy the power to suppress it. Only the Holy See can suppress an association

¹⁵⁶ Dalla Torre, "Associazioni," p. 191.

¹⁵⁷ L. de Echeverria, "De las asociaciones de fieles," in *Codigo de derecho canonico*, L. de Echeverria (ed.), Madrid, Biblioteca de autores cristianos, 1983, p. 191.

erected by it (can. 320.1). For grave reasons, the conference of bishops can suppress associations erected by the same conference; and the diocesan bishop can suppress diocesan associations and associations erected with his consent by members of religious institutes in virtue of apostolic indult (can. 320.2). The competent authority must hear the moderator and major officials of public associations before suppressing them (can. 320.3). Without hearing the moderator and major officials of a public association, its suppression is invalid (can. 127.2).

3.2.5. The Significance of Canon 278

The 1983 Code reflects a great effort in translating the Conciliar doctrine and ecclesiology into canonical language.¹⁵⁸ Regarding the right of association of secular priests, canon 278 presents a juridical interpretation of *PO* no. 8. In spite of many similarities between canon 278 and *PO* no. 8, the canon makes remarkable changes.

First, the canon refers to the secular clergy, whereas *PO* no. 8 referred to priests. The canon includes deacons and excludes members of the Institutes of Consecrated Life and Societies of Apostolic Life. The decree deals with the priests' right of association, because it considers the life and the ministry of priests and did not intend to establish the

¹⁵⁸ John Paul II, *Sacrae disciplinae leges*, pp. viii-xiv.

juridical status of clergy, their obligations and rights.¹⁵⁹

Second, where the decree states: *competent ecclesiastical authority*, the canon speaks of competent authority. The qualification, *statutis ab auctoritate ecclesiastica probatis*, in *PO* was to distinguish associations from so called "patriotic associations" in socialistic states.¹⁶⁰ But in the new Code competent authority is the ecclesiastical authority.

Third, according to the mind of the Council, associations are at the service of the "whole order of priests", but for the Code they must promote unity among clerics and between clerics and their proper bishop. The scope of service directed to the whole order of priests as noted by the decree is generic. In the canon, the scope is specified: holiness in the exercise of the ministry, fostering unity among the clergy, and with the bishop.¹⁶¹

¹⁵⁹ Ocaña, "El lugar teológico-canonico de las asociaciones de clérigos," p. 211.

¹⁶⁰ Lynch, "The Obligations and Rights of the Clerics," p. 212, footnote 105.

¹⁶¹ Canon 278.2. "Magni habeant clerici saeculares praesertim illas consociationes quae, statutis a competenti auctoritate recognitis per aptam et convenienter approbatam vitae ordinationem et fraternum iuvamen, sanctitatem suam in ministerii exercitio fovent, quaeque clericorum inter se et cum proprio Episcopo unioni fovent."

PO, no. 8: "Magni quoque habendae sunt et diligenter promovendae associationes quae, statutis a competenti ecclesiastica auctoritate recognitis, per aptam et convenienter approbatam vitae ordinationem et per iuvamen fraternum, sanctitatem sacerdotum in exercitio ministerii fovent, et sic toti Ordini Presbyterorum servire intendunt."

Within the 1983 Code itself, there is no special norm similar to canon 278 on the right of association of the laity. Canon 224 refers to the rights and duties of the Christian faithful (cann. 208-223) in general. It is true that canon 225 makes a reference to associations while it refers to the right and duty of the laity to strive for evangelization. But it does not assert the right of association for laity as does canon 278.1 for clerics. Associations are contemplated by canon 225 as a means to the apostolate.¹⁶²

There is a parallel to canon 278.2 in canon 327, the first of three canons regarding special norms for lay associations. Canon 327 exhorts the laity to hold in great esteem those associations which are constituted for spiritual purposes. But there does not exist anything similar to canon 278.3, in the juridical statute for the laity. Paragraph three of canon 278 clarifies the limits of the exercise of the right of association of the clergy. Other than some points of similarity which canon 278.2 has with canon 327, the canon on the right of association of secular clergy has no parallel in the rights and obligations of laity.¹⁶³

¹⁶² Canon 225.1. "Since the laity like all the Christian faithful, are deputed by God to the apostolate through their baptism and confirmation, they are therefore bound by the general obligation and enjoy the general right to work as individuals or in associations so that the divine message of salvation becomes known and accepted by all persons throughout the world; this obligation has a greater impelling force in those circumstances in which people can hear the gospel and know Christ only through lay persons."

¹⁶³ Canon 327. "Lay members of the Christian faithful are to esteem greatly associations established for the spiritual purposes mentioned in can. 298, and especially those which propose to animate the temporal order with the Christian spirit and in this way greatly foster an intimate

The canons on the Institutes of Consecrated Life and Societies of Apostolic Life speak only once of the right of association. The canon refers to the order of virgins. It specifies that the virgins can associate together to fulfil their pledge more faithfully and assist each other to serve the Church in a way that befits their state.¹⁶⁴ In addition, among the norms on associations of the Christian faithful (cann. 298-329), one canon states that religious can join associations in accordance with their own law and with the consent of the superior. But these canons are not parallel to canon 278.¹⁶⁵

Canon 278 is based on canon 215 which recognizes the right of association as a fundamental right of the faithful in the Church. However, canon 278 specifically and exclusively speaks about the right of association for the secular clergy which is in harmony with the clerical state.¹⁶⁶ Here, canon 278 indicates three important elements: first, it recognizes the right of association as a fundamental right. Therefore, diocesan

union between faith and life." See also Ocaña, *Las asociaciones de clerigos en la Iglesia*, p. 224.

¹⁶⁴ Canon 604.2: "In order to observe their commitment more faithfully and to perform by mutual support service to the Church which is in harmony with their state these virgins can form themselves into an association."

¹⁶⁵ Canon 307.3: "Members of religious institutes can enroll in associations in accord with their own law with the consent of their superior." See also Ocaña, "El lugar teologico-canónico de las asociaciones de clerigos," p. 215.

¹⁶⁶ *Communicationes*, 9 (1977), p. 245.

priests can freely unite themselves in associations. Second, it regulates the right of association due to the clerical state. The right of association which is recognized as a natural right has an instrumental and subsidiary function with respect to the life and ministry of the sacred minister.¹⁶⁷ The motive of canon 278 is to avoid misgivings on the right of clerics to found and govern associations, formed by themselves for the ends conforming to their status. Third, the canon applies the principle of unity and of diversity. It reflects the mystery of the Church which is unity in diversity.¹⁶⁸

The right to associate, a right flowing from one's human dignity and from one's identity as a Christian, is in harmony with the clerical state. Canon 278 not only recognizes the right of association as a fundamental right of secular clergy, but also regulates its exercise in line with the clerical state. The canon also implies the fact that all the rights recognized for all the Christian faithful because of their common condition, belong also to clerics.¹⁶⁹

¹⁶⁷ Mogavero, "I ministri sacri o chierici," p. 120.

¹⁶⁸ Ocaña, "El lugar teologico-canónico de las asociaciones de clérigos," p. 212.

¹⁶⁹ *Communicationes*, 9 (1977), p. 245.

3.3. ASSOCIATIONS OF PRIESTS AND SOCIETIES OF APOSTOLIC LIFE

In the 1980 schema, the whole Part III of Book II was entitled "Associations in the Church" and this was divided into three sections consisting of Institutes of Consecrated Life, Societies of Apostolic Life and the other Associations of the Faithful. Eventually the 1983 Code puts these societies in different canons from the canons about associations.

Canon 298 of the 1983 Code asserts that associations of the faithful are distinct from Societies of Apostolic Life. It means that the members of an association are not bound by living a fraternal life in common. On the other hand, Societies of Apostolic Life place great emphasis on community life. Canon 731 states that the members of these societies lead a life as brothers or sisters in common according to a particular manner of life. Canon 740 explicitly says that members must live in a house or community legitimately established and observe a common life according to the norm of proper law. By this life in common they form a "special family in Christ." It helps them in giving mutual assistance and in fulfilling their vocation. In other words, common life is essential to the fulfillment of the mission or purpose of a Society of Apostolic Life.

In Societies of Apostolic Life, clerics are not fully attached to a diocese even though some do become incardinated. If they are incardinated they are usually not completely dependent upon the diocesan bishop. The constitutions of Societies of Apostolic Life may provide for incardination into a diocese. The dual alliance thus

effected by incorporation into a society and incardination into a diocese, is governed by the constitutions of the Society or by particular agreements between the Society and the proper bishop.¹⁷⁰ In the associations of priests, priests are still attached to the diocesan bishop. Incardination into a diocese is not taken away by joining or establishing an association. In turn, canon 278.2 encourages priests to join or establish associations that promote the union of the secular priests and their bishop.

The purpose of Societies of Apostolic Life is quite different from that of an association of priests. The members of these Societies (clerics or laity) pursue an apostolic purpose. For greater efficacy of their apostolate, they live a fraternal life in common, in a form proper to their apostolate, and in the observance of the constitutions tending to the perfection of charity. Some even assume the evangelical counsels by a bond defined in the constitutions, but without religious vows (can. 731). The members of the associations of priests may pursue any purposes as far as they are suitable to the clerical state (can. 278.1).

Societies and, unless the constitutions state otherwise, their parts and houses are juridic persons (can. 741), while associations of priests may or may not be juridic persons. A public association is constituted a juridic person by the decree of erection by competent

¹⁷⁰ Canon 736.1: "In clerical societies the clerics are incardinated in the society itself, unless the constitutions provide otherwise." See also canon 266.2.

ecclesiastical authority (can. 313). A private association can acquire juridic personality by a formal decree of competent authority (can. 322). Some private associations or *de facto* associations are not juridic persons (can. 310).

The canons on the Societies of Apostolic Life mention that the written consent of the diocesan bishop is needed for the erection of a house and the establishment of a local community. The diocesan bishop is also to be consulted for its suppression. This obligation rests with the superior but even if the diocesan bishop disagrees the house may be suppressed (can. 733). In the case of an association, a diocesan bishop can erect and suppress a public association. He can also suppress private associations if they cause serious harm to ecclesiastical doctrine or discipline or are a scandal to the faithful (can. 326). The private *de facto* associations do not need any consent from competent ecclesiastical authority for erection.

CONCLUSION

Priests possess human rights that flow from the dignity of the human being who is intelligent, free and social. Among these rights is the right of association. This right relates to the nature of the priest as a fully social human being. This right has been recognized as an authentic right for secular priests by the competent authority in the Church. Since ancient times there have been many associations constituted by priests.

However, the official teachings of the Church that recognize the right of association for secular priests as a natural right were issued only in this century. The theological and legal recognition of this right for priests is found in *PO* no. 8 and canon 278 of the 1983 Code. Both the Second Vatican Council and the 1983 Code declare that this right is in harmony with the nature and mission of the Church in general, and with the nature and mission of priests in particular.

Since it is a fundamental right, secular priests have a right to join or establish associations. They are not forbidden to form private or public associations. They are allowed to join and establish diocesan, national or international associations. They can also form clerical or non clerical associations.

An association of priests, promoted by *PO* no. 8 and canon 278 of the 1983 Code, is different from clerical associations mentioned in canon 302. A clerical association which presumes the exercise of sacred orders, the recognition by the competent authority, and is under the direction of the clerics, is always public; while the associations of priests can be public or private. The purpose of associations of priests is to pursue the member's personal goals, e.g., holiness in the exercise of the ministry, unity among priests, and unity between priests and their bishop. Clerical associations are to promote the mission and to pursue the ends which they propose for themselves in the name of the Church.

The 1983 Code also distinguishes the association of priests from Societies of

Apostolic Life. The members of an association are not bound to living fraternal life in common. On the other hand, Societies of Apostolic Life place great emphasis on community life (cann. 731 and 740). In Societies of Apostolic Life, the clerics are not fully attached to a diocese even though some do become incardinated. If they are incardinated they usually are not completely dependent upon the diocesan bishop. The constitutions of Societies of Apostolic Life may provide for incardination into a diocese. The members of Societies of Apostolic Life (clerics or laity) pursue an apostolic purpose (can. 731), while the members of the associations of priests may pursue any purposes as far as they are suitable to the clerical state (can. 278.1). Unless the constitutions state otherwise, Societies of Apostolic Life and their parts and houses are juridic persons (can. 741), while associations of priests may or may not be juridic persons.

Within the Church, the right of association is exercised in the context of ecclesial communion. Canon 96 states that communion with the Church is a source from which the obligations and rights of the Christian faithful (including priests) derive. Living in communion with the Church is the first obligation of the faithful, including secular priests (can. 209.1). Associations of secular priests, therefore, are obliged to maintain this communion by remaining steadfast to the truth to which the Church adheres naturally as saving truth, and by leading a holy life in the exercise of charity (cann. 748.1, 752-754, 212.1).

The canons on the obligations and rights of the clergy (cann. 273-289) are intended to safeguard the identity of the priest and his sacred ministry. Canon 278, for example, notes that the right of association for secular priests is to be in keeping with the clerical state. Secular priests are encouraged to join or establish associations which a) have their statutes recognized by the competent authority, b) foster holiness, c) help the sacerdotal ministry, d) support fraternal assistance, and e) promote unity among the clergy themselves and the bishop.

Canon 278 also forbids secular priests from joining or forming associations which are contrary or harmful to Catholic doctrine and the discipline of the Church, cause a great spiritual harm to the faithful, or obscure the identity and mission of the Catholic priest.

Priests are supposed to be people of peace and justice. Canon 287 puts in the first place the role of the priest to foster among all people peace that is founded on justice. They are required to do everything possible in defense of the rights of the human person when they deal with the demands of natural and positive justice. However, it does not presuppose an involvement in the affairs of political parties or political associations because the mission of the Church has to do with the religious order. A true Christian prophet never fully identifies with any one political system, because of an intense awareness of the human weakness that lies at the heart of every political ideology.

Priests should be a sign of unity, and they must therefore avoid political

associations that stir up division and discord among the People of God, whether among the faithful, or among the priests, both among themselves and with their own Ordinaries. Priests are also forbidden to serve as executives of labor unions.

Canon 278 gives the competent authority the responsibility for watching over and taking care of the exercise of the right of association for secular priests. The competent authority has the power to recognize the statutes of the associations of secular priests and to see to it that they refrain from establishing or joining associations or unions which are not compatible with the priestly state. The competent authority also supervises these associations (can. 305.1).

The involvement of the competent authorities in this area should be one of encouragement and not interference. They cannot interfere with or take away this basic right of secular priests. They have the functions 1) to direct the exercise of those personal spheres of autonomy towards the common good of the Church, 2) to ensure that doctrine and order are at all times respected, and 3) to promote the exercise of this right together with its corresponding duty, by giving doctrinal guidance and the necessary spiritual help.

On the other hand, secular priests are required to show reverent obedience to competent authority. This obligation of obedience is determined by the sacred ministry and by all that entails direct and immediate objective relations with the ministry. This obedience leaves room for a secular cleric to enjoy lawful autonomy in other areas of his

life, even spiritual ones.

Consequently, there is a need to view the issue of freedom and authority in the new perspectives created by the signs of the times, that is, within the context of community. For both authority and freedom come from God, and are exercised in and for the service of the community. Service is key to the understanding of authority and freedom within the Church. The service of authority on the one hand and the exercise of freedom on the other must be carried out in a spirit of trust, mutual charity, filial and friendly respect, constant and patient dialogue, so that the common mission of the priests may be carried out responsibly together with the guidance and support of their bishop.

The need to view freedom and authority in the context of communion and for the service of the community is to be clearly defined in the statutes of the association. The focus of the following chapter, therefore, is to see how this need is or could be expressed in practical terms.

CHAPTER FOUR

PRACTICAL APPLICATIONS

Secular priests have a right to join any associations whose ends are suitable to their clerical state. They also have a right to form their own associations. Besides assisting priests in their spiritual, intellectual, and communal life, these associations are to promote their ministry among the people of God and foster the communion of the Church.

The purpose of this chapter is to examine critically, in the light of the 1983 Code, the statutes of some associations established or joined by secular priests. The chapter begins with a brief analysis of the statutes of associations as provided in the 1983 Code of Canon Law and then it reviews the statutes of the Companions of the Cross, the Emmanuel Community, Unio Indonesia, and Jesus Caritas Fraternity of Priests, and finally, the National Federation of Councils of Priests of Canada.¹

¹ There are several reasons for choosing the statutes of these associations. Firstly, the availability of the statutes of these associations; secondly, these associations represent private and public, diocesan and national and international associations. Thirdly, the National Federation of Councils of Priests of Canada is examined in order to clarify the concept of association of priests.

The statutes of the Companions of Christ are placed in appendix because they conform to the norms of the 1983 Code; however, the Companions of Christ is not an association of secular priests. It is a Public Association of the Faithful with the eventual goal of becoming a Clerical Public Association of the Faithful.

4.1. STATUTES OF ASSOCIATIONS IN THE 1983 CODE

All associations of the Christian faithful - private or public - are required to have statutes (can. 304.1). Statutes in the proper sense are regulations of the aggregates of persons or things. The statutes define the purpose, constitution, government and operation of the organization.² Canon 304 specifies the essential features of the statutes of associations. It says that associations of the Christian faithful, whether public or private, are to have statutes which define the ends of the association, or its social objectives, the headquarters, government, the conditions of the membership and by whom its policies are to be determined, according to the need or utility of time and place.³ These essential features of the statutes are specified in other canons.

Canon 298 which speaks about the nature of the association of the faithful, for example, mentions several purposes of associations. The associations aim to promote more perfect life, to foster public worship or Christian doctrine or to exercise other apostolic works, namely to engage in efforts of evangelization, to exercise works of piety

² Canon 94.

³ Canon 304.1: "Omnes christifidelium consociationes, sive publicae sive privatae, quocumque titulo seu nomine vocantur, sua habeant statuta, quibus definiantur consociationis finis seu obiectum sociale, sedes, regimen et condiciones ad partem in iisdem habendam requisitae, quibusque determinentur agendi rationes, attentis quidem temporis et loci necessitate vel utilitate."

or charity and to animate the temporal order with the Christian spirit.

The Christian faithful enjoy freedom to form associations among themselves in order to pursue those ends (cann. 215 and 299). The associations can be private - *de facto*, recommended or praised - associations (can. 299). However, only the competent authority has the right to erect public associations which set out to teach Christian doctrine in the name of the Church or to promote public worship or which aim at other ends whose pursuit by their nature is reserved to the same ecclesiastical authority (cann. 301 and 312).

All associations of the Christian faithful are subject to the vigilance of competent ecclesiastical authority. Public associations are subject to the further direction of the ecclesiastical authorities mentioned in canon 312.1 (can. 315). This direction involves ecclesiastical authority in such activities as determining the leadership of public associations (cann. 317 and 318) in managing their temporal goods (can. 319), and in suppressing the association (can. 320). This is different from private associations which enjoy greater autonomy than public ones. In accord with their statutes, private associations select their own leaders without the intervention of ecclesiastical authority, and they administer their temporal goods with fewer restrictions.⁴

Public associations receive their statutes from the ecclesiastical competent

⁴ Canon 324.1: "Christifidelium consociatio privata ea bona quae possidet libere administrat, iuxta statutorum praescripta, salvo iure auctoritatis ecclesiasticae competentis vigilandi ut bona in fines associationis adhibeantur."

authority. Canon 312 specifies the competent authority, such as a diocesan bishop for diocesan public associations, a bishops' conference for national public associations, the Holy See for international public associations. Revising or changing these statutes requires the approval of the same authority (can. 314). Canon 312 expands the competent authorities to include those with the apostolic privilege of erecting certain associations.

For the most part, private associations provide their own statutes. Their statutes must be reviewed by ecclesiastical authority to obtain recognition (can. 299.3). The approval of the statutes of private associations by the competent authority mentioned in canon 312 makes the private associations a juridic person (can. 322.2).⁵ Statutes provide objective norms for the management of private associations (can. 321). These norms enable private associations to suppress themselves (can. 326.1) and to allocate their temporal goods when they become extinct with due regard for acquired rights and the will of the donors (can. 326.2).

4.2. STATUTES OF SELECTED ASSOCIATIONS OF SECULAR PRIESTS

The 1983 Code defines associations of the Christian faithful primarily in terms of

⁵ Amos, *Association of the Faithful*, pp. 207-209. The approval of statutes requires a greater commitment on the part of ecclesiastical authority to associations than does a review of status. The act of approving statutes involves ecclesiastical authority in the very constitution of these statutes.

their relationship with ecclesiastical authority. This relationship establishes two fundamental kinds of associations: Public associations, those erected and governed by ecclesiastical authority, and private associations, those established and governed by the Christian faithful (other than those in ecclesiastical authority).

Based on the statutes, this section examines the nature of the associations of the Companions of the Cross, the Emmanuel Community, Unio Indonesia, and the Jesus Caritas Fraternity. The study also includes an analysis of their relationship to the Church's authority.

4.2.1. The Companions of the Cross

For the Christian faithful, life is a calling from God. The Companions of the Cross believe Jesus has called them together and given them a common vision. They will live, pray, and minister together according to the norms of their statutes. This section will review their statutes in the light of the 1983 Code beginning with a brief historical background, followed by an identification and analysis of their statutes (constitution), and finally the evaluation of the statutes.

4.2.1.1. Historical Background

The Companions of the Cross began with a small group organized by Rev. Robert

Bedard in the Archdiocese of Ottawa. The group, comprised of a priest, a seminarian, and two candidates for seminary at that time, came together on a weekly basis in January 1984. They gathered together in order to support each other in the spiritual life.⁶

Since 1985, the group has become a distinct community of priests. The community, however, includes candidates for the priesthood and other single men who embrace celibacy as a call from God. By this time, a vision for ministry has crystallized the life and mission of the community. All the members are called to participate in the first priority of the mission of the Church, which is evangelization.⁷

The Archbishop of Ottawa recognized this group as a public clerical association after having approved the proposed statutes. The recognition was given in the decree issued in January 1988 by the Archbishop of Ottawa, the Most Reverend Joseph-Aurele Plourde. The decree was effective on February 11, 1988. On December 4, 1990, the statutes were revised. The revised constitution was approved by the Most Rev. Marcel A. Gervais, the present Archbishop of Ottawa, on January 11, 1991.⁸

The revised constitution of the Companions of the Cross consists of the decree,

⁶ *Constitution of the Companions of the Cross*, Ottawa, December 4, 1990, pp. 3-5.

⁷ *Ibid.*

⁸ M.A. Gervais, Decree to the Companions of the Cross, Ottawa, January 11, 1991.

Preamble, and the body of the constitution. The decree dated January 11, 1991 states the approval of the constitution of the Companions of the Cross revised on December 4, 1990, by the Archbishop of Ottawa. The Preamble describes a very brief history and development of the association from the time of its foundation until the time of its recognition as a public clerical association.⁹ The body of the constitution is divided into eight parts: general direction, spirituality, mission, life together, identity, categories of participation, formation and lines of authority.

4.2.1.2. The Analysis of the Revised Constitution

The following analysis of the statutes is based on the categories required by the 1983 Code of Canon Law.¹⁰ These categories consider the association according to the name or title, kind, purpose, headquarters, spirituality, establishment, vigilance, temporal goods, determination of leadership, the approval of statutes, suppression, meetings, duties, and membership. These elements will be divided into three clusters: a) Nature of the association which includes name or title, kind, purpose, headquarters, and spirituality; b) Relationship with the Church's authority which contains the establishment, approval of

⁹ *Constitution of the Companions of the Cross*, p. 2.

¹⁰ Canon 304.1.

statutes, jurisdiction or vigilance, temporal goods, determination of leadership, and suppression; c) Internal organization which includes meetings, membership, various duties, and formation.

4.2.1.2.1. Nature of the Association

The name of the association is the Companions of the Cross. It is a public clerical association. It is a Catholic association within the Church. The identity of the Companions of the Cross cannot be separated from its commitment to serving the Church under the direction of the diocesan bishop of Ottawa. Its centre is based in the Archdiocese of Ottawa. The association is also open to considering invitations to minister in other dioceses.¹¹

The purpose of this association is to help its members to take part effectively in the mission and the ministry of the Church. The priority of their ministry is the apostolate of social justice. Reflecting on the goodness of creation, the dignity of the human person, and a duty to be Christian witnesses in social life, they sense the call from God to be involved in the apostolate of social justice and evangelization, the Church's first priority. They are called to go after the lost or alienated from the Church, the poor, the desperate, those in bondage, the addicted, the abused, the hungry, the homeless, the lonely, the

¹¹ *Constitution of the Companions of the Cross*, pp. 2-5 and p. 14.

abandoned, the jobless, the run-away and the street person. They also work among the youth. To carry out this mission they will work in teams and together with the laity. They give support to each other in spiritual life, ministry, and daily life. Their loyalty is to be lived in communion with the pope and bishops, in faithfulness to the Church's magisterium.¹²

The spirituality of the Companion of the Cross is rooted in two major realities: the wisdom and the power of God. They believe God can do great things through those who are small. They are aware of the words of Jesus Himself: "Without me, you can do nothing" (Jn. 15.5). They are committed to the truth that God desires to direct his people, both as individuals and as bodies of believers. Consequently, prayer, whether private or together, sacramental or non-sacramental, becomes an important part of their daily life.¹³

4.2.1.2.2. Its Relationship with the Church's Authority

The Companions of the Cross was constituted as a clerical association according to the norms of canons 302, 312-320 by the Archbishop of Ottawa in January 1988. The

¹² Ibid., pp. 5-7 and pp. 10-11.

¹³ Ibid., pp. 8-9.

same competent authority approved its revised constitution on January 11, 1991.¹⁴

The Companions of the Cross is under the canonical authority of the Archbishop of Ottawa or the local diocesan bishop. The Archbishop appoints a priest to act as his liaison with the Companions of the Cross.¹⁵

The association is governed by a moderator. He is elected by the coordinators from among themselves. There are five coordinators who are elected for a term of three years by all the members and candidates. These coordinators must be members of the association and elected by absolute majority and through individual ballots.¹⁶

The moderator is responsible for general governance. He is also responsible for the calling of elections, the calling and presiding over of meetings, preserving the statutes and proposing the amendments to the same. He is assisted by the coordinators. He is required by statute to consult the coordinators in making any decisions concerning the members and to seek the consent of coordinators in matters related to the association.¹⁷ Together

¹⁴ Ibid., pp. 2-3.

¹⁵ Ibid., p. 14 and p. 20.

¹⁶ Ibid., p. 20.

¹⁷ The statutes do not specify what aspects of members and of association are subject to these decisions.

with the coordinators, after due consultation with the members and the candidates, the moderator has the right through a majority vote to amend the constitution. However, this action is subject to the approval of the Archbishop of Ottawa or the local diocesan bishop or their duly appointed delegate.¹⁸

The exercise of authority in the Companions of the Cross is modelled after Christ's authority within the Church. The authority is a ministry and a service. The moderator and coordinators have to act on behalf of and for the needs of the entire community. An open dialogue between the authority and the members is a requisite. The authority is to be lived faithfully to keep communion with the people of God, the bishop and the Pope.¹⁹

4.2.1.2.3. Internal Organization

There are several categories of participation in the Companions of the Cross, such as visitors, applicants, candidates, members, priests-associates, and deacon-associates. A visitor is one who attends meetings in order to look at the possibility of joining the community or simply to seek and receive spiritual support. A visitor is permitted to visit for a period of one year. At the end of the year he is asked to decide to be an applicant,

¹⁸ Ibid., pp. 20-21.

¹⁹ Ibid., p. 6 and p. 21.

continue as a visitor, or cease attendance. One may become an applicant after three months attendance at the meetings of the community. After a certain time (from six months to one year) an applicant may request acceptance as a candidate. A candidate is one who places himself fully under the authority of the community as he continues toward membership. The time of candidacy is about five to nine years. A member is one who makes a life time commitment to the Companions of the Cross.

The membership of the Companions of the Cross includes priests, candidates for the priesthood, and other men who wish to share in its life and mission. A priest or deacon who does not sense a call to membership in the community may apply for associate status. Associate priests or deacons are welcome to attend meetings and other functions of the community. Clerical members incardinated in the Archdiocese of Ottawa are subject to the norms of the Archdiocese. A cleric incardinated in another diocese will be subject to the norms of that diocese.²⁰

The Companions of the Cross believe that they must be formed as men, Christians, priests and brothers. Therefore, their statutes mandate the theological, personal and spiritual formation of the member. The students are sent to study theology in a seminary determined by the Archbishop. Then they will be appointed by the Archbishop to a pastoral internship position in one of the parishes or to some other diocesan ministry. In

²⁰ Ibid., p. 5 and pp. 16-17.

the final year before ordination, the seminarian will be assigned by the community to pastoral studies and experiences. The Companions of the Cross wish to abide by the guidelines provided by the Canadian Conferences of Catholic Bishops in this regard.²¹

It is the responsibility of the director of admissions, chosen by the coordinators, to receive the application. A seminarian could terminate his commitment to the Archdiocese by his own decision. He can also be dismissed by the decision of the Archbishop. The dismissed member may leave the community, or remain in community but not as a possible ordinand, or apply to some other dioceses.²²

For the Companions of the Cross, life in common is not an option. The Companions of the Cross is a group of men who feel called to take up the common life. Since Jesus Himself and the first community of believers highly esteemed the common life, the Companions of the Cross are called to live out their daily life in common in pursuit of their ministry. They believe that the work of the Church becomes more efficacious when they are together. Common life sustains and enriches spiritual life and provides support for each other. It is expressed by living, praying, and working together.²³

²¹ Ibid., pp. 18-19.

²² Ibid., p. 5 and pp. 16-17.

²³ Ibid., pp. 11-12.

In the context of common life, general meetings become very important for the direction and the progress of the community. Every household sends its representative to discuss their concerns in each household and in the Community.²⁴

4.2.1.3. Evaluation

The very existence of the Companions of the Cross is an expression of the fundamental right of every human being to associate. This association began with a private agreement among the members. The common interest which calls them to run and join the Companions of the Cross is the same need for mutual support in their spiritual life and then in their ministry. The association basically pursues the ends that are suitable to the clerical state required by canon 278. It provides mutual support among the members in their spiritual and daily life, in their ministry and service to the people of God.

The members of the association freely chose to seek juridical status by proposing their statutes to the competent authority. In January 1988, after having reviewed the proposed statutes, the Archbishop of Ottawa decided to grant the Companions of the Cross recognition as a clerical association. This juridical status gives the association the right to receive the mission to accomplish its ends in the name of the Church. It also provides competent authority the right to intervene when necessary. The 1983 Code states

²⁴ Ibid., p. 21.

that public associations are subject to the further direction of the ecclesiastical authorities mentioned in canon 312.1 (can. 315). In view of this provision, the competent ecclesiastical authority has the right to confirm the moderator of a public association (can. 317 and also cfr. can. 318), to be involved in the management of their temporal goods (can. 319), as well as to suppress the association (can. 320).²⁵

Accordingly, the statutes of the Companions of the Cross include provision for legitimate intervention of the competent ecclesiastical authority, that is, the Archbishop of Ottawa. The statutes declare that the Companions of the Cross are under the canonical authority of the Archbishop of Ottawa. He appoints a priest as his representative. He enjoys the right to be consulted when decisions are made concerning undertakings of ministry in other dioceses and assignment of candidates for theological studies. He has the right to dismiss a seminarian, to determine places of pastoral internship for seminarians, to assign priests to ministry in the diocese.²⁶

The Companions of the Cross are a diocesan and a public clerical association. Canon 302 identifies three conditions required for an association to be called a clerical association: 1) it is under the direction of the clergy, 2) it presumes the exercise of sacred

²⁵ Pagé, "Associations of the Faithful in the Church," pp. 182-185.

²⁶ *Constitution of the Companions of the Cross*, pp. 14-20.

orders, and 3) it is recognized as such by the competent authority. Roch Pagé argues that these three conditions must be fulfilled at the same time.²⁷ It is clear that the Companions of the Cross are recognized as such by the competent authority. The second condition does not seem to be a problem since the presumption of the exercise of sacred orders does not mean that all the members must be clerics.²⁸

The statutes do say that the moderator is responsible for the general governance of the association. He is elected from and by the coordinators. These coordinators must be members of the association. The membership of association is comprised of priests, candidates for priesthood, and other single men who wish to share its life and mission. It means that all the members of this association have a right to be elected as coordinators and moderator. The possibility of having a non-clerical moderator would be contrary to the norm of canon 302 which requires a clerical association to be under the direction of clergy, as well as the norm of canon 317.3 according to which a cleric should be the moderator of a clerical association. Due to this stipulation, the moderator of the association of the Companions of the Cross must be a cleric.²⁹

²⁷ Pagé, "Associations of the Faithful in the Church," p. 175.

²⁸ Ibid.

²⁹ Ibid., p. 188.

As required by law, the Companions of the Cross have their own statutes which were revised and approved by the competent authority on January 11, 1991.³⁰ These revised statutes contain most of the canonical requirements and elements governing a public association. In other words, in accord with the norms of the 1983 Code, the statutes of the Companions of the Cross seem to be in order. However, the statutes do not contain any directives in regard to temporal goods and the suppression of the association. In these matters, one would have to conclude that in the absence of particular law, common law contained in canons 319-320 is to be applied.³¹

Is the Companions of the Cross a juridic person? The revised statutes do not make any explicit reference to this aspect of the association. According to canon 313, a public association is constituted a juridic person by the decree by which it is erected by competent ecclesiastical authority; such an association thereby receives also a mission to pursue the ends which it proposes for itself in the name of the Church.³² As a public

³⁰ *Constitution of the Companions of the Cross*, pp. 2-3.

³¹ Canon 319 designates two obligations which a public association has in relation to the competent authority: that of rendering an annual account of its administration and use of the goods (can. 1287) and that of rendering satisfactory account regarding fulfillment of obligations attached to certain goods: offerings, alms, mass obligations, pious wills, etc (cann. 1267-1301). Canon 320 mentions that the competent authority who establishes the public association can suppress it.

³² Canon 116.1 and canon 301.

association, the Companions of the Cross has received by the decree of its constitution by the competent ecclesiastical authority, its mission to pursue these ends in the name of the Church. In fact, the first priority of the Companions of the Cross pursues the Church's mission, that is, evangelization. Their loyalty is to live and work in communion with the Pope and bishops, in faithfulness to the Church's magisterium.³³ Therefore, the Companions of the Cross seems to enjoy the status of a public juridic person.

The juridic status of an association certainly affects the administration of its temporal goods. According to canon 1257, all temporal goods of public juridic persons within the Church are ecclesiastical goods and are regulated by canons 1259-1310 of the Code as well as by their own statutes. Therefore, the temporal goods of the Companions of the Cross are ecclesiastical goods and are regulated by the norms of Book V of the 1983 Code.³⁴

For the Companions of the Cross, community is not an option. They live, pray, and minister together. The life is to be lived in common, in a community of true, committed love. This feature raises a question about the difference between associations and Societies of Apostolic Life. Common life is an essential element of the Societies of

³³ Canon 301. See also *Constitution of the Companions of the Cross*, p. 6 and p. 10.

³⁴ Pagé, "Associations of the Faithful in the Church," p. 190.

Apostolic Life. It seems that the common life in the Companions of the Cross is to be understood in the light of canon 280.³⁵ Here the concept of common life is different from the concept of common life of the Societies of Apostolic Life mentioned in canons 731 and 740.³⁶ Otherwise, the Companions of Cross bears the essential features of the Societies of Apostolic Life, such as life in common, apostolic ministry, and spiritual perfection.³⁷

4.2.2. Emmanuel Community

The Emmanuel Community is an international association of the faithful. It is not an association of priests, but its membership is open to the clergy (priests). The proper statutes contain special rules governing admission of the clergy into this association. We

³⁵ Canon 280: "Clericis valde commendatur quaedam vitae communis consuetudo; quae quidem, ubi viget, quantum fieri potest, servanda est." See also *PO*, no. 8. Here common life aims at safeguarding celibacy and other virtues; it helps the diocesan priests in carrying out their apostolate and in providing the Christian faithful with an example of charity and unity; it helps the diocesan priests in seeking mutual help for the enrichment of intellectual and spiritual life, in promoting better cooperation among them, and in safeguarding them from dangers arising from loneliness.

³⁶ S.L. Holland, "Societies of Apostolic Life," in *The Code of Canon Law. A Text and Commentary*, p. 537. Here members must live in a legitimately constituted house or community and observe a common life.

³⁷ Canadian Conference of Catholic Bishops, *Recognition of National Catholic Associations*, p. 13.

will analyse its statutes following the same method used in the preceeding section. First, we will look at the historical background of the association of the Emmanuel Community, and then subject its statutes to a critical evaluation.

4.2.2.1. Historical Background

The Emmanuel Community was established in 1976. Its origins are rooted in the Catholic Charismatic Renewal. It was in 1972 that Pierre Goursat and Martine Laffite-Catta started a charismatic group in Paris. At that time its members were laypeople. Four years later, the group became an association, called the Emmanuel Community.³⁸ It is an association of the faithful open to all states of life.³⁹

The aim of the association is to participate in the fulfillment of the mission of the Church in today's world. In the spirit of adoration, compassion and evangelization, its members strive to live out the truth of Emmanuel as "God with us in everyday life." Eucharistic celebration becomes the centre of their lives and evangelization is the centre

³⁸*Statutes of the Emmanuel Community and the Fraternity of Jesus*, Unofficial translation of the French statutes by Emmanuel-Saskatoon, Canada, January 1994, p. 1. The term community is not taken in the restricted sense of a community living under the same roof, nor of any religious community, but in the broad sense of an association quickened by a community spirit.

³⁹ *Statutes of the Emmanuel Community and the Fraternity of Jesus*, pp. 1-3.

of their work or mission.⁴⁰

The association has been working in many countries and dioceses in Africa, Asia, and America. The bishop of Saskatoon issued a letter of acceptance of this community in October 1993.⁴¹

On December 8, 1992, the Pontifical Council for the Laity proclaimed that the Emmanuel Community was a private and universal association of the faithful. The association enjoys the status of juridic personality according to the norms set forth in canons 298-311 and 321-329. The Pontifical Council for the Laity approved the statutes *ad experimentum* for a period of 5 years.⁴²

The statutes of the Emmanuel Community (and the Fraternity of Jesus) begin with the decree issued by the Pontifical Council for the Laity. The decree basically recognizes the Emmanuel Community as a private and universal association of the faithful. Then follow the statutes which consist of a preamble and Rulings with regard to Emmanuel Community. Its Rulings contain the nature and end, members-probation-commitment, life-

⁴⁰ Ibid., p. 4. See also Pontifical Council for the Laity, "Decree addressed to Emmanuel Community," Vatican City, December 8, 1992, p. 1.

⁴¹ *Statutes of the Emmanuel Community and the Fraternity of Jesus*, p. 4. See also the Letter of Acceptance of the Emmanuel Community and the Fraternity of Jesus in the Diocese of Saskatoon, October 13, 1993.

⁴² Pontifical Council for the Laity, "Decree," p. 1.

laws and obligations of the members, rules for clerics, particular regulations of celibacy for the Kingdom, governance and regulations concerning the Fraternity of Jesus.

4.2.2.2. The Analysis of Statutes

The analysis of the statutes will follow the categories determined in the previous section. These include the nature of the association (name or title, kind, purpose, and headquarters), then the relationship with the Church's authority (establishment, statutes, vigilance, leadership, temporal goods, and suppression), and finally its internal organization (meetings, members, duties, formation, etc).

4.2.2.2.1. Nature of the Association

The association is called Emmanuel Community. This name is based on the text of Mt. 1.23, which says: "Behold the Virgin will conceive and give birth to a Son who will be called Emmanuel, which means God is with us." For them, Jesus is the centre of their daily life. It is a private and universal association of the faithful with juridic personality.⁴³

The purpose of the association is to help the members in answering the same call to holiness and for proclaiming the gospel. They endeavour to pursue this call according to each person's state in life and ministry. They jointly commit themselves to unify the

⁴³ *Statutes of the Emmanuel Community and the Fraternity of Jesus*, pp. 4-5.

community and to effectively assist each other in material, fraternal and spiritual aspects of life. Through common activities the Community aims at the sanctification of its members and the participation in the general apostolic end of the Church. They are called to bring good News to all, that is, all believers as well as non-believers in different cultures. They are committed to the care of the sick and the poor, and to the promotion of human and spiritual values. They seek enlightenment from the teachings of the Church in filial submission to the magisterium.⁴⁴

4.2.2.2.2.. Its Relationship with the Church's Authority

The Emmanuel Community was founded by lay people and was recognized as a private association in December 1992. The Community enjoys the status of a juridic person according to the norms of canons 298-311 and 321-329. Their statutes were approved by the Pontifical Council for the Laity on December 8, 1992. The statutes were originally written in French, but they may be translated while maintaining the integrity of the French version.⁴⁵

As a private association, the community is governed by its own leader with the

⁴⁴ Ibid.

⁴⁵ Ibid., p. 5 and p. 18.

autonomy sanctioned by the universal law of the Church, particularly by canons 215, 298 to 311 and 321-329 of the 1983 Code, and also by its own statutes. The Emmanuel Community is an international community which consists of "Community provinces."⁴⁶ For the governance in the international level, there are a Moderator, International Council, Consultative Committee, and College of Prayer and Election. The Community is led by a Moderator assisted by an International Council.⁴⁷ For governance at the province level, the Community is governed by the Provincial Coordinator assisted by the Board and the Apostolic Committee.⁴⁸ However, the life and apostolate of the community are under the vigilance of the Holy See and that of the Ordinary of the place of its activities at the diocesan level to the extent that it works in the diocese (can. 305).⁴⁹

The common good of the Community and of its members is the main responsibility

⁴⁶ Ibid., p. 12. Community provinces are defined by the Council. They may encompass a whole country, or beyond the borders of the country, depending on the number of members, types of activities, and the extension of the Community.

⁴⁷ Ibid. pp. 12-14. The International Council is a group of people composed of 12-17 members which elects a Moderator, and together with the Moderator sets up a Consultative body, determines the general plans of the life of the apostolate and of the formation of the Community, and defines the boundaries of the provinces.

⁴⁸ The statutes do not explain the nature of the Board and Apostolic Committee.

⁴⁹ Ibid., p. 5 and pp. 12-15. See also Pontifical Council for the Laity, "Decree," p. 1.

of the Moderator and the International Council. Besides this, the Moderator and the International Councils are responsible for setting up the Consultative Committee⁵⁰ and for defining the general plans for the apostolate and for the formation of the Community. They also supervise the provinces.⁵¹

The Moderator represents the Community in all religious and civil matters. He/she presides over the International Council. In consultation with the International Council, he/she appoints a priest to be responsible within the Community for specific aspects of the ordained ministry. With the consent of the Bishop or Ordinary, he/she may designate a priest to act as his/her representative responsible for the formation of seminarians of the Community. He/she also draws up the agenda for meetings of the Consultative Committee. This meeting takes place once a year.⁵²

⁵⁰ *Statutes of the Emmanuel Community and the Fraternity of Jesus*, p. 13. The Consultative Committee includes the Moderator, the International Council, those who are responsible for the main apostolic services, the provincial Coordinators, the senior members of the Community whose contribution could be helpful to deepen the charism, and others appointed to ensure an equitable and qualitative representation of the states of life or to reflect other Community realities.

⁵¹ *Ibid.*, pp. 13-14.

⁵² *Ibid.*, pp. 15-16. The consent of the Council is required concerning the commitment to celibacy, commitments in the Community, establishment of the community in a diocese, agreement for apostolic services, candidates for ordination, the institution of formation or curriculum of ecclesiastical studies, appointment or confirming or renewing the coordinators of provinces, delegation of power as Moderator, appointment of the bursar, the improvement of the annual budget, alienation, or acts of extraordinary administration.

The Moderator is elected by the International Council which in turn is elected by a "College of Prayer and Election." This College is comprised of the Moderator, the International Council, the Consultative Committee, and delegates from provinces.⁵³

In financial matters the Moderator is helped by the bursar, who does not necessarily have to be a member of the Council. The administration of the temporal goods is subject to the prescription of its statutes with due regard for the right of the competent ecclesiastical authority to be watchful that the goods are used for the purposes of the association (can. 325). Furthermore, each member has a responsibility to share the expenses, and to support the survival and activities of the Community.⁵⁴

A Provincial Coordinator is named by the Moderator, with the agreement of the International Council, for a period of three years, renewable. His/her responsibility is to animate the community life of the Province, foster the ongoing growth of the members, and coordinate the apostolic activities.

The diocesan bishops or Ordinaries who explicitly accept the presence of the

The advice of the Council is required to request the assignment of clerics by the bishop, to accept the requests for entry on probation or for readmittance to the Community, to confirm the Boards and Councils established by the regional coordinators, to draw up and revise the list of members of the Consultative Committee.

⁵³ Ibid., pp. 12-14.

⁵⁴ Ibid., p. 18.

Community in the dioceses according to present statutes are to incardinate the priests and deacons belonging to the Emmanuel Community. The bishops or the Ordinaries have the ultimate responsibility for the formation of the members of the Community who are candidates for priesthood in conformity with canons 232-264. However, they (bishops and Ordinaries) must consult the Moderator and Council of the Community when determining the conditions and place of formation. They enjoy the right to appoint the clerics for ministry in the diocese in consultation with the Moderator of the Emmanuel Community. In agreement with the Moderator, they determine the time each priest or deacon is to allot to a particular work within the community.⁵⁵

The statutes also acknowledge the right of the Pontifical Council for the Laity to appoint the Ecclesiastical Assistant for both the Emmanuel Community and the Fraternity. The function of the Ecclesiastical Assistant is to help the Community and the Fraternity in the promotion of sacramental life, sanctification, and theological formation, in fidelity to the Church. The Ecclesiastical Assistant does not participate in the governances. The Ecclesiastical Assistant is appointed by the Pontifical Council for the Laity from three names submitted to it by the Moderator.⁵⁶

⁵⁵ Ibid., pp. 9-11.

⁵⁶ Ibid., p. 17.

4.2.2.2.3. Internal Organization

The community is comprised of the Christian faithful belonging to all states of life: married or celibate lay folk, men and women committed to celibacy for the Kingdom, permanent deacons, priests, transient deacons, seminarians, men and women religious. The membership can be classified as probationary members,⁵⁷ fully committed members, associate members, associate members according to a particular status, and associate members consecrated to the Fraternity of Jesus. Among the members, there are some who practice a radical commitment. There are some who become members only of the Fraternity of Jesus, and not of the Emmanuel Community.⁵⁸

The conditions of membership require that one: a) should be baptized and confirmed in the Catholic Church, b) be of age according to Canon law⁵⁹ and national civil law, c) who has completed a probationary period of not less than two years, d) who adheres to the spirit of the Community; such a person is to be expressly received by the Moderator and the Council or their local representatives with a special mandate to this

⁵⁷ Ibid., p. 6.

⁵⁸ Ibid., pp. 5-8.

⁵⁹ Ibid., p. 6, footnote no. 1: "Canon 97.1, eighteen years of age."

effect.⁶⁰

Secular clerics need written permission from their diocesan bishop and religious need written consent from their lawful superiors. A baptized non-Catholic may participate as an associate member and then, with the consent of the Moderator and the Council he/she may participate in the community life while respecting the relationship with their Church. However, such persons take part neither in the governance of the community nor in the responsibility of formation.⁶¹

The clerics have the same rights and obligations as the other members. All members commit themselves to fraternal, contemplative and apostolic life in the world and in everyday life. They spend a substantial amount of time in adoration, daily participation in the Eucharist, communal prayer and regular reception of the sacrament of reconciliation. They live a community life that promotes adoration before the Blessed Sacrament, compassion for all people who starve to death - materially and spiritually -, and evangelization.⁶²

A member may be dismissed because of grave difficulty in living out the

⁶⁰ Ibid., p. 5.

⁶¹ Ibid., pp. 5-6.

⁶² Ibid., p. 7.

commitments of the Emmanuel Community. In this case, the Moderator, with the consent of the Council, may ask a member to leave or initiate dismissal proceedings. However, the dismissal of any member should be done with due respect for one's right of defence. The Community shall practice equity and evangelical charity towards the dismissed member.⁶³

4.2.2.3. Evaluation

The statutes of the Emmanuel Community contain the name, purpose, kind, juridic status, establishment, vigilance of the competent authority, temporal goods, duties, and formation. The statutes, for the most part, conform to the norms of the 1983 Code. However, the statutes do not say anything about the suppression of the association mentioned in canon 326. The statutes do not explicitly indicate the location of the headquarters of the association. The statutes only passingly make mention of meetings without providing any details. Explicit consideration of the suppression, headquarters, and meetings of the association should be included in the statutes.

The statutes were approved by the Holy See on December 8, 1992. By that time the Emmanuel Community was recognized as a private and universal association of the faithful with status of juridic personality according to the norms of canons 298-311 and 321-329. It seems that the Emmanuel Community is a private juridic person because 1)

⁶³ Ibid., p. 17.

the Community does not exercise a mission in the name of the Church, 2) its temporal goods are administered according their statutory purpose in conformity with canon 325,⁶⁴ and 3) the competent authority never expressly granted it public juridic personality.⁶⁵

As a private association, the Emmanuel Community has great autonomy and flexibility. The Community can determine how to proceed in attaining its goals, even in matters considered essential: the appointments of their moderator and spiritual counsellor, management of their temporal goods, etc. However, this autonomy is subject to the vigilance of the Church's competent authority.⁶⁶ Accordingly, the statutes say that the life and apostolate of the community fall under the vigilance of the Holy See and that of the Ordinary of the place of activities at the diocesan level to the extent that it works in the diocese (can. 305).⁶⁷

The statutes also mention the existence of the Ecclesiastical Assistant in this Community. Is the ecclesiastical assistant understood in the sense of canon 317? The

⁶⁴ Ibid., p. 18.

⁶⁵ Canons 116 and 1257. See also Pagé, "Associations of the Faithful in the Church," p. 192.

⁶⁶ Kneal, "Associations of the Christian faithful," p. 255. See also E. Caparros, M. Thériault, J. Thorn, *Code of Canon Law Annotated*, p. 259.

⁶⁷ *Statutes of the Emmanuel Community and the Fraternity of Jesus*, p. 5 and pp. 12-15.

answer is no, because the Emmanuel Community is not a public association. Canon 317 is applied only to public associations. Moreover, the function of the Ecclesiastical Assistant in the Emmanuel Community is different from that of canon 317. The Ecclesiastical Assistant in the Emmanuel community does not participate in the government. The function of this person is to provide assistance to the Community. Thus, its existence does not have any juridical effect on the status of the Emmanuel Community as a private universal association.

The Emmanuel Community is not an association of priests, but it allows priests to be its members. This raises a question: Does the Emmanuel Community pursue the ends suitable to the clerical state? Priests should govern or join associations which are meant to improve the spiritual life of the priests, help priests in their ministry among the people of God, and foster ecclesial communion.⁶⁸ The fact that the Emmanuel Community aims at fostering perfection, promoting public ministry, exercising apostolic activities, and being faithful to the Christian teaching affirms its suitability to the clerical state.

Its statutes also stipulate that diocesan clerics may become members of the Community and the Fraternity of Jesus with "the written permission of their bishop." This stipulation neither intends to restrict the right of diocesan clerics to associate nor considers the right of diocesan clerics to associate as a concession from the bishop. The stipulation

⁶⁸ *PO*, no. 8. See also Heranz, *Studi sulla nuova legislazione della Chiesa*, p. 285.

rather intends to avoid tension between the Emmanuel Community and the diocesan bishop concerning the diocesan clerics who wish to join this Community.⁶⁹

The diocesan bishop or Ordinary who explicitly accepts the presence of this community in his diocese is required to incardinate priests and deacons who belong to this community. The Second Vatican Council states that by incardination, a cleric is bound to obey the Ordinary of the church he has been attached to because the service a cleric wants to give to the particular church has to be done under the authority and direction of that Ordinary. Incardination places the cleric in a position of dependence on the bishop in the pastoral exercise of the ministry, and for spiritual and material support.⁷⁰ He is to work under the direction and guidance of the diocesan bishop.⁷¹

In the case the Emmanuel Community, the rights of the diocesan bishop or Ordinary over the priests and deacons belonging to the Community are restricted. The bishop assigns the clerics to ministries in consultation with the Moderator of the

⁶⁹ Rincón, "Los sujetos del ordenamiento canonico," p. 195. The right of diocesan priests to associate is a true one and not a faculty granted by ecclesiastical authority because the diocesan priesthood does not constitute an association and because diocesan priests enjoy autonomy in their lives within the limits of good morals and activities congruent with the clerical state. See also Lynch, "The Obligations and Rights of Clerics," p. 212.

⁷⁰ *LG*, no. 28.

⁷¹ J.K. Mussio, "The Priest and His Bishop," in *Secular Priests in the New Church*, G.S. Sloyan (ed.), New York, Herder and Herder, 1967, p. 116.

Emmanuel Community. The assignment should take into consideration the charism of the Community and the concrete feasibility of the community life and apostolate. The bishop cannot assign a cleric to particular works of the Community without consultation with the Moderator. The bishop is responsible for the formation of the members of the Community who are candidates for the priesthood, but the conditions and place of formation are determined in consultation with the Moderator and Council of the Community.

4.2.3. Unio Indonesia

The eternal Oneness of the Priesthood of Jesus Christ which inspires the exercise of the sacred office of the priesthood is made clearly evident by the obvious truth that priests need to work together in the spirit of Christ's love and help each other both spiritually and materially in all aspects of life for the sake of building up the Church and society (LG 28).

Aware of the great importance of increasing this spirit of cooperation, the diocesan priests of Indonesia have agreed to form a national association of secular priests of Indonesia, called Unio Indonesia. An analysis of this association is presented below following the same headings employed in the preceding sections.

4.2.3.1. Historical Background

The need to have contact with and to work together with other priests inspired some secular priests in Indonesia to form Unio Indonesia. It was in 1950 that Fr. Padmoseputro sponsored the first meeting for secular priests in Indonesia. He also published a bulletin for this group, named *Berita*. Msgr. Soegijopranoto, the Archbishop of Semarang, was sceptical of the group fearing that would turn into a trade union.⁷²

In July 1955, the group was officially formed by the name of Unio Indonesia. However, the group used the word *Tetua*⁷³ for its leader instead of president in order to avoid the impression that the group would be a formal organization. The members of this group were from Semarang diocese. On June 27-29, 1977, the general meeting was held in Salam. Secular priests from several dioceses attended the meeting. During this meeting a set of guidelines for Unio Indonesia was drawn up. These guidelines contained a foreword, sections defining the association's name and nature, purposes, membership, rights and duties, government, and an explanation of the statutes. The statutes were

⁷² Sekretariat Unio Indonesia, *Musyawahar Nasional Unio Indonesia I Jakarta, 14-17 Juni 1983*, Jakarta, Mardi Yuana, 1983, p. 9.

⁷³ *Tetua* is an Indonesian word for *primus inter pares*.

approved by the members on October 24, 1977.⁷⁴

The general meeting held on June 14-17, 1983, was considered as the first general national meeting because this meeting was more representative. Almost all the dioceses in Indonesia sent their representatives to this meeting. In this meeting, the guidelines were revised and approved by the members on June 17, 1983. The guidelines consist of a preamble, followed by sections dealing with the association's name and headquarters, purposes, membership, rights and duties of the members, government, responsibilities of the officers, general meeting, temporal goods, amendment, cessation, and other relevant matters.⁷⁵

At the general meeting on June 23-27, 1986, in Malang, the membership felt that the 1983 guidelines were very dry and juridic. In the estimation of the membership, those guidelines lacked the spirit to engender a sense of fraternity among the diocesan clergy. Therefore, they were revised. The revised guidelines were approved by its members on June 26, 1986, and contain a foreword and the association's basic principles, vocation and way of life, services, and organization.⁷⁶

⁷⁴ Ibid. pp. 9-10 and pp. 71-75.

⁷⁵ Ibid. pp. 37-70.

⁷⁶ Sekretariat Unio Indonesia, *Musyawahar Nasional Unio Indonesia II Malang, 23-27 Juni 1986*, Jakarta, Mardi Yuana, 1986, pp. 22-44.

4.2.3.2. The Analysis of Its 1986 Statutes

The analysis of these statutes will follow the categories outlined in the previous section. It begins with the nature of the association (name or title, and purpose), then the relationship with the Church's authority (establishment, statutes, vigilance, leadership, temporal goods, and suppression), and finally the internal organization (meetings, membership, duties, formation, etc) of the association.

4.2.3.2.1. The Nature of Unio Indonesia

Unio Indonesia is a national association of secular priests in Indonesia. The purpose of this association is to help the secular priests, individually or in groups, throughout Indonesia so that they might more effectively and efficiently cooperate in building up the Indonesian Church and Society. Unio Indonesia unites secular priests who work to help each other in perfecting their spiritual life in the ministry and in the fostering of priestly brotherhood. Unio Indonesia promotes the sacramental brotherhood between secular priests and their bishops, and among themselves.⁷⁷

For these purposes, the Unio Indonesia provides its members with retreats and recollections, updates in theological- ascetical- and pastoral renewal, distributes

⁷⁷ Sekretariat Unio Indonesia, *Pedoman Unio Indonesia - The Statutes of Unio Indonesia*, Jakarta, Mardi Yuana, 1986, pp. 11-13. 19.

magazines and other publications concerned with spirituality.⁷⁸

The spirituality of Unio Indonesia focuses on celibacy, poverty, and obedience. Celibacy is a sign and a motivation for the priests' love of Christ and their availability to carry out their pastoral duties. They practice the spirit of poverty by living simply but decently, for example: in keeping their financial affairs in responsible order. They practice obedience primarily in accepting diocesan directives, especially those of the bishop, in the spirit of Church unity. The celebration of sacramental penance occupies an important place among the means of perfection in the life of the priests.⁷⁹

4.2.3.2.2. Its Relationship with the Church Authority

Unio Indonesia was founded by secular priests. Its statutes were approved by its members. Approval of the association or recognition from any Church authority has never been requested.⁸⁰

Unio Indonesia is governed by a Board of Directors elected during the National Conference of Unio Indonesia. The Board of Directors consists of at least the following

⁷⁸ Ibid., pp. 18-19.

⁷⁹ Ibid., pp. 13-15.

⁸⁰ Ibid., pp. 24-25.

officers: chairman, secretary, treasurer, and two members. They are elected for a term of three years. In case that one of them cannot carry out his duties, the other officers shall take over his duties until the next national Conference.⁸¹

The Board of Directors has the authority and the duty to represent Unio Indonesia in external affairs,⁸² to augment its staff in case of necessity, to acknowledge and respect the authority of the bishop over the priests of his diocese, to hold a meeting at least annually and to hold a National Conference.⁸³

The National Conference holds the highest authority in Unio Indonesia. The Conference is attended by representatives of the units of Unio. Decisions of the National Conference are arrived at by *musyawarah mufakat*.⁸⁴ Alterations, additions, or refinements of the statutes can be made only in the National Conference. The association is supported by contributions of members, donations, and other legitimate fiscal sources.⁸⁵

⁸¹ Ibid., pp. 20-21.

⁸² The Board of Directors represents Unio Indonesia at the national and international level.

⁸³ Sekretariat Unio Indonesia, *Pedoman Unio Indonesia*, pp. 22-23.

⁸⁴ *Musyawarah mufakat* (deliberation leading to agreement) means that a decision takes place after the participants of the conference deliberate for hours and finally reach an agreement.

⁸⁵ Sekretariat Unio Indonesia, *Pedoman Unio Indonesia*, p. 23.

4.2.3.2.3. Internal Organization

Members of Unio Indonesia are those diocesan priests who serve in Indonesia and who become members of their own local Unio unit. Ordinarily, a unit of Unio is made up of diocesan priests of the same diocese. In instances where the number of members is considered insufficient⁸⁶ to constitute a unit, they may either join with another Unio unit or become members of Unio Indonesia directly on an individual basis.⁸⁷

Each member is obliged to abide by the decisions of Unio Indonesia for the sake of common well-being, and is entitled to make use of available resources.⁸⁸

4.2.3.3. Evaluation

It is obvious that Unio Indonesia is a national association of secular priests in Indonesia who pursue the same interests. The common interests are the needs of the secular priests to help each other in perfecting their spiritual life in the ministry and in fostering priestly brotherhood, in promoting the unity between secular priests and their bishops. Unio Indonesia also helps the secular priests, individually or in groups,

⁸⁶ The statutes do not specify the sufficient number.

⁸⁷ Sekretariat Unio Indonesia, *Pedoman Unio Indonesia*, pp. 18-20.

⁸⁸ *Ibid.*, pp. 21-22.

throughout Indonesia so that they might more effectively cooperate in building up the Indonesian Church and society.

As an association, Unio Indonesia has its own statutes. The present statutes contain the association's name, purposes, membership, meeting, and government. The statutes generally conform to the norms of the 1983 Code of Canon Law. However, they do not say anything about its headquarters, kind of association, cessation, its relationship with the Church's authority, and temporal goods. Compared to the former statutes, the present statutes are less complete.⁸⁹ The reason behind such an approach seems to be the fear of expressing the statutes in strictly juridic language. The present statutes are obviously written in the language of the Second Vatican Council. Canonically, however, the statutes will be more complete if they also identify the headquarters, the kind of association, its relationship to the Church's authority, its cessation, and management of temporal goods.

The 1983 Code divides associations of the Christian faithful into public associations and private associations. Public associations are those associations erected and governed by ecclesiastical authority (can. 301). Private associations are those associations established and governed by the Christian faithful other than those in

⁸⁹ The former guidelines consist of a preamble, name and headquarters, purposes, form, membership, rights and duties of the members, government, responsibilities of the officers, general meeting, amendment, cessation, and other relevant matters.

ecclesiastical authority (cann. 215 and 299).⁹⁰ As a matter of fact, Unio Indonesia was not erected by any ecclesiastical authority. It means that Unio Indonesia is a private association.

According to canon 322.2, no private association of the Christian faithful can acquire juridic personality unless its statutes have been approved by the ecclesiastical authority mentioned in canon 312.1. In the case of Unio Indonesia, its statutes have never been approved or recognized by any Church's authority. Consequently, Unio Indonesia has not been constituted as a juridic person. According to canon 310, such an association cannot be a subject of rights and obligations.⁹¹ However, its members can jointly contract obligations and acquire rights and possess goods as co-owners and co-possessors. Its members can also exercise their rights and obligations through an agent or proxy.⁹²

4.2.4. Jesus Caritas Fraternity of Priests

It is no secret that today priests live and work under a great deal of stress. The

⁹⁰ Pagé, "Associations of the Faithful in the Church," pp. 172-175.

⁹¹ *Communicationes*, 14 (1982), p. 144. See also Chiappetta, *Il Codice di diritto canonico*, p. 144. By the acquisition of juridic personality, the association becomes subject of obligations and rights in the canonical order.

⁹² Amos, *Associations of the Faithful*, pp. 182-183. See also Pagé, "Associations of the Faithful in the Church," p. 181.

Church's growing pains are part of their daily life. In this situation, priests need fraternal support. It was to answer this need that Jesus Caritas Fraternity of Priests was formed in France. We will analyse mainly the statutes/ directory of the Jesus Caritas-Fraternity.

4.2.4.1. Historical Background

Jesus Caritas began with a small group of priests who came together for retreat. It was in September 1951, that six diocesan priests from France attended a retreat given by Fr. Rene Voillaume. It was also the time that they were touched by the spirituality of Brother Charles de Foucauld (1858-1916). They recognized how well such a spirituality might assist them in living this life as diocesan priests. Thus, the origin of the Fraternity lies in the meeting of two movements: the quest for a more authentic spiritual life for diocesan clergy, and the spiritual movement that stems from Charles de Foucauld.⁹³

In 1952 three fraternities were organized in France. Under the patronage of Archbishop Charles de Provencheres, the Fraternity was erected as a Pious Union in September 1955. Then a petition was sent to Rome seeking the status of a Secular Institute with vows. After some years, the request was withdrawn. At present, it refers to itself

⁹³ Jesus Caritas Fraternity of Priests. *An Overview of Spirituality and Method*, Fifth Edition, April 1987, p. 21.

simply as the Fraternity and has no juridical status.⁹⁴ Daniel Danielson, a coordinator of the Fraternity in the USA, notes that the technical status of the Fraternity in canon law is a Pious Union.⁹⁵

Fraternities of Jesus Caritas sprang up in various countries. It came to North America through Brazil, Chile, and Peru. It was formed in Montreal 1959, in Brooklyn 1960, in San Francisco 1964. Today Jesus Caritas fraternities are found throughout the world with four thousand members.⁹⁶

4.2.4.2. The Analysis of Its Statutes

The original regulations of the Jesus Caritas Fraternity of Priests were drawn up and approved in 1962. However, since that time the world has changed, and the Church itself has undergone a renewal brought about by the Vatican Council. The Jesus Caritas Fraternity which had also evolved during this time had been called to change the

⁹⁴ Ibid.

⁹⁵ This information was obtained by the author from Daniel Danielson through his letter of May 17, 1995.

⁹⁶ Jesus Caritas Fraternity of Priests, *An Overview of Spirituality and Method*, pp. 21-22.

regulations it had.⁹⁷

It was in September 1974 that the fraternities were invited to express their opinions on the Guidelines proposed by Peter Hunnermann. In August 1976, the Regional Coordinators (Responsibles) of the Fraternity gathered together in General Assembly in Montefiolo. On August 23, 1976, they issued Guidelines for the Fraternity. These Guidelines were reviewed in 1981 without any major change. In 1987, the Regional Coordinators (Responsibles) of the Fraternity modified the 1976 Guidelines. However, the 1976 Guidelines still remained the main source for the new edition of the 1987 Guidelines.⁹⁸

Our analysis will focus on the 1976 Guidelines and the 1987 Guidelines under three categories: the nature of Jesus Caritas, the relationship with the Church's authority, and internal organization.

4.2.4.2.1. Nature of Jesus Caritas

The Jesus Caritas Fraternity is a Pious Union. It aims to help secular priests to answer their call as diocesan priests. In this Fraternity, the secular priests are called to

⁹⁷ Jesus Caritas Fraternity of Priests, *Directoire*, Montefiolo, 1976, p. 5.

⁹⁸ *Ibid.*, p. 6. See also Jesus Caritas Fraternity of Priests, *An Overview of Spirituality and Method*, p. 2.

share a life as a brother, to become better brothers to fellow priests and to their bishop, to help each other in spiritual life and ministry: bearing witness to Jesus and proclaiming the Good News to the poor. The purpose of the group, therefore, goes beyond merely recreational goals or solely theological and ministerial discussions. It rather leads its members to a deeper level of their spirituality where they seek the union with Jesus and the Father in personal life.⁹⁹

4.2.4.2.2. Its Relationship with the Church's Authority

It is obvious that the Fraternity was established by a private agreement of the members. However, in September 1955, the Fraternity was erected as a Pious Union under the patronage of Archbishop Charles de Provencheres.

The Fraternity continually emphasizes that the purpose of any structure is for assisting the spiritual growth of its members. Therefore, there is a minimal structure within the Fraternity. On the organizational plane, there are local, district, and national councils to assist the Fraternity.¹⁰⁰

⁹⁹ Jesus Caritas Fraternity of Priests, *Directoire*, pp. 7-9 See also *An Overview of Spirituality and Method*, pp. 4-5.

¹⁰⁰ Jesus Caritas Fraternity, *Directoire*, p. 10. See also *An Overview of Spirituality and Method*, p. 4.

The Fraternity is led by a Coordinator (Responsible) at each of its levels: local, district, national, and international. Each local Fraternity chooses its own Coordinator. The election is confirmed by the district (diocesan) Coordinator. The Coordinator of the district is elected by the Fraternity members in the district. This election is confirmed by the Regional (National) Coordinator, subject to approval by the bishop of the diocese, since this is an ecclesial responsibility. The National Coordinator is elected by the national assembly for a period of three years,¹⁰¹ which is renewable for another three years. He is to be a priest who has walked with the Fraternity for several years, has matured in its spirit and shares its charism, and has made the Month of Nazareth.¹⁰² He has authority to appoint up to four Fraternity brothers to serve with him on the National Council for the duration of his three years term. The General Coordinator and International Council are elected for a six year term. They are elected in the General Assembly by the delegates from all the nations. A majority of two-thirds in the first two rounds and an absolute majority in the following rounds are required for a valid election

¹⁰¹ Jesus Caritas Fraternity, *Directoire*, p. 25. See also *An Overview of Spirituality and Method*, p. 21. Other Coordinators are elected for a period of six years.

¹⁰² Jesus Caritas Fraternity, *An Overview of Spirituality and Method*, p. 18. The Month of Nazareth offers its members a more extended and deeper experience of fraternal life. While practicing the core components of fraternal life, its members also explore in a contemplative way their lives, ministry, and their relationship with God in the spirit of Nazareth. The Month of Nazareth is a sharing of fraternal life: prayer, reflection, manual work, leisure, etc.

of a General Coordinator and International Council.¹⁰³

The Fraternity emphasizes that these structures of leadership are not meant for authority or power but for service. Those who are elected to coordinate the Fraternity should serve others as brothers. At the district level, the Coordinator has the responsibility for maintaining contacts with the bishop, the Church's authority.

For financial management, every Region has to designate a treasurer. The international fund shall be the responsibility of the General Coordinator and shall be overseen by the International Treasurer.¹⁰⁴

4.2.4.2.3. Internal Organization

The members of the Fraternity can be divided into two kinds: those who are in the initial period of commitment and those who have passed that period. The initial period of commitment is from six months to one year. Those priests who are in a serious crisis cannot be accepted in this Fraternity. A bishop can be one of its members.¹⁰⁵

¹⁰³ Ibid., pp. 18-21. See also Jesus Caritas Fraternity, *Directoire*, pp. 18-20.

¹⁰⁴ Jesus Caritas Fraternity, *Directoire*, p. 23. See also *An Overview of Spirituality and Method*, p. 21.

¹⁰⁵ Jesus Caritas Fraternity, *Directoire*, p. 16. See also *An Overview of Spirituality and Method*, pp. 3-5.

At least once a month the members come together for scripture sharing, contemplative prayer before the Eucharist, and a review of life. Other activities are recollections, a national and international annual retreat, the Month of Nazareth, and the General Assembly. Recollection lasts one or two days once in six months. The Month of Nazareth takes place at the time of definitive commitment in the Fraternity or as a renewal of that commitment. The General Assembly is held every six years. It is composed of a National Coordinator, delegates from regions, a General Coordinator and his team, a former General Coordinator.¹⁰⁶

The local Coordinator (Responsible) has the responsibility of guiding the group in being faithful to the vision and purpose of fraternity life. He also oversees the arrangements for and facilitates the meetings. He maintains contact with the district which helps him in planning recollections and retreats. It is the district Coordinator who is the spokesperson for the Fraternity in relation to other Church structures within the district, and maintains communication with the National Council. He represents the district at the national meeting. The National Coordinator (Responsible) has the task of maintaining contact with the General Coordinator and the International Council. He represents the country at the international meetings. He should call a national assembly every three

¹⁰⁶ Jesus Caritas Fraternity, *Directoire*, p. 17. See also *An Overview of Spirituality and Method*, pp. 5-18.

years. The General Coordinator (Responsible) and International Council bear the responsibility of maintaining the unity of the Fraternity throughout the world.¹⁰⁷

4.2.4.3. Evaluation

An association is a voluntary group of people who pursue the same interests. Accordingly, Jesus Caritas Fraternity originated in the meeting of some diocesan priests who were seeking authentic spiritual life based on the inspiration provided by Charles de Foucauld. The Fraternity's aim is to provide personal support, and professional and ministerial growth of the diocesan clergy. In the Fraternity, secular priests are called to share life as brothers, to become better brothers to fellow priests and to the bishop, to help each other in spiritual life and ministry: bearing witness to Jesus and proclaiming the Good News to the poor.¹⁰⁸

The Fraternity approved its guidelines on August 23, 1976 and revised them in 1981 and in 1987. The guidelines are obviously written in non-canonical language. However, they maintain the essential features of the statutes of an association required by

¹⁰⁷ Jesus Caritas Fraternity, *Directoire*, pp. 17-20. See also *An Overview of Spirituality and Method*, pp. 18-21.

¹⁰⁸ Jesus Caritas Fraternity, *Directoire*, pp. 7-9. See also *An Overview of Spirituality and Method*, pp. 4-5.

the 1983 Code. The guidelines contain the name, purpose, spirituality, lines of authority or leadership, membership, meetings, duties, etc. The guidelines give very little importance to temporal goods and requisites for membership. They say nothing about the Fraternity's suppression.

The technical status of the Fraternity in canon law is that of a Pious Union. According to canon 707.1 of the 1917 Code, a Pious Union was an association of the faithful erected for the promotion of works of piety or religion. While the above canon spoke only of erected associations, canon 708 said that pious unions did not have to be formally erected. The approval of the Ordinary was sufficient; and by this approval, these associations became ecclesiastical associations like those erected by Church's authorities.¹⁰⁹

The terms *erection* and *formal approval* accounted for the two types of ecclesiastical associations distinguished by their relationship with Church's authority. *Erection* referred to those which enjoyed moral personality; *formal approval* referred to those which did not.¹¹⁰ Fortunately, the Fraternity was erected as a Pious Union under the

¹⁰⁹ Bouscaren, *Canon Law. A Text and Commentary*, pp. 361-367. See also Amos, *Associations of the Faithful*, p. 29.

¹¹⁰ Amos, *Associations of the Faithful*, p. 35. See also Pagé, "Associations of the Faithful in the Church," p. 176; Quinn, *Archconfraternity*, pp. 36-38.

patronage of Archbishop Charles de Provencheres in September 1955. It means that the Jesus Caritas Fraternity was an erected association endowed with moral/juridic personality.

Since the 1983 Code no longer mentions the status of a Pious Union in its canons, what is its juridic status? Is a Pious Union parallel to a public or private association? The 1983 Code defines public associations as those associations erected and governed by ecclesiastical authority. Private associations are those associations established and governed by the Christian faithful other than those in ecclesiastical authority.¹¹¹ By its very decree of erection a public association becomes a public juridic person and receives a mission to pursue its ends in the name of the Church (can. 313). Consequently, since the Jesus Caritas Fraternity was erected as an association by competent authority endowed with moral/juridic personality under the 1917 Code and since private juridic persons did not exist under that Code, the Fraternity is classified as a public association.¹¹²

As a public association, the Fraternity is governed by canons 312-321 of 1983

¹¹¹ Canons 301, 215, and 299. See also Kneal, "Associations of the Christian Faithful," p. 246.

¹¹² Amos, *Associations of the Faithful*, p. 179. Associations erected into moral persons under the old Code constitute public juridic persons under the new Code, because private juridic persons did not exist under the old Code. Moreover, other moral persons erected under the 1917 Code (e.g., parishes, dioceses, seminaries, religious institutes etc.) are now public juridic persons.

Code. According to canon 313, the fraternity has a right to act in the name of the Church and is endowed with a public juridic personality. The Fraternity is subject to the further direction of the ecclesiastical authorities mentioned in canon 312.1 (can. 315). In view of this provision, the ecclesiastical authority has a right to be involved in the management of its temporal goods (can. 319), as well as to suppress the association (can. 320). According to canon 1257, its temporal goods are ecclesiastical goods.

Canon 314 states that the statutes of any public association as well as their revision or change require the approval of the ecclesiastical authority which is competent to erect the association in accord with the norm of canon 312.1. In the case of the Jesus Caritas Fraternity, none of its revised statutes¹¹³ have been approved by the competent ecclesiastical authority. Since Jesus Caritas Fraternity is an international association,¹¹⁴ its statutes need the approval of the Holy See (can. 312.1).¹¹⁵

¹¹³ Basically guidelines are different from statutes. Guidelines are principles by which to determine a course of action, while statutes are law passed by a legislative body. However, there are some guidelines which are in reality statutes, because they include the most essential features of the statutes. In this context, the guidelines of the Jesus Caritas Fraternity are categorized as statutes.

¹¹⁴ Jesus Caritas Fraternity, *An Overview of Spirituality and Method*, p. 3.

¹¹⁵ Paul VI, Apostolic Constitution, *Regimini Ecclesiae universae*, August 15, 1967, in *AAS*, 59 (1967), pp. 885-928. Id., Motu proprio, *Apostolatus peragendi*, December 10, 1976, in *AAS*, 68 (1976), pp. 696-700. John Paul II, Apostolic constitution, *Pastor bonus*, June 18, 1988, in *AAS*, 80 (1988), pp. 880-881. The Congregation for the Clergy is responsible for associations of the clergy and associations of the clergy and laity.

4.3. NATIONAL FEDERATION OF COUNCILS OF PRIESTS (NFCP)

The National Federation of Councils of Priests has been established in the USA and Canada. Such an assertion is likely to raise some important questions. What is the nature of this organization? Is it an association? Based on its statutes, this section examines the nature of this federation. It begins with a brief historical background of NFCP in Canada and then subjects its statutes to a critical evaluation.

4.3.1. Historical Background

The National Federation of Councils of Priests in Canada originated with the regional meeting of some priests in Toronto in 1967. This group had the support of Bishop A. Carter, Bishop of Sault Ste. Marie. In the spring of 1968, an ad hoc Committee was set up. Among its members, there were Bishop R. DeRoo and Father Edmund Roche for the English sector.¹¹⁶ In the same year both of them were successful in bringing together in all Senates of Priests from the entire country and in making a resolution. The resolution basically asked for the constitution of a national committee to look into the intellectual

¹¹⁶*Summary of the History of the National Federation of Council of Priests*, Unpublished document, p. 1. Another is the French sector.

and spiritual needs of the priests, and their ministry. The resolution read:

That meetings be constituted by the Senate or Councils of Priests across the country with a view to delineating the theology and problems of the priesthood, the future of the ministry, its style of life, forms and structures; and that these local meetings constitute a national committee to bring reports and concrete suggestions to the C.C.C. before its Spring plenary Session. That a protem committee of this group (here meeting) be elected to encourage and follow up the above mentioned local meetings across the country.¹¹⁷

William Roach was elected as the first chairman and Edmund Roche as the first secretary-treasurer.¹¹⁸ Since then annual meetings have been held, and at these meetings members elect a committee to carry out the responsibilities of the group.

4.3.2. The Statutes of the NFCP

During the annual meeting in 1990, the statutes of the NFCP were approved by its members. The statutes refer to the group's name, objectives, membership, fees, annual meeting, delegates, executive, duties of the executive, executive meetings, and amendments.¹¹⁹ These can be categorized into three groups as outlined above: Nature of

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ *Constitution of National Federation of Councils of Priests*, English Sector, 1990, p. 5.

the NFCP which includes the name or title and purposes; the relationship with Church authority which covers the executive, its duties, approval and amendment of the statutes.

4.3.2.1. Nature of the NFCP

The name of the organization is the National Federation of Councils of Priests. This organization is not a canonical body. It does not have any jurisdiction. It pursues several purposes. It aims at helping the bishops of Canada to develop and implement national pastoral programs for serving the people of God. It provides a forum for the Councils of Priests of the local churches whereby they can share their experiences as collaborators of the diocesan bishop in the governance of the local church. It carries out the tasks which can not be adequately or easily done by individual councils. It promotes and collaborates with others in pastoral research and action. It helps the Councils of Priests in the English sector to work together with their bishops, religious and laity. It provides an opportunity to priests of the English sector to collaborate with priests of the French sector. On the international level, the organization provides for representation of Canadian priests at international meetings of diocesan priests.¹²⁰

¹²⁰ Ibid., pp. 1-2.

4.3.2.2. Its Relationship with the Church Authority

The National Federation of Councils of Priests does not claim itself as a juridical body. It was established by the private agreement of several priests. The federation never sought any canonical status.¹²¹ At the annual meeting of 1990, the proposed constitution was approved by the members. The constitution may be amended by a two-thirds vote of the delegates present and voting at any annual or special meeting of the Federation. For that purpose, the executive is required to submit the amendments to the members of the Councils at least four months prior to such meetings. Under normal circumstances, amendment motions are considered at the annual meeting and put to vote at the subsequent annual meeting.¹²²

The Federation is governed by its executive, comprised of the president, vice president, other executive members,¹²³ a secretary-treasurer, and four liaison bishops. The president is elected by secret ballot and absolute majority (50% percent plus one).¹²⁴ He

¹²¹ E.L. Thériault, "President's Report," Unpublished document. November 1991, p. 4.

¹²² *Constitution of National Federation of Councils of Priests*, p. 1 and p. 5.

¹²³ *Ibid.* p. 3.

¹²⁴ A. Mendonça, *Persons in General and Juridical Acts*. (Class notes for the Private Use of the Students), Ottawa, Faculty of Canon Law, Saint Paul University, 1995-1996, p. 87. This definition is inadequate because in case of odd numbers of votes application of this definition would lead to an unusual conclusion. For example, if 15 votes were cast, half of these would be

is elected for a two year term and can be reelected only for a second term. He is assisted by three vice-presidents. The vice presidents are elected during the annual meeting by the delegates of the Atlantic, Central and Western regions. The term of the vice-presidency is two years, renewable once. Other members of the executive are, one member from the Atlantic, one from Western regions, and three from the Central region. All of them are elected by their own delegates at the annual meeting of each region. They also have a two-year term of office, renewable once. A Secretary-Treasurer is appointed annually by the Executive. Three liaisons bishops are appointed by the Atlantic, Central, and Western Conferences of Bishop, and one liaison bishop from the Ministries and Apostolate Commission of the CCCB. The term of the liaison bishops is determined by the Episcopal Conference.¹²⁵

In order to be eligible for election as a member of the executive, one must be a full member of the Council at the time of election or chosen by their Council as an official delegate to the annual meeting. This requirement is not applied to the appointment of the

7 1/2 and the required majority for election would be 8 1/2 (one vote more than half). But in this case 8 votes out of 15 would certainly constitute an absolute majority. Therefore, a more accurate definition of "absolute majority" would be, "any number exceeding half of the votes" whether or not the total number of votes is an odd or even number. See also G. Lewis, *Chapters in Religious Institutes*, Washington, DC, The Catholic University of America, 1920, p. 116.

¹²⁵ Ibid., pp. 3-4.

Secretary-Treasurer.¹²⁶

4.3.2.3. Internal Organization

The membership of the federation includes all Councils of Priests in the English sector and of the Eparchies in Canada. English speaking priests from the French sector dioceses can send representatives with the approval of their Councils. The dioceses of the French sector in Atlantic, Central and Western Regions may send observers to attend the annual meeting of the Federation.¹²⁷

All members are obliged to pay the annual fees which are determined at the annual meeting. The annual meeting takes place between September and December of each year. The meeting is attended by the delegates chosen by the member Councils. Member dioceses with under 100 members priests may send two delegates to the annual meetings who will have only one vote. Dioceses with over 100 members priests may send three delegates, with only two votes. At the annual meeting of the Federation, the membership fee and the place for the following meeting are to be determined and the budget of the

¹²⁶ Ibid., p. 4.

¹²⁷ Ibid., p. 2.

Federation is to be approved by those in attendance.¹²⁸

The President enjoys all the rights and obligations which are normally associated with the presidency of such an organization. It is the responsibility of the President to call and preside over the general and executive meetings of the Federation. The executive meeting occurs once annually at a predetermined time and also before the annual meeting. The Vice President has two responsibilities: in the absence of the President or in case of the incapacity of the President, the Vice-President fulfils the duties of the President. The Vice President also has the responsibility to coordinate the activities within the region or Eparchy. The Secretary is responsible for keeping the records of the Federation, such as mailing, documentation, safe keeping and the dispersal of funds. The other executives represent their regions at the executive and annual meetings.¹²⁹

4.3.3. Evaluation

The statutes of an association should contain certain basic information for purposes of identification. This information includes the name, kind, ends or its social objective, its headquarters, establishment, approval/recognition of the statutes, jurisdiction,

¹²⁸ Ibid., pp. 2-3.

¹²⁹ Ibid., pp. 4-5.

leadership, temporal goods, suppression, membership, meeting, duties, spirituality, and formation. The statutes of the National Federation of Councils of Priests cover most of these elements, except the headquarters, temporal goods, and suppression.

The name of the organization is the National Federation of Councils of Priests. Unfortunately, the statutes do not explicitly identify the nature of this organization. Is it an association? Kneal says that the National Federation of Councils of Priests is an example of a confederation of public associations endowed with public juridic personality.¹³⁰ However, the argument has been rejected since ecclesiastical authority has not erected it.¹³¹ Some bishops in Canada argue that the name "National Federation of Councils of Priests" seems to be ambiguous. The reason is that a Council of Priests is a canonical body, the Federation is not. They suggested that the Federation should be changed from a Federation of Councils of Priests to an Association of Priests.¹³²

Roch Pagé raises two concerns about this federation on the basis of the right of association in the Church and the nature of the Council of Priests.¹³³ The right of

¹³⁰ Kneal, "Associations of the Christian Faithful," p. 250.

¹³¹ Amos, *The Associations of the Faithful*, p. 172.

¹³² Thériault, "President's report," p. 4.

¹³³ R. Pagé, "Considerations on a Federation of Councils of Priests," unpublished document presented to the Episcopal Commission for Relationship with Associations of Christian Faithful,

association principally responds to a common interest and serves the attainment of a purpose which cannot be achieved or is achieved with difficulty by the individuals on their own. This principle is also applied to institutions.¹³⁴ Then what is the aim of the National Federation of Councils of Priests? Is it to make its affiliated members better Councils of Priests? Is such a Federation the simplest and most efficient way of improving Councils of Priests?¹³⁵

Article II nos. 2.4 and 5 of the statutes of the National Federation of Councils of Priests seems to indicate that three of its purposes are to make an individual Council of Priests better. The Federation aims to accomplish these tasks which can not be done by individual Councils of Priests. The Federation intends to help the individual Council of Priests in exercising their pastoral ministry in the diocese and in promoting collaboration between the bishop, religious and laity. However, the four other objectives mentioned in Article II do not deal with anything related to individual Council of Priests. They deal with an individual priest and the Bishops of Canada at the national level. These four ends

June 11, 1991, p. 1.

¹³⁴ Ibid. Canon 374 states that to foster pastoral care by means of common action, several neighbouring parishes can be joined together in special groups, such as vicariates forane (deaneries).

¹³⁵ Ibid. p. 1.

seem to raise more questions in regard to the nature of this Federation. Is such a Federation the most efficient and proper means for achieving these aims?

The main consideration relates to the nature of the Council of Priests. Canon 495 says that the Council of Priests is a group of priests who represent the presbyterium and who are to be, as it were, the bishop's senate. The Council's role is to assist the bishop, in accordance with the law, in the governance of the diocese, so that the pastoral welfare of that portion of the people of God entrusted to the bishop may be most effectively promoted.

Since the Council is connected to the presbyterium with the bishop in each diocese, it does not exist outside the diocese. It is within any bishop's power to delegate a member of his Council to act outside of his diocese. The Council of Priests can "never act without the diocesan bishop" (can. 500.3) and "when the see is vacant, the council of priests lapses" (can. 501.2).¹³⁶

It means that even if its statutes generally conform to the essential elements of an association identified in can. 304 of the 1983 Code, the National Federation of Councils of Priests cannot be called an association. Consequently, there is a need for change. Roch Pagé suggests the formation of a "Federation of Clergy Personnel Boards" which would be responsible for the spiritual, intellectual, and material aspects of the life of clergy.

¹³⁶ Ibid., p. 2.

Otherwise, it should become a National Association of Priests whose members are individual priests. This change, of course, would affect the content of the statutes. The membership and the purposes mentioned in the present statutes, for example, will have to be totally changed.

CONCLUSION

An association of priests is a voluntary group of priests (often including candidates or lay persons) organized for the pursuit of one, or of several interests in common. It provides the members a means to attain some goals which cannot be achieved or achieved with difficulty on their own. Associations of priests are meant to promote the sanctity of priests in their ministry, foster unity with the bishop and among themselves, and strengthen ecclesial communion. These associations can be private (Unio Indonesia, Emmanuel Community), public (The Companions of the Cross), diocesan (The Companions of the Cross), national (Unio Indonesia), or international (The Emmanuel Community).

The National Federation of Councils of Priests can't be categorized as an association of secular priests for several reasons. The name itself seems to be ambiguous. The purposes of the NFCP are not exclusively designed to make its affiliated members better Councils of Priests. The main reason is that a Council of Priests cannot exist or

function as a council outside the diocese.

Associations of priests are required to have their own statutes which must specify certain basic information for purposes of identification. This should include the nature of the association, its relationship to Church's authority, and its internal organization. The statutes should clearly state the organization's name, kind, purpose, headquarters, spirituality, establishment, juridic personality, approval of statutes, temporal goods, leadership, suppression, membership, meetings, duties, formation, etc.

Associations of priests, for example, pursue ends suitable to the clerical state. These associations aim at helping the priests in spiritual and intellectual life, personal and communal life. They are to promote the holiness of the priests, improve their ministry among the people of God, strengthen the communion of the Church, and support hierarchical communion.

The nature of the associations of priests determines its relationship to Church authority. As a public association, the Companions of the Cross affords wider scope for the involvement of the Church's authority in its affairs. This association is different from the Emmanuel Community because the latter is a private association. In the case of Unio Indonesia, the scope of the Church's authority is very limited in regard to its internal and external aspects of governance.

GENERAL CONCLUSION

Priests are taken from among the people of God and ordained to minister to them. Priesthood does not change or annihilate a priest's personality. Nor does priestly ordination disqualify a priest from his membership in the human as well as the ecclesial community. Like other members, they do have rights. Rights are necessary to express and to fulfil their dignity as human beings and as christians.

It was the mind of the Code Commission that priests also have the same rights that are accorded to all the Christian faithful. Certain rights are inherent to the nature and the dignity of being human and christian. These rights originate in the divine creation of human beings, Jesus Christ's own participation in humanity and His redemptive sacrifice, the dignity of the new person given by the Holy Spirit, and the calling for communion with God.

The 1983 Code acknowledges officially and generally the right of secular priests to associate as a natural as well as an ecclesial right (cann. 215 and 278). It is a genuine fundamental right which is connatural with their membership of the human race and the people of God. The ultimate foundation of this right relates to the social nature of human

beings and the nature of the Church as *communio* and its supernatural mission.

Secular priests, therefore, have the right to join any associations or to form their own associations. An association of secular priests is a freely organized group of secular priests meant to respond to their common needs and to serve their common goals: to provide each member of an association a good which cannot be attained or only attained with difficulty on their own. Canon 278 specifies some elemental features of these associations, such as constitution, goals, membership, competent authority, and its limitations.

Associations of secular priests - private or public - are required to have their own statutes (recognized or not recognized by the competent authority) and to pursue the ends suitable to the clerical state (these ends relate to the spiritual, intellectual, social, material, personal, and communal life of secular priests). Canon 278 seems to promote those associations of diocesan priests which a) have their statutes recognized by the competent authority, b) foster holiness, c) help the priestly ministry and fraternal assistance, and d) promote unity among the clergy themselves and with their bishop.

The members of these associations are secular priests; however, they are also open to deacons, bishops, and other Christian faithful. The members of the Companions of the Cross, for example, include priests, candidates for priesthood, and other single men.

These associations can be private (Unio Indonesia, Emmanuel Community) or

public (the Companions of the Cross). These associations can be diocesan (the Companions of the Cross), national (Unio Indonesia), or international (The Emmanuel Community). All these associations (both private and public) are subject to the supervision of the competent ecclesiastical authority (can. 305) who has power to suppress public associations of secular priests (can. 320); and in certain cases the same authority can suppress private associations of secular priests (can. 326).

The purposes and membership make the associations of secular priests different from other associations of the Christian faithful in the Church. The purposes of these associations are limited to the ends compatible with the clerical state, and its members are mostly secular priests. The association of secular priests does not necessarily consist of the essential elements of Societies of Apostolic Life, that is, life in common, apostolic ministry, and spiritual ministry.

The National Federation of Councils of Priests of Canada cannot be considered an association of priests. Firstly, the purposes of NFCP are not exclusively designed to make its affiliated members better Councils of Priests. Secondly, while the association is a voluntary organization, a Council of Priests cannot exist without relating to the diocese (cann. 500-501). It cannot function freely as a council outside the diocese.

The right of association is not unlimited. The nature of the right, the nature of the association, the public good, and the purposes of the association are among those factors

which must be taken into consideration in exercising and applying this right. Within the Church, this right is always exercised within the context of building the communion of the Church (can. 209), carrying out the mission of Christ (*LG*, no.5), with respect for the principle of equality (can. 208), subsidiarity and diversity (*LG*, no.32), and the common good of the Church (can. 223).

Beside these factors, canon 278 regulates this right of secular priests in light of the nature and dignity of priesthood. This canon discourages those associations whose aims and activities are unworthy of their priestly condition or which hinder the fulfillment of their ecclesial ministry. The association of secular priests (or those joined by secular priests) should not impede hierarchical communion, harm priestly dignity, or hinder the fulfillment of priestly duties. It is precisely for this reason that secular priests are forbidden to involve in political associations and to direct trade unions.

These limitations are intended to safeguard the integrity of faith, morals, canonical discipline, dignity of the priesthood, and rights of others in the Church. The limitations are set forth not solely to defend the institution, but to forestall any harm to the Christian faithful who seek their perfection in the life of the Church. For those reasons, the competent authority has a responsibility to oversee the exercise of this right so that it does not harm the common good of the Church or the dignity of the clerical state. According to the 1983 Code, the competent ecclesiastical authority has a responsibility to recognize

the statutes of associations of secular priests (can. 278.2), to see that clerics refrain from establishing or joining associations or unions which are not compatible with the priestly state (can. 278.3), and to supervise these associations (can. 305).

The involvement of the competent authority in the exercise of the right of association of secular priests should be one of encouragement and not interference. It should recognize, respect, coordinate, protect, and promote the exercise of this right. Bishop cannot interfere with or take away this basic right of the secular priests. They have the obligation to direct the exercise of those personal spheres of autonomy towards the common good of the Church, to safeguard doctrine and order, and to promote the realization of this right in light of its corresponding duty, by offering priests doctrinal guidance and the spiritual assistance.

Since both authority and freedom come from God, and are exercised in and for the service of the community, bishop and secular priests should be bound together in a spirit of faith, mutual charity, filial and friendly confidence, constant and patient dialogue, so that the common mission of the priests may be carried out responsibly under the guidance and support of their bishop.

Consequently, the statutes of an association of secular priests should take into account the freedom of the secular priests, the nature and the mission of the Church, the common good of the Church, the dignity of the clerical state, and the competence of the

Church's authority. Such statutes might include the following elements: preliminaries (historical background), nature of the association (name, headquarters, goal, spirituality), membership (admission, conditions of membership, formation, dismissal), relationship to the Church's authority (establishment, visitation, and the approval of statutes, temporal goods, government, suppression, etc.).

As a matter of fact, there is a variety of statutes of associations in the Church. It is possible to undertake a comprehensive study of all associations of secular priests. Furthermore, an interesting issue that can be pursued further is the right of religious to constitute associations similar to those of secular priests beyond the realm of their own institutes. Does the Code recognize the right of religious to associate? How does the Code regulate it? Is there any limitation? If there is, what are the reasons for such limitations?

APPENDIX

COMPANIONS OF CHRIST

STATUTES

October 19, 1992
(Approved)

March 9, 1994
(Revised)

Chapter I

Preliminaries

Title I - Establishment

Art. 1 - 1. The Association of the Companions of Christ was founded September 14, 1985 to live a common way of life among its members which promotes a more perfect way of loving God and serving the Catholic Church in works of evangelization.

2. Thus on Pentecost Sunday, June 7, 1992 the Companions of Christ submitted to the Archdiocese to be established as a Public Association of the Faithful with the eventual goal of becoming a Clerical Public Association of the Faithful.

3. A decree of erection and approval of these Statutes and Rule of the Companions of Christ with the Archbishop's establishment cause the Companions of Christ to be a public association of the faithful according to canons 298, 301, (302), 304, 312.3 and 320, of the Code of Canon Law.

Title II - Place of Residence and Ministry

Art. 2 - The place of dwelling and ministry for the Association is within the Archdiocese of Saint Paul and Minneapolis, Minnesota.

Art. 3 - Changes in assignment of residence are only done with the approval of the Archbishop of Saint Paul and Minneapolis.

Chapter II

Nature

Title I - Juridical Status

Art. 4 - The name of the Association is the Companions of Christ, the same name it has civilly as a non-profit corporation in the State of Minnesota.

Art. 5 - The Association of the Companions of Christ is a Public Association of the Faithful according to the norms of the Code of Canon Law, as described by its statutes, and further elaborated by the Rule of the Companions of Christ.

Title II - The Mission

Art. 6 - By living a common pattern of life as described in the Rule the Association seeks first and foremost to foster among its members personal sanctification: to love God above all else.

Art. 7 - The Companions of Christ have a particular charism for evangelization, which expresses itself in parish ministry and the promotion of lay movements and communities.¹

Art. 8 - The members of the Association are committed to the service of God and his people through worship, prayer, fraternal love, and evangelization.

Art. 9 - Appointments of clerical members are made by the Archbishop of Saint Paul and Minneapolis after consulting with the Archdiocesan Priest Personnel Board and Moderator of the Companions. Generally, the Archbishop follows the recommendation of the Priest Personnel Board and the Moderator. However, he is fully capable of doing otherwise if special needs or circumstances dictate a different response.

¹ Canons 313, 315.

Title III - Spirituality

Art. 10 - The Companions of Christ seek to live a life dedicated to the Lord in prayer and ministry.

Art. 11 - The celebration of the Eucharist is central to the identity of the Association, and is expressed in participation at daily Mass and regular times of Eucharistic adoration.

Art. 12 - The Liturgy of the Hours will be prayed communally in the morning and evening, and at night.

Art. 13 - The charism, fruits and gifts of the Holy Spirit will be fostered among the membership.

Art. 14 - The evangelical lifestyle of poverty (simplicity), chastity and obedience will be lived according to the Rule of the Association.

Chapter III

Members

Title I - Membership

Art. 15 - Membership is made up of candidates for the priesthood (and eventually ordained priests) and other celibate men who share its life and mission.

Art. 16 - When admitting new members the Association will look for two basic qualities: personal strength (physical, emotional, and spiritual); and the desire to be formed in the Ideal of the Rule, indicated by prayer, deep and personal love for the Lord, eagerness to give all for Him and the desire to be part of the life of the Association.

Art. 17 - One is considered a member after he has been accepted by the Association and has made either an associate, full (temporary), or life-long (perpetual)

commitment.² The decision is reserved to the Moderator with the consent of the Council.

Art. 18 - Associate membership is a period of at least one year during which men interested in living as Companions of Christ live in a residence of the Association for the purpose of discernment.

Art. 19 - Members must live the way of life faithfully, joyfully and peacefully for at least three years as fully committed members (temporary commitments) before being admitted to make life-long commitment (perpetual commitments). Reception of members into life-long commitments is made by the Moderator with the consent of the Association's Council.

Art. 20 - The Moderator or his delegate will work with the Archdiocesan Vocation Office in evaluating who will study for priesthood, and when such a member will begin his studies at the Seminary.

Art. 21 - Members who are candidates for the priesthood, because they will be incardinated into the Archdiocese of Saint Paul and Minneapolis, follow procedures for acceptance to theological studies set forth by the Archbishop of Saint Paul and Minneapolis and the Vocation Office in being admitted to priestly studies.

Title II - Commitments

Art. 22 - The Companions of Christ commit themselves the same as every Christian, namely, to love God with their whole heart, soul, mind, and strength, and their neighbour as themselves. Further, since they have been called to belong to God in a particular way, they seek to free themselves from other things for undivided devotion to the Lord and his service in accordance with these statutes. Therefore they commit themselves additionally to:

1. Remain celibate
2. Live a life of evangelical poverty (simplicity) in common with the other members;
3. Be obedient to the Archbishop of Saint Paul and Minneapolis, the Moderator of the Companions of Christ, and to follow the Rule.

² Canon 306, 307.

4. Live for the spread of the Gospel, first among themselves and then with all others.

Title III - Dismissal

Art. 23 - An associate member of the Companions of Christ may release himself or be released by the Moderator or his delegate at any time of his associate membership.³

Art. 24 - Dismissal of any committed member, either fully (temporary) or long-life (perpetual) committed member, can occur only with the consent of a majority of the other life long members following the canonical procedures as established by universal law.

Art. 25 - A dismissed member has no right to expect from the Association or the Archdiocese any monetary compensation for his commitment or for services rendered. Yet the Association will act with equity and charity towards dismissed members.⁴

Art. 26 - Dismissal of an ordained member of the Association will be done in consultation with the Archbishop. The dismissed member will remain incardinated into the Archdiocese of Saint Paul and Minneapolis.

Chapter IV

Material Possessions

Art. 27 - Finances for the Association and its members will be governed by these Statutes, the Rule and decisions of the Association, and the norms of canon law pertaining to temporal goods of a Public Association of the Faithful.

³ Canon 308.

⁴ Canon 702.

Title I - Corporate Finances and Possessions

Art. 28 - The Association may purchase and own things for the sake of its life and/or mission.

Art. 29 - The Association will be financially supported through contributions of its members and through donations.

Art. 30 - Households of the Association will maintain common financial responsibilities and practices appropriate to their common life.

Title II - Personal Financial Responsibility

Art. 31 - For clerical members of the Association, matters relating to financial compensations are governed by the policy set forth for clergy within the Archdiocese.

Art. 32 - Association members will administer their personal financial responsibilities according the Rule and decisions of the Association. Members will be financially independent as legal persons.

Art. 33 - Members of the Association will contribute financially to the Association according to the decisions of the Association.

Chapter V

Government

Title I - Nature

Art. 34 - The Moderator and those who exercise leadership within the Association do so as an expression of love and service for the sake of the service of Christ.

Art. 35 - The leadership of the Companions will consist of the Moderator and his council for the oversight and development of the Association.

Art. 36 - The Council will consist of the members of the Association who have made full or life-long commitment.

Art. 37 - The Council will give advice to the Moderator on issues pertaining to the Association. On major issues affecting the common life the Moderator will consult and receive the consent of the Council (a majority of those present and voting before acting.)

Art. 38 - Stewards will be appointed by the Moderator to oversee the finances, daily administration and other needs.

Art. 39 - The Moderator, in consultation with his Council, will appoint the director of each household.

Art. 40 - The Moderator may appoint other positions with the consent of the Council as needed (e.g. formation director, business manager).

Art. 41 - A two-thirds plus one majority of fully and life-long committed members is needed for any changes of the Rule or these statutes.

Art. 42 - The Archbishop of Saint Paul and Minneapolis must review and approve any changes or revisions to either these statutes, or the Rule of the Companions of Christ.⁵

Title II - Responsibilities

Art. 43 - The Moderator, who must be a life-long committed member, will oversee and govern the overall life and development of the Association. He will oversee the spiritual, pastoral and governmental matters of the Companions and its members. He will seek the advice of the Council for significant matters affecting the common life of the Association.

Art. 44 - The Council will serve under the Moderator and will help govern and care for the Association and its members.

Title III - Elections

Art. 45 - The Moderator of the Companions of Christ, chosen from the life-long (perpetual) members, is determined by two-thirds plus one approval of the full and life

⁵ Canon 314.

long members. The term of appointment is for five years, renewable for one consecutive term.

Art. 46 - The Archbishop of Saint Paul and Minneapolis confirms the Moderator, legitimately elected by the membership.⁶

Title IV - Relationship with the Archdiocese

Art. 47 - The governance of the Companions of Christ principally rests within these statutes, the Rule of the Companions in provisional form, and both universal and particular law.

Art. 48 - The Companions of Christ function under, and never apart from, the Archbishop of Saint Paul and Minneapolis.

Chapter VI

Ecclesiastical Representative

Art. 49 - The Archbishop of Saint Paul and Minneapolis appoints the Ecclesiastical Representative of the Companions of Christ, who is not a member of the group. The role of the Ecclesiastical Representative is to represent the Archbishop according to the norms of Canon Law.⁷

Art. 50 - The Companions of Christ may submit names to the Archbishop of a cleric to be appointed as Ecclesiastical Representative.

⁶ Canon 317.1.

⁷ Canons 305, 315.

Chapter VII

Administration of Assets

Art. 51 - The Companions of Christ has the right to acquire temporal assets, to possess them, to administer them and to transfer them. As the Association has public juridical status, its assets, all being in order, are ecclesiastical assets and their administration are subject to the norms of Canon Law concerning temporal assets, particularly as these apply to Public Associations of the Faithful.⁸

Art. 52 - Being incorporated civilly the Companions of Christ must also comply with the norms contained in its civil Statutes and By-laws, which establish it as a non-profit corporation in the state of Minnesota.

Chapter VIII

Incardination into the Archdiocese

Title I - Incardination

Art. 53 - Clerics, who are members of the Companions of Christ, are incardinated into the Archdiocese of Saint Paul and Minneapolis. Seminarians who are members become incardinated at the diaconate. Incardination brings with it the rights and responsibilities of any cleric in the Archdiocese of Saint Paul and Minneapolis. Through incardination, clerics become perpetually bound, with exception of universal law, to the Archdiocese. In the event the Companions of Christ cease to exist, clerics remain incardinated in the Archdiocese and under the direction of the Archbishop of Saint Paul and Minneapolis.

Art. 54 - Clerical members of the Companions who have been lawfully accepted according the procedures set forth in the Rule and by the Archbishop or his delegate, live the common life and ministry according to the Rule.

⁸ Canon 319.

Title II - Seminary Formation

Art. 55 - Members of the Association who are pursuing priestly formation will live in a household of the Companions of Christ. They follow the formation guidelines of the Companions of Christ.

Art. 56 - Seminarians in the Companions fall under the authority of the Rector of Saint Paul Seminary in those areas which pertain to academic, spiritual and pastoral formation prescribed for any candidate seeking incardination into the Archdiocese.

Art. 57 - Periodic evaluations by the Rector will be conducted and directed to the Archbishop of Saint Paul and Minneapolis. Furthermore, evaluations by the Moderator for the Companions reflecting the individual candidate's formation and common life will accompany those of the Seminary.

Chapter IX**Dissolution**

Art. 58 - For grave reasons, the Association may be suppressed or dissolved by the decision of the Archbishop of Saint Paul and Minneapolis after consulting with the Moderator of the Companions of Christ and his Council.⁹

Art. 59 - If the Association is dissolved, all the ecclesiastical goods and property will return to the corporation of the Roman Catholic Church of the Archdiocese of Saint Paul and Minneapolis.

⁹ Canons 305.1, 320.

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BIOGRAPHICAL NOTE

Fr. Yohanes Servatius Lon (Boylon) was born on May 5, 1959, in Ruteng-Flores, an island in southeast Indonesia. He attended Catholic elementary school in Ruteng from 1967-1972. In 1973, he entered St. Pius XII Seminary, a minor seminary in the diocese of Ruteng, and completed his seminary studies at St. Peter's Interdiocesan Seminary in Maumere-Flores. On June 27, 1987, he was ordained a priest for the diocese of Ruteng. His first assignment after the ordination was at St. Pius XII Seminary, as a member of the formation team. He obtained his Licentiate degree in Canon Law in 1993 at the Catholic University of America.